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FTC DA

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

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

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

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

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

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

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

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

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

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

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

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Delegation CP

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to substantially increase prohibitions on nearly all anticompetitive business practices by expanding the scope of core antitrust laws.

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

Rebecca Haw 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." Texas Law Review, vol. 89, no. 6, May 2011, p. 1247-1292. HeinOnline.

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.

#### That’s 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.

### Off---1NC

Politics DA

#### Infrastructure will pass now but can be derailed.

Laura Tyson & Lenny Mendonca 9-14-2021, Laura Tyson, former chair of the US president's Council of Economic Advisers, is professor of the Graduate School at the Haas School of Business and chair of the Blum Centre Board of Trustees at the University of California, Berkeley. Lenny Mendonca, senior partner emeritus at McKinsey & Company, is a former chief economic and business adviser to Governor Gavin Newsom of California and chair of the California High-Speed Rail Authority "Why America must go big on infrastructure," Jordan Times, https://www.jordantimes.com/opinion/project-syndicate/why-america-must-go-big-infrastructure

Economists across the political spectrum have long advocated an increase in infrastructure investment in the United States. Now, Congress is debating infrastructure spending packages that would secure the current economic recovery and boost potential growth over the next decade. Despite deep partisan divisions on most other issues, the Senate recently passed the $1 trillion Infrastructure Investment and Jobs Act (IIJA) by a large majority. The bill now must pass the House of Representatives, where Speaker Nancy Pelosi has secured an agreement for a vote by the end of September. Approval looks likely but is by no means certain, given complete lack of support from House Republicans and ongoing divisions among House Democrats.

#### Antitrust reform requires PC and trades off.

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” 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.

#### The bill is key to cybersecurity.

Cat Zakrzewski, 8-14-2021, "The Senate’s $1 trillion infrastructure bill includes funding to secure Americans’ water systems and power grids from cyberattacks," https://www.washingtonpost.com/technology/2021/08/14/cybersecurity-infrastructure-senate-legislation/

A Senate bill intended to shore up the nation’s roads, pipes and electric grid includes billions to protect that aging infrastructure from cyberattacks.

With a series of high-profile ransomware attacks fresh in their minds, U.S. Senate negotiators wove cybersecurity investments throughout the bipartisan $1 trillion infrastructure proposal, which passed the Senate in a 69-to-30 vote on Tuesday and now moves to the House for a vote. The allocations are a reflection of the growing realization in Congress that a computer attack could leave Americans without water, power or other essentials.

“This is an incredibly serious threat to this country that’s only growing more serious,” said Sen. Angus King (I-Maine).

The Colonial Pipeline ransomware attack in May was a wake-up call that gave lawmakers and the public “a taste of what is potentially in store,” King said. The attack disrupted fuel supplies in the eastern United States, prompting gasoline shortages and panicked buying that affected millions for days.

The Colonial hack was just one in a series of attacks on lawmakers’ minds. King said he is particularly wary of attacks on the more than 100,000 public water systems in the United States, especially after a hacker in February took control of a water treatment facility in Oldsmar, Fla. The intruder raised the levels of sodium hydroxide to a hazardous point that could have sickened residents. An operator noticed the rising levels and was able to quickly intervene, but the incident highlighted the broader weaknesses at the facilities responsible for ensuring Americans have clean drinking water.

To King, one of the Senate negotiators, these incidents underlined that cybersecurity has to be a part of any work the government does on infrastructure, from broadband to power grids.

The bill directs the Federal Highway Administration to create a new tool to help transportation authorities better detect and respond to cyber attacks, which could range from ransomware attacks on transportation departments or hacks of traffic lights and road signs. It makes emergency funding available to respond to digital attacks on public water systems and makes grants available that can be used to help some water systems increase their ability to deal with cyberattacks as well as natural hazards and extreme weather.

It also calls on the Federal Energy Regulatory Commission to develop incentives to ensure that electric utilities are investing in cybersecurity and sharing data about potential threats.

The bill also authorizes nearly $2 billion in spending for specific cybersecurity initiatives, such as the creation of a $1 billion grant program to provide federal cybersecurity assistance to state and local governments, which experts say are among the most vulnerable institutions to ransomware attacks. The bill also would fund a new cyber director office, so that the federal government can better coordinate its response to major hacks, and would create a $100 million response and recovery fund, which the Department of Homeland Security could use to support both private companies and governments’ recoveries from cyberattacks.

The infusion of funding follows years of warnings from across the federal government of the vulnerability of U.S. critical infrastructure to cyberattacks. A year ago, the National Security Agency and the Cybersecurity and Infrastructure Security Agency warned that critical infrastructure systems, including energy, transportation and water systems, make “attractive targets for foreign powers attempting to do harm to U.S. interests or retaliate for perceived U.S. aggression.”

#### Cyberattacks go nuclear.

Michael T. Klare 19. Professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation

Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response.

Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1

The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2

Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response.

That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea.

For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing.

The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

### Off---1NC

Regs CP

#### The United States federal government should substantially increase prohibitions on nearly all anticompetitive business practices through non-antitrust regulations.

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

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

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

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

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

### Off---1NC

Japan DA

#### New antitrust is applied globally---that offends allies.

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.

#### That 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)).

#### Japan economic alliance is key to prevent Chinese challenges to the LIO---recovering now but smooth sailing is not guaranteed.

Shihoko Goto 21. deputy director for geoeconomics and senior associate for Northeast Asia at the Wilson Center. "When Trade No Longer Hampers U.S.-Japan Ties". 4-20-2021. https://www.wilsoncenter.org/blog-post/when-trade-no-longer-hampers-us-japan-ties

The April 16th meeting between President Joe Biden and Japanese Prime Minister Yoshihide Suga marked several milestones: not only was it the first foreign leader’s visit to the Biden White House, but it was also the first visit to the United States by Yoshihide Suga as the Japanese prime minister. It was also the first in-person summit meeting between the United States and Japan since the outbreak of a global pandemic. It marked a number of firsts in terms of content too, not least that it was the first time since the 1980s in which trade was not a sore point of contention between the two sides. Instead, trade relations projected as a way forward for further bilateral cooperation in confronting the China threat.

That isn’t to say trade relations between Japan and the United States are now smooth sailing. The U.S. trade deficit with the world’s third-largest economy runs to nearly $68 billion, and although the two sides signed a merchandise trade deal in 2019, the Japanese auto industry remains a point of contention for the United States. Indeed, Japan’s auto exports account for about $54 billion, or close to 80 percent, of the overall trade deficit. Meanwhile, the Biden administration is not expected to lift tariffs on steel and aluminum anytime soon, nor is it expected to make efforts to join the CPTPP in the near future, much to the frustration of Tokyo.

Yet instead of trying to negotiate a breakthrough on the trade front, the Biden-Suga meeting focused on bilateral economic relations based on their shared threat of dealing with China’s ambitions to challenge the regional status quo. Until recent months, Tokyo had aspired to maintain solid relations with China whilst furthering ties with the United States, most notably by endeavoring to decouple economic interests with Beijing from the security threat that China has increasingly been posing upon Tokyo. After the joint 2+2 joint security meeting in Tokyo in March, however, the two countries declared that China’s behavior is “inconsistent with the existing international order, presents political, economic, military, and technological challenges to the Alliance and to the international community.”

Since then, Tokyo has moved even closer to Washington publicly in pushing back against China, as the bilateral statement noted “the importance of peace and stability across the Taiwan Strait,” marking the first time since 1969 that Japan and the United States publicly referred to Taiwan which remains a core interest for China. In short, Japan’s hedging against the United States and maintaining a balancing act between China and the United States is now over. Not only is its security interests even more closely aligned with that of the United States, Japan’s economic interests are now more intertwined with that of the United States than ever.

Rather than focusing on the trade balance, Tokyo and Washington’s economic relations will concentrate more on economic resilience and maintaining free and fair economic rules of engagement in the Indo-Pacific. At the same time, the two countries are expected to work more closely together on competing against China in emerging technologies, from 5G to AI and information sciences.

For Japan, one of the biggest takeaways from the Biden-Suga meeting will be that the days of Japan posing an economic threat to the United States are now over. It will also be putting increasing pressure not only for Tokyo to be prepared to fight back against China on the economic as well as security fronts together with Washington, but it will also push Tokyo to step up its own efforts to compete in the innovation economy that goes beyond manufacturing.

#### LIO is sustainable and prevents great power war but can’t run on autopilot---preventing Chinese aggression is key.

Alan W. Dowd 21. Senior fellow with the Sagamore Institute, where he leads the Center for America’s Purpose. "Capstones: China’s Dream, the World’s Nightmare – Sagamore Institute". No Publication. 4-5-2021. https://sagamoreinstitute.org/capstones-chinas-dream-the-worlds-nightmare/

If China is indeed the future, if China is primed to “rule the world,” if China remakes the international order in its image, it won’t be pretty. A future dominated by the People’s Republic of China (PRC) will be demonstrably worse than the world we know. Just look at how Xi Jinping’s regime treats its own subjects—and plays its current role on the global stage.

NO RIGHTS

Those predictions aren’t outlandish. China already is the world’s top manufacturing nation, top exporting nation and second-largest economy. The PRC was the only major economy to emerge from 2020 claiming GDP growth (if we are to trust Beijing’s books). In the pandemic’s wake, China dislodged the U.S. as the world’s primary destination for foreign direct investment. PRC-backed firms are leaders in the global 5G and AI race. On the strength of a 517-percent binge in military spending since 2000, China bristles with anti-ship and anti-aircraft missiles, deploys a high-tech air force, has a growing and openly hostile presence in space, is doubling its nuclear arsenal, and boasts a 350-ship navy (now the world’s largest). Beijing’s growing cultural reach is evident in everything from its influence over Hollywood, to its puppet-master relationship with the NBA, to its 480 Confucius Institutes (designated by Washington as “part of the Chinese Communist Party’s global influence and propaganda apparatus”).

As President Joe Biden concludes, China is “the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system.”

Xi is doing exactly that. But the China challenge starts inside the PRC.

Xi is pursuing what he calls the “China Dream,” which enfolds goals such as sustained economic development, military power modeled after and matching that of the U.S., ideological conformity, “rejuvenation of the Chinese nation” and “complete unification of our country.” Making Xi’s “China Dream” come true is turning into a nightmare for his subjects.

Before leaving his State Department post, Secretary of State Mike Pompeo described what Xi is doing to Uighur Muslims as “genocide,” noting that Beijing has “forced more than a million people into internment camps in the Xinjiang region” and detailing “torture, sexual abuse…rape, forced labor…and unexplained deaths in custody.” As he took the baton from Pompeo, Secretary of State Antony Blinken agreed, affirming that “The forcing of men, women and children into concentration camps, trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party—all of that speaks to an effort to commit genocide.”

The U.S. government isn’t alone. The Uighur Muslim region, according to a UN human-rights watchdog, “resembles a massive internment camp…a no-rights zone.” More accurately, all of China is a no-rights zone.

Xi’s China is a place where Christian churches are smashed and followers of Christ are sent to reeducation camps; Buddhist temples are bulldozed; Uighur men are packed into freight trains, Uighur women are forcibly sterilized and Uighur babies are forcibly aborted; and bishops and Nobel Peace Prize laureates die in prison. Under Xi, “Religious persecution has increased…with four communities in particular experiencing a downturn in conditions—Protestant Christians, Tibetan Buddhists, and both Hui and Uighur Muslims,” Freedom House reports. Amnesty International adds that “hundreds of thousands of people” are subjected to arbitrary arrest and detention in China, many of them for “peacefully exercising their rights to freedom of expression and freedom of belief.”

There’s a brutal logic to Xi’s brutal response to religious activity. The common denominator of most every religion is that there’s something above, something beyond, something bigger, more enduring and more important than the state. That notion represents a mortal threat to the legitimacy and durability of Xi’s regime, which is founded on the premise that people exist to serve the state—not to use their God-given gifts to serve others and God.

Xi’s capacity to control is growing ever more insidious. The PRC’s new “social credit system” is using mega-databases to monitor and catalogue every aspect of life of China’s 1.3 billion people—financial transactions, civil infractions, social-media postings, online activity—and then reward or sanction Xi’s subjects by feeding all that information to the National Development and Reform Commission, banking system and judicial system. PRC subjects with good social credit scores enjoy waived fees, lower utility bills, promotions and expedited overseas-travel approval, while those with poor social credit scores can be fired from their jobs, expelled from school, blocked from universities, or barred from accessing transportation.

An Orwellian surveillance state, more than a billion people denied religious freedom and other human rights, uncounted numbers tortured in reeducation camps, physicians jailed for following the Hippocratic Oath—that’s the kind of future and the kind of world Xi wants to build. As dissident leader Xu Zhangrun observed in the wake of Beijing’s criminal mishandling of COVID-19, “A polity that is blatantly incapable of treating its own people properly can hardly be expected to treat the rest of the world well.”

NO LIMITS

That idea—the notion that the PRC is incapable of treating the world any better than it treats its own—is not particularly profound. After all, this is a regime that over the decades has erased some 35 million of its subjects and tortured millions more. Regimes like this see no limits on their power. Since they believe nothing is above the state, they rationalize everything they do in the name of the state, the revolution, the Supreme Leader, the Dear Leader, the Core Leader (Xi’s new title). With no moral constraints on what they do, they believe their ends always justify their means.

That backwards worldview informs every aspect of decision-making in the PRC. This doesn’t mean Washington should refuse to talk with Beijing. But we must be ever vigilant when dealing with Xi. A regime that can justify imprisoning, torturing and killing its own people for peacefully practicing their faith can and will justify anything: seizing foreign lands, annexing international waterways, absorbing free peoples, stealing proprietary information, leveraging a pandemic to gain geopolitical advantage, breaking treaties. The godless USSR did those sorts of things, and so has the godless PRC.

“It is difficult to imagine that a government that continues to repress freedom in its own country,” President Ronald Reagan said of the USSR, “can be trusted to keep agreements with others.” And here we are yet again.

Experts in policy analysis, academia and military-security affairs conclude that Xi’s response to COVID-19 “was in breach of international law.” It pays to recall that COVID-19 was a local public-health problem that metastasized into a global pandemic due to Beijing’s incompetence or intention (either cause is reason not to entrust the future to Xi); that Xi’s regime lied about human-to-human transmission; that Xi’s regime willfully allowed millions to leave the epicenter in Wuhan for destinations around the world; that Xi’s regime carried out a premeditated plan to hoard 2.5 billion pieces of protective equipment as the virus swept the globe; that Xi’s regime blocked scientists from sharing findings about genome sequencing for weeks; that Xi’s regime continues to refuse to cooperate with international health agencies.

Xi’s intervention in Hong Kong and assertion of rule by remote-control is a brazen violation of an international treaty.

In and above the East China Sea, Beijing is constantly violating Japanese airspace and illegally loitering PRC coast guard vessels in Japanese waters. All the while, Beijing illegally claims some 90 percent of the South China Sea. Xi has backed up those claims by building 3,200 acres of illegal islands beyond PRC waters. These islands feature SAM batteries and warplanes. Xi promised the PRC wouldn’t militarize these islands. But as America and its allies learned at enormous cost last century, words don’t matter to men like Xi. Strength and the will to wield it are all that matters. Xi has both.

His goal is to control the resource-rich South and East China Seas, assert sovereignty claims in fait accompli fashion, and bring Chinese-speaking lands under his heel. Hong Kong—where only PRC-approved “patriots” are allowed to serve in government—was his first objective. Taiwan is next. Xi has made clear that democratic Taiwan “must and will be” absorbed by the communist Mainland. “We make no promise to abandon the use of force,” he warns. That explains Beijing’s ground-unit exercises, naval drills and bomber sorties around the island democracy.

Nor are Xi’s dreams and designs limited to his immediate neighborhood. Beijing is buying loyalty via development projects (see the Belt and Road Initiative), gaining a toehold in strategically located regions (see PRC control over ports in 18 countries), building an authoritarian bloc (see Russia, Serbia, North Korea, Iran, Venezuela), and fielding a power-projecting military capable of challenging the Free World across every region and every domain—land, sea, air, space and cyberspace. Xi’s relentless cybersiege of the Free World is siphoning away inventions, discoveries, technologies and wealth, penetrating defense firms, and interfering in elections.

For those with eyes to see—who know about the laogai camps and brutalization of Muslims and oppression of Tibet and assault on Christianity—none of this comes as a surprise. What’s surprising is that for 40 years, the trade über alles caucus convinced itself that such a regime could somehow be reformed by access to Buicks and Kentucky Fried Chicken.

TAKING AIM

Xi vows to build what he calls “a more just and reasonable new world order”—one that would supplant the liberal democratic order the United States and its allies began building after World War II. Importantly, the PRC not only has the intent to build a new world order; it has the resources and capabilities to do so—which helps explain why those who designed and uphold the existing world order are answering China’s challenge.

The PRC is a country of 1.3 billion people. Its GDP is already $14.1 trillion. Its economic tendrils—trade, banking, manufacturing, logistics, shipping, technology, super-computing, artificial intelligence—stretch into every part of the globe. All of this is fueling the PRC’s relentless military modernization and buildup. The PRC’s annual military expenditure is at least $261 billion. (Beijing recently announced an increase in military spending of 6.8 percent for 2021). The PRC has a 2-million-man military, the world’s largest navy and an intense focus on its neighborhood.

None of this would be a particularly worrisome if China embraced the values of liberal democracy—the rule of law, individual freedom, religious liberty, free enterprise and free trade, majority rule with minority rights. These are the foundation stones of what Churchill and FDR envisioned when they drafted the Atlantic Charter in 1941. Their vision led to what some call the “rules-based democratic order,” others the “liberal international order,” still others the “free world order.” These terms aim to describe how the peoples of the West have tried to make the world work and indeed manage the world: They embraced and encouraged democratic governance; developed rules and norms of behavior; promoted liberal (freedom-oriented) political and economic institutions; and called upon governments to live up to the responsibilities of nationhood by respecting international borders and promoting good order within those borders. The result has been an unparalleled spread of prosperity, an unprecedented expansion of free government and an unexpected remission of great-power war (which had become an increasingly-destructive feature of the centuries leading up to 1945).

To be sure, many regimes reject the values of liberal democracy. But the PRC, like the USSR before it, not only rejects those values; it possesses the military-technological-industrial-economic assets to challenge those values, erode the liberal international order built upon those values, and forge a new international order or at least bend the existing order toward its own goals. But don’t take my word for it.

“Some seek to challenge the international order—that is, the rules, values and institutions that reduce conflict and make cooperation possible among nations,” Blinken and Defense Secretary Lloyd Austin warn, pointedly adding that “China in particular is all too willing to use coercion to get its way.”

Former national security advisor Gen H.R. McMaster concludes that PRC “leaders believe they have a narrow window of strategic opportunity to…revise the international order in their favor.”

Before he retired as Indo-Pacific commander ,Adm. Phil Davidson told the Senate Armed Services Committee that Xi and his lieutenants are “accelerating their ambitions to supplant the United States and our leadership role in the rules-based international order.”

A NATO panel noted late last year that Beijing’s “approach to human rights and international law challenges the fundamental premise of a rules-based international order.”

These political, diplomatic and military leaders recognize that the liberal order has promoted the peace and prosperity of the Free World for nearly 75 years. But it doesn’t run on autopilot. If we want the benefits of a liberal order that sustains our way of life, we need to sustain the liberal order. As Robert Kagan of the Brookings Institution observes, “The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it.” He adds, “Every international order in history has reflected the beliefs and interests of its strongest powers, and every international order has changed when power shifted to others with different beliefs and interests.”

Indeed, the liberal order and its guarantors have arrived at a turning point or breaking point: Either they will marshal the means and will to update, strengthen and preserve the existing order, or Beijing will dramatically transform it. Xi’s callous treatment of his own subjects and contempt for international norms offer a glimpse of what his “more reasonable new world order” would look like.

### Off---1NC

States CP

#### The 50 states, DC, and all relevant territories should uniformly:

#### --- substantially increase prohibitions on nearly all anticompetitive business practices by expanding the scope of core antitrust laws.

#### ---Grant jurisdiction to attorney generals to investigate conduct and enforce these prohibitions.

#### ---Set aside funds to their attorney general’s office for the purpose of enforcing these prohibitions.

#### Solves the case---states can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

## Case

### Adv---1NC

#### Cap solves environmental damage and is sustainable.

John Asafu-Adjaye 15. Associate professor of economics at the University of Queensland in Brisbane, Australia. Et al. “An Ecomodernist Manifesto”. April 2015. <https://www.ecomodernism.org/manifesto-english>

The role that technology plays in reducing humanity’s dependence on nature explains this paradox. Human technologies, from those that first enabled agriculture to replace hunting and gathering, to those that drive today’s globalized economy, have made humans less reliant upon the many ecosystems that once provided their only sustenance, even as those same ecosystems have often been left deeply damaged.

Despite frequent assertions starting in the 1970s of fundamental “limits to growth,” there is still remarkably little evidence that human population and economic expansion will outstrip the capacity to grow food or procure critical material resources in the foreseeable future.

To the degree to which there are fixed physical boundaries to human consumption, they are so theoretical as to be functionally irrelevant. The amount of solar radiation that hits the Earth, for instance, is ultimately finite but represents no meaningful constraint upon human endeavors. Human civilization can flourish for centuries and millennia on energy delivered from a closed uranium or thorium fuel cycle, or from hydrogen-deuterium fusion. With proper management, humans are at no risk of lacking sufficient agricultural land for food. Given plentiful land and unlimited energy, substitutes for other material inputs to human well-being can easily be found if those inputs become scarce or expensive.

There remain, however, serious long-term environmental threats to human well-being, such as anthropogenic climate change, stratospheric ozone depletion, and ocean acidification. While these risks are difficult to quantify, the evidence is clear today that they could cause significant risk of catastrophic impacts on societies and ecosystems. Even gradual, non-catastrophic outcomes associated with these threats are likely to result in significant human and economic costs as well as rising ecological losses.

Much of the world’s population still suffers from more-immediate local environmental health risks. Indoor and outdoor air pollution continue to bring premature death and illness to millions annually. Water pollution and water-borne illness due to pollution and degradation of watersheds cause similar suffering.

2.

Even as human environmental impacts continue to grow in the aggregate, a range of long-term trends are today driving significant decoupling of human well-being from environmental impacts.

Decoupling occurs in both relative and absolute terms. Relative decoupling means that human environmental impacts rise at a slower rate than overall economic growth. Thus, for each unit of economic output, less environmental impact (e.g., deforestation, defaunation, pollution) results. Overall impacts may still increase, just at a slower rate than would otherwise be the case. Absolute decoupling occurs when total environmental impacts — impacts in the aggregate — peak and begin to decline, even as the economy continues to grow.

Decoupling can be driven by both technological and demographic trends and usually results from a combination of the two.

The growth rate of the human population has already peaked. Today’s population growth rate is one percent per year, down from its high point of 2.1 percent in the 1970s. Fertility rates in countries containing more than half of the global population are now below replacement level. Population growth today is primarily driven by longer life spans and lower infant mortality, not by rising fertility rates. Given current trends, it is very possible that the size of the human population will peak this century and then start to decline.

Trends in population are inextricably linked to other demographic and economic dynamics. For the first time in human history, over half the global population lives in cities. By 2050, 70 percent are expected to dwell in cities, a number that could rise to 80 percent or more by the century’s end. Cities are characterized by both dense populations and low fertility rates.

Cities occupy just 1 to 3 percent of the Earth’s surface and yet are home to nearly four billion people. As such, cities both drive and symbolize the decoupling of humanity from nature, performing far better than rural economies in providing efficiently for material needs while reducing environmental impacts.

The growth of cities along with the economic and ecological benefits that come with them are inseparable from improvements in agricultural productivity. As agriculture has become more land and labor efficient, rural populations have left the countryside for the cities. Roughly half the US population worked the land in 1880. Today, less than 2 percent does.

As human lives have been liberated from hard agricultural labor, enormous human resources have been freed up for other endeavors. Cities, as people know them today, could not exist without radical changes in farming. In contrast, modernization is not possible in a subsistence agrarian economy.

These improvements have resulted not only in lower labor requirements per unit of agricultural output but also in lower land requirements. This is not a new trend: rising harvest yields have for millennia reduced the amount of land required to feed the average person. The average per-capita use of land today is vastly lower than it was 5,000 years ago, despite the fact that modern people enjoy a far richer diet. Thanks to technological improvements in agriculture, during the half-century starting in the mid-1960s, the amount of land required for growing crops and animal feed for the average person declined by one-half.

Agricultural intensification, along with the move away from the use of wood as fuel, has allowed many parts of the world to experience net reforestation. About 80 percent of New England is today forested, compared with about 50 percent at the end of the 19th century. Over the past 20 years, the amount of land dedicated to production forest worldwide declined by 50 million hectares, an area the size of France. The “forest transition” from net deforestation to net reforestation seems to be as resilient a feature of development as the demographic transition that reduces human birth rates as poverty declines.

Human use of many other resources is similarly peaking. The amount of water needed for the average diet has declined by nearly 25 percent over the past half-century. Nitrogen pollution continues to cause eutrophication and large dead zones in places like the Gulf of Mexico. While the total amount of nitrogen pollution is rising, the amount used per unit of production has declined significantly in developed nations.

Indeed, in contradiction to the often-expressed fear of infinite growth colliding with a finite planet, demand for many material goods may be saturating as societies grow wealthier. Meat consumption, for instance, has peaked in many wealthy nations and has shifted away from beef toward protein sources that are less land intensive.

As demand for material goods is met, developed economies see higher levels of spending directed to materially less-intensive service and knowledge sectors, which account for an increasing share of economic activity. This dynamic might be even more pronounced in today’s developing economies, which may benefit from being late adopters of resource-efficient technologies.

Taken together, these trends mean that the total human impact on the environment, including land-use change, overexploitation, and pollution, can peak and decline this century. By understanding and promoting these emergent processes, humans have the opportunity to re-wild and re-green the Earth — even as developing countries achieve modern living standards, and material poverty ends.

#### We’re past tipping points---only tech solves---the Aff causes dictatorship.

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Today’s best-case ecological scenario was a horror story just three decades ago. In 1993, Bill Clinton declared that global warming presented such a profound threat to civilization that the U.S. would have to bring its “emissions of greenhouse gases to their 1990 levels by the year 2000.” Instead, we waited until 2020 to do so; in the interim, humanity burned more carbon than it had since the advent of agriculture. Now, it will take a historically unprecedented, worldwide economic transformation to freeze warming at “only” 2 degrees — a level of temperature rise that will turn “once in a century” storms into annual events, drown entire island nations, and render major cities in the Middle East uninhabitable in summertime (at least for those whose lifestyles involve “walking outdoors without dying of heatstroke”). This is what passes for a utopian vision in 2021. If we confine ourselves to mere optimism — and assume that every Paris Agreement signatory meets its current pledged target for decarbonization — then warming will hit 2.4 degrees by century’s end.

The reality of our ecological predicament invites denial of our political one. Put simply, it is hard to reconcile the scale of the climate crisis with the limits of contemporary American politics. Delusions rush in to fill the gap. Among these is the fantasy of national autonomy; the notion that the United States can save the planet or destroy it, depending on the precise timeline of its domestic decarbonization. A rapid energy transition in the U.S. is a vital cause, not least for its potential to expedite similar transformations abroad. But the battle for a sustainable planet will be won or lost in the developing world. Although American consumption played a central role in the history of the climate crisis, it is peripheral to the planet’s future: Over the coming century, U.S. emissions are expected to account for only 5 percent of the global total.

There is also the delusion of “de-growth’s” viability. The fact that there is no plausible path for global economic expansion that won’t entail climate-induced death and displacement has led some environmentalists to insist on global stagnation. Yet there is neither a mass constituency for this project, nor any reason to believe that there will be any time soon. Freeze the status-quo economy in amber, and you’ll condemn nearly half of humanity to permanent poverty. Divide existing GDP into perfectly even slices, and every person on the planet will live on about $5,500 a year. American voters may express a generalized concern about the climate in surveys, but they don’t seem willing to accept even a modest rise in gas prices — let alone a total collapse in living standards — to address the issue. Meanwhile, any Chinese or Indian leader who attempted to stymy income growth in the name of sustainability would be ousted in short order. It’s conceivable that one could radically reorder advanced economies in a manner that enabled living standards to rise even as GDP fell; Americans might well find themselves happier and more secure in an ultra-low-carbon communal economy in which individual car ownership is heavily restricted, and housing, healthcare, and myriad low-carbon leisure activities are social rights. But nothing short of an absolute dictatorship could affect such a transformation at the necessary speed. And the specter of eco-Bolshevism does not haunt the Global North. Humanity is going to find a way to get rich sustainably, or die trying.

Thus, the chasm between the ecologically necessary and the politically possible can only be bridged by technological advance. And on that front, the U.S. actually has the resources to make a decisive contribution to global decarbonization — and some political will to leverage those resources. Unfortunately, due to some combination of fiscal superstitions and misplaced priorities, the Biden administration’s proposed investments in green innovation remain paltry. An American Jobs Plan with much higher funding for green R&D is both imminently winnable and environmentally imperative. U.S. climate hawks should make securing such legislation a top priority.

The choice before us is techno-optimism or barbarism.

If governments are forced to choose between increasing income growth in the present, and mitigating temperature rise in the future, they are going to pick the former. We’ll get cheap, lab-grown Kobe beef before we get a U.S. Senate willing to tax meat, and steel plants powered by “green hydrogen” before we get anarcho-primitivism with Chinese characteristics.

The question is whether we’ll get such breakthroughs before it’s too late.

Techno-optimism has its hazards, but the progress we’ve made toward decarbonization has come largely through technological innovation. When India canceled plans to construct 14 gigawatts of new coal-fired power stations in 2019, it did not do so in deference to international pressure or domestic environmental movements, but rather to the cost-competitiveness of solar energy. The same story holds across Asia’s developing countries: Thanks to a ninefold reduction in the cost of solar energy over the past decade, the number of new coal plants slated for construction in the region has fallen by 80 percent. Meanwhile, the road to an electric-car revolution was cleared by a collapse in the cost of lithium batteries, the challenge of powering cities with solar energy on cloudy days was eased by a 70 percent drop in the price of utility-scale batteries, and wind power grew 40 percent cheaper. Our species remains lackluster at solidarity and self-government, but we’ve got a real knack for building cool shit.

The technological progress of the past decade was not sufficient to compensate for tepid climate policy. But real techno-utopianism has never been tried: As of 2019, global spending on clean energy R&D totaled $22 billion a year, or 3 percent of the Pentagon’s annual budget. Increasing spending on such research — while expediting cost-reductions in existing technologies by deploying them en masse — should be twin priorities of American climate policy.

The preconditions for green industrialization can be made in America.

The United States has more fiscal capacity and better-financed research universities than any nation on the planet. And, for all the pathologies of our politics, public investment in green tech inspires far weaker opposition than many less-indispensable climate policies. In fact, late last year, with Republicans controlling the Senate and Donald Trump in the White House, the U.S. increased funding for zero-emission technology R&D by $35 billion. America does not have sovereignty over enough humans to save the planet by slashing our domestic emissions. But we just might have the resources and political economy necessary to help the developing world save us all.

#### Regulated cap solves everything better.

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However, things are more complicated than the arguments above would suggest, and the benefits of capitalism, especially for the world's poorest and most vulnerable people, are in fact myriad and significant. In addition, as we will see in this section, many experts argue that capitalism is not the fundamental cause of the previously described problems but rather an essential component of the best solutions to them and of the best methods for promoting our goals of health, well-being, and justice.

To see where the defenders of capitalism are coming from, consider an analogy involving a response to a pandemic: if a country administered a rushed and untested vaccine to its population that ended up killing people, we would not say that vaccines were the problem. Instead, the problem would be the flawed and sloppy policies of vaccine implementation. Vaccines might easily remain absolutely essential to the correct response to such a pandemic and could also be essential to promoting health and flourishing, more generally.

The argument is similar with capitalism according to the leading mainstream arguments in favor of it: Capitalism is an essential part of the best society we could have, just like vaccines are an essential part of the best response to a pandemic such as COVID-19. But of course both capitalism and vaccines can be implemented poorly, and can even do harm, especially when combined with other incorrect policy decisions. But that does not mean that we should turn against them—quite the opposite. Instead, we should embrace them as essential to the best and most just outcomes for society, and educate ourselves and others on their importance and on how they must be properly designed and implemented with other policies in order to best help us all. In fact, the argument in favor of capitalism is even more dramatic because it claims that much more is at stake than even what is at stake in response to a global pandemic—what is at stake with capitalism is nothing less than whether the world's poorest and most vulnerable billion people will remain in conditions of poverty and oppression, or if they will instead finally gain access to what is minimally necessary for basic health and wellbeing and become increasingly affluent and empowered. The argument in favor of capitalism proceeds as follows:

Premise 1. Development and the past. Over the course of recorded human history, the majority of historical increases in health, wellbeing, and justice have occurred in the last two centuries, largely as a result of societies adopting or moving toward capitalism. Capitalism is a relevant cause of these improvements, in the sense that they could not have happened to such a degree if it were not for capitalism and would not have happened to the same degree under any alternative noncapitalist approach to structuring society. The argument in support of this premise relies on observed relationships across societies and centuries between indicators of degree of capitalism, wealth, investments in public goods, and outcomes for health, wellbeing, and justice, together with econometric analysis in support of the conclusion that the best explanation of these correlations and the underlying mechanism is that large increases in health, wellbeing, and justice are largely driven by increasing investments in public goods. The scale of increased wealth necessary to maximize these investments requires capitalism. Thus, as capitalist societies have become dramatically wealthier over the past hundred years (and wealthier than societies with alternative systems), this has allowed larger investments in public goods, which simply has not been possible in a sustained way in societies without the greater wealth that capitalism makes possible. Important investments in public goods include investments in basic medical knowledge, in health and nutrition programs, and in the institutional capacity and know-how to regulate society and capitalism itself. As a result, capitalism is a primary driver of positive outcomes in health and wellbeing (such as increased life expectancy, lowered child and maternal mortality, adequate calories per day, minimized infectious disease rates, a lower percentage and number of people in poverty, and more reported happiness);5 and in justice (such as reduced deaths from war and homicide; higher rankings in human rights indices; the reduced prevalence of racist, sexist, homophobic opinions in surveys; and higher literacy rates).6 These quantifiable positive consequences of global capitalism dramatically outweigh the negative consequences (such as deaths from pollution in the course of development), with the result that the net benefits from capitalism in terms of health, wellbeing, and justice have been greater than they would have been under any known noncapitalist approach to structuring society.7

Premise 2. Economics, ethics, and policy. Although capitalism has often been ill-regulated and therefore failed to maximize net benefits for health, wellbeing, and justice, it can become well-regulated so that it maximizes these societal goals, by including mechanisms identified by economists and other policy experts that do the following:

* optimally8 regulate negative effects such as pollution and monopoly power, and invest in public goods such as education, basic healthcare, and fundamental research including biomedical knowledge (more generally, policies that correct the failures of free markets that economists have long recognized will arise from “externalities” in the absence of regulation);9
* ensure equity and distributive justice (for example, via wealth redistribution);10
* ensure basic rights, justice, and the rule of law independent of the market (for example, by an independent judiciary, bill of rights, property rights, and redistribution and other legislation to correct historical injustices due to colonialism, racism, and correct current and historical distortions that have prevented markets from being fair);11 and
* ensure that there is no alternative way of structuring society that is more efficient or better promotes the equity, justice, and fairness goals outlined above (by allowing free exchange given the regulations mentioned).12

To summarize the implication of the first two premises, well-regulated capitalism is essential to best achieving our ethical goals—which is true even though capitalism has certainly not always been well regulated historically. Society can still do much better and remove the large deficits in terms of health, wellbeing, and justice that exist under the current inferior and imperfect versions of capitalism.

Premise 3. Development and the future. If the global spread of capitalism is allowed to continue, desperate poverty can be essentially eliminated in our lifetimes. Furthermore, this can be accomplished faster and in a more just way via well-regulated global capitalism than by any alternatives. If we instead opt for less capitalism, less growth, and less globalization, then desperate poverty will continue to exist for a significant portion of the world's population into the further future, and the world will be a worse and less equitable place than it would have been with more capitalism. For example, in a world with less capitalism, there would be more overpopulation, food insecurity, air pollution, ill health, injustice, and other problems. In part, this is because of the factors identified by premise 1, which connect a turn away from capitalism with a turn away from continuing improvements in health, wellbeing, and justice, especially for the developing world. In addition, fertility declines are also a consequence of increased wealth, and the size of the population is a primary determinant of food demand and other environmental stressors.13 Finally, as discussed at length in the next section of the essay, capitalism can be naturally combined with optimal environmental regulations.14 Even bracketing anything like optimal regulation, it remains true that sufficiently wealthy nations reduce environmental degradation as they become wealthier, whereas developing nations that are nearing peak degradation will remain stuck at the worst levels of degradation if we stall growth, rather than allowing them to transition to less and less degradation in the future via capitalism and economic growth.15 In contrast, well-regulated capitalism is a key part of the best way of coping with these problems, as well as a key part of dealing with climate change, global food production, and other specific challenges, as argued at length in the next section. Here it is important to stress that we should favor well-regulated capitalism that includes correct investments in public goods over other capitalist systems such as the neoliberalism of the recent past that promoted inadequately regulated capitalism with inadequate concern for externalities, equity, and background distortions and injustices.16

Conclusion. Therefore, we should be in favor of capitalism over noncapitalism, and we should especially favor well-regulated capitalism, which is the ethically optimal economic system and is essential to any just basic structure for society.

This argument is impressive because, as stated earlier in the essay, it is based on evidence that is so striking that it leads a bipartisan range of open-minded thinkers and activists to endorse well-regulated capitalism, including many of those who were not initially attracted to the view because of a reasonable concern for the societal ills with which we began. To better understand why such a range of thinkers could agree that well-regulated capitalism is best, it may help to clarify some things that are not assumed or implied by the argument for it, which could be invoked by other bad arguments for capitalism.

One thing the argument above does not assume is that health, wellbeing, or justice are the same thing as wealth, because, in fact, they are not. Instead, the argument above relies on well-accepted, measurable indicators of health and wellbeing, such as increased lifespan; decreased early childhood mortality; adequate nutrition; and other empirically measurable leading indicators of health, wellbeing, and justice.17 Similarly, the argument that capitalism promotes justice, peace, freedom, human rights, and tolerance relies on empirical metrics for each of these.18

Furthermore, the argument does not assume that because these indicators of health, wellbeing, and justice are highly correlated with high degrees of capitalism, that therefore capitalism is the direct cause of these good outcomes. Rather, the analyses suggest instead that something other than capitalism is the direct cause of societal improvements (such as improvements in knowledge and technology, public infrastructure, and good governance), and that capitalism is simply a necessary condition for these improvements to happen.19 In other words, the richer a society is, the more it is able to invest in all of these and other things that are the direct causes of health, wellbeing, and justice. But, to maximize investment in these things societies need well-regulated capitalism.

As part of these analyses, it is often stressed that current forms of capitalism around the world are highly defective and must be reformed in the direction of well-regulated capitalism because they lack investments in public goods, such as basic knowledge, healthcare, nutrition, other safety nets, and good governance.20 In this way, an argument for a particular kind of progressive reformism is an essential part of the analyses that lead many to endorse the more general argument for well-regulated capitalism.

Although these analyses are nuanced, and appropriately so, it remains the case that the things that directly lead to health, wellbeing, and justice require resources, and the best path toward generating those resources is well-regulated capitalism. And on the flip side, according to the analyses behind premise 1 described above, an anti-capitalist system would not produce the resources that are needed, and would thus be a disaster, especially for the poorest billion people who are most desperately in need of the resources that capitalism can create and direct, to escape from extreme poverty.21

#### Cap solves war.

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Countries with liberal political and economic systems rarely use military force against each other. This anomalous peace has been most prominently attributed to the ‘democratic peace’ – the apparent tendency for democratic countries to avoid militarized conflict with each other (Maoz & Russett, 1993; Ray, 1995; Dafoe, Oneal & Russett, 2013). More recently, however, scholars have proposed that the liberal peace could be partly (Russett & Oneal, 2001) or primarily (Gartzke, 2007; but see Dafoe, 2011) attributed to liberal economic factors, such as commercial and financial interdependence. In particular, Erik Gartzke, Quan Li & Charles Boehmer (2001), henceforth referred to as GLB, have demonstrated that measures of capital openness have a substantial and statistically significant association with peaceful dyadic relations. Gartzke (2007) confirms that this association is robust to a large variety of model specifications.

To explain this correlation, GLB propose that countries with open capital markets are more able to credibly signal their resolve through the bearing of greater economic costs prior to the outbreak of militarized conflict. This explanation is novel and plausible, and resonates with the rationalist view of asymmetric information as a cause of conflict (Fearon, 1995). Moreover, it implies clear testable predictions on evidential domains different from those examined by GLB.

In this article we exploit this opportunity by constructing a confirmatory test of GLB’s theory of market-mediated signaling. We first develop an innovative quantitative case selection technique to identify crucial cases where the mechanism of market-mediated signaling should be most easily observed. Specifically, we employ quantitative data and the statistical models used to support the theory we are probing to create an impartial and transparentmeans of selecting cases in which the theory – as specified by the theory’s creators –makes its most confident predictions. We implement three different case selection rules to select cases that optimize on two criteria: (1) maximizing the inferential leverage of our cases, and (2) minimizing selection bias.

We examine these cases for a necessary implication of market-mediated signaling: that key participants drew a connection between conflictual events and adverse market movements. Such an inference is a necessary step in the process by which market-mediated costs can signal resolve. For evidence of this we examine news media, government documents, memoirs, historical works, and other sources. We additionally examine other sources, such as market data, for evidence that economic costs were caused by escalatory events. Based on this analysis, we assess the evidence for GLB’s theory of market mediated costly signaling.

Our article then considers a more complex heterogeneous effects version of market-mediated signaling in which unspecified scope conditions are required for the mechanism to operate. Our design has the feature of selecting cases in which scope conditions are most likely to be absent. This allows us to perform an exploratory analysis of these cases, looking for possible scope conditions. We also consider alternative potential mechanisms. Our cases are reviewed in more detail in the online appendix.1

To summarize our results, our confirmatory test finds that while market-mediated signaling may be operative in the most serious disputes, it was largely absent in the less serious disputes that characterize most of the sample of militarized interstate disputes (MIDs). This suggests either that other mechanisms account for the correlation between capital openness and peace, or that the scope conditions for market-mediated signaling are restrictive. Of the signals that we observed, strategic market-mediated signals were relatively more important than automatic market-mediated signals in the most serious conflicts. We identify a number of potential scope conditions, such as that (1) the conflict must be driven by bargaining failure arising from uncertainty and (2) the economic costs need to escalate gradually and need to be substantial, but less than the expected military costs of conflict.

Finally, there were a number of other explanations that seemed present in the cases we examined and could account for the capitalist peace: capital openness is associated with greater anticipated economic costs of conflict; capital openness leads third parties to have a greater stake in the conflict and therefore be more willing to intervene; a dyadic acceptance of the status quo could promote both peace and capital openness; and countries seeking to institutionalize a regional peace might instrumentally harness the pacifying effects of liberal markets.

The correlation: Open capital markets and peace

The empirical puzzle at the core of this article is the significant and robust correlation noted by GLB between high levels of capital openness in both members of a dyad and the infrequent incidence of militarized interstate disputes (MIDs) and wars between the members of this dyad (Gartzke, Li & Boehmer, 2001). The index of capital openness (CAPOPEN) is intended to capture the ‘difficulty states face in seeking to impose restrictions on capital flows (the degree of lost policy autonomy due to globalization)’ (Gartzke & Li, 2003: 575). CAPOPEN is constructed from data drawn from the widely used IMF’s Annual Reports on Exchange Arrangements and Exchange Controls; it is a combination of eight binary variables that measure different types of government restrictions on capital and currency flow (Gartzke, Li & Boehmer, 2001: 407). The measure of CAPOPEN starts in 1966 and is defined for many countries (increasingly more over time). Most of the countries that do not have a measure of CAPOPEN are communist.2

GLB implement this variable in a dyadic framework by creating a new variable, CAPOPENL, which is the smaller of the two dyadic values of CAPOPEN. This operationalization is sometimes referred to as the ‘weak-link’ specification since the functional form is consonant with a model of war in which the ‘weakest link’ in a dyad determines the probability of war. CAPOPENL has a negative monotonic association with the incidence of MIDs, fatal MIDs, and wars (see Figure 1).3 The strength of the estimated empirical association between peace and CAPOPENL, using a modified version of the dataset and model from Gartzke (2007), is comparable to that between peace and, respectively, joint democracy, log of distance, or the GDP of a contiguous dyad (Gartzke, 2007: 179; Gartzke, Li & Boehmer, 2001: 412). In summary, CAPOPENL seems to be an important and robust correlate of peace. The question of why specifically this correlation exists, however, remains to be answered.

The mechanism: Market-mediated signaling?

Gartzke, Li & Boehmer (2001) argue that the classic liberal account for the pacific effect of economic interdependence – that interdependence increases the expected costs of war – is not consistent with the bargaining theory of war (see also Morrow, 1999). GLB argue that ‘conventional descriptions of interdependence see war as less likely because states face additional opportunity costs for fighting. The problem with such an account is that it ignores incentives to capitalize on an opponent’s reticence to fight’ (Gartzke, Li & Boehmer, 2001: 400.)4 Instead, GLB (see also Gartzke, 2003; Gartzke & Li, 2003) argue that financial interdependence could promote peace by facilitating the sending of costly signals. As the probability of militarized conflict increases, states incur a variety of automatic and strategically imposed economic costs as a consequence of escalation toward conflict. Those states that persist in a dispute despite these costs will reveal their willingness to tolerate them, and hence signal resolve. The greater the degree of economic interdependence, the more a resolved country could demonstrate its willingness to suffer costs ex ante to militarized conflict.

Gartzke, Li & Boehmer’s mechanism implies a commonly perceived costly signal before militarized conflict breaks out or escalates: if market-mediated signaling is to account for the correlation between CAPOPENL and the absence of MIDs, then visible market-mediated costs should occur prior to or during periods of real or potential conflict (Gartzke, Li & Boehmer, 2001). Thus, the proposed mechanism should leave many visible footprints in the historical record. This theory predicts that these visible signals must arise in any escalating conflict, involving countries with high capital openness, in which this mechanism is operative

Clarifying the signaling mechanism

Gartzke, Li & Boehmer’s signaling mechanism is mostly conceptualized on an abstract, game-theoretic level (Gartzke, Li & Boehmer, 2001). In order to elucidate the types of observations that could inform this theory’s validity, we discuss with greater specificity the possible ways in which such signaling might occur.

A conceptual classification of costly signals

The term signaling connotes an intentional communicative act by one party directed towards another. Because the term signaling thus suggests a willful act, and a signal of resolve is only credible if it is costly, scholars have sometimes concluded that states involved in bargaining under incomplete information could advance their interests by imposing costs on themselves and thereby signaling their resolve (e.g. Lektzian & Sprecher, 2007).

However, the game-theoretic concept of signaling refers more generally to any situation in which an actor’s behavior reveals information about her private information. In fact, states frequently adopt sanctions with low costs to themselves and high costs to their rivals because doing so is often a rational bargaining tactic on other grounds: they are trying to coerce their rival to concede the issue. Bargaining encounters of this type can be conceptualized as a type of war-of-attrition game in which each actor attempts to coerce the other through the imposition of escalating costs. Such encounters also provide the opportunity for signaling: when states resist the costs imposed by their rivals, they ‘signal’ their resolve. If at some point one party perceives the conflict to have become too costly and steps back, that party ‘signals’ a lack of resolve. Thus, this kind of signaling arises as a by-product of another’s coercive attempts. In other words, costly signals come in two forms: self-inflicted (information about a leader arising from a leader’s intentional or incidental infliction of costs on himself) or imposed (information about a leader that arises from a leader’s response to a rival’s imposition of costs).

Additionally, costs may arise as an automatic byproduct of escalation towards military conflict or may be a tool of statecraft that is strategically employed during a conflict. The automatic mechanism stipulates that as the probability of conflict increases, various economic assets will lose value due to the risk of conflict and investor flight. However, the occurrence of these costs may also be intentional outcomes of specific escalatory decisions of the states, as in the case of deliberate sanctions; in this case they are strategic.

Finally, at a practical level, we identify three different potential kinds of economic costs of militarized conflict that may be mediated by open capital markets: capital costs from political risk, monetary coercion, and business sanctions. The most prominent mechanism proposed by Gartzke, Li & Boehmer (2001) to account for the correlation between capital openness and peace is that of capital costs. They note that 'since conflict threatens investments among disputing states, it makes such investments less desirable and capital becomes relatively scarce' (Gartzke, Li & Boehmer, 2001: 407) and hence more costly. Increased capital openness may increase the capital costs of escalation by increasing both the ease of capital flight (Abadie & Gardeazabal, 2003, 2007) and the expected harm of escalatory events to the national economy. This mechanism will be more effective in countries with more open capital markets; countries where the value of investments are more publicly observable (such as arises with a public stock exchange); and countries where leaders are more sensitive to the costs of capital.5

#### Nuclear war causes extinction.

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Nuclear warfare could have devastating impacts on millions of people, yet it has been suggested that regional or global nuclear conflict may be possible in the future (Toon et al., 2019). In addition to the calamitous impacts of nuclear conflict on a local level, research conducted with a range of climate models finds a global cooling in response to various conflict scenarios (Coupe et al., 2019; Malone et al., 1985; Mills et al., 2014; Pausata et al., 2016; Robock et al., 2007; Turco et al., 1983). This global cooling is driven by fires started by the nuclear weapons. These fires inject smoke into the upper troposphere, where rapid lofting can spread the sunlight-absorbing soot particles into the stratosphere (Turco et al., 1983). Recent research implies that even a small nuclear conflict may have impacts on the global climate system, affecting the state and circulation of the atmosphere (Robock et al., 2007), increasing the sea ice extent in both hemispheres (Mills et al., 2014), and reducing plant productivity and crop yields in regions far from the conflict location (Özdogan et al., ˘ 2013; Toon et al., 2019; Xia & Robock, 2013). While less studied, the potential impacts of nuclear conflict on the ocean are many. Numerous physical, chemical, and biological processes in the ocean are temperature dependent, and sunlight is a critical ingredient for photosynthesizing phytoplankton at the base of the marine food web. Using a climate model with an interactive ocean, Mills et al. (2014) evaluated the ocean physical response to a potential India/Pakistan nuclear war that lofts 5 Tg of black carbon particles into the stratosphere; they find a 0.8◦ C decrease in globally averaged sea surface temperature, with smaller temperature reductions at depth. Recently Toon et al. (2019) used an Earth system model that includes a representation for phytoplankton to evaluate the ocean biological response to nuclear conflict; they report a 5–15% decrease in phytoplankton productivity under a range of conflict scenarios. Such findings prompt further investigation into how nuclear conflict and the resulting global cooling may alter the chemical state of the ocean. Perturbations in the ocean's carbonate chemistry are of particular interest, owing to their importance for ocean acidification. Ocean acidification is an ongoing, large-scale environmental problem driven by fossil fuel emissions of carbon dioxide (CO2). Cumulatively since the preindustrial era, the ocean has absorbed 41% of the carbon emitted by human industrial activities (McKinley et al., 2017). While this ocean absorption of carbon has partially mitigated anthropogenic global warming, it has fundamentally altered the carbonate chemistry of the ocean, increasing the concentration of hydrogen ions ([H+]) while decreasing the concentration of carbonate ions ([CO2− 3 ]). Observations collected at time series sites across the global ocean find statistically significant reductions in the potential hydrogen (pH = −log([H+])) and the saturation state of the calcium carbonate mineral aragonite (Ωarag, which is proportional to [CO2− 3 ]) over the past few decades (Bates et al., 2014). These changes are a direct consequence of the ocean absorption of anthropogenic carbon; carbonate chemistry dictates that the excess carbon will react with water and CO2− 3 to decrease ocean pH and Ω (Feely et al., 2004). Both of these changes may have negative consequences for marine organisms, in particular for those that precipitate calcium carbonate shells (e.g., coccolithophores, pteropods, foraminifera, corals, molluscs, and echinoderms), as the precipitation is hindered by low pH, and because decreases in Ω favor shell dissolution (Doney et al., 2009). To date, there have been no studies of the effects of nuclear conflict on ocean acidification, though past modeling studies on the ocean's response to volcanic forcing and to proposed geoengineering schemes have intimated that ocean carbonate chemistry is highly sensitive to these types of external forcings. Using a fully coupled carbon-climate model, Frölicher et al. (2011) find that volcanic-induced cooling following the 1991 Mt. Pinatubo eruption led to immediate increases in the flux of carbon from atmosphere to ocean and consequently, increases in the total dissolved inorganic carbon (DIC) concentration in the surface ocean. Eddebbar et al. (2019) demonstrate that air-to-sea CO2 fluxes are significantly enhanced following the eruptions of Agung, El Chichón, and Pinatubo in a large ensemble of simulations with an Earth system model. Matthews et al. (2009) conduct solar radiation management climate engineering simulations with an intermediate complexity model of the coupled climate-carbon system; they find changes in ocean pH and Ωarag as a result of the anomalous cooling. Similarly, Lauvset et al. (2017) indicate that radiation management geoengineering leads to changes in North Atlantic pH in a fully coupled Earth system model, but they do not explore changes in Ωarag. While these studies are suggestive of the carbonate chemistry response to nuclear conflict, the external forcing perturbations are of a different magnitude and duration than those imposed by nuclear conflict. Further, it is difficult to mechanistically understand the ocean carbonate chemistry response to such external forcing perturbations in fully coupled models, where the terrestrial response to forcing additionally influences the atmospheric CO2 concentration. Here, we use a state-of-the art Earth system model to simulate the ocean carbonate chemistry response to a range of nuclear conflict scenarios. We decouple the ocean carbon cycle from that of the terrestrial carbon cycle via a direct prescription of the atmospheric CO2 boundary condition used for air-sea CO2 flux, that is, changes in the terrestrial biosphere have no influence on the atmospheric CO2 that the ocean sees. As we will demonstrate, we find large perturbations in ocean pH and Ωarag as a result of nuclear conflict. These perturbations have relatively long duration (order of 10 years) and are driven by decreases in temperature and subsequent increases in the ocean carbon inventory. 2. Methods We analyse output generated by the Community Earth System Model (CESM) version 1.3, a state-of-the-art coupled climate model consisting of atmosphere, ocean, land, and sea ice components (Hurrell et al., 2013). The atmosphere component of CESM in our simulations is the Whole Atmosphere Community Climate Model (WACCM; Marsh et al., 2013) with nominal 2◦ resolution, 66 vertical levels, and a model top at ∼145 km; it uses the Rapid Radiative Transfer Model for GCMs (RRTMG; Iacono et al., 2000) for the radiative transfer. The Community Aerosol and Radiation Model for Atmospheres (Bardeen et al., 2008) is coupled with WACCM to simulate the injection, lofting, advection, and removal of soot aerosols in the troposphere and stratosphere, and their subsequent impact on climate (Coupe et al., 2019; Toon et al., 2019). The ocean component of CESM is the Parallel Ocean Program version 2 (Danabasoglu et al., 2012) with nominal 1◦ resolution and 60 vertical levels. The biogeochemical ocean component of CESM is the Biogeochemical Elemental Cycling model that represents the lower trophic levels of the marine ecosystem, full carbonate system thermodynamics, air-sea CO2 fluxes, and a dynamic iron cycle (Doney et al., 2006; Moore et al., 2004, 2013; Moore & Braucher, 2008; Long et al., 2013; Lindsay et al., 2014). LOVENDUSKI ET AL. 2 of 9 Geophysical Research Letters 10.1029/2019GL086246 The ocean in the coupled CESM simulation is initialized from rest with World Ocean Circulation (WOCE) temperature and salinity (Gouretski & Koltermann, 2004). Biogeochemical tracers are initialized to observationally based climatologies where possible (Lauvset et al., 2016); where these were not available (such as dissolved iron and phytoplankton biomass), the model is initialized with fields interpolated from an existing CESM simulation. The new, fully coupled simulation was spun up for 4 years to an approximate steady state with a constant atmospheric CO2 mixing ratio of 370 ppm, representative of the mixing ratio in the year 2000. Due to the relatively short spin-up period, the globally integrated air-sea CO2 flux is not in steady state (drifting at a rate of 0.14 Pg C year−2) when the perturbation forcing is applied. We therefore present our results as anomalies from the drifting control integrations. Three control simulations of 20-year duration are generated using round-off level differences in atmospheric initial conditions. As each of these control simulations has different phasing of internal variability (e.g., El Niño-Southern Oscillation), we use the standard deviation across this ensemble to identify statistically significant perturbations due to nuclear conflict. We report on the anomalies generated from four simulations of nuclear conflict with varying amounts of soot injection: three India/Pakistan conflict scenarios that inject 5, 27, and 47 Tg of soot, respectively, and one US/Russia conflict scenario that injects 150 Tg of soot. The initial soot injection amounts are generated from plausible scenarios for nuclear conflict following advice from a number of military and policy experts; the reader is referred to Toon et al. (2019) for further details on scenario development. In each case, we prescribe that the conflict begins on 15 May of the 5th year of the first control simulation, and we integrate the model for a 15-year period following the injection. We assume that the smoke generated by mass fires from nuclear conflict is injected into the upper troposphere above the target sites (in the U. S./Russia case, smoke is spread evenly over the two nations), as in Toon et al. (2019). WACCM lofts much of this smoke higher into the stratosphere via solar heating of black carbon aerosols in the smoke, where the black carbon aerosols persist for about a decade. The resulting annual mean, post-conflict (May to the following April) anomalies in aerosol optical depth are shown in Figure 1a. These optical depth changes result in a 10–40% reduction in incoming solar energy (Toon et al., 2019). While we discuss the anomalies generated from all four of these conflict simulations, we describe two in greater detail throughout this manuscript: the U. S./Russia case, as it is the largest climate perturbation overall, and the India/Pakistan 47-Tg case, as it is the largest climate perturbation generated by a regional nuclear conflict. Ocean biogeochemistry in the version of CESM used for our simulations has been extensively validated in the literature (Brady et al., 2019; Freeman et al., 2018; Harrison et al., 2018; Krumhardt et al., 2017; Lindsay et al., 2014; Lovenduski et al., 2015, 2016; Long et al., 2013, 2016; Moore et al., 2013; McKinley et al., 2016; Negrete-García et al., 2019). Of particular note for our study, the simulated surface ocean carbonate ion concentration from a long, preindustrial control simulation of CESM compares favorably with reconstructed observations, albeit with lower interannual variance than has been measured at subtropical time series sites (Lovenduski et al., 2015). In Figure S1 in the supporting information, we illustrate the comparison between observationally based estimates of surface ocean pH and Ωarag (from GLODAPv2; Lauvset et al., 2016) and the CESM control ensemble mean. In this comparison, we note that the observational estimates have been extensively interpolated and are intended to represent year 2002 carbonate chemistry parameters, whereas CESM has been integrated under an atmospheric CO2 mixing ratio that corresponds to year 2000 forcing. We find high correspondence between the spatial patterns of modeled and observed pH and Ωarag, giving us confidence that CESM is capable of representing the mean state of these two variables. 3. Results Globally averaged surface ocean pH increases in response to each of the nuclear conflicts, where the magnitude of the pH anomaly scales with the amount of soot injected (Figure 1b). In each case, the pH anomaly exceeds the interannual standard deviation of pH in the control ensemble mean (gray shading in Figure 1b). We observe the largest increases in surface ocean pH in response to the U. S./Russia 150-Tg case; here the globally averaged surface ocean pH anomaly exceeds 0.05, corresponding to a ∼10% decrease in the global mean hydrogen ion concentration. Under each scenario, the pH anomaly peaks 2–4 years after the conflict and persists for ∼10 years. With the exception of the high-latitude oceans, the pH increase following the nuclear conflict is pervasive across the surface ocean (Figures 2a– 2c). In the 47-Tg India/Pakistan scenario, we observe local pH anomalies exceeding 0.06 units on average in years 2–5 post conflict (Figure 2c); the anomalies are largest in the North Atlantic, North Pacific, and Equatorial Pacific. These large, abrupt changes in surface ocean pH may have important consequences for calcifying organisms, as shell precipitation can be affected by the ambient hydrogen ion concentration in seawater (Kroeker et al., 2013). Since the beginning of the industrial revolution, global ocean pH has dropped by an estimated 0.1 units (Ciais & Sabine, 2013). The anomalies in pH generated by our simulations exceed 50% of this historical change and occur over a much shorter time period. Whether and how organisms respond to the initial and rapid alleviation of low pH, followed by an immediate return to the current pH state in the global ocean, is as yet unknown (see, e.g., Haigh et al., 2015). In contrast to our results for pH, we observe decreases in surface ocean Ωarag following nuclear conflict (Figure 1c), which should tend to inhibit the maintenance of shells and skeletons in calcified organisms. While minimal changes in Ωarag are simulated for the 5-Tg India/Pakistan case, the other three cases produce large decreases in saturation state, on the order of 0.1 to 0.3 units (Figure 1c). In each of these three cases, the anomalies exceed the interannual standard deviation of Ωarag in the control ensemble mean (gray shading in Figure 1c). The peak response in these three cases occurs 3–5 years post conflict, a year or so later than the pH response. While for pH the globally averaged anomaly is negligibly small, 10-years post conflict; anomalies in globally averaged Ωarag persist beyond our 15-year simulation time frame for all conflict scenarios. The decreases in aragonite saturation state span the tropics and subtropics, with the exception of the central and eastern Equatorial Pacific region (Figures 2d– 2f). Local decreases in saturation state exceed 0.5 units in the western North Atlantic and western North Pacific under the 47-Tg India/Pakistan scenario (Figure 2f). Importantly, the simulated decreases in saturation state are highly pronounced in regions that host diverse coral reef ecosystems (for instance, the western and southwestern Pacific and the Caribbean), and like pH, the changes in saturation state occur fairly rapidly. Projections from climate models suggest that coral reef ecosystems across the world will experience aragonite saturation state declines from their preindustrial value of 3.5 to 3.0 by the end of the century (Ricke et al., 2013); alarmingly, our simulations project similar Ωarag declines over a 3- to 5-year period, which then persist for years after the initial forcing dissipates. The opposite-signed anomalies in pH and Ωarag induced by nuclear conflict seem puzzling at first, as for "typical" anthropogenic ocean acidification scenarios, both of these variables simultaneously decrease. Why would nuclear conflict cause opposing responses in pH and saturation state? To understand these opposing responses, we need to consider the carbonate chemistry system in seawater and its sensitivity to changing temperature. Gaseous CO2 reacts with seawater to form carbonic acid (H2CO3), which then dissociates to form H+ and bicarbonate (HCO− 3 ). The hydrogen ion then reacts with CO2− 3 to form additional HCO− 3 , CO2 + H2O− ↽−−−−−−⇀−H2CO3. (1) H2CO3− ↽−−−−−−⇀−H+ + HCO− 3 . (2) H+ + CO2− 3 − ↽−−−−−−⇀−HCO− 3 . (3) The equilibrium constants for these reactions (typically expressed as K0, K1, and K2, respectively; Sarmiento & Gruber, 2006) are sensitive to changes in temperature, for example, the cooling induced by nuclear conflict. We need to also consider the dissolution reaction for mineral calcium carbonate (CaCO3) in seawater, CaCO3(s)− ↽−−−−−−⇀−Ca2+ sat + CO2− 3,sat, (4) where [Ca2+]sat and [CO2− 3 ]sat are the concentrations of dissolved calcium and carbonate in equilibrium with mineral CaCO3, and the solubility product (Ksp) for this reaction is also sensitive to temperature (Sarmiento & Gruber, 2006). Further, the saturation state for a calcium carbonate mineral in seawater (here: aragonite), can be expressed as Ωarag = [Ca2+][CO2− 3 ] Ksp , (5) where both [CO2− 3 ] and Ksp are affected by changes in temperature (Ca2+ is highly abundant in seawater, and thus changes in temperature do not affect its concentration enough to matter for CaCO3 dissolution; Emerson & Hedges, 2008; Sarmiento & Gruber, 2006). Thus, we can decompose the anomalies in pH and Ωarag into the component driven by temperature-induced changes in the carbonate chemistry equilibrium constants (K0, K1, K2, and Ksp) and the component driven by all other changes to the carbonate chemistry system, such as changes in the DIC concentration, the alkalinity, or the salinity. We approximate the temperature sensitivity of the equilibrium constants using a program developed for CO2 system calculations (CO2SYS; van Heuven et al., 2011) via finite difference approximation. The component driven by all other changes to the carbonate system is computed as the residual of the other two terms. The pH response to nuclear conflict is the sum of two opposing drivers: an increase in pH driven by a decrease in sea surface temperature that alters the carbonate chemistry equilibrium constants and a decrease in pH driven by an increase in the DIC concentration of the upper ocean. Figure 1b illustrates the temporal evolution of the components of the global pH anomalies from the India/Pakistan 47-Tg simulation driven by changes in the equilibrium constants versus all other changes in the carbonate chemistry system. The equilibrium constant-driven pH anomaly is positive, peaking 2–3 years after the conflict, whereas the “other” component of the pH anomaly is negative, peaking 3–5 years after the conflict. The resulting total pH anomaly is positive, indicating that it is more strongly influenced by changes in the equilibrium constants than other changes. In the India/Pakistan 47-Tg case, globally averaged temperature reaches a minimum 2 to 3-years post conflict; the model initially produces 3.5◦C–4◦C anomalies at the surface that rewarm toward pre-conflict values for the duration of the simulation (Figure 3a). In contrast, surface ocean salinity-normalized DIC anomalies peak 3 to 5-years post conflict (Figure 3b), mainly as a result of the enhanced solubility of CO2 in colder seawater. While decreasing biological export production also contributes to increased DIC in the surface ocean, this signal is small relative to the change driven by enhanced air-to-sea CO2 flux (e.g., Figure S2). The delay in DIC relative to temperature anomalies is a result of the long (order months to years) timescale for CO2 to fully equilibrate with the surface mixed layer (Emerson & Hedges, 2008). The cold, high DIC surface anomalies slowly propagate into the global ocean thermocline; we observe 1◦ C and 10 mmol m−3 anomalies in temperature and DIC, respectively, at a depth of 300 m that persist beyond the length of our simulation (Figure 3). As there are no significant anomalies in global mean alkalinity or salinity post conflict (not shown), we conclude that the DIC perturbation drives the “other” component of the pH anomalies. We find similar behavior for these components in the other conflict scenarios (not shown). The negative Ωarag anomalies post conflict are driven by a combination of lower temperatures and higher DIC concentrations. Colder surface temperatures tend to increase Ksp, while higher surface DIC concentrations tend to decrease [CO2− 3 ], resulting in lower Ωarag values post conflict. Figure 1c illustrates that the DIC (other) component dominates the total Ωarag anomaly for the India/Pakistan 47-Tg simulation. As for pH, the equilibrium constant component peaks earlier than the other component; this is due to the timing of the temperature and DIC perturbations (Figure 3). The spatial patterns of the post-conflict surface pH and Ωarag anomalies in the India/Pakistan 47-Tg scenario (Figures 2c and 2f) result from perturbations in local surface ocean temperature and DIC (Figure S3). Negative temperature anomalies and positive DIC anomalies are pervasive in the tropics and extratropics, with the exception of the eastern Equatorial Pacific, where a large and long-lasting El Niño-like event develops following the conflict (Coupe, et al., manuscript in review). This strong reduction in the equatorial trade winds greatly weakens upwelling in the cold tongue region, producing near-zero surface temperature anomalies and a reduction in vertical DIC supply here (Figure S3). In the Southern Ocean, temperature and DIC are not much affected by the nuclear conflict, likely a result of enhanced upwelling of warm water from the subsurface (Harrison, et al., manuscript in preparation). Taken together, the aforementioned changes in temperature and DIC lead to increases in pH and decreases in Ωarag over most of the ocean surface (Figure S4). The changes in surface ocean pH that we simulate for nuclear conflict resemble the simulated response of pH to volcanic eruptions, but are an order of magnitude larger. Figure S5 illustrates the anomaly in surface ocean pH in the first year following the eruptions of Agung, El Chichón, and Mt. Pinatubo, as estimated by the CESM Large Ensemble (Kay et al., 2015), which uses the same physical and biogeochemical ocean components as in our nuclear conflict simulations. The ensemble mean isolates the evolution of the Earth system under historical external forcing, including the aerosol loading following volcanic eruptions (Eddebbar et al., 2019), and averages across the various representations of internal variability (Deser et al., 2012; we note that ensembles are not necessary for the nuclear conflict scenarios since the much larger magnitude of forcing provides a higher signal-to-noise ratio). The anomaly in the ensemble mean shown here thus cleanly captures the response of surface ocean pH to volcanic eruptions. Here we show the anomaly in preindustrial pH (pH anomalies in equilibrium with preindustrial atmospheric CO2, which is computed simultaneously with contemporary pH at model run time), as the contemporary pH anomalies include also the response to increasing atmospheric CO2 from one year to the next. The similarity in the spatial patterns of volcanically induced pH anomalies and those produced under nuclear conflict is striking (cf. Figures S5 and 2c), suggesting that volcanic forcing produces similar temperature, DIC, and thus pH anomalies (including the El Niño-like response to volcanic forcing in the eastern Equatorial Pacific, described in Eddebbar et al., 2019). However, the eruption-driven pH anomaly is both smaller (an order of magnitude) and of shorter duration (∼2 years) than in the India/Pakistan 47-Tg simulation. Unfortunately, a similar analysis of volcanic Ωarag anomalies in the CESM Large Ensemble was not possible as preindustrial [CO2− 3 ] was not saved to disk. 4. Conclusions and Discussion We report on the surface ocean pH and Ωarag anomalies generated from four simulations of nuclear conflict using the CESM with full ocean carbonate system thermodynamics. Globally averaged surface ocean pH increases in response to each conflict, with the largest increases in the North Atlantic, North Pacific, and Equatorial Pacific Ocean. The pH anomalies persist for 10 years post conflict and are primarily driven by changes in the carbonate chemistry equilibrium constants as a result of decreases in sea surface temperature. In contrast, CESM simulates globally averaged decreases in surface ocean Ωarag in response to nuclear conflict, with the largest decreases in the tropics and subtropics. The Ωarag anomalies persist beyond the length of our 15-year simulations and are driven by a combination of changes in the carbonate chemistry equilibrium constants and the solubility-driven increases in DIC. We further demonstrate that the surface pH anomalies induced by nuclear conflict resemble those induced by volcanic eruptions in the same modeling system. The simulated changes in global and regional pH and Ωarag as a result of nuclear conflict are large and abrupt. In the most extreme forcing scenario (U. S./Russia 150 Tg), over a period of ∼5 years, global surface ocean pH increases by 0.06 units, and Ωarag decreases by 0.3 units. To put these numbers into perspective, this simulated rate of change of pH is 10 times larger than the rate of change we have observed over the past two decades as a result of ocean acidification (−0.0018 year−1; Lauvset et al., 2015). Worryingly, surface ocean Ωarag decreases more than six times faster than has been observed in the open ocean over the past three decades (−0.0095 year−1 at the Bermuda Atlantic time series; Bates et al., 2014). While the cooling associated with nuclear conflict rapidly and briefly alleviates the decline in pH associated with ocean acidification, the increase in solubility causes the ocean to absorb ∼11 Pg of excess carbon in a 10-year period, leading to a rapid drop in Ωarag. Whether and how calcifying organisms might respond to such rapid and opposing changes in pH and Ωarag is as yet unknown. In order to measure organism response to ocean acidification, a majority of laboratory studies perform CO2 bubbling perturbation experiments, which simultaneously decrease the pH and Ωarag in the surrounding seawater solution (Pörtner et al., 2014). This simultaneous change in two carbonate chemistry parameters challenges our ability to isolate the organism response to changes in pH or changes in Ωarag alone. A recent laboratory sensitivity study of marine bivalve larvae used chemical manipulation experiments to decouple these two parameters; they found that larval shell development and growth were negatively impacted by decreasing Ω and unaffected by changes in pH (Waldbusser et al., 2014). If these sensitivities are sustained in other organisms, we might conclude that calcifying organisms would be severely affected by nuclear conflict. Our findings shed light on the ocean biogeochemical response to other forms of extreme external forcing, such as volcanic eruptions (Eddebbar et al., 2019; Frölicher et al., 2011) and solar radiation management climate engineering (Lauvset et al., 2017; Matthews et al., 2009). They may further inform the study and understanding of the role of ocean acidification in marine extinction following the Chicxulub impact event (Henehan et al., 2019). Importantly, our results suggest that even a regional nuclear conflict can have an impact on global ocean acidification, adding to the list of the many, far-reaching consequences of nuclear conflict for global society.

#### No impact to biodiversity.

R. Alexander Pyron 17. Robert F. Griggs Associate Professor of Biology at the George Washington University. “We don’t need to save endangered species. Extinction is part of evolution.” The Washington Post. November 22, 2017. <https://www.washingtonpost.com/outlook/we-dont-need-to-save-endangered-species-extinction-is-part-of-evolution/2017/11/21/57fc5658-cdb4-11e7-a1a3-0d1e45a6de3d_story.html?utm_term=.f0978c93ca1e>

But the impulse to conserve for conservation’s sake has taken on an unthinking, unsupported, unnecessary urgency. Extinction is the engine of evolution, the mechanism by which natural selection prunes the poorly adapted and allows the hardiest to flourish. Species constantly go extinct, and every species that is alive today will one day follow suit. There is no such thing as an “endangered species,” except for all species. The only reason we should conserve biodiversity is for ourselves, to create a stable future for human beings. Yes, we have altered the environment and, in doing so, hurt other species. This seems artificial because we, unlike other life forms, use sentience and agriculture and industry. But we are a part of the biosphere just like every other creature, and our actions are just as volitional, their consequences just as natural. Conserving a species we have helped to kill off, but on which we are not directly dependent, serves to discharge our own guilt, but little else.

Climate scientists worry about how we’ve altered our planet, and they have good reasons for apprehension: Will we be able to feed ourselves? Will our water supplies dry up? Will our homes wash away? But unlike those concerns, extinction does not carry moral significance, even when we have caused it. And unless we somehow destroy every living cell on Earth, the sixth extinction will be followed by a recovery, and later a seventh extinction, and so on.

Yet we are obsessed with reviving the status quo ante. The Paris Accords aim to hold the temperature to under two degrees Celsius above preindustrial levels, even though the temperature has been at least eight degrees Celsius warmer within the past 65 million years. Twenty-one thousand years ago, Boston was under an ice sheet a kilometer thick. We are near all-time lows for temperature and sea level; whatever effort we make to maintain the current climate will eventually be overrun by the inexorable forces of space and geology. Our concern, in other words, should not be protecting the animal kingdom, which will be just fine. Within a few million years of the asteroid that killed the dinosaurs, the post-apocalyptic void had been filled by an explosion of diversity — modern mammals, birds and amphibians of all shapes and sizes.

This is how evolution proceeds: through extinction. The inevitability of death is the only constant in life, and 99.9 percent of all species that have ever lived, as many as 50 billion, have already gone extinct. In 50 million years, Europe will collide with Africa and form a new supercontinent, destroying species (think of birds, fish and anything vulnerable to invasive life forms from another landmass) by irrevocably altering their habitats. Extinctions of individual species, entire lineages and even complete ecosystems are common occurrences in the history of life. The world is no better or worse for the absence of saber-toothed tigers and dodo birds and our Neanderthal cousins, who died off as Homo sapiens evolved. (According to some studies, it’s not even clear that biodiversity is suffering. The authors of another recent National Academy of Sciences paper point out that species richness has shown no net decline among plants over 100 years across 16,000 sites examined around the world.)

Conserving biodiversity should not be an end in itself; diversity can even be hazardous to human health. Infectious diseases are most prevalent and virulent in the most diverse tropical areas. Nobody donates to campaigns to save HIV, Ebola, malaria, dengue and yellow fever, but these are key components of microbial biodiversity, as unique as pandas, elephants and orangutans, all of which are ostensibly endangered thanks to human interference.

Humans should feel less shame about molding their environment to suit their survival needs. When beavers make a dam, they cause the local extinction of numerous riverine species that cannot survive in the new lake. But that new lake supports a set of species that is just as diverse. Studies have shown that when humans introduce invasive plant species, native diversity sometimes suffers, but productivity — the cycling of nutrients through the ecosystem — frequently increases. Invasives can bring other benefits, too: Plants such as the Phragmites reed have been shown to perform better at reducing coastal erosion and storing carbon than native vegetation in some areas, like the Chesapeake.

And if biodiversity is the goal of extinction fearmongers, how do they regard South Florida, where about 140 new reptile species accidentally introduced by the wildlife trade are now breeding successfully? No extinctions of native species have been recorded, and, at least anecdotally, most natives are still thriving. The ones that are endangered, such as gopher tortoises and indigo snakes , are threatened mostly by habitat destruction. Even if all the native reptiles in the Everglades, about 50, went extinct, the region would still be gaining 90 new species — a biodiversity bounty. If they can adapt and flourish there, then evolution is promoting their success. If they outcompete the natives, extinction is doing its job.

There is no return to a pre-human Eden; the goals of species conservation have to be aligned with the acceptance that large numbers of animals will go extinct. Thirty to 40 percent of species may be threatened with extinction in the near future, and their loss may be inevitable. But both the planet and humanity can probably survive or even thrive in a world with fewer species. We don’t depend on polar bears for our survival, and even if their eradication has a domino effect that eventually affects us, we will find a way to adapt. The species that we rely on for food and shelter are a tiny proportion of total biodiversity, and most humans live in — and rely on — areas of only moderate biodiversity, not the Amazon or the Congo Basin.

Developed human societies can exist and function in harmony with diverse natural communities, even if those communities are less diverse than they were before humanity. For instance, there is almost no original forest in the eastern United States. Nearly every square inch was clear-cut for timber by the turn of the 20th century. The verdant wilderness we see now in the Catskills, Shenandoah and the Great Smoky Mountains has all grown back in the past 100 years or so, with very few extinctions or permanent losses of biodiversity (14 total east of the Mississippi River, counting species recorded in history that are now apparently extinct), even as the population of our country has quadrupled. Japan is one of the most densely populated and densely forested nations in the world. A model like that can serve a large portion of the planet, while letting humanity grow and shape its own future.

#### No resource conflict.

Agha BAYRAMOV 18. PhD candidate and lecturer at the department of International Relations and International Organization of the University of Groningen. “Review: Dubious nexus between natural resources and conflict.” *Journal of Eurasian Studies* 9(1): 72-81. Emory Libraries.

The arguments of scarcity adherents have been challenged by a number of scholars in terms of qualitative and quantitative findings. According to Stern (2016) the assumptions underpinning the scarcity notion are illogical due to the exaggeration of threats arising from oil ownership from misperceptions of market information. Furthermore, Koubi et al. (2013) explain that despite their strong empirical explanations, scarcity scholars have weak quantitative research results ones that fail to prove the link between resource scarcity and intrastate or interstate conflict. The reason for this is that some large-N findings contradict early results, which illustrate that the scarcity-conflict nexus is more complicated than scarcity scholars would have us believe. Dinar (2011), meanwhile, argues that natural resource scarcity may in fact be an important force for cooperation between states. However, scholars of natural resource scarcity have hitherto ignored the ways in which scarcity can spur cooperation (Deudney, 1999).

Considering these findings, three conclusions can be drawn from this section. First, scarcity is a complex term and it should not be equated with only natural resources. As it is explained by Kester (2016) some countries may suffer from scarcity of technical, knowledge and human capacity rather than natural resources. In light of this, without a proper capacity it is also possible to have scarcity within abundancy of resources. While supporting the scarcity argument, Andrews-Speed (2015) offer an alternative explanation that natural resources are not physically scarce but there are indeed economic, political, environmental and equity barriers that can lead to a scarcity of natural resources. Due to the strong rule of law, decent neighbourly relations and existence of strong norms for compromise and of multilateral institutions, the North Atlantic countries are highly unlikely to utilize force against or declare war to each other. However, these dimensions and buffers are currently lacking in the Middle East, Africa and Asia. As such, the U.S and Europe should work closely with these regions to prevent any resource disputes erupting (Andrews-Speed 15). Similarly, Gleditsch (1998) explains that some highly developed countries have population density, clean water, and land degradation problems but they still do not suffer from environmental violence. Thus the main issue might be that poor economic development, rather than environmental scarcity, leads to conflict. Kester (2016) names this situation as “second-order-scarcity” which refers to a lack of technology, economic capacity, and knowledge to stop resource scarcity. In this regard, it may be scarcity, itself, rather than natural resources that leads to conflict.

Second, conflict can be defined differently based on different dimensions. However, the common consensus is that conflict consists of multiple dimensions (political, economic, environmental, historical, cultural, and geographical etc.) rather than single factor. In this regard, scarcity of natural resources is not strong enough, by itself, to induce either interstate or intrastate conflict. It needs in fact to interact with other variables. Finally, related to the previous reasons, scarcity of natural resources might be a contributing or marginal reason for rather than the root cause of a given conflict. In other words, it needs to interact with non-resource factors in order to cause violence.

#### Their entire volcanoes scenario is written by two random science writers---reject it.

#### No impact to disease.

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

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

#### The megacities impact has no scenario and says they cause terrorist safe havens---that’s non-unique.

### Solvency---1NC

#### Cap is entrenched---they can’t cause a shift toward degrowth.

Hubert Buch-Hansen 18. Associate Professor, Department of Business and Politics, Copenhagen Business School. “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy”. Ecological Economics. April 2018. <https://doi.org/10.1016/j.ecolecon.2017.10.021>

Still, the degrowth project is nowhere near enjoying the degree and type of support it needs if its policies are to be implemented through democratic processes. The number of political parties, labour unions, business associations and international organisations that have so far embraced degrowth is modest to say the least. Economic and political elites, including social democratic parties and most of the trade union movement, are united in the belief that economic growth is necessary and desirable. This consensus finds support in the prevailing type of economic theory and underpins the main contenders in the neoliberal project, such as centre-left and nationalist projects. In spite of the world's multidimensional crisis, a pro-growth discourse in other words continues to be hegemonic: it is widely considered a matter of common sense that continued economic growth is required.

It is also noteworthy that economic and political elites, to a large extent, continue to support the neoliberal project, even in the face of its evident shortcomings. Indeed, the 2008 financial crisis did not result in the weakening of transnational financial capital that could have paved the way for a paradigm shift. Instead of coming to an end, neoliberal capitalism has arguably entered a more authoritarian phase (Bruff, 2014). The main reason the power of the pre-crisis coalition remains intact is that governments stepped in and saved the dominant fraction by means of massive bailouts. It is a foregone conclusion that this fraction and the wider coalition behind the neoliberal paradigm (transnational industrial capital, the middle classes and segments of organized labour) will consider the degrowth paradigm unattractive and that such social forces will vehemently oppose the implementation of degrowth policies (see also Rees, 2014: 97).

While degrowth advocates envision a future in which market forces play a less prominent role than they do today, degrowth is not an anti-market project. As such, it can attract support from certain types of market actors. In particular, it is worth noting that social enterprises, such as cooperatives (Restakis, 2010), play a major role in the degrowth vision. Such enterprises are defined by being ‘organisations involved at least to some extent in the market, with a clear social, cultural and/or environmental purpose, rooted in and serving primarily the local community and ideally having a local and/or democratic ownership structure’ (Johanisova et al., 2013: 11). Social enterprises currently exist at the margins of a system, in which the dominant type of business entity is profit-oriented, shareholder-owned corporations. The further dissemination of social enterprises, which is crucial to the transitions to degrowth societies, is – in many cases – blocked or delayed as a result of the centrifugal forces of global competition (Wigger and Buch-Hansen, 2013). Overall, social enterprises thus (still) constitute a social force with modest power.

Ougaard (2016: 467) notes that one of the major dividing lines in the contemporary transnational capitalist class is between capitalists who have a material interest in the carbon-based economy and capitalists who have a material interest in decarbonisation. The latter group, for instance, includes manufacturers of equipment for the production of renewable energy (ibid.: 467). As mentioned above, degrowth advocates have singled out renewable energy as one of the sectors that needs to grow in the future. As such, it seems likely that the owners of national and transnational companies operating in this sector would be more positively inclined towards the degrowth project than would capitalists with a stake in the carbon-based economy. Still, the prospect of the “green sector” emerging as a driving force behind degrowth currently appears meagre. Being under the control of transnational capital (Harris, 2010), such companies generally embrace the “green growth” discourse, which ‘is deeply embedded in neoliberal capitalism’ and indeed serves to adjust this form of capitalism ‘to crises arising from contradictions within itself’ (Wanner, 2015: 23).

In addition to support from the social forces engendered by the production process, a political project ‘also needs the political ability to mobilize majorities in parliamentary democracies, and a sufficient measure of at least passive consent’ (van Apeldoorn and Overbeek, 2012: 5–6) if it is to become hegemonic. As mentioned, degrowth enjoys little support in parliaments, and certainly the pro-growth discourse is hegemonic among parties in government.5 With capital accumulation being the most important driving force in capitalist societies, political decision-makers are generally eager to create conditions conducive to production and the accumulation of capital (Lindblom, 1977: 172). Capitalist states and international organisations are thus “programmed” to facilitate capital accumulation, and do as such constitute a strategically selective terrain that works to the disadvantage of the degrowth project.

The main advocates of the degrowth project are grassroots, small fractions of left-wing parties and labour unions as well as academics and other citizens who are concerned about social injustice and the environmentally unsustainable nature of societies in the rich parts of the world. The project is thus ideationally driven in the sense that support for it is not so much rooted in the material circumstances or short-term self-interests of specific groups or classes as it is rooted in the conviction that degrowth is necessary if current and future generations across the globe are to be able to lead a good life. While there is no shortage of enthusiasts and creative ideas in the degrowth movement, it has only modest resources compared to other political projects. To put it bluntly, the advocates of degrowth do not possess instruments that enable them to force political decision-makers to listen to – let alone comply with – their views. As such, they are in a weaker position than the labour union movement was in its heyday, and they are in a far weaker position than the owners and managers of large corporations are today (on the structural power of transnational corporations, see Gill and Law, 1989).

6. Consent

It is also safe to say that degrowth enjoys no “passive consent” from the majority of the population. For the time being, degrowth remains unknown to most people. Yet, if it were to become generally known, most people would probably not find the vision of a smaller economic system appealing. This is not just a matter of degrowth being ‘a missile word that backfires’ because it triggers negative feelings in people when they first hear it (Drews and Antal, 2016). It is also a matter of the actual content of the degrowth project.

Two issues in particular should be mentioned in this context. First, for many, the anti-capitalist sentiments embodied in the degrowth project will inevitably be a difficult pill to swallow. Today, the vast majority of people find it almost impossible to conceive of a world without capitalism. There is a ‘widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible to even imagine a coherent alternative to it’ (Fisher, 2009: 2). As Jameson (2003) famously observed, it is, in a sense, easier to imagine the end of the world than it is to imagine the end of capitalism. However, not only is degrowth – like other anti-capitalist projects – up against the challenge that most people consider capitalism the only system that can function; it is also up against the additional challenge that it speaks against economic growth in a world where the desirability of growth is considered common sense.

Second, degrowth is incompatible with the lifestyles to which many of us who live in rich countries have become accustomed. Economic growth in the Western world is, to no small extent, premised on the existence of consumer societies and an associated consumer culture most of us find it difficult to completely escape. In this culture, social status, happiness, well-being and identity are linked to consumption (Jackson, 2009). Indeed, it is widely considered a natural right to lead an environmentally unsustainable lifestyle – a lifestyle that includes car ownership, air travel, spacious accommodations, fashionable clothing, an omnivorous diet and all sorts of electronic gadgets. This Western norm of consumption has increasingly been exported to other parts of the world, the result being that never before have so many people taken part in consumption patterns that used to be reserved for elites (Koch, 2012). If degrowth were to be institutionalised, many citizens in the rich countries would have to adapt to a materially lower standard of living. That is, while the basic needs of the global population can be met in a non-growing economy, not all wants and preferences can be fulfilled (Koch et al., 2017). Undoubtedly, many people in the rich countries would experience various limitations on their consumption opportunities as a violent encroachment on their personal freedom. Indeed, whereas many recognize that contemporary consumer societies are environmentally unsustainable, fewer are prepared to actually change their own lifestyles to reverse/address this.

#### Antitrust enforcement helps small businesses---that means they don’t solve corporatism---no Aff ev says enforcement causes localism, just that it breaks up oligopolies---wealth distribution goes to small businesses, reinstantiating corporatism.

#### Expand the scope of antitrust refers exclusively to formal law not enforcement---the plan is circumvented.

Sinisa Milosevic et al. 18. Commission for Protection of Competition, The Republic of Serbia. Dejan Trifunovic, Faculty of Economics, University of Belgrade, Belgrade, The Republic of Serbia. Jelena Popovic Markopoulos, Commission for Protection of Competition, The Republic of Serbia. “The Impact of the Competition Policy on Economic Development in the Case of Developing Countries”. Economic Horizons, May - August 2018, Volume 20, Number 2, 153 – 167. http://scindeks-clanci.ceon.rs/data/pdf/1450-863X/2018/1450-863X1802157M.pdf

The paper that analyzes the impact of the competition policy on the GDP growth in developing and developed countries in the Solow growth model framework is T. C. Ma’s (2011). The presence and scope of the competition policy is captured by the SCOPE variable that is defined in the paper by K. N. Hylton and F. Deng (2007). The overall effectiveness of the government’s application of policies, not only of the competition policy, is captured by the EFFICIENCY variable that is defined in the paper by D. Kaufmann, A. Kraay and M. Mastruzzi (2009). The results show that the SCOPE variable is not significant and the formal existence of the competition law cannot influence economic growth. The interacting variable of SCOPE x EFFICIENCY is named EFFLAW. For poor countries, the coefficient for this variable is 0.04 and is significant, whereas for rich countries the coefficient is 0.064 and is also significant. Therefore, the competition law must be complemented with the effective enforcement of this policy.

#### Antitrust fails---expanding scope opens the floodgates to litigation and makes enforcement impossible.

Geoffrey Manne, 18. International Center for Law & Economics president & founder, Congressional Documents and Publications, “Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights Hearing; "A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU."; Testimony by Geoffrey Manne, President and Founder, International Center for Law and Economics,” December 19, 2018. Lexis, accessed 6-1-21

II. The specious lure of excessively discretionary antitrust

Antitrust is an attractive regulatory tool for a number of reasons. As noted above, the vague, terse language of the Sherman Act readily lends itself to "interpretation" imbuing it with virtually limit-less scope. Indeed, the urge to treat antitrust as a legal Swiss Army knife capable of correcting all manner of social and economic ills is apparently difficult to resist. Conflating size with market power, and market power with political power, many recent calls for regulation of the tech indus-try are framed in antitrust terms, even though they are mostly rooted in nothing recognizable as modern, economically informed antitrust legal claims or analysis. But that attraction is precisely why we should care about the scope, process, and economics of anti-trust and the extent of its politicization. Antitrust in the US has largely resisted the relentless effort to politicize it. Despite being rooted in vague and potentially expansive statutory language, US anti-trust is economically grounded, evolutionary, and limited to a set of achievable social welfare goals. In the EU, by contrast, these sorts of constraints are far weaker. Whether or not that is suitable for the particular political and historical circumstances of the EU is a separate question. But, undoubt-edly, applying a controversial legal regime to the United States -- a markedly different jurisdiction with a unique governance structure -- and upsetting more than a century of legal, technological, and social development, is deeply problematic. This conclusion is in no way altered by the fact that US antitrust law has become the outlier of global antitrust enforcement, compared to the EU's more "consensual" approach. n26 What matters is a policy's actual results, not whether it is widely adopted; the world is full of debunked beliefs that were once widely shared. And it is far from certain that the widespread adoption of the EU model is in any way indicative of superior results. It is equally (or even more) plausible that this model has proliferated because it naturally accommodates politically useful populist narratives -- such as "big is bad," robin hood fallacies and robber baron myths -- that are constrained by the US's more evidence-based and rational antitrust decision-making. n27 America's isolation might thus be a testament to its success rather than an emblem of its failure. But even if by some chance the European approach proved to be optimal for many other countries in the world, it is still dubious that its adoption would lead to improved economic performance in the United States. As has already been alluded to, the unique features of the US legal regime make it unlikely that the best policy for the EU would also happen to be the best one for America. The EU's more aggressive pursuit of technology platforms under its antitrust laws demonstrates many of the problems with its approach in general. I urge this subcommittee to consider not just whether the EU approach seems to permit the government to reach a preconceived outcome -- i.e., placing large tech platforms under increased antitrust scrutiny -- but whether it is truly desirable at all to emulate the EU's approach and to try to reach the goals of EU competition policy under US antitrust law. Endorsing the European approach to antitrust, in a naive attempt to bring high-pro-file cases against large Internet platforms, would prioritize political expediency over the rule of law. It would open the floodgates of antitrust litigation and facilitate deleterious tendencies, such as non-economic decision-making, rent-seeking, regulatory capture, and politically motivated enforce-ment. Bringing US antitrust enforcement in line with that of the EU would thus unlock a veritable Pan-dora's box of concerns that are currently kept in check. Chief among them is the use of antitrust laws to evade democratically and judicially established rules and legal precedent. When consider-ing this question, it is important to see beyond any particular set of firms that enforcement offi-cials and politicians may currently be targeting. An antitrust law expanded to consider the full scope of soft concerns that the EU aims at will not be employed against only politically disfavored companies, companies in other jurisdictions, or in order to expediently "solve" otherwise political problems. Once antitrust is expanded beyond its economic constraints and imbued with political content, it ceases to be a uniquely valuable tool for addressing real economic harms to consumers, and becomes a tool for routing around legislative and judicial constraints**.**

## 2NC

### Regs CP---2NC

#### “Do both” is antitrust duplication---the disputes collapse resources, effectiveness, and signaling.

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Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### “Expanding the scope” of “anti-trust laws” must be the DOJ and FTC.

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

#### 2. Jurisdiction: the plan expands the DOJ and FTC role.

Babette E. Boliek 11. Associate Professor of Law at Pepperdine University School of Law. J.D., Columbia University School of Law; Ph.D., Economics University of California, Davis. FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries, 52 B.C.L. Rev. 1627 (2011). <http://lawdigitalcommons.bc.edu/bclr/vol52/iss5/2>

There is a crucial battle playing out in the world of Internet access provision. While the Internet is the natural home of competing business giants and warring digital avatars, the contest that will have the most sweeping ramifications for the future of the Internet is the turf war being waged between the Federal Communications Commission (FCC), on the one hand, and the Federal Trade Commission (FTC) and the Department of Justice (DOJ), on the other.1 Nothing less than jurisdiction over the development of the Internet is at stake.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times.2 But it is the current iteration of the FCC’s “net neutrality” regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service.4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose—to protect consumers and to promote allocative efficiencies in production—the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws “typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods” —regulation looks to achieve these goals directly “through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about.”5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets— regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major- ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

This Article sets forth a framework to identify the boundaries between FCC regulatory power and antitrust authority. The goal is to pinpoint for Congress the problematic use of regulatory discretion in defining, or redefining, those boundaries and to propose the standard by which Congress may address inappropriate use of existing FCC jurisdiction. Specifically, this Article creates a new categorization of “procedural opportunism” and “substantive opportunism” to identify problematic, regulatory assertions of jurisdiction. The central issue examined in this Article is to posit what is (or should be) the boundaries of antitrust law in relation to the FCC’s regulatory authority. This important issue has reached a point of public crises in the current net neutrality debate.9 Rather than act reflexively, this is an opportunity for Congress to act clearly to redefine the boundaries between the two regimes that have otherwise been blurred by regulatory overreach.

#### 3. Legal code---antitrust requires Title 15 of US Code.

Sanjukta M. Paul 16. David J. Epstein Fellow, UCLA School of Law. The Enduring Ambiguities of Antitrust Liability for Worker Collective Action. Loyola University Chicago Law Journal. https://www.congress.gov/116/meeting/house/110152/witnesses/HHRG-116-JU05-Wstate-PaulS-20191029-SD002.pdf

Unlike the Clayton Act, which was the first legislative attempt at a labor exemption from antitrust,202 the Norris-La Guardia Act did not grapple directly with trade regulation in subject matter—even with how trade regulation applies to labor—although it had the effect of modifying its reach. Norris-La Guardia is not an antitrust statute. Instead, it is incorporated into Title 29 (“Labor”) of the United States Code. By contrast, the Clayton Act was conceived and written as an antitrust statute, was incorporated into Title 15, the antitrust and trade regulation section of the Code, and portions of it dealt with matters other than labor.

#### First solvency advocate says the word antitrust once with zero warrant---lists a laundry list of regulations like minimum wage, restructuring land patterns, and funding local agriculture which solve.

Christopher Ketcham, 4-14-2018, a published writer in Harper’s, National Geographic, Hustler, Penthouse, the New York Times, Pacific Standard, Sierra, Earth Island Journal, Vanity Fair, The New Republic, Rolling Stone, Mother Jones, Salon, and many other websites and newspapers large and small, The Curse of Bigness, Local Futures, https://www.localfutures.org/the-curse-of-bigness/; accessed 9-16-2021

\*edited for language\*

But bigness is the prejudice of American life, our cultural albatross, the axiom being that when something is big it is automatically better. That we allow corporations to grow to outrageous size is just another symptom of the disease. Bigness worship permeates every layer of the culture; it is racked into our brains with every turn of the advertising screw; it is a totalizing force. Today we find ourselves in an unprecedented age of corporate gigantism. This situation is characterized not by outright monopolies, but by the rise of oligopolies, a few very ~~obese~~ [large] firms, the Big Three or Big Six, dominating their sectors while being insulated from failure by the hand of government. Republican and Democratic administrations alike, spellbound by so-called laissez-faire ideology, abandoned their antitrust duties and abetted the growth of stupendous privileges in the corporatocracy. At the same time, federal and state governments have done most everything they can to ignore, discourage, and imperil the small man in the world of business. It’s an old story, and it bears repeating: Government subsidies favor large-scale standardized activity (in farming, manufacturing, retail — the list is long) at the expense of the local, the small, the diverse, the upstart. What we’re told is that all this consolidation, this predilection for bigness, always and every time — per the usual knee-jerk size-valuation — brings “synergies,” “economies of scale,” efficiency, innovation. But the opposite is too often the case. “The irony,” says economist James Brock, “is that we have established a reverse economic Darwinism, where we ensure the survival of the ~~fattest~~ [biggest], not the fittest, the biggest, not the best.” It was E.F. Schumacher who, in the 1950s, as the chief economist at the British National Coal Board, came to the quite reasonable — at the time unthinkable — conclusion that energy supply, the coal that England so ravenously was burning up, could not satisfy an ideology of unlimited growth. It was, Schumacher concluded, a suicide pact with Planet Earth. What Schumacher offered instead in the book that made him famous, Small Is Beautiful, is the common-sensical idea that man is small, therefore should think small — that is, think along the lines of human scale. When in 1955 Schumacher was invited by the government of Burma as an advisor on economic development, he understood at once that the rote econometrics of the West had little to offer the Burmese. Schumacher fell in love with the country, the people, the culture, and it was Buddhism that most impressed him, Buddhism in practice in the little villages, the Buddhism of the Middle Path. The experience was transformative, inspiring him to gestate the notion of a “Buddhist economics,” an “economics as if people mattered.” Instead of demanding that his hosts modernize, he urged the Burmese to hold fast to the middle path, employing energy-light, human-scale technology — what he called “democratic or people’s technology” — to develop the economy on the organic scale of the village. Instead of industrial irrigation super-projects, there would be drip-irrigation and foot-operated treadle pumps (which have worked in Burma to this day). Instead of breakneck urbanization and huge capital investments and centralized planning, the Burmese would do better to decentralize as much as possible, he said, to keep decision-making local for the local production of food and handicrafts to be locally consumed. Mahatma Gandhi’s development plans for India were much along the same lines. “If we feel the need of machines,” said Gandhi, “we certainly will have them. Every machine that helps every individual has a place, but there should be no place for machines [that] turn the masses into mere machine minders.” What in the intervening years has been the alternative? In China, great leaps forward have poisoned the rivers and the lakes and the fields and the coastal beds, displacing huge populations, concentrating them in the filth of cities as machine minders, impoverishing every rank of traditional society while enriching a very few, for whom tradition is nothing more than an attachment to the nonmaterial. Of course, among the economists for whom growth was the unquestioned ideology — growth for its own sake, the ideology of the ~~cancer cell~~ [badness]— Schumacher was considered a ~~crazy~~ [absurd] old man, a godforsaken crank. And to that he was said to have replied that a crank is small, safe, cheap, comprehensible, nonviolent, and efficient, a perfect tool of intermediate technology. Let us be cranks then, though the consensus conspires against us — against the very notion that the small-scale and low-tech may hold the means to a workable future. We can start by downsizing the monster corporations.

The antitrust law is there, waiting, a fist in our pockets. Let’s have a third party in politics that might dare to confront bigness — hell, let’s have a second party, given that Republicans and Democrats are at odds only in the ~~perfumes they wear~~ [aesthetic]. Let’s have ten or twenty parties. Let’s encourage local production with local labor within easy commuting distances; pay a living wage; restructure land-use patterns to provide easy access to work; grow most of our food close to where it will be consumed. Let’s dream small.

#### Solvency advocate never says expansion is key---a national media policy solves.

1AC Stucke and Grunes 9 (Maurice E. Stucke University of Tennessee, and Allen P. Grunes Brownstein Hyatt Farber Schreck, November 2009, "Toward A Better Competition Policy For The Media" University of Tennessee – Tennessee Research and Creative Exchange, https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1041&context=utk\_lawpubl, accessed 9-17-2021)

Congress recently held a range of hearings on media-related topics,∂ including specific media mergers, the “digital future,” net neutrality, piracy,∂ the role of private equity, as well as FCC oversight hearings. Ideally, a∂ national media policy would emerge from such hearings, including media∂ specific legislation and new ways to further the other goals of any media∂ policy, such as localism and diversity.121

#### Merger review, presumption against media mergers, giving journalists a veto in decisions, and presumption of illegality against monopolies ALL solves---their evidence says regulations good, not expansion.

1AC Stucke and Grunes 9 (Maurice E. Stucke University of Tennessee, and Allen P. Grunes Brownstein Hyatt Farber Schreck, November 2009, "Toward A Better Competition Policy For The Media" University of Tennessee – Tennessee Research and Creative Exchange, https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1041&context=utk\_lawpubl, accessed 9-17-2021)

Other countries, including Germany, England, Norway, Sweden, and∂ the Netherlands, have taken steps to limit concentration and promote∂ editorial independence.122 Some possibilities discussed by Professor Baker∂ and others include requiring more extensive pre-merger review, applying∂ presumptions against media mergers under certain defined circumstances,∂ barring certain types of transactions entirely, explicitly taking editorial∂ independence into account, giving journalists a say or even a veto in merger∂ decisions, imposing some non content-based access requirements on∂ dominant firms, changing tax and subsidy policies, and strengthening antitrust enforcement through more objective criteria (e.g., presumption of∂ illegality based on market share).123

#### Anti-Trust remedies for big tech fail. Regulative legal tools solve better.

Herbert Hovenkamp 21. James G. Dinan University Professor at the University of Pennsylvania Law School and the Wharton School of the University of Pennsylvania. 2021. “Antitrust Remedies for Big Tech.” January 18, 2021. https://www.theregreview.org/2021/01/18/hovenkamp-antitrust-remedies-big-tech/

The U.S. Department of Justice, Federal Trade Commission, and several states attorneys general have brought major antitrust cases against Facebook and Google. The complaints allege several anticompetitive agreements, and a judicial finding of liability against the tech companies is a realistic possibility. Yet too often the government has proven antitrust violations against large firms only to have the case fall apart at the remedy stage. The antitrust laws themselves are not very helpful: They empower the government to “prevent and restrain” antitrust violations but say nothing about how to do that. We cannot identify proper antitrust remedies without some clarity about antitrust policy’s goals. The antitrust laws speak in unmistakably economic terms about “monopoly,” “restraint of trade,” and “competition.” The laws cannot be interpreted as limitations on political power, large size, or some common law or criminal offense, such as theft, invasion of privacy, or fraud, unless those bad acts serve to injure competition. Other statutes exist for pursuing those harms, and they are important components of legal policy. If we wanted antitrust laws to police these practices, however, antitrust laws would have to be amended. But antitrust should not be some general fix for issues that the U.S. Congress has not seen fit to address more directly. Under antitrust’s consumer welfare principle, the goal of antitrust law is competitive markets, which produce the highest output of goods and services consistent with sustainable competition. High economic output delivers low prices to consumers. It will also protect labor and other suppliers, who almost always benefit when markets produce more goods and services. More competitive markets, however, does not necessarily mean the absence of large firms. This is particularly true if economies of scale make production by large firms cheaper, or if network effects make a firm more valuable as the number of users increases. The goal of an antitrust remedy should be driven by this same rule—to make markets more competitive. Courts have the power to break firms into little pieces or even to dissolve them. The hard part is for courts to fix the problem in a way that is consistent with maximum competitive output. Often the least disruptive and most effective antitrust remedy is an injunction against competitively harmful conduct. The antitrust lawsuits against Facebook and Google charge the firms with agreements forbidding their contracting partners from competing with them or from dealing with other competitors. The Google complaint, for example, asserts that Google paid billions of dollars to make the Google search engine the default on iPhones, and Google does the same thing with manufacturers’ Android devices. Requiring Google to break off its search engine would not necessarily address this issue—it would just give the monopoly to a different owner. By contrast, an injunction—a legal tool that would forbid Google from paying other companies to make Google search the default search engine—can go straight to the problem by giving control to the user. The European Union has taken that approach: New devices come with a startup screen for the user to select from several search engines as a default. Many antitrust breakups for monopolistic practices have done more harm than good, making firms less efficient, ruining consumer benefits, and sometimes even bankrupting firms. One exception to this practice is when courts impose breaking off assets that have been acquired by merger. Requiring divestiture to undo mergers is nearly always less disruptive than trying to break up integrated firms. Here, good candidates are Facebook’s acquisitions of Instagram and WhatsApp, neither of which has been completely integrated into Facebook. Another possibility is Android, which Google acquired when Android was still a fledgling firm. But there are better ways to make platform markets more competitive. One remedy that could work well for a platform such as Amazon is a court order governing its commercial decision processes. Antitrust law treats agreements between entities much more aggressively than it does unilateral conduct. As a unitary firm, Amazon’s decisions about product selection, pricing, dealing with competitors, and other aspects of its business can be treated only as unilateral monopolistic practices. Some corporate boards, however, have members with independent business interests who make many important economic decisions. Among these entities are real estate boards (which are typically corporations whose decisions are carried out by their individual licensed brokers), hospitals (which have admitting privileges granted by a board of physicians with independent practices), and sports leagues such as the National Football League (whose individual teams collaborate through corporations to conduct business such as trademark licensing). Amazon’s commercial decision-making could be entrusted to a board whose members include Amazon as well as representatives of the various merchants and others with whom it does business. This board would have control over product selection and exclusion, pricing, and distribution practices. This change might not make Amazon smaller. Indeed, greater internal competition might make Amazon even larger. But it would behave more competitively. Another remedy, which could apply to platforms such as Facebook or Google that deal in large amounts of information, would be for a court to impose interoperability requirements. Platform firms are valuable to consumers because they take advantage of network effects, becoming more valuable to users as the number of participants on all sides increases. This principle also applies to the phone system, credit card platforms, ride-hailing services, dating sites, and many other things. Rather than breaking platforms apart, courts should make them interoperable by requiring these platforms to share the data they collect with competitors, subject to user rights to withhold data. Sharing in this way would increase value to consumers, but it would also remove the size advantage that accrues to the largest players. They would have to find other ways to compete. The phone network is a successful example of this remedy. An antitrust decree issued by a federal court in 1984 changed it from a single firm into a network operated by hundreds of competitors that share interoperability protocols and information. Interoperability works so well that a caller cannot even identify the equipment or carrier used by another caller. These approaches to antitrust remedies reflect an important principle: The remedy should be consistent with the underlying goal of antitrust, which is to make markets work better by expanding rather than contracting their offerings—and in a more competitive environment. This approach will benefit a broader range of constituents, including consumers, labor, and other suppliers.

#### 2AC evidence says they are required to abide by REGULATIONS.

Jason 2AC Gordon, 7-1-2021, State-Owned Enterprise, Business Professor, LLC, https://thebusinessprofessor.com/en\_US/business-governance/state-owned-enterprise-definition; accessed 9-8-2021

A Little More on What is a State-Owned Enterprises (SOE)

State-Owned Enterprises (SOE) are otherwise called government-owned corporations (GOC) or Government sponsored enterprises (GSEs). These are enterprises wherein the government holds a partial or whole ownership of the enterprises. They are created to undertake commercial activities in place of the government. SOEs can be found in many countries of the world such as the United States, New Zealand, China, and many others. It is important to know that state-owned enterprises (SEOs) are not the same as public corporations such as listed companies. Despite the fact that the government has part or the whole of the ownership of SEOs, they are required to abide by the laws and regulations that govern businesses in the states where they operate.

#### Regs solve and increase flexibility---solves SSOs AND SOEs.

Erik R. Puknys and Michelle (Yongyuan) Rice 20. Parnter at Finnegan and former patent examiner at the US Patent & Trademark Office. Associate at Finnegan, with experience in section 337 investigations before the U.S. International Trade Commission (ITC). SEP Users Should Jettison Antitrust For Patent, Contract Law. Finnegan. Law360. 10-15-2020. https://www.finnegan.com/en/insights/articles/CDMR-sep-users-should-jettison-antitrust-for-patent-contract-law.html

The Qualcomm and Continental decisions demonstrate that antitrust is an unlikely vehicle for resolving FRAND disputes. Unless the Ninth Circuit, sitting en banc reverses the panel decision in Qualcomm, the Fifth Circuit reverses the Continental decision, or the Supreme Court steps in to change things, antitrust challenges to SEP licensing practices face an uphill battle.

Contract and patent law, on the other hand, provide a different perspective and more flexibility for implementers during negotiations and in court. When negotiating FRAND terms, the parties should review relevant case law interpreting similar SSO policies, and the damages methodologies courts have endorsed or criticized. In addition, the parties should be mindful of creating a record of willingness and diligence and beware of engaging in behavior that could be characterized as bad faith. As in traditional contract settings, the covenant of good faith will play a role in the FRAND world. And that applies to both sides.

### Delegation CP---2NC

#### Participation must be prior and considered

Rohit Chopra and Lina Khan 20. Rohit Chopra, Commissioner, Federal Trade Commission. And Lina M. Khan, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; former Legal Fellow, Federal Trade Commission. “The Case for "Unfair Methods of Competition" Rulemaking”. The University of Chicago Law Review , Vol. 87, No. 2 (March 2020), pp. 357-380. https://www.jstor.org/stable/10.2307/26892415

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

#### Admin law is precedent setting---genuine consultation now becomes inalienable---the plan and perm signal nullification is legitimate

Giulio Napolitano 14. Professor of Administrative Law, Law Department, University of Roma Tre. "Conflicts and strategies in administrative law". OUP Academic. 8-1-2014. https://academic.oup.com/icon/article/12/2/357/710357

Conflicts in administrative law are not a single-battle war. Every move of an actor responds to the moves made by others. That’s why administrative law is a repeated interactions game. Each move is incremental and path-dependent. Devices and mechanisms set up in the previous round cannot be easily and fully dismantled.

Let’s take the example of independent authorities. Once they are established in order to insulate the implementation of specific policies from the influence of the government or from the pressure from local interests, it becomes difficult to abolish them: even when the rule-making power comes back into the hands of national legislators or executives. As a consequence, reactions must be fine-tuned and sophisticated. The preferred solutions will be, for instance, the transfer of a specific power from the regulatory agency to the executive, or the submission of some sensible prerogatives of the independent body to ex ante directives or ex post approval by a political actor.36

Further, procedural rights are difficult to withdraw: even more than organizational devices. Once they have been recognized, even if sometimes for purely instrumental reasons of fire-alarm signaling, they become sanctified as inalienable rights.37 That’s why adjustments and reactions must be interstitial: the right to be heard and other prerogatives of private actors cannot be nullified. Changing time limit for comments, enlarging or restricting addressees of participatory rights, shifting the burden of proof from the acting agency to private parties, and vice-versa, are among the most preferred solutions.

#### Severs the mandate of the plan---counterplan doesn’t fiat antitrust law but recommends

Justia 21. "Notice and Comment Process for Agency Rulemaking". Updated: May 2021. Accessed: 8/26/2021. https://www.justia.com/administrative-law/rulemaking-writing-agency-regulations/notice-and-comment/

Agencies must consider all “relevant matter presented” during the comment period, and they must respond in some form to all comments received. They are not, however, required to take any specific action with regard to the rule itself. The publication of the final rule must include analyses of any relevant data or other materials submitted by the public and a justification of the form of the final rule in light of the comments the agency received.

If opposition to the proposed rule is exceptionally large or strident, the agency may decide to make substantial modifications and start the process over by publishing a new notice and opening a new comment period. Otherwise, the agency will publish its final findings along with the rule, which is codified in the Code of Federal Regulations.

#### 1---“Resolved”

Webster’s Revised Dictionary 1996 ((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### 2---“Should”

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16)  [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or *immediately effective*, as opposed to something that *will* or *would* become effective *in the future [in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### 3---“Substantial”

Words & Phrases 64 (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

#### 4---“Law”

Anu Bradford and Adam Chilton 19. Anu Bradford, Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton, Assistant Professor of Law and Walter Mander Research Scholar. “Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets.” Codebook for Version 1. “Comparative Competition Law Dataset”. “CCL\_Law\_Data\_Ver1.dta”. Journal of Empirical Legal Studies 16(2): 411-443.

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| Threshold for a “law” that triggers coding | Code all laws, regulations, and constitutional provisions on competition that appear to be legally binding. Ask yourself whether the competition agency could rely on this particular document as a legal basis for bringing an enforcement action or reaching a certain decision. If the document is a mere notice of enforcement priorities, a white paper on planned (future) changes in remedies, or a guideline elaborating on how the agency approaches the questions of market definition, etc., exclude the document from the set of laws that you code. As the name of the document (Regulation v. Guideline) is not always conclusive in revealing its legal status, this may require you to read through the text of a document, or do some additional background investigation to determine whether it should be coded. If you are uncertain, reach out to Lead Coders for guidance – this can be very tricky to determine, particularly as you get used to the survey instrument and coding procedure. |

#### 2---The process builds consesus

William E. Kovacic 21. Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. “The future adaptation of the per se rule of illegality in U.S. Antitrust law”. Columbia Business Law Review.

The public antitrust agencies—the DOJ, the FTC, and the state attorneys general—from time to time have convened public gatherings to examine developments in antitrust law.175 The agencies could apply their capability as convenors to conduct periodic assessments of the operation of per se rules of illegality and to build a consensus about what types of behavior are appropriate subjects for categorical prohibition.176 They could host proceedings in which academics, business officials, judges, policymakers, and practitioners analyze the existing set of per se prohibitions and discuss possibilities for expanding or reducing the set. One could imagine that such proceedings might take place on a regular basis—perhaps every five years. As a recent example, the FTC in 2020 held a public workshop on noncompete covenants as part of a larger set of deliberations on modern competition law and policy.177

An important aim of the periodic reassessment would be to take stock of ongoing advances in economic theory and in learning about business practices. This stock-taking would help illuminate the impact of existing per se rules and help interpret the experience that courts use as a basis for adjusting the class of conduct subject to per se condemnation. The agencies could prepare reports that distill the results of the reassessment proceedings and thus provide accessible means for courts to consider future adaptions to the per se rule.

#### 3---Supporters get more weight

Marissa Martino Golden 98, University of Pennsylvania. “Interest Groups in the Rule-Making Process: Who Participates? Whose Voices Get Heard?”. Journal of Public Administration Research and Theory: J-PART , Apr., 1998. Vol. 8, No. 2 (Apr., 1998), pp. 245-270. https://www.jstor.org/stable/1181558

To return to our theoretical concerns, there is little evidence of agency capture in these data. With the exception of the electric vehicle regulation, all three agencies ignored the often impassioned pleas of their clientele and stuck with their initial proposals, albeit with some modifications.

The question of whose voices get heard remains. Here, the weight given to the comments received may compensate for the imbalance in the rates of participation that are documented above. In other words, it may not matter if there is only one public interest group commenting on a given rule if its voice is heard above the din of the larger number of industry commenters. It turns out, however, that the answer to the question, Whose voices get heard? has less to do with agencies favoring business over public interest groups or with the number of commenters (the squeakiest wheel gets the grease) than it has to do with the degree of conflict among commenters, the sides in the conflict, and the paucity of repeat players.

With respect to the specific issue of agency responsiveness to citizens' groups, the best sources of evidence are the three regulatory rules for which public interest groups submitted comments. In two cases (one at EPA, one at NHTSA), the lone public interest group was virtually ignored. In one case, the Natural Resources Defense Council (NRDC) wanted a stronger rule than that proposed by the EPA; in the second case, the Center for Auto Safety raised the sole objection to a rule supported by manufacturers. However, in the third case (EPA's acid rain rule), the NRDC and the Environmental Defense Fund (EDF) supported the EPA's definition of thermal energy, with which commenters from industry, utilities, and municipal govern- ments all found fault. In that case, the agency's final rule granted what the public interest groups sought.

The conclusion to be drawn from these fmdings is not that agency responsiveness to public interest groups varies. It is that when there is conflict rather than consensus among the commenters (as there was in six of the ten rules examined), the agency tends to hear most clearly the voices that support the agency's position.9 In the acid rain case, the public interest commenters were supportive of the NOPR. In the other two cases, the public interest groups sought change. The voices of critics tend to be heard less clearly than the voices of rule supporters, even when there are more critics than supporters. This finding applies not just when there is conflict between citizen's groups and business but when the conflict is among business commenters. For example, in NHTSA's proposal to issue a rule regarding safety standards for air brakes, the voice of the lone air brake manufacturer who supported the rule was heard over the voices of the six spring brake manufacturers and trade associations who objected to the standards set by the rule.

I did not find undue business influence in the rules I examined. This is in part because in a number of cases, business did not present a united front. There were frequently divisions within the business community. To use the example mentioned above, the air brake rule pitted air brake manufacturers against spring brake manufacturers. Accordingly, not all business inter- ests could be accommodated. In other cases, particularly at the EPA, business influence was limited because industry opposed the agency's proposals, and the agency made only minor conces- sions to the commenters. Finally, influence was limited by the absence of repeat players. Since different groups commented on each rule, few groups, corporations, or industries were in a position to influence more than one rule, even within the same agency. The rule's beneficiaries were different in each case, making capture unlikely.

The primary bias that I detected in my examination of ten federal rule-making procedures was the agencies' tendency to favor supporters of its rules over critics. It did not matter if the critics were the big three automakers or the Center for Auto Safety, those who submitted comments in support of a rule were likely to get the final rule they desired, and those who objected were likely to get only minor concessions. 10

In sum, there appear to be two consistent findings regarding interest group influence via notice and comment. First, significant influence is limited. Only one of the ten rules examined was changed significantly from the NOPR. Second, with respect to whose voices get heard, no clear pattern emerges. Citizens' influ- ence was obviously limited to those rules where there was citizen group participation. Where there was public interest participation, voices on all sides appeared to be taken into account. Of equal interest, in the case of those rules without citizen participation, business influence was nonetheless variable, due to conflict within the business sector and the tendency on the part of federal agencies to favor supportive commenters over critics. I submit that these nonpatterns make sense if they are viewed in an issue network framework.

#### Democracy solves every impact.

Matt Kroenig 20. Professor of government and foreign service at Georgetown University. “Why the U.S. Will Outcompete China”. 4-3-2020. <https://www.theatlantic.com/ideas/archive/2020/04/why-china-ill-equipped-great-power-rivalry/609364/>

National-security analysts see China as one of the greatest threats facing the United States and its allies. According to an emerging conventional wisdom, China has the leg up on the U.S. in part because its authoritarian government can strategically plan for the long term, unencumbered by competing branches of government, regular elections, and public opinion. Yet this faith in autocratic ascendance and democratic decline is contrary to historical fact. China may be able to put forth big, bold plans—the kinds of projects that analysts think of as long term—but the visionary projects of autocrats don’t usually pan out. Watch White Noise, the inside story of the alt-right The Atlantic’s first feature documentary ventures into the underbelly of the far-right movement to explore the seductive power of extremism. Stream Now Yes, democratic governments are obligated to answer to their citizens on regular intervals and are sensitive to public opinion—that’s actually democracies’ greatest source of strength. Democratic leaders have a harder time advancing big, bold agendas, but the upside of that difficulty is that the plans that do make it through the system have been carefully considered and enjoy domestic support. Historically speaking, once a democracy comes up with a successful strategy, it sticks with the plan, even through a succession of leadership. Washington has arguably followed the same basic, three-step geopolitical plan since 1945. First, the United States built the current, rules-based international system by providing security in important geopolitical regions, constructing international institutions, and promoting free markets and democratic politics within its sphere of influence. Second, it welcomed into the club any country that played by the rules, even former adversaries, like Germany and Japan. And, third, the U.S. worked with its allies to defend the system from those countries or groups that would challenge it, including competitors such as Russia and China, rogue states such as Iran and North Korea, and terrorist networks. America can pursue long-term strategy in part because it enjoys domestic political stability. While new politicians seek to improve on their predecessor’s policies, the United States is unlikely to see the drastic shifts in strategy that come from the fall of one political system and the rise of another. Democratic elections may be messy, but they’re not as messy as coups or civil wars. Daniel Blumenthal: The Unpredictable Rise of China Open societies have many other advantages as well. They facilitate innovation, trust in financial markets, and economic growth. Because democracies tend to be more reliable partners, they are typically skillful alliance builders, and they can accumulate resources without frightening their neighbors. They tend to make thoughtful, informed decisions on matters of war and peace, and to focus their security forces on external enemies, not their own populations. Autocratic systems simply cannot match this impressive array of economic, diplomatic, and military attributes. David Leonhardt recently wrote in The New York Times, “Chinese leaders stretching back to Deng Xiaoping have often thought in terms of decades.” Commonly cited examples of that long-term thinking include the Belt and Road Initiative, a program that invests in infrastructure overseas; Made in China 2025, an effort to subsidize China’s giant tech companies to become world leaders in 21st-century technologies, such as artificial intelligence; and Beijing’s promise to be a global superpower by 2049. Since putting in place sound economic reforms in the 1970s, China has seen its economy expand at eye-popping rates, to become the world’s second largest. Many economists predict that China could even surpass the United States within the decade, and some have suggested that China’s model of state-led capitalism will prove more successful, in terms of economic growth, than the U.S. template of free markets and open politics. I doubt these predictions. Because autocratic leaders are unconstrained and do not have to contend with a legislature or courts, they have an easier time taking their countries in new and radically different directions. Then, when the dictator changes his mind, he can do it again. Mao’s autocratic China ricocheted from one failed policy to another: the Great Leap Forward, then the Hundred Flowers Campaign, then the Cultural Revolution. Mao aligned with the Soviet Union in 1950 only to nearly fight a nuclear war with Moscow in the next decade. Beginning in the time of Deng Xiaoping, China pursued a fairly constant strategy of liberalizing its economy at home and “hiding its capabilities and biding its time” abroad. But President Xi Jinping abandoned these dictums when he took over. As the most powerful leader since Mao—he has changed China’s constitution to set himself up as dictator for life—he could once again jerk China in several new directions, according to his whims, and back again. According to the Asia Society, he has stalled or reversed course on eight of 10 categories of economic reform promised by the Chinese Communist Party (CCP) itself. Moreover, Xi is baring China’s teeth militarily, taking contested territory from neighbors in the South China Sea and conducting military exercises with Russia in Europe. The problem for Beijing is that stalled reforms will stymie its economic potential and its confrontational policies are provoking an international coalition to contain them. The 2017 U.S. National Security Strategy declared great-power competition with China the foremost security threat to the U.S.; the European Union labeled China a “systemic rival”; and Japan, Australia, India, and the United States have formed a new “quad” of powers to balance China in the Pacific. Furthermore, the plans often cited as evidence of China’s farsighted vision, the Belt and Road Initiative and Made in China 2025, were announced by Xi only in 2013 and 2015, respectively. Both are way too recent to be celebrated as brilliant examples of successful, long-term strategic planning. A certain level of domestic political stability is a prerequisite for charting a steady strategic course in foreign and domestic affairs. But autocratic regimes are notoriously brittle. While institutionalized political successions in democracies typically lead to changes of policy, political successions in autocracies are likely to result in regime collapse and war. China’s “5,000 years of history” were pockmarked by rebellion, revolution, and new dynasties. Fearing internal threats to domestic political stability—consider the protests this year in Hong Kong and Xinjiang—the CCP spends more on domestic security than on its national defense. If you follow the money, the CCP is demonstrating that the government is more afraid of its own people than of the Pentagon. This domestic fragility will frustrate China’s efforts to design and execute farsighted plans. If threats to Chinese domestic stability were to materialize and the CCP were to collapse tomorrow, for example, Chinese grand strategy could undergo another seismic shift, including possibly opting out of competition with the United States altogether. Shadi Hamid: China Is Avoiding Blame by Trolling the World Autocracies have other vulnerabilities as well. State-led planning has never produced high rates of economic growth over the long term. Autocrats are poor alliance builders who fight with their supposed allies more than with their enemies. And the highest priority of autocratic security forces is repressing their own people, not defending the country. The world has undergone drastic changes in just the past few years, but these enduring patterns of international affairs have not. Some fear that Trump’s nationalist tendencies will erode the U.S. position, but the momentum of America’s successful grand strategy has kept the country on a fairly steady course. Despite Trump’s criticism of NATO, for example, two new countries have joined the alliance on his watch, including North Macedonia this week. The coronavirus has upended a sense of security in the U.S., leading many people into the familiar trap of lauding autocratic China’s firm response in contrast to the halting and patchwork measures in the United States. But there is good reason to believe that this assessment will be updated in America’s favor with the benefit of hindsight. Already we are seeing evidence that conditions are much worse in China than CCP officials are letting on and that China’s attempts at international “disaster diplomacy” are backfiring. It has been revealed that the CCP has continually misrepresented the numbers of COVID-19 infections and deaths in China, and European nations have rejected and returned faulty Chinese coronavirus testing kits.

### Solvency---2NC

#### Scope is not sufficient to solve.

Tay-Cheng Ma 11. Professor, Department of Economics, Chinese Culture University. “The Effect of Competition Law Enforcement on Economic Growth”. Journal of Competition Law & Economics, Volume 7, Issue 2, June 2011, Pages 301–334. https://academic.oup.com/jcle/article/7/2/301/1031182?casa\_token=CYnGqjkOtzwAAAAA:uLB97jLHKYta3keLCEOLQGcwg61bFW72SokNT\_8K3J5nh9m\_Sf-KyBNgVwJ91iYxg0ewZegeWsG6qA

With respect to the variables of primary concern, SCOPE and its interaction term SCOPE · EFFICIENCY (for brevity, hereinafter referred to as “EFFLAW”), the results show two interesting pieces of evidence. First, all regressions fail to show a statistically significant impact for SCOPE. Thus, the size or intensity of the competition law net is irrelevant to the economic growth. Second, the impact of competition law enforcement on productivity growth is asymmetrical between rich and poor countries. Column (C) indicates that the estimated coefficient for the interaction term (EFFLAW) of 0.04 is insignificantly different from zero for the poor group. This failure to find an impact of competition law on productivity among the poor countries parallels the inference of Gal.48 For these countries, competition legislation is neither harmful nor helpful in terms of aggregate productivity. As to the rich group, Column (B) shows that the estimated coefficient for EFFLAW of 0.064 is significantly positive. This indicates that countries exhibiting high efficiency in enforcing competition law will grow disproportionately faster if they have stricter regimes for the law. Thus, the impact of competition law on growth is not uniform between rich and poor groups. From the viewpoint of threshold externalities, the difference in the impact of law can be explained by the incidence of multiple regimes. The reasoning is that competition law affects economic growth through various production regimes in a way that is similar to that put forth by Azariadis and Drazen49 and by Durlauf and Johnson.50 This result reveals the fact that certain types of channels through which competition law has an effect on productivity growth are constrained by the socioeconomic infrastructure (LAW). Once this constraint is no longer binding, the impact of the competition law will increase with its scope and enforcement efficiency.

D. Competition Law Effect in the Rich Group

This subsection evaluates the magnitude of the effect of competition law on the growth of rich countries with different levels of governmental efficiency (EFFICIENCY). Since SCOPE is not significant, I drop it from the regression and report the regression results in Columns (D) and (E) of Table 4. First, Column (D) shows that the coefficient of EFFLAW is 0.044.51 Conditional upon the sample mean of governmental efficiency (⁠forumla⁠), for every one-point increase in SCOPE, GROWTH increases by 0.01 percentage points. To consider a concrete example of the implications of this evidence, take the case of Ireland, which has SCOPE =18 (25th percentile),52EFFICIENCY = 1.58, and GROWTH = 4.81 percent. Consider that Ireland were to revamp its competition statute, so that its SCOPE increases from the level at the 25th percentile to the one at the 75th percentile of the distribution (SCOPE = 21), which is equivalent to the level for the Netherlands. The results of Table 4 suggest that the maximum increase in GROWTH that would result is 0.21 percentage points. In other words, a 3 point increase in SCOPE could increase the growth rate from 4.81 percent to 5.02 percent.53

To highlight the importance of EFFICIENCY, Table 5 calculates the effect of SCOPE on GROWTH for countries with different levels of EFFICIENCY if one increases the SCOPE by three points.54 As I did above, I perform this calculation based on the estimation results in Column (D) of Table 4. For a country (for example, Morocco) at the 5th percentile of the distribution of EFFICIENCY (–0.18), the coefficient of EFFLAW reveals a negative effect of 0.044·3·(–0.18) = –0.02 percent on growth. In Morocco, a stronger competition law not only cannot support productivity growth, but might also slow down the potential path of growth. The overreach of antitrust law has not been found to increase productivity growth in any systematic way, and in some instances the intervention may even have retarded economic growth. To ensure a credible and impartial enforcement, the infrastructure landscape should provide the enforcing agencies an effective apparatus to enforce the law.

[TABLE 5 OMITTED]

Alternatively, if one performs this calculation for a country (for example, Portugal) at the 75th percentile of the distribution of EFFICIENCY (1.79), the result shows that the effect of a stronger competition law increases to 0.24 percentage points. In conclusion, a high SCOPE indeed can promote growth, but only on the condition that the agency can enforce the law effectively. Just as Crandall and Winston have indicated, a tough and broad antitrust policy must rest on adequate infrastructure that ensures that such policies can be enforced effectively. The mere adoption of a competition law is a necessary condition, but not a sufficient condition, to promote economic growth.

#### 2. Endless future cases and delayed rulings, clogging the courts

Dave Danforth, 7-25. Aspen Daily News columnist, A founder of the Aspen Daily News. “Danforth: Antitrust laws buried under layers of complexity.” Jul 25, 2021. https://www.aspendailynews.com/opinion/danforth-antitrust-laws-buried-under-layers-of-complexity/article\_aa9916fa-ecdf-11eb-a815-73afcf72ee6d.html

In 1981, David Palmer, a lawyer for the Aspen Skiing Co., had a problem. Back then, the “SkiCorp” didn’t own all four Aspen ski areas, but only three: Ajax (Aspen Mountain), Buttermilk, and Snowmass. The fourth — Aspen Highlands — was separately owned and was on the warpath against the Ski Corp. Its owner, Whip Jones, had convinced a Denver federal jury that the SkiCorp, was bent on a bold, bad-faith bid to monopolize the Aspen skiing market. To corner the market, the SkiCorp, led by D.R.C. “Darcy” Brown, had manipulated the pricing of an all-Aspen ticket to severely harm Highlands. The jury, on June 18, agreed. It awarded what today would seem chump change — $7.5 million to Highlands. To appeal the ruling, Palmer would need a novel argument: that the Aspen market couldn’t be monopolized. If he could show that, he could re-argue a case on its way to the U.S. Supreme Court. Palmer had to hope nobody in Aspen would read his words. The Aspen skiing world was built on the notion that Aspen was unique. There is only one Aspen. Nobody can copy it. Hogwash, Palmer argued in a brief only judges were supposed to read. Aspen ski services aren’t at all unique, he wrote. Services available to Aspen skiers “are neither unique nor in any way different from the services provided by Vail, Crested Butte, Steamboat Springs, Heavenly Valley, Jackson Hole and Lake Tahoe.” The argument wouldn’t win the case, but it advanced it to the highest court. It also showed how **antitrust laws get so complex** they’re hard to understand. The case illustrates the rough sledding that antitrust warriors will face as the Biden administration hopes to reawaken a Justice Department slumbering over the last four years. It sees a new frontier in high-tech titans. The Aspen case eventually reached the Supreme Court in March of 1985. The justices had no dispute, ruling 8-0 for Highlands. In later years, the Aspen Skiing Co. would “monopolize” the market the easy way: it simply bought Highlands. The case showed how **simple concepts of ­monopoly law can get bogged down when buried under years of subsequent court rulings**. They all sought to clarify what Congress meant in 1892 when it outlawed any “combination or conspiracy in restraint of trade.” The law has been used by trust-busters seeking to break up everything from industrial complexes to a phone company. Along the way, it has **spawned a flock of subsequent court rulings**, citing concepts from the “essential facilities doctrine” to “duty to deal” and “predatory pricing” as warning signs of where monopolies might lurk. The Aspen case stands out. Nobody doubted that the “SkiCorp” wanted to injure Highlands when it decided, around 1977, to change the “cut” of the court-ordered joint four-area ticket unilaterally. Highlands had traditionally received about 19 percent of sales when the SkiCorp decided to drop it to 15 percent. Highlands was bound to be hurt, but the SkiCorp was adamant. It resented Jones and Highlands for running an inferior ski area with clunky lifts, piggy-backing on slick marketing largely produced by the SkiCorp. Palmer and the SkiCorp argued to the Supreme Court that they had no duty to cooperate — a legal concept — with a lower-class competitor. Unfortunately, the SkiCorp sabotaged its argument with a series of “**dirty tricks”** aimed at Highlands. In one infamous example, it produced a batch of Aspen skiing maps from which Highlands was simply air-brushed away. Nobody doubted that the Ski Corp and the headstrong Darcy Brown were out to get Jones and Highlands. But they fumbled, and their arguments **were buried** by the finer points of antitrust law. A similar episode arose in 1993 involving another strong figure: Robert Crandall, then CEO of American Airlines. The company had been sued by Northwest and Continental — two competitors — for predatory pricing. Crandall, the competitors argued, had sharply cut fares in the summer of 1992 in a bid to hurt the competitors and force them under. A federal jury convened in Galveston, Texas to hear the case. As in the Aspen case, the facts seemed clear as a bell. Crandall, a legendary and fiery CEO, had cut fares to retaliate against competitors for irritating fare cuts of their own. Wagers popped up in the gallery. Would Crandall throw a temper tantrum in court? But the case got sidetracked by a judge who, in a bid to write a road map for the jury, embedded a roadside bomb. Which “city-pairs,” the judge demanded the jury answer, did American intend to monopolize? The jury, having spent a week on the case, was thrown by the judge’s question. It decided a few hours into deliberating that it couldn’t answer, thus ruling in American’s favor. The simple retaliation got buried by clouds of antitrust rulings.

#### 3. Expanding reach of antitrust law = more court cases, clogs the courts

Thomas A. Lambert, 20. Thomas A. Lambert is the Wall Chair in Corporate Law and Governance and Professor of Law at Mizzou. “The Case Against Legislative Reform of U.S. Antitrust Doctrine.” Legal Studies Research Paper Series Research Paper No. 2020-13. https://www.competitionpolicyinternational.com/wp-content/uploads/2020/07/Lambert-Submission.pdf

The courts have responded by positing (mainly) standards—not rules—for determining the legality of challenged business practices.5 They have interpreted Section 1 of the Sherman Act to forbid agreements that unreasonably restrain trade and Section 2 to condemn unreasonably exclusionary unilateral conduct by firms possessing market power.6 In both cases, reasonableness is determined by assessing the actual or likely effect of the challenged behavior on quality-adjusted market output. For a few business behaviors (e.g., naked price-fixing among competitors), experience has shown that the conduct is always or almost always output-reducing, so such practices are deemed per se unreasonable. Such ex ante rules, though, are the exception in antitrust; for the most part, the law consists of ex post standards that require case-by-case assessment. Courts have posited different standards for different types of business behavior, calibrating them (by adjusting the elements of liability, burdens of proof, available defenses, etc.) to reflect judicial experience and economic learning. In so doing, the courts have been rightly concerned with the costs of the standards they set. One set of relevant costs consists of the welfare losses that result when a standard makes a mistake on liability. The behaviors antitrust polices—agreements that restrain trade, single-firm acts that make life hard for rivals, business combinations—can sometimes enhance market output and sometimes reduce it.7 If a legal standard mistakenly allows conduct that is, on net, anticompetitive, consumers will face higher prices and/or reduced quality, and a deadweight loss will occur. But if the standard wrongly forbids conduct that is, on balance, procompetitive, market output will be lower than it otherwise would be and, again, consumers will suffer. Both false convictions (Type I errors) and false acquittals (Type II errors) generate losses. In addition to these so-called “error costs,” regulating competitive mixed bags entails significant costs of simply deciding whether contemplated or actual conduct is forbidden or permitted. Such “decision costs” must be borne by business planners (who are attempting to avoid liability), by litigating parties (who are trying to prove their case), and by **adjudicators (who must decide whether the law has been broken**). Type I error costs, Type II error costs, and decision costs are intertwined. If courts try to reduce the risk of false conviction (Type I error) by making it harder for a plaintiff to establish liability or easier for a defendant to make out a defense, they will increase the risk of false acquittal (Type II error). If they ease a plaintiff’s burden or cut back on available defenses to reduce false acquittals, they will tend to enhance the social losses from false convictions. And if they make the rule more nuanced in an effort to condemn the bad without chilling the good, thereby reducing error costs overall, they enhance decision costs. As in a game of whack-a-mole, driving down costs in one area will cause them to rise elsewhere. In light of the inevitable and intertwined costs that will result from any effort to police market power-creating conduct, antitrust standards should be crafted so as to minimize the sum of error and decision costs. The institutions charged with crafting antitrust policies—under the status quo, the courts—should not strive to prevent every anticompetitive act, to allow every procompetitive one, or to keep the rules as simple as possible. In keeping with Voltaire’s prudent maxim, “the perfect is the enemy of the good,” they should eschew perfection along any single dimension in favor of overall optimization. Such an approach ensures that antitrust accomplishes as much good as possible. As I have elsewhere documented, this prudent approach has largely been embraced by the U.S. Supreme Court in recent years.8 Time and again, the Court has examined the economic learning on different business practices and crafted “structured” rules of reason aimed at separating the procompetitive wheat from the anticompetitive chaff, while keeping decision costs in check. For some practices (e.g., tying) the legal rules have not caught up with economic understanding, but the system as a whole is sound, and one would certainly expect the doctrine to evolve in a salutary direction. With respect to mergers and other business combinations, the judicial precedents are less sound, largely because few merger decisions are appealed to allow for an updating of controlling precedents in light of current economic understanding. In the merger context, though, the federal enforcement agencies (the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice) have taken the lead in updating the standards so as to minimize the sum of error and decision costs; the agencies’ enforcement guidelines, crafted with an eye toward optimizing antitrust interventions and regularly updated to reflect new economic learning, have been extremely influential among the lower courts and have largely remedied the deficiencies in controlling precedents. To summarize this section, **any effort to regulate potentially market power-creating conduct** (collusion, exclusionary conduct, business combinations) **is sure to create some** losses in terms of errors (wrongful acquittals of harmful behavior and wrongful convictions of beneficial conduct) and **administrative costs**. The approach currently prevailing under the federal antitrust laws—an output-focused, standards-based, common law approach under which courts craft policies in light of evolving understandings of economics and with an eye toward minimizing the sum of error and decision costs—is generally working well.

#### 4. New guidelines and application of antitrust enforcement means more contesting court decisions, clogs the courts

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Life-sciences company Illumina Inc. ILMN -0.82% is facing a labyrinth of antitrust hurdles on two continents as it seeks to save its planned $7.1 billion acquisition of Grail Inc., which is developing an early-stage cancer-detection test. The deal, announced last September, could have important ramifications for cancer care and the future of both companies. It also has become something of a test for U.S. and European antitrust enforcers as they focus more on whether acquisitions of leading startups could slow innovation. The U.S. Federal Trade Commission sued the companies in March to block the deal. Since then, the European Union has added an element of intrigue by invoking a new policy to claim a say on whether the combination of the two U.S.-based companies moves forward. llumina and Grail suffered the latest in a series of legal blows late Friday in San Diego, where a judge granted the FTC’s request to drop coming federal court proceedings, rejecting arguments from the companies that a slower legal timeline would be unfair to their defense of the transaction. Illumina is separately mounting a legal campaign overseas contesting the EU’s jurisdiction. San Diego-based Illumina develops and sells next-generation genetic-sequencing machines and the chemicals used in them. Grail, based in Menlo Park, Calif., was founded by Illumina and spun off in 2017. It has been developing liquid biopsy tests that examine blood samples for genetic signs of cancer, a product that, if successful, could have a significant impact in healthcare. Illumina says buying Grail back would allow it to scale up operations and expand access to the tests more quickly. The FTC sees the deal differently, arguing it could harm competition in the testing market. Other cancer-test developers—Grail’s competitors—have no choice but to use Illumina’s instruments, the FTC alleged in its complaint, putting Illumina in a position to impede their efforts and “cause substantial harm to U.S. consumers, who would experience reduced innovation, as well as potentially higher costs and reduced choice and quality for these lifesaving products.” The commission voted 4-0 to bring the lawsuit, with Democrats and Republicans supporting it. Illumina denies the allegations and says it would offer cancer-testing labs equal and fair access to sequencing. It had pushed for quick legal proceedings in a San Diego federal court that had been scheduled to begin considering on Aug. 9 whether to issue a preliminary injunction blocking the deal. But the FTC said those proceedings aren’t appropriate right now, because the European developments mean Illumina can’t close the transaction anyway. Illumina urged the U.S. court to keep the case on track, alleging the FTC was attempting to kill the deal through “procedural gamesmanship” instead of trying to prove its case. **Any material delay in the schedule “would make it nearly impossible for any court to make an informed decision** regarding the fate of what defendants believe is a pro-competitive lifesaving transaction,” lawyers for Illumina and Grail said in a Wednesday court filing. Both sides argued their positions during the hearing Friday in San Diego. At its conclusion, U.S. District Judge Cathy Ann Bencivengo granted the FTC’s request to dismiss the preliminary injunction proceedings, saying the commission was entitled to do so. The terms of the transaction expire in September but can be extended until December. The FTC has a unique two-track system for challenging mergers. It can bring a case in its in-house court system, a process disliked by defendant companies, but the agency has to go to a federal judge if it wants an injunction to block the deal in the meantime. The in-house trial on Illumina-Grail is set to begin Aug. 24, and the FTC says those proceedings will continue. Illumina, like past companies in its position, was most focused on the federal court proceedings, hoping that a win there would undercut the FTC’s in-house trial, a process the company says is too slow. The European Commission, the executive arm of the EU, wouldn’t have been able to review the Illumina transaction under its traditional criteria that focus on issues related to revenue and market share. Under a new policy announced in March, the commission can now review a merger at individual countries’ request on the grounds that it would affect trade between states and be a significant threat to competition. Six countries—France, Belgium, Greece, Iceland, the Netherlands and Norway—made such a request for the Illumina deal, making it a test case for the new approach. The company has filed suit in the General Court of the European Union, arguing there is no European jurisdiction because Grail has no active business activities there. A European Commission spokeswoman said the EU antitrust enforcer has asked Illumina to notify it formally of the transaction. She declined to comment on Illumina’s statements about the EU review. The change in European policy marks an effort by the commission to adapt its antitrust enforcement to a fast-changing marketplace where companies can expand with great speed, including through the acquisition of pivotal smaller businesses, the commission has said. Its March policy guidance changes nothing in the letter of the law but fundamentally changes how it is interpreted. Potential red flags for merger review now include almost any deal done by a tech giant; almost any deal in a highly innovative sector, such as pharmaceuticals; a deal that might trigger complaints from third parties; and high-price acquisitions of companies with little revenue. “It raises a lot of questions and uncertainty,” said Salomé Cisnal de Ugarte, a partner at law firm Hogan Lovells in Brussels. “It can affect every transaction.”

#### 5. New antitrust cases clog the courts, they take longer to decide

Edward D. Cavanagh, 13. Past chair of the New York State Bar Association Antitrust Section and currently a member of its Executive Committee, professor in the Law department at St. John's University School of Law, Antitrust Law and Economic Theory: Finding a Balance, 45 Loy. U. Chi. L. J. 123 (2013). https://lawecommons.luc.edu/luclj/vol45/iss1/3

Over the past forty years, the federal courts have relied more and more on economic theory to inform their antitrust analyses. Economic theory has indeed provided guidance with respect to antitrust issues and assisted the courts in reaching rational outcomes. At the same time, infusion of economic evidence into antitrust cases has made these cases more complex, lengthier, more expensive to litigate, and less predictable. This Article argues that courts need to restore the balance between facts and economic theory in undertaking antitrust analysis. The problem is not that judges and juries cannot reach good outcomes in antitrust cases, but rather that courts have become too reliant on economic theory in deciding them. Just as courts of an earlier generation became too enamored of per se rules in antitrust cases, some courts today have become too enamored of economic theory in addressing and resolving antitrust issues. Some courts have lost sight of basic antitrust goals and have gotten bogged down in arcane economic tests—relevant market and proof of common impact in class action cases are two examples—which have become obstacles to, instead of tools for, resolution of antitrust disputes. Antitrust is a body of law enacted by Congress and construed by the courts; it is not a compendium of the latest thinking in economic theory. The role of the courts is not to decree economic policy, but rather to implement antitrust policies enacted by Congress. Antitrust has always been a fact-specific enterprise, and courts need to restore the proper balance between fact finding and economic theory by confining economic theory to those areas where it assists antitrust analysis and discarding such theory where it gets in the way. In short, courts need to return to simple, predictable, and administrable—but informed—antitrust rules.

#### The aff bans oligopolies like Big Tech which deter start-ups now---the plan opens the floodgate to start-ups.

Michael Gofman & Zhao Jin 21. \*an assistant professor of finance at the Simon Business School. \*an Assistant Professor of Finance at the Cheung Kong Graduate School of Business. "The New Challenges of Assessing Big Tech’s Impact." ProMarket. 8-3-2021. https://promarket.org/2021/08/03/big-tech-impact-challenge-antitrust-acquisitions/

On the other hand, a 2021 paper by Sai Krishna Kamepalli, Raghuram Rahan, and Luigi Zingales provides a theoretical model arguing that Big Tech firms can deter new startup formation. If a new startup wants to develop a competing platform to that of a Big Tech company, it would have a smaller chance of succeeding given the network externalities and the economy of scale in the digital platforms business. The network externality increases with the number of users, this tendency of users to stay with the incumbent’s platform will reduce the stand-alone value of entering platform.

Kamepalli et al. show the evidence that relative to the mean in the entire software sector, VC investments in startups that operate in the same space as the firms acquired by Google and Facebook drop by 40 percent, and the number of deals decreases by 43 percent in the three years following a major acquisition. Similarly, the financing of new startups in the same space decreased by 51 percent relative to the financing of all new start-ups in the software industry. This evidence suggests that a desire to be Big Tech firms’ first acquisition in a business space that complements their existing business can incentivize entry by startups, as suggested by the 2019 paper by Zhao Jin mentioned earlier. Consequent entry of more startups to the same space will be discouraged because their products are substitutes to Big Tech’s existing business after the first acquisition. In other words, the first acquisition creates a “kill zone” and disincentivizes further entry.

#### Even limited nuclear war causes extinction.

Steven Starr 17. 1-9-2017. Director, University of Missouri’s Clinical Laboratory Science Program; senior scientist, Physicians for Social Responsibility. “Turning a Blind Eye Towards Armageddon — U.S. Leaders Reject Nuclear Winter Studies.” Federation of American Scientists. <https://fas.org/2017/01/turning-a-blind-eye-towards-armageddon-u-s-leaders-reject-nuclear-winter-studies/>

Now 10 years ago, several of the world’s leading climatologists and physicists chose to reinvestigate the long-term environmental impacts of nuclear war. The peer-reviewed studies they produced are considered to be the most authoritative type of scientific research, which is subjected to criticism by the international scientific community before final publication in scholarly journals. No serious errors were found in these studies and their findings remain unchallenged. Alan Robock et al., “Nuclear winter revisited with a modern climate model and current nuclear arsenals: Still catastrophic consequences,” Journal of Geophysical Research: Atmospheres 112 (2007). Owen Brian Toon et al., “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” Atmospheric Chemistry and Physics 7 (2007). Michael Mills et al., “Massive global ozone loss predicted following regional nuclear conflict,” Proceedings of the National Academy of Sciences of the United States of America 105, no. 14 (2008). Michael Mills et al., “Multidecadal global cooling and unprecedented ozone loss following a regional nuclear conflict,” Earth’s Future 2. Alan Robock et al., “Climatic consequences of regional nuclear conflicts,” Atmospheric Chemistry and Physics 7 (2007). Working at the Laboratory for Atmospheric and Space Physics at the University of Colorado-Boulder, the Department of Environmental Sciences at Rutgers, and the Department of Atmospheric and Oceanic Sciences at UCLA, these scientists used state-of-the-art computer modeling to evaluate the consequences of a range of possible nuclear conflicts. They began with a hypothetical war in Southeast Asia, in which a total of 100 Hiroshima-size atomic bombs were detonated in the cities of India and Pakistan. Please consider the following images of Hiroshima, before and after the detonation of the atomic bomb, which had an explosive power of 15,000 tons of TNT. The detonation of an atomic bomb with this explosive power will instantly ignite fires over a surface area of three to five square miles. In the recent studies, the scientists calculated that the blast, fire, and radiation from a war fought with 100 atomic bombs could produce direct fatalities comparable to all of those worldwide in World War II, or to those once estimated for a “counterforce” nuclear war between the superpowers. However, the long-term environmental effects of the war could significantly disrupt the global weather for at least a decade, which would likely result in a vast global famine. The scientists predicted that nuclear firestorms in the burning cities would cause at least five million tons of black carbon smoke to quickly rise above cloud level into the stratosphere, where it could not be rained out. The smoke would circle the Earth in less than two weeks and would form a global stratospheric smoke layer that would remain for more than a decade. The smoke would absorb warming sunlight, which would heat the smoke to temperatures near the boiling point of water, producing ozone losses of 20 to 50 percent over populated areas. This would almost double the amount of UV-B reaching the most populated regions of the mid-latitudes, and it would create UV-B indices unprecedented in human history. In North America and Central Europe, the time required to get a painful sunburn at mid-day in June could decrease to as little as six minutes for fair-skinned individuals. As the smoke layer blocked warming sunlight from reaching the Earth’s surface, it would produce the coldest average surface temperatures in the last 1,000 years. The scientists calculated that global food production would decrease by 20 to 40 percent during a five-year period following such a war. Medical experts have predicted that the shortening of growing seasons and corresponding decreases in agricultural production could cause up to two billion people to perish from famine. The climatologists also investigated the effects of a nuclear war fought with the vastly more powerful modern thermonuclear weapons possessed by the United States, Russia, China, France, and England. Some of the thermonuclear weapons constructed during the 1950s and 1960s were 1,000 times more powerful than an atomic bomb. During the last 30 years, the average size of thermonuclear or “strategic” nuclear weapons has decreased. Yet today, each of the approximately 3,540 strategic weapons deployed by the United States and Russia is seven to 80 times more powerful than the atomic bombs modeled in the India-Pakistan study. The smallest strategic nuclear weapon has an explosive power of 100,000 tons of TNT, compared to an atomic bomb with an average explosive power of 15,000 tons of TNT. Strategic nuclear weapons produce much larger nuclear firestorms than do atomic bombs. For example, a standard Russian 800-kiloton warhead, on an average day, will ignite fires covering a surface area of 90 to 152 square miles. A war fought with hundreds or thousands of U.S. and Russian strategic nuclear weapons would ignite immense nuclear firestorms covering land surface areas of many thousands or tens of thousands of square miles. The scientists calculated that these fires would produce up to 180 million tons of black carbon soot and smoke, which would form a dense, global stratospheric smoke layer. The smoke would remain in the stratosphere for 10 to 20 years, and it would block as much as 70 percent of sunlight from reaching the surface of the Northern Hemisphere and 35 percent from the Southern Hemisphere. So much sunlight would be blocked by the smoke that the noonday sun would resemble a full moon at midnight. Under such conditions, it would only require a matter of days or weeks for daily minimum temperatures to fall below freezing in the largest agricultural areas of the Northern Hemisphere, where freezing temperatures would occur every day for a period of between one to more than two years. Average surface temperatures would become colder than those experienced 18,000 years ago at the height of the last Ice Age, and the prolonged cold would cause average rainfall to decrease by up to 90%. Growing seasons would be completely eliminated for more than a decade; it would be too cold and dark to grow food crops, which would doom the majority of the human population.

#### Limited nuclear war escalates---shuts down global ag and trade.

PIK 20. Potsdam Institute for Climate Impact Research (PIK). “Regional nuclear war a risk for global food security.” 3-16-2020. https://www.eurekalert.org/pub\_releases/2020-03/pifc-rnw031120.php

Even a limited nuclear war could have dangerous effects far beyond the region that is fatally hit. It would result in global cooling that substantially reduces agricultural production in the world's main breadbasket regions, from the US, to Europe, Russia, and China. The particular effect on food security worldwide including trade responses has now for the first time been revealed by an international team of scientists in a study based on advanced computer simulations. The sudden temperature reduction would lead to a food system shock unprecedented in documented history. It would not undo long-term climate change from fossil fuels use, though - after about a decade of cooling, global warming would surge again.

"We now know that nuclear conflict would not just be a terrible tragedy in the region where it happens - it is also an underestimated risk for global food security," says Jonas Jaegermeyr at the Potsdam Institute for Climate Impact Research, the NASA Goddard Institute for Space Studies, and the University of Chicago; lead-author of the study now published in the Proceedings of the National Academy of Sciences. "We find severe losses in agricultural production, but importantly we also evaluate trade repercussions affecting local food availability. It turns out that major breadbasket regions would cut exports leaving countries worldwide short of supplies. A regional crisis would become global, because we all depend on the same climate system."

+++Soot from fires ignited by the bombs would partially block sunlight+++

As an example for a regional conflict, the scientists studied the implications of a limited nuclear war between India and Pakistan using less than 1 percent of the worldwide nuclear arsenal. Fires ignited by the bombs would send large amounts of soot high up into the atmosphere where winds would rapidly distribute it around the globe. These particles would partially block sunlight from reaching Earth's surface, causing sudden cooling and changing weather patterns. For the injection of 5 million tons of smoke, climate models calculated global mean temperature drops of about 1.8 Celsius degrees (3.2 Fahrenheit degrees) and precipitation declines of 8 percent for at least five years - pushing Earth into a state substantially colder and drier. To put this into context, so far greenhouse gases from fossil fuels have warmed our planet by roughly 1 degree Celsius. Before this study, however, there has been very little understanding of how global agricultural systems would respond to cooling.

In the first year after the war, domestic reserves and global trade could largely buffer the food production loss, the researchers now show. By year four, grain stocks would virtually be depleted and the international trade systems would come to a halt. Continuing production losses therefore propagate from the breadbasket regions in the Northern Hemisphere to the often poorer populations of the Global South. Maize and wheat availability would shrink by at least 20 percent in more than 70 countries with about 1.3 billion people. "This is a surprisingly sharp response in view of the much larger conflict scenarios imaginable when it comes to nuclear war," says Jaegermeyr.

+++"More people could die outside the target areas due to famine"+++

"As horrible as the direct effects of nuclear weapons would be, more people could die outside the target areas due to famine, simply because of indirect climatic effects," says co-author Alan Robock at Rutgers University. "Nuclear proliferation continues, and there is a de facto nuclear arms race in South Asia. Investigating the global impacts of a nuclear war is therefore - unfortunately - not at all a Cold War issue."

The authors exclude India and Pakistan from their analyses, in order to avoid arbitrary assumptions when mixing up the direct and indirect effects of war. Under the assumption that food production in the two countries would drop essentially to zero, indirect global food shortages would be even worse. While the two countries' nuclear arsenals continue to grow both in number and weapon size, this study used the lower end of potential soot emission estimates.

"We ran an ensemble of six leading AgMIP global crop models for this study, and they all agree to a great deal on the signal. This shows how robust the simulations are," says co-author Cynthia Rosenzweig at the NASA Goddard Institute for Space Studies. She's a veteran pioneer of breakthrough agricultural model intercomparisons (AgMIP) which today are one important part of the larger Impacts Model Intercomparison Project (ISIMIP) coordinated by the Potsdam Institute. "Comparing different computer simulation models reduces uncertainties. Today, we can say with confidence that such a regional nuclear war would have adverse consequences for global food security for about a decade, unmatched in modern history."

### Advantage---2NC

#### Capitalism’s not monolithic---regs solve their impacts and preserve positives.

Laura Tyson and Lenny Mendonca 21. Laura Tyson, former chair of the US President's Council of Economic Advisers, is Professor of the Graduate School at the Haas School of Business and Chair of the Blum Center Board of Trustees at the University of California, Berkeley. Lenny Mendonca, Senior Partner Emeritus at McKinsey & Company, is a former chief economic and business adviser to Governor Gavin Newsom of California and chair of the California High-Speed Rail Authority. "Capitalism We Can Believe In". Project Syndicate. 1-15-2021. https://www.project-syndicate.org/commentary/what-to-do-about-declining-trust-in-us-capitalism-by-laura-tyson-and-lenny-mendonca-2021-01

Growing distrust of capitalism follows from its failure to address major socioeconomic challenges, not least climate change and inequalities in opportunity, income, and wealth. While private incentives under capitalism are good at stimulating efficiency, growth, and innovation, they also generate unequal income and wealth distributions (even in a context of intense competition), often at odds with social norms of fairness. Moreover, capitalist systems tend to underinvest in public goods like education, health care, and social insurance – all critical factors in the pandemic response – while also discounting negative externalities such as greenhouse-gas emissions.

These shortcomings of capitalism are predictable, but they are remediable through public policies and institutions. Tax and transfer policies and minimum wages can reduce income and wealth disparities, just as public investment in education, training, and health care can enhance opportunity by providing access to good jobs and fostering the creation of new enterprises. Likewise, a price on carbon dioxide and regulations limiting or banning carbon emissions can help the world avert the existential threat of climate change.

Critics of capitalism often miss (or choose to ignore) that there is no single canonical model. Europe’s various “social market” models differ significantly from the neoliberal variant in the US. And even within the US, there are important differences between states and localities.

Some of these distinctions have been highlighted in the responses to the COVID-19 pandemic and recession. All advanced economies have deployed unprecedented levels of fiscal and monetary stimulus in the face of “K-shaped” or “dual” recessions in which lower-wage workers have suffered disproportionately more than other cohorts. Unlike the US, Germany and several other European countries have deployed measures specifically designed to keep as many workers as possible in their jobs. Because these countries have generous social insurance and benefits, including sick leave and family leave, workers and their families have been able to cope with both COVID-19 and sudden drops in their incomes.

Differences in national health-care models have also become more apparent. Unlike European capitalist systems that provide universal coverage, 14.5% of America’s non-elderly population (ages 18-64) remains uninsured. Moreover, owing to America’s heavy reliance on employer-based insurance, the pandemic has pushed at least 15 million more workers at least temporarily into the uninsured pool.

With their strong public-health systems, many European countries were also better equipped to carry out widespread testing and vaccine distribution. The US, meanwhile, has utterly failed to contain the virus, and is now delegating the vaccination campaign to under-resourced state and local authorities.

In another contrast with the US, Europe has dedicated about one-third of its massive stimulus program to investments aligned with its commitment to achieve carbon neutrality by mid-century. America’s federal stimulus measures have been silent on climate with few conditions of any kind.

Within the US, individual states’ responses to the COVID-19 crisis reflect different variants of capitalism. In California, Governor Gavin Newsom’s recent 2021-22 budget proposal reveals some distinctive features. In terms of health-care coverage, California remains a national leader with a Medicaid program covering more than 13 million people. Despite the pandemic-induced recession, the state is increasing its minimum wage to $14 per hour in 2021, on track to realize the target of $15 per hour in 2022 for all businesses employing 26 or more workers; many municipalities, including Los Angeles and San Francisco, have already achieved or exceeded the $15 target. (On January 1, 2021, 20 other states also raised their minimum wages, whereas the US federal minimum wage has remained unchanged at $7.25 per hour since 2009.)

California has also expanded coverage of its Earned Income Tax Credit (EITC) and Young Child Tax Credit to include undocumented workers who are otherwise denied the benefits of federal stimulus packages. Together, these tax credits applied to 3.6 million California households in 2020, adding $1 billion in total income. The state also passed new legislation significantly expanding unpaid family-leave rights. Employers with as few as five employees now must provide this option as well as more time for paid sick leave for workers forced to self-isolate or quarantine as a result of COVID-19 exposure or diagnosis.

Looking ahead, Newsom has proposed an additional $600 one-time cash payment to all taxpayers who are eligible for the state’s EITC in 2021. His proposed 2021-22 budget also earmarks $372 million to expedite the distribution of COVID-19 vaccines, and includes $4.5 billion for programs to drive economic growth and job creation once restrictions on normal activities have been lifted. These programs include $575 million in grants to small businesses and nonprofits, in addition to the $500 million for such grants implemented in late 2020 amid forced business closures. The proposal also allocates up to an additional $50 million for the California Rebuilding Fund, a public-private partnership, to support up to an additional $125 million of low-interest loans to underserved small businesses throughout the state.

California’s distinctive approach to market capitalism also emphasizes climate sustainability, using both carbon pricing and efficiency standards to achieve ambitious decarbonization targets. Under a 2018 state law, 60% of electricity must come from renewable resources by 2030, and 100% by 2045. California runs the world’s fourth-largest cap-and-trade system and will be setting even lower caps (and thus a higher carbon price) next month. In September 2020, Newsom announced an executive order requiring that zero-emission vehicles account for 100% of new car sales by 2035. His proposed budget seeks $1.5 billion to accelerate the infrastructure investment needed to achieve this goal.

President-elect Joe Biden has just announced a $1.9 trillion emergency rescue plan to counter the pandemic’s surge and provide substantial relief to workers, families, small businesses, and state and local governments. Prompt congressional passage of this plan is a critical first step in the renovation of America’s outdated neoliberal version of capitalism. As the economy recovers from the deep and uneven COVID-19 recession, the US must “build back better” by strengthening its social safety net, increasing public investment in education, health care, and other public goods, and rejoining the global charge against climate change. Lessons from the more successful variants of market capitalism in Europe and California point the way forward.

#### Pricing in solves but only the market model works.

Mark Budolfson 21. PhD in Philosophy. Assistant Professor in the Department of Environmental and Occupational Health and Justice at the Rutgers School of Public Health and Center for Population–Level Bioethics "Arguments for Well-Regulated Capitalism, and Implications for Global Ethics, Food, Environment, Climate Change, and Beyond". Cambridge Core. 5-7-2021. https://www-cambridge-org.proxy.library.emory.edu/core/journals/ethics-and-international-affairs/article/arguments-for-wellregulated-capitalism-and-implications-for-global-ethics-food-environment-climate-change-and-beyond/96F422D04E171EECDEF77312266AE9DD

Applications to Food, Environment, and Climate Change

Let us turn to a concrete example. It is often claimed that we need less capitalism, less growth, and less globalization if we are to successfully address such challenges as climate change, population growth, air and water pollution, feeding the world, ensuring sustainable development for the world's poorest people, and other interrelated challenges at the environmental nexus.22

However, if the argument for well-regulated capitalism is sound, then these claims are wrong. Just because the aforementioned challenges may require pervasive changes throughout the economy does not mean that they require large changes to the basic structure of the economy such as a move away from capitalism.

Climate change—like many large-scale environmental harms—is the perfect example to illustrate why large environmental challenges that require pervasive changes to the economy need not require large changes to the economy's basic structure. The key point is that in that an unregulated marketplace polluters do not pay the true cost to society of their pollution, which incentivizes too much pollution; the best solution for society in the case of climate change and many other large environmental challenges is simply to use markets to regulate the relevant pollution by putting an appropriate price on emissions (reflecting the cost to society), so that people and firms have to pay the true cost of their emissions. This could be accomplished by putting a simple tax on emissions, or by instituting a more complicated market-based system.23

In more detail, the problem of climate change arises because humans do not have to pay the cost of the harms from greenhouse gas (GHG) emissions when they engage in emitting activities. As a result of not having to pay the true cost of these activities, we make decisions that lead to too many emissions, and a worse outcome than we could achieve if we behaved differently, which would require pervasive changes throughout the economy. But according to mainstream economics, the best solution to this problem is a textbook example of well-regulated capitalism that applies the theory of externalities to achieve pervasive changes across the economy at the least cost to society: We should tax24 GHG emissions at a rate equal to the harm they inflict if emitted, because this will (to a first approximation) create the right incentives to cause all of the pervasive changes throughout every aspect of the economy in the way that best achieves the optimal level of GHG emissions for society.25 And because one ton of GHG emissions does the same harm regardless of where it is emitted on the earth, there is just a single price that we should use as a tax on all emissions regardless of where they occur.

Many economists, including Nobel laureate William Nordhaus, argue that pricing the externality in this simple way is not only necessary to solving climate change but also essentially sufficient.26 Other economists argue that investments in public goods like basic knowledge and infrastructure might also be necessary, as well as measures to address equity and justice (such as investing the revenues from a carbon tax in a progressive way, having different carbon prices in different regions that collectively lead to the same globally optimal reductions that could be achieved with a single uniform global price, or even putting additional weight on co-benefits from air pollution reductions via climate policy in places where minorities have historically been unjustly saddled with disproportionately high exposure to pollutants). These additional measures would be taken on the grounds that climate policy will be enacted in a “nonideal”/“second-best” context in which background distortions, inequity, and injustice make them necessary to achieve the best outcome.27 But these measures are all part and parcel to well-regulated capitalism.

Furthermore, getting rid of capitalism would involve harm to the world's poorest and most vulnerable people that could exceed the harm that is at stake for the world in connection with climate change and other environmental harms. Evidence for this claim is provided by taking the quantitative magnitude of health, wellbeing, and justice gains due to capitalism, according to the argument for premise 1 above, projecting trends into the future, and comparing these gains to the quantitative magnitude of health, wellbeing, and justice losses at issue in connection with climate change and other environmental harms, as provided by leading estimates.28 Again, according to the argument for well-regulated capitalism, the essence of our situation is that humanity is better off with our current flawed forms of capitalism than we would be without capitalism; however, we are not as well off as we could be if we properly regulated the externalities that are causing environmental harms, so there is no argument in favor of the status quo. Instead, we should properly regulate externalities, and thus move toward well-regulated capitalism, which would yield the optimal trade-off for humanity between the benefits of capitalism and the costs of pollution and other ills.

Viewed through the lens of the argument for well-regulated capitalism, other environmental challenges have a similar structure, such as food-systems challenges (including feeding the world without destroying the environment), air and water pollution, ensuring sustainable development for the world's poorest, and other interrelated challenges at the environmental nexus. These problems are more complicated than climate change because they each involve multiple externalities and multiple background distortions, where the magnitude of those is sometimes highly location dependent, and issues of equity and justice are exceedingly complex. But the basic mechanisms for the best solutions are the same according to proponents of the argument for well-regulated capitalism, and indeed the best responses all require capitalism in order to work well and avoid a cure that is worse than the disease.

As a point of optimism in connection with these often-discouraging challenges, the relationship between the wealth of a society and environmental degradation often has an inverted U shape: As society initially gets wealthier, environmental degradation increases, until a point of peak degradation, after which the environment improves as society becomes rich enough to invest more and more in environmental quality rather than in basic needs. In the richest nations of the world, the peak of degradation arguably happened in the mid- to late twentieth century, and can be seen in measures of, for example, air and water pollution.29 In some emerging economies like China, there is hope that the peak has been reached and environmental degradation will now decline as society becomes richer and richer. For other developing nations, the peak has not been reached yet. Moreover, different forms of degradation (such as industrial air pollution and agricultural water pollution) might peak at different points within a nation. Putting this together, there is reason to hope that environmental challenges will reach a peak in our lifetime, and if we can meet them with well-regulated capitalism, they will begin to progressively improve over time in line with the end of extreme poverty for the entire world. Capitalism has brought these problems to a head because it has caused the world to get richer so quickly. But according to the argument for well-regulated capitalism, this is a good problem to have, as it is a symptom of a global society that is on the cusp of growing its way out of poverty and out of widespread environmental degradation. According to this argument, we should want to grow our way out of both of these problems as quickly as possible, rather than keep both problems around indefinitely by moving away from capitalism.30

## 1NR

### FTC DA---2NC

#### **1. Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### 2. Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

#### 3. Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### 4. Extinction outweighs---evaluate impacts through a util framing.

Seth D. Baum & Anthony M. Barrett 18. Global Catastrophic Risk Institute. 2018. “Global Catastrophes: The Most Extreme Risks.” Risk in Extreme Environments: Preparing, Avoiding, Mitigating, and Managing, edited by Vicki Bier, Routledge, pp. 174–184.

2. What Is GCR And Why Is It Important? Taken literally, a global catastrophe can be any event that is in some way catastrophic across the globe. This suggests a rather low threshold for what counts as a global catastrophe. An event causing just one death on each continent (say, from a jet-setting assassin) could rate as a global catastrophe, because surely these deaths would be catastrophic for the deceased and their loved ones. However, in common usage, a global catastrophe would be catastrophic for a significant portion of the globe. Minimum thresholds have variously been set around ten thousand to ten million deaths or $10 billion to $10 trillion in damages (Bostrom and Ćirković 2008), or death of one quarter of the human population (Atkinson 1999; Hempsell 2004). Others have emphasized catastrophes that cause long-term declines in the trajectory of human civilization (Beckstead 2013), that human civilization does not recover from (Maher and Baum 2013), that drastically reduce humanity’s potential for future achievements (Bostrom 2002, using the term “existential risk”), or that result in human extinction (Matheny 2007; Posner 2004). A common theme across all these treatments of GCR is that some catastrophes are vastly more important than others. Carl Sagan was perhaps the first to recognize this, in his commentary on nuclear winter (Sagan 1983). Without nuclear winter, a global nuclear war might kill several hundred million people. This is obviously a major catastrophe, but humanity would presumably carry on. However, with nuclear winter, per Sagan, humanity could go extinct. The loss would be not just an additional four billion or so deaths, but the loss of all future generations. To paraphrase Sagan, the loss would be billions and billions of lives, or even more. Sagan estimated 500 trillion lives, assuming humanity would continue for ten million more years, which he cited as typical for a successful species. Sagan’s 500 trillion number may even be an underestimate. The analysis here takes an adventurous turn, hinging on the evolution of the human species and the long-term fate of the universe. On these long time scales, the descendants of contemporary humans may no longer be recognizably “human”. The issue then is whether the descendants are still worth caring about, whatever they are. If they are, then it begs the question of how many of them there will be. Barring major global catastrophe, Earth will remain habitable for about one billion more years 2 until the Sun gets too warm and large. The rest of the Solar System, Milky Way galaxy, universe, and (if it exists) the multiverse will remain habitable for a lot longer than that (Adams and Laughlin 1997), should our descendants gain the capacity to migrate there. An open question in astronomy is whether it is possible for the descendants of humanity to continue living for an infinite length of time or instead merely an astronomically large but finite length of time (see e.g. Ćirković 2002; Kaku 2005). Either way, the stakes with global catastrophes could be much larger than the loss of 500 trillion lives. Debates about the infinite vs. the merely astronomical are of theoretical interest (Ng 1991; Bossert et al. 2007), but they have limited practical significance. This can be seen when evaluating GCRs from a standard risk-equals-probability-times-magnitude framework. Using Sagan’s 500 trillion lives estimate, it follows that reducing the probability of global catastrophe by a mere one-in-500-trillion chance is of the same significance as saving one human life. Phrased differently, society should try 500 trillion times harder to prevent a global catastrophe than it should to save a person’s life. Or, preventing one million deaths is equivalent to a one-in500-million reduction in the probability of global catastrophe. This suggests society should make extremely large investment in GCR reduction, at the expense of virtually all other objectives. Judge and legal scholar Richard Posner made a similar point in monetary terms (Posner 2004). Posner used $50,000 as the value of a statistical human life (VSL) and 12 billion humans as the total loss of life (double the 2004 world population); he describes both figures as significant underestimates. Multiplying them gives $600 trillion as an underestimate of the value of preventing global catastrophe. For comparison, the United States government typically uses a VSL of around one to ten million dollars (Robinson 2007). Multiplying a $10 million VSL with 500 trillion lives gives $5x1021 as the value of preventing global catastrophe. But even using “just" $600 trillion, society should be willing to spend at least that much to prevent a global catastrophe, which converts to being willing to spend at least $1 million for a one-in-500-million reduction in the probability of global catastrophe. Thus while reasonable disagreement exists on how large of a VSL to use and how much to count future generations, even low-end positions suggest vast resource allocations should be redirected to reducing GCR. This conclusion is only strengthened when considering the astronomical size of the stakes, but the same point holds either way. The bottom line is that, as long as something along the lines of the standard riskequals-probability-times-magnitude framework is being used, then even tiny GCR reductions merit significant effort. This point holds especially strongly for risks of catastrophes that would cause permanent harm to global human civilization. The discussion thus far has assumed that all human lives are valued equally. This assumption is not universally held. People often value some people more than others, favoring themselves, their family and friends, their compatriots, their generation, or others whom they identify with. Great debates rage on across moral philosophy, economics, and other fields about how much people should value others who are distant in space, time, or social relation, as well as the unborn members of future generations. This debate is crucial for all valuations of risk, including GCR. Indeed, if each of us only cares about our immediate selves, then global catastrophes may not be especially important, and we probably have better things to do with our time than worry about them. While everyone has the right to their own views and feelings, we find that the strongest arguments are for the widely held position that all human lives should be valued equally. This position is succinctly stated in the United States Declaration of Independence, updated in the 1848 Declaration of Sentiments: “We hold these truths to be self-evident: that all men and 3 women are created equal”. Philosophers speak of an agent-neutral, objective “view from nowhere” (Nagel 1986) or a “veil of ignorance” (Rawls 1971) in which each person considers what is best for society irrespective of which member of society they happen to be. Such a perspective suggests valuing everyone equally, regardless of who they are or where or when they live. This in turn suggests a very high value for reducing GCR, or a high degree of priority for GCR reduction efforts.

#### 2. Current enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### 3. Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### 4. Thumpers are priced in.

William C. MacLeod 7/2/21. One of the top rated Antitrust Litigation attorneys in Washington, DC. “Chopra, Khan, Slaughter Take Control of the Federal Trade Commission.” https://www.adlawaccess.com/2021/07/articles/chopra-khan-slaughter-take-control-of-the-federal-trade-commission/

With an unprecedented attack on policies the Federal Trade Commission had long embraced, the new majority of Democratic Commissioners revealed a bold enforcement agenda that would circumvent Supreme Court decisions and avoid Congressional limits.

It was a meeting like none the Federal Trade Commission has ever held. On one week’s notice, the Commission adopted new rules to impose civil penalties on substandard Made-in-USA claims, removed judges and safeguards from rulemaking proceedings, rescinded its 2015 enforcement policy statement on unfair methods of competition, and granted staff more authority to issue subpoenas and civil investigative demands. The vote on every issue followed party lines. Republican Commissioners, Noah Phillips and Christine Wilson, voted against all, and the Democratic Commissioners, Chopra, Khan, and Slaughter, rejected all amendments. Chair Khan announced that public meetings will become regular events at the FTC.

Made in USA Claims

Commissioner Chopra took the lead on the Made-in-USA (MUSA) rule, which would impose civil penalties on claims that do not meet FTC standards for domestic content, whether those claims appear on labels or in marketing. He criticized the Commission for years of allegedly allowing deceptive claims to persist and wrongdoers to escape fines. Imposing fines, he said, was one way of recovering the power the Commission was denied in the Supreme Court’s decision in AMG Capital Management v. FTC, which held that Section 13(b) of FTC Act did not authorize the Commission to obtain monetary relief.

Phillips opposed the rule, saying that Congress had not given FTC the authority to cover off-label claims; it had authorized MUSA rules only for product labels. Unless and until Congress granted authority for expedited rulemaking on advertising claims, which Congress is now considering, he insisted that the FTC was bound to use the more restrictive Magnusson-Moss procedures. Wilson objected to the short notice announcing the meeting, objected to the exclusion of staff from the meeting, and warned that it was unwise to disregard a unanimous Supreme Court that had just admonished the Commission for exceeding its authority to obtain money in consumer protection cases.

Expediting Rulemaking

Foreshadowing an ambitious regulatory agenda was a motion to streamline new rules under Section 18 of the FTC Act. The motion would remove the chief administrative law judge from the role of presiding officer in rulemakings. The FTC Chair would preside. The motion also proposed eliminating the requirement of a staff report to accompany a rule recommendation. Slaughter said these were unnecessary “self-imposed” limits. Chopra praised the proposal for helping end the era of “perceived powerlessness” at the FTC

Phillips and Wilson objected, citing concerns that removing the judge would threaten the independence of the rulemaking process – an extensive fact-finding exercise – and lend support to challengers who claim that FTC rules are politically motivated. As for staff reports, Phillips remarked that these gave the Commissioners and the public some confidence that a rule would not inflict unnecessary harm on the economy. Wilson reminded her colleagues that zealous rulemaking in the 1970s precipitated an existential crisis for the agency. It closed its doors after public resistance and widespread ridicule prompted Congress to defund the FTC. Not until the Commission promised a return to responsible enforcement was it allowed to reopen. The FTC delivered on that promise with a series of policy statements clarifying unfair acts and practices, illegal deception, and necessary substantiation for advertising claims.

Wilson proposed posting the procedural changes for comment. It failed 3-2. Phillips proposed retaining the chief judge and the staff report. It also failed to attract a Democratic vote. Rulemakings without a judge and without a staff report passed without a Republican vote.

Rescinding the Competition Policy Statement

In a sweeping departure from a bipartisan antitrust policy, the Commission rescinded its 2015 Policy Statement on Unfair Competition. Khan argued that the FTC should not have to show a likelihood of harm to competition in order to declare conduct unfair. In her view, the FTC Act was intended to circumvent the Supreme Court’s adoption of the Rule of Reason in antitrust cases – a requirement that condemned restraints of trade only when their anticompetitive effects outweighed the procompetitive benefits. The Rule of Reason made it too hard to prove violations, said Khan, and the FTC’s policy statement improperly confined the agency to an enforcement policy indistinguishable from the standards that DOJ applied.

Wilson regarded the rescission as an abandonment of the consumer welfare standard, the framework of antitrust analysis for half a century. She expressed fears that if competition policy were not designed to benefit consumers, it could be coopted by special interests. She added that when the FTC had failed to apply a standard consistent with the antitrust laws in the past, its decisions had often been reversed on appeal. (The FTC lost a string of appeals in the 1980s when it attempted to prohibit refusals to deal, price discrimination that might be competitive, supplier-distributor pricing policies, and practices that could facilitate collusion.) Phillips noted that the Supreme Court’s decision in NCAA had just applied the Rule of Reason in holding for plaintiffs, so it was hardly a bar to successful prosecution. Of concern to the Republicans was a proposal in Congress that would eliminate the FTC’s competition authority altogether.

Proposals to seek comment on the rescission were voted down on party lines. Competition policy at the FTC will depend on future Commission actions.

Targeting Sectors and Suspects

Finally the FTC identified seven areas in which it would adopt omnibus resolutions authorizing compulsory process – civil investigative demands and subpoenas enforceable in court. The Commission typically authorizes compulsory process when it identifies specific companies or conduct – like a merger or a deceptive practice – warranting intensive and urgent investigation. These resolutions covered broad sectors of the economy and authorized investigations under practices any law the FTC enforces. As explained in its press release, the Commission’s crosshairs are focused on these sectors and individuals:

Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

With these resolutions, the FTC delegated the decision to issue compulsory process to the staff and a single commissioner. In the past, an investigation into a new area could not use compulsory process until the commission voted on the resolution. These omnibus resolutions dispensed with that procedure. Khan hailed the move as cutting “red tape bureaucracy.” Wilson countered that the Commissioners were abrogating their sworn responsibilities of supervision. This last comment reveals the import of the change. If Chopra departs to the Consumer Financial Protection Bureau, which he has been nominated to direct, the Democrats will lose their majority. These resolutions will allow staff to open investigations, demand documents, and conduct depositions without the approval of the Commission. All the staff will need is the approval of a commissioner.

The Future of FTC Enforcement

In short, July 1, 2021 was an extraordinary day in the history of the FTC. It is an unmistakable harbinger of a Commission that is aiming to ramp up enforcement beyond the levels it sought to achieve in the 1970s. None of the supporters of the agenda had answers to the dissenters’ repeated questions: How will the agency overcome the obstacles that stymied its unbridled ambitions in the past? How will it respond to the resistance it will face from Congress, the courts, and the public it is supposed to serve? The public at this meeting, Phillips noted, was scheduled to comment after the Commission had made its decisions, so that their testimony would not be taken into account before the votes.

How far the Commission can take this agenda will be difficult to predict until the inevitable allegations of unauthorized investigations, arbitrary and capricious rules, unpredictable decisions, and deprivations of due process make their way to higher authorities. Safer predictions: We will see the fruits of yesterday’s decisions in the form of CIDs, subpoenas, proposed rules, and new interpretations of a century-old competition statute. Businesses and citizens will face the first engagement. Then Congress and the courts will join the fray. For a preview of potential outcomes, there is no better place to start than the rich literature of FTC history.

#### 5. XO doesn’t reach our link threshold but the plan does.

Masuda et. al. 21. Funai, Eifert & Mitchell, Ltd. Masuda, Funai, Eifert & Mitchell, Ltd. is a U.S. law firm headquartered in Chicago, Illinois, “The Implications of President Biden's "Executive Order on Promoting Competition in the American Economy" 8.18.21. https://www.masudafunai.com/articles/the-implications-of-president-bidens-executive-order-on-promoting-competition-in-the-american-economy?utm\_source=Mondaq&utm\_medium=syndication&utm\_campaign=LinkedIn-integration

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

#### 6. Plan tips the balance.

Tara Lachapelle 8/25/21. Bloomberg Opinion columnist covering the business of entertainment and telecommunications, as well as broader deals. She previously wrote an M&A column for Bloomberg News. “Wall Street Is Ready to Put Lina Khan’s FTC to the Test.” https://www.bloomberg.com/opinion/articles/2021-08-25/wall-street-is-ready-to-put-lina-khan-s-ftc-to-the-test

As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC.

These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong.

“To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.”

Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process.

For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years.

In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too.

The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.”

Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) The Justice Department is pursuing its own case against Google. And what was initially seen as a narrow effort to reel in dominant technology companies has since expanded to other industries in light of a sweeping executive order from President Biden. Even more obscure areas such as ocean shipping are facing new scrutiny.

#### 2. The FTC doesn’t have the resources for expanded antitrust enforcement.

Alex Kantrowitz 20 – Silicon Valley-based journalist covering Big Tech and society, 9/17/20. “‘It’s Ridiculous’: Underfunded U.S. Regulators Can’t Keep Fighting the Tech Giants Like This.” https://onezero.medium.com/its-ridiculous-underfunded-u-s-regulators-can-t-keep-fighting-the-tech-giants-like-this-3b57487b4d63

As politicians, the press, and the public scrutinize the tech giants and grow wary of their power, the most important organizations tasked with restraining them — the U.S. regulatory agencies — aren’t getting enough funding to do the job. “The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology. The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone. The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions. “DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology. This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it’s really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through. “When I was there, the privacy wing had maybe 50 people, and that’s probably generous. That’s lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone’s time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps. Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn’t have to be a winner, doesn’t have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don’t have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking. Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

#### 3. The FTC is looking to avoid added prohibitions.

MARIANELA LOPEZ-GALDOS 21. Global Competition Counsel at the Computer & Communications Industry Association, 7/28/21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils.” https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

But most importantly, the Section 5 Policy Guidelines acted as the guardrails to avoid situations where the FTC, in an effort to expand its enforcement authority, would lose many antitrust stand-alone Section 5 cases in court, to the detriment of the institution itself. Indeed, the Section 5 Policy Guidelines were the result of lessons learned throughout the history of the FTC and represented a tool to avoid history repeating itself. In this respect, it is important to recall that back in the 70s, under Chairman Pertschuck, and in the following years, the FTC suffered immensely due to disparities between enforcement promises and implementation capabilities. Much of the institutional suffering came from the agency not self-imposing limitations and standards to bring cases under Section 5 of the FTC Act which led to numerous litigation losses, consequential institutional reputational damage, and lack of political support.

#### 1. FTC is cash-strapped---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### 2. Limited resources force tradeoffs in enforcement decisions.

Bernard (Barry) A. Nigro Jr. et al., 21 – Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ, with Nathaniel L. Asker and Aleksandr B. Livshits, 1/5/21. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar’s acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies’ budgets in the future is likely.

### Japan DA---2NC

#### 2. It’s reinvigorated.

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Japan has been delighted with the first months of Joe Biden’s presidency. Unlike his predecessor, whose transactional view of diplomacy rankled many in Tokyo, Biden has been at pains to rekindle the U.S.-Japanese alliance and to emphasize that Japan remains the linchpin of U.S. security policy in Asia. In February, the two nations renewed the agreement under which Japan hosts U.S. troops, and in March, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin both visited Japan on their first overseas trips. Biden hosted Japanese Prime Minister Suga Yoshihide as his first foreign guest as president.

It will surprise no one that a major focus of these early meetings has been China, whose economic and military rise has unnerved Washington and Tokyo and united them in competition with Beijing. Biden administration officials have repeatedly affirmed their readiness to defend Japan, including its claim to the disputed Senkaku Islands (known in China as the Diaoyu Islands). But in addition to military and diplomatic competition with China, which has long been central to the U.S.-Japanese relationship, both countries have placed a new and important emphasis on economic security. In their first meeting, Biden and Suga discussed ways to protect critical supply chains, intellectual property rights, and sensitive technology that should not pass into Beijing’s hands. At the March meeting of the Quadrilateral Security Dialogue, an informal strategic forum that includes Australia, India, Japan, and the United States, both leaders took a similarly expansive view of the China challenge, leading to the creation of working groups on controlling critical and emerging technologies, among other economic security issues.

That heightened economic competition with China has helped Japan reinvigorate its alliance with the United States is not an accident. Over the last several years, the Japanese government—first under Prime Minister Abe Shinzo and then under Suga—has honed a new brand of economic statecraft designed to protect the country’s economic interests, limit China’s creeping influence in Asia, and bolster Japanese soft power. Through a combination of enhanced economic intelligence, tighter trade restrictions, and better stewardship of data and emerging technologies, Japan has become a force for economic security in Asia and reinforced its position as an indispensable U.S. ally.

ABE’S ECONOMIC STATECRAFT

Japan has long thought of security in more than military terms. In part because of the military constraints imposed by its pacifist constitution, Tokyo has historically tried to win the trust of other Asian powers through aid, trade, and diplomacy. And it has largely succeeded: public opinion surveys in Southeast Asia consistently show that Japan is the most trusted major power in the region and that it has considerable soft power.

#### 3. Perceived alliance strength is high---business leaders.

Japan Times 21. "Japan business leaders welcome Biden's multilateral push". https://www.japantimes.co.jp/news/2021/01/21/business/economy-business/japan-keidanren-joe-biden/

Business leaders in Japan on Thursday welcomed the inauguration of U.S. President Joe Biden, expecting his administration to take a multilateral approach to trade policy while cooperating closely with other countries.

"We have high hopes for the new U.S. administration as it focuses on international coordination," Hiroaki Nakanishi, chairman of the Japan Business Federation, known as Keidanren, said in a statement.

The chief of the country's most powerful business lobby made clear "the power of the United States is necessary" to achieve a recovery in a global economy hit hard by the novel coronavirus pandemic, adding that it also allows for the global order to be "reconstructed."

"I hope the Biden administration will unite and revive the United States as the world's number one country," said Nakanishi.

He added that Japan has to make efforts to further develop its relationship with the United States and persuade it to return to the Trans-Pacific Partnership free trade pact, from which Washington withdrew under the administration of Biden's predecessor Donald Trump.

Akio Mimura, chairman of the Japan Chamber of Commerce and Industry, said he expects Biden to exert strong leadership "as a new U.S. president who values multilateralism and the rule of law."

He expressed hope that Biden will tackle global issues such as the coronavirus pandemic and climate change in conjunction with other countries.

"I welcome a shift to international cooperation by the Biden administration," said Kengo Sakurada, chairman of the Japan Association of Corporate Executives.

"We hope the United States will reclaim its status as a world leader in promoting democracy and market economics and again drive moves toward global peace and prosperity," Sakurada said, also stressing the importance of strengthening Japan-U.S. cooperation in various areas.

#### 4. But not locked in place.

Dr. Adam Liff 19. Assistant Professor of East Asian International Relations at the Hamilton Lugar School of Global and International Studies at Indiana University, Ph.D. and M.A. in Politics from Princeton University, and B.A. from Stanford University, “Unambivalent Alignment: Japan’s China Strategy, The US Alliance, and the ‘Hedging’ Fallacy”, International Relations of the Asia-Pacific, July 2019, p. 31

Nevertheless, **what is at present is not necessarily what shall forever be**. Japan’s leaders will continue to face a complex, dynamic, and potentially volatile strategic environment. Increasingly **difficult trade-offs** may **manifest**, especially if China’s military power, economic wherewithal, and willingness to attempt to drive wedges between the United States and its allies grow. An **exogenous shock** could also upset Japan’s basic trajectory. Indeed, this possibility appears **less remote** today given China’s and North Korea’s recent policies, geopolitical and **geo-economic shifts**, **US** relative decline, and President **Trump's skepticism** of alliances and free trade. Yet, even in this case, Japan’s continued pursuit of more **independent military capabilities** and strategic autonomy while simultaneously bolstering security cooperation with the United States and its regional partners seems more likely than a strategic realignment toward Beijing.

#### Economic alliance is key to deterrence---only business cooperation can maintain military supremacy.

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A top security issue for the incoming Biden administration must be forging closer technology ties with Japan as a counterweight to the trinity of mutual adversaries we face in Asia.

The ascendancy of China combined with the technological know-how of Russia and the ever-mercurial North Korean regime present a combined threat that is increasingly destabilizing to the region and highly worrisome for both Washington and Tokyo. As a result, nurturing the U.S.-Japan relationship has never been more important.

President-elect Joe Biden and new Japanese Prime Minister Yoshihide Suga must find ways to improve the relationship and telegraph strength and cooperation to dissuade adversaries. One essential way to do this is for both countries to work closer on procurement of weapons and weapon systems.

The United States and Japan have traditionally worked well together on specific, one-off projects where Japanese companies have demonstrated expertise. For example, the anti-ballistic missile that shot down a mock North Korean intercontinental ballistic missile in November was a joint product of Raytheon and Mitsubishi Heavy Industries.

According to an April study by the Atlantic Council, other efforts that the two countries are working on together include unmanned systems, defense applications of artificial intelligence, hypersonic missiles and space technologies.

Where things can improve are in procurement of dual-use technologies. Japanese firms have many commercial off-the-shelf technologies with military applications, such as microelectronics and 5G, that are Pentagon priorities. But the ability to share these technologies has been limited due to export restrictions in both countries.

Both governments have been chipping away at these restrictions during the past few years by mitigating the bureaucratic hurdles that have inhibited greater cooperation.

First, under former Prime Minister Shinzo Abe, the Japanese government was increasingly willing to cooperate with the United States. This includes partially embracing the right to collective self-defense through increased technology transfers. His successor, Prime Minister Suga, seems intent on continuing this policy.

Next, the United States has been searching out and working with nontraditional partners in the technology community. One key to this effort has been the military’s use other transaction authority, a contracting tool to get around the Pentagon’s notoriously bureaucratic procurement policies and encourage dual-use innovators to work with the military. Under OTAs, the time it takes to develop prototypes of weapons and weapon systems is reduced from years to months.

In addition, Japan is rejiggering export rules for specific military needs. In one example of this, the Japanese government has asked its counterparts at the Pentagon to be more detailed about the technologies it is interested in so that Japan can change regulations blocking these transfers. The Pentagon in turn has removed barriers that allow Japanese companies to partner with U.S. firms on key, dual-use contracts.

Finally, U.S. policy is primed for a bilateral engagement on emerging technology with Japan. In October, the White House released the National Strategy for Critical and Emerging Technologies, and in December, it released its National Space Policy. Both strategies recognize the importance of international cooperation with trusted allies, such as Japan.

With legalities out of the way, it is now time for action.

On the U.S. side, the Biden administration’s incoming undersecretary of defense for acquisition and sustainment should instruct agencies that use OTAs to reach out to organizations, such as the Hawaii-based Pacific International Center for High Technology Research. These third parties should distribute targeted opportunities to U.S. OTA performers and their vetted Japanese technology partners.

On Japan’s side, the Suga government should instruct the Japan External Trade Organization to market these opportunities to Japanese innovators, particularly in the areas of space, hypersonics, trusted microelectronics and additive technologies. Japan’s Ministry of Economy, Trade and Industry should then issue the necessary export control waivers.

By forging greater technology ties with Japan, there is an opportunity to ensure access to the technology U.S. forces need for deterring and, if necessary, defeating any adversary. Such an alliance would ensure U.S. leadership in the Pacific.

#### US-Japan relations are independently key to avert a host of existential threats.

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For the first time in nearly a quarter century, the world is witnessing multiple momentous challenges to the international order. China’s emergence, Russia’s resurgence, and the Islamic State of Iraq and the Levant’s (ISIL’s) barbarity are forcing the United States and Japan to address simultaneous, diverse threats to the international order. Within Asia, increasing prosperity and economic interdependence coincide with intensifying friction among the major powers. Changes in relative power, rapid expansion in the military budgets of some states, territorial disputes, historical animosities, irregular threats, and nuclear proliferation all present serious risks to regional security. Managing these challenges will require an understanding of how long-term trends, such as demographics, technology, and climate change, are likely to affect the strategic environment. Asia is the world’s most dynamic region, so understanding current trends and potential future discontinuities is essential if the United States and Japan are to adopt an overall strategy that is capable of adapting effectively to rapid shifts in the security environment. While regional trends in the Asia-Pacific region favor continued growth and economic integration, there are pockets of uncertainty that could threaten both economic progress and political stability. These include: obstacles to China’s economic transition from its past export-led growth model to a domestically driven model; the shrinking working age population in Japan, South Korea, China, Taiwan, and Singapore; and the over-reliance of countries such as Taiwan, South Korea, Malaysia, Thailand, and Australia on Chinese momentum to drive their own growth. Economic growth and integration in Asia have been driven by intra-regional trade as well as global investment flows and production networks, underpinned by the international financial institutions established at Bretton Woods and sustained since then with the active support of Japan and the United States. However, as the international economy has diversified, the original managers of global financial governance, such as the G-7, have lost ground to more inclusive but less effective groupings, such as the G-20. Moreover, progress on global trade liberalization at the World Trade Organization (WTO) has stalled. China is challenging the existing international financial institutions with the Asian Infrastructure Investment Bank (AIIB) and its new “One Belt, One Road” initiatives. At the same time, the Trans-Pacific Partnership (TPP), led by the United States and Japan, has the potential to reboot international trade liberalization and governance. Passage of TPP in Japan, the United States, and the ten other participating countries would boost economic growth in Asia by reducing barriers, establishing standards for ensuring protection of intellectual property in new areas such as e-commerce, empowering China’s economic reformers as Beijing is drawn by preferential tariffs to join TPP, animating negotiations on the Transatlantic Trade and Investment Partnership (TTIP), and perhaps eventually helping to revitalize the pursuit of global free trade agreements through the WTO. Governance of global trade and finance is in flux, but the forces of liberalization and integration are still present. Beyond these economic concerns the dangers of climate change and ecological degradation threaten the region. The ability of the major Asia-Pacific economies to cooperate in the face of all these transnational challenges will have important implications for the future strategic environment. While China and the United States are the world’s leading emitters of greenhouse gases (in that order), Japan is the world’s superpower in clean technology and energy efficiency. There are encouraging signs of U.S. and Chinese initiatives to curb greenhouse gas emissions as well as the recent agreement at the 2015 Paris Climate Conference, but these promises remain aspirational and unenforceable, requiring further efforts at bilateral, regional, and global cooperation to reduce carbon emissions. China The Commission believes that China’s trajectory is one of the most uncertain variables in shaping the security environment of the Asia-Pacific region out to 2030. Given the variety and complexity of the factors involved, it is impossible to predict a single outcome for China. To the contrary, the range of plausible alternative futures for that country is exceptionally broad. That said, the most influential drivers of China’s development will likely be internal—demographic trends; the pace, form, and success of efforts at economic reform; the attitudes and actions of various actors in the Party, the state, and society; and the successes, failures, and unintended effects of government policies. Regardless of China’s economic trajectory, its investment in military capabilities is likely to continue, the scope of its interests will expand, and its assertive behavior and expansive claims to territory are unlikely to abate and could intensify. The Commission’s baseline projection over the next 15 years is that China will continue to grow more powerful and somewhat more aggressive than in the past. This projection includes the following elements: the Chinese Communist Party (CCP) will maintain its grip on power with a mixture of concessions to and repression of newly empowered sectors within the country. The Party will also continue to make use of appeals to a militant form of popular nationalism that emphasizes its own central role in righting the wrongs done to China during the so-called “century of humiliation.” Efforts to shift the nation’s growth model towards greater reliance on domestic consumption and enhanced productivity will encounter significant obstacles. Growth will continue, albeit less steadily and at a significantly lower rate than in recent decades. China is unlikely to overtake the United States as the largest economy in the world by 2030. While China could increase the share of GDP allocated to defense, Beijing may also choose to follow its historic pattern of proportionate allocations to defense, which would mean reductions from the annual double-digit increases in defense spending of the past two decades. As reforms announced in November 2015 indicate, China’s leadership intends to continue the transformation of the People’s Liberation Army (PLA) into a technologically and organizationally advanced warfighting military. Given increasing unit costs of sophisticated systems, the PLA will thus grow in capability even if the growth in numbers of platforms and weapons systems slows before 2030. In aggregate, PLA capabilities will not exceed those that the United States, Japan, and other allied countries can bring to bear in East Asia through 2030. However, the PLA’s growing anti-access and area denial capabilities will pose an increasing threat to U.S. and Japanese bases and to their forces operating inside the First and Second Island Chains. China’s military advantages over other neighboring countries, such as Vietnam and the Philippines, will also continue to grow. China will continue to press its claims to Taiwan, in the East and South China Seas, and over disputed territory with India, and it will use both paramilitary and coercive military tactics to do so. There will also be further attempts by Beijing to weaken U.S. alliances and construct an Asia-Pacific economic and security order that marginalizes the United States, as suggested by Xi Jinping in Shanghai in the spring of 2014. China will continue to use external tensions to mobilize domestic political support and it will try to use its growing military and paramilitary capabilities for coercive purposes, but it is unlikely to take deliberate actions intended to trigger an armed conflict with its neighbors or the United States. China will assume a more cooperative role in dealing with at least some global problems, and it will continue to develop Chinese-led alternatives to existing economic, diplomatic, and military organizations, particularly within Asia. Xi Jinping’s signature “One Belt, One Road” initiative will result in increased investments in infrastructure, agriculture, and natural resource extraction throughout Central, South, and Southeast Asia. These activities could lead to expanded diplomatic influence, but they may also result in growing friction between China and some of its neighbors, including Russia, and could increase Chinese exposure to the forces of radical Islamic extremism. As with other rising powers throughout history, China will attempt to revise the regional order of which it is a part, but rather than pose a direct challenge it will likely attempt to continue to benefit from freeriding on the existing U.S.- and Western-led order. This baseline projection to 2030 does not mean that the Commission rules out more significant discontinuities, ranging from higher growth trajectories based on economic restructuring, to political instability, liberalization, or even economic or political collapse. However, it provides the most useful scenario to plan against as it highlights both the downside risks of China’s increasingly revisionist behavior in Asia and the upside possibilities for expanded cooperation with China on global challenges and to some extent within Asia. With the uncertainties in China’s future, the United States and Japan must develop a sufficiently resilient strategy to handle a wide range of potential developments. Korean Peninsula North Korea will continue to be a critical security concern as the situation on the Korean Peninsula remains unstable and uncertain. North Korea represents a dangerous threat to both Japan and the United States, particularly now that it appears to have developed nuclear weapons and the means to deliver them. Further improvements in warhead and missile design (including the development of miniaturized thermonuclear devices capable of delivery by intercontinental ballistic missiles) will enhance Pyongyang’s ability to threaten an increasingly wide range of countries, including the United States. It is highly probable that North Korea will continue a pattern of intermittent provocative military actions to justify its grip on power internally, and it is extremely unlikely that the regime will give up its nuclear weapons as it regards them as a guarantee against attack by the United States and South Korea. Despite disapproval of North Korea’s adventurism and its growing nuclear arsenal, China is unlikely to alter its current policy of providing Pyongyang economic assistance and a measure of diplomatic support. Beijing still prefers the status quo on the peninsula, and only more extreme North Korean provocations might change that calculation. As in the past, the North Korean regime may experiment with some limited market elements in its economy, but there is no doubt that the regime will retain tight political control over the population through brutal and effective security measures. Changes to this dismal projection could come from unexpected events. A faction within the power elite in North Korea upset with Kim’s leadership and the impoverishment of the country could stage a coup. China might use its leverage more actively to push North Korea towards a larger private sector, potentially providing incentives for more moderate behavior by the regime. Finally, although he is in his mid-30s, Kim Jong-Un could die or be killed, setting off a succession struggle with unpredictable consequences. Sudden regime instability or collapse could lead to dangerously chaotic situations inside North Korea that would require close U.S.- Japan-Republic of Korea (ROK) cooperation as well as dialogue with China and Russia to avoid potentially dangerous repercussions. In the meantime, Washington, Tokyo, and Seoul should appreciate and address the mutual dependence of the U.S.-ROK and U.S.-Japan alliances. Japan relies on Korea to protect its western flank while the ROK depends on Japan for indispensable rear area support on the peninsula. Trilateral security cooperation among those three democratic countries is increasingly important and political leadership will be required to overcome the political obstacles that continue to stand between Japan and South Korea. Southeast Asia Association of Southeast Asian Nations (ASEAN) leaders seek a regional balance that allows them to sustain reasonable security, protect their sovereignty, and grow their economies. Member countries have developed an innate geopolitical survival instinct: namely, to avoid being overly influenced by any single outside power. That basic trait is found not only in ASEAN as a regional institution, but individually among its member nations, and will continue to guide ASEAN policies and behavior for the next 15 years. Most of the ASEAN member states are located in strategically important maritime areas from the Bashi Channel through the South China Sea and from the Malacca Strait to the Indian Ocean. Maritime law enforcement and naval capabilities of those nations are far from adequate to assume responsibilities to secure these vast maritime zones and should be built up in the coming years. ASEAN also seeks regional peace and stability so its members can continue to pursue economic growth in ways that sustain domestic political stability, including through equitable growth, investment, capacity building, training and education, and development of infrastructure. However, perceived bullying by China in the South China Sea, and concerns among some ASEAN nations that China’s behavior represents the beginning of a trend that could threaten their autonomy and endanger peace and stability if left unchecked, has driven many Southeast Asian states to welcome greater U.S. and Japanese security involvement in the region. At the same time, China’s increasing influence over some ASEAN countries has created divisions that could weaken the organization’s capacity for collective action. Most ASEAN members have concluded that they need to act individually to professionalize and modernize their militaries and redirect their security establishments to focus more on external threats, while at the same time investing in more effective cooperation to enhance interoperability and strengthen collective security. Such action will also promote preparedness in coping with natural disasters. The United States and Japan should continue to help build the capacity of Southeast Asian nations to defend their airspace and territorial waters from hostile intrusion. ASEAN members are dealing with domestic politics that have an impact on how quickly each can move toward advancing regional goals. Generally, the region is moving toward more open, participatory models of governance and strengthened domestic institutions. While high-profile moves in the opposite direction, such as the May 2014 coup in Thailand, attract headlines, a closer look suggests ASEAN’s incumbent governments are moving quickly, even with a sense of urgency defined by concerns for political survival, to adapt to increasing demands from more engaged and discerning constituencies. The United States and Japan have a high stake in the outcome of this process, based on both geopolitical interests and democratic values Russia and the Arctic Russia, once the raison d’être for the U.S.-Japan Alliance, has assumed a second-tier role in the geopolitics of East Asia. Russia’s Far Eastern conventional and nuclear forces are a shadow of what they once were and Russia’s diplomatic profile in Asia is also limited, even in areas where Russia has traditionally played a key role, such as the Six-Party Talks. Nevertheless, Russia is more capable and active in Asia than it has been at any time since the dissolution of the Soviet Union. While Russia appears to be working with China to counter the U.S.-led alliance system, Moscow is also quietly bolstering its regional military forces, as well as putting more investment into its Far Eastern federal regions in hopes of enhancing its geopolitical position and preserving its autonomy with respect to China. Russia’s activities in Ukraine have resulted in an international sanctions regime and damage to Russian relations with all democracies— particularly the United States, but also Japan. In the immediate future Japanese and U.S. interests regarding Russia will not perfectly coincide. Japan’s need for energy diversity will lead it to consider increasing imports of Russian natural gas, and many in Japan will continue to seek a resolution of the Northern Territories issue with Russia. That said, beyond the current crisis with Putin over Ukraine and through the longer term, the United States and Japan share a geopolitical interest in cooperating with Russia in ways that inhibit the possible emergence of a Sino-Russian bloc. Although President Putin’s military buildup and aggressive actions currently enjoy wide popularity within Russia, it is unlikely that he and his successors will be able to sustain them through 2030. Russia faces daunting economic and demographic problems, and its aggressive actions in Eastern Europe, the Middle East, and the Pacific have awakened dormant fears of its intentions worldwide. Putin seems unique among recent Russian leaders in his willingness to take unpredictable risks in foreign policy. His primary external focus is competition with the United States and the North Atlantic Treaty Organization (NATO), which fuels his opportunistic alignment with China in the near-term. Sixty-three years old, he is likely to remain in power for another decade, but he is not yet grooming a younger successor in his mold. Developments in the Arctic will impact the Alliance in new and profound ways. The Arctic is warming at a rate almost double that of the rest of the world, and the resulting loss of sea ice poses security challenges as well as potential commercial opportunities. The melting sea ice and partially navigable northern passages could create new shipping routes between Europe, North America, and Asia. Such navigational changes in ocean transport could raise sovereignty concerns in several littoral states and drive legal disputes regarding which ocean areas constitute international waters and what rights to passage associate with such waters according to the UN Convention on the Law of the Sea (UNCLOS). Moreover, the combination of melting ice and rapid developments in transportation and exploitation technologies may open the possibility for large reserves of oil, gas, and minerals to be exploited. Arctic littoral states could move quickly and competitively to mine natural resources on their continental shelves and sea floors within their 200 nautical mile Exclusive Economic Zones (EEZs). Recent years have seen a rapidly growing military presence on the part of some Arctic littoral states, most notably Russia, in the high Arctic areas, including the movement of troops and hardware. With Japan joining four other Asian states, including China, as observers to the Arctic Council, there is an increasing focus among Asian states on engaging the existing core Arctic states on a range of regional issues. Australia, India, and Europe Japan and the United States work closely with a number of important allies and partners outside Northeast Asia. Tokyo and Washington have together been transforming the Alliance into a hub for regional and global cooperation by networking these relationships. Networking alliance relationships has been attractive because the challenges that the United States and Japan face are not isolated to Northeast Asia and are too big for bilateral alliances to manage alone. Foremost among these relationships are ties to other major democratic countries that share support for international rules, norms, and values. Efforts to increase security cooperation with Australia, India, and key European states have been central to Alliance strategy in recent years. Australia is already an extremely close ally of the United States and is now expanding security cooperation with Japan in a variety of areas, including possible submarine development, based on the historic Japan-Australia Security Agreement concluded in 2007. While its security interests and core values are fundamentally aligned with the United States and Japan, Australia has relatively higher dependence on the Chinese market for exports of natural resources. That could change, however, as exports of Australian liquefied natural gas (LNG) to Japan outpace commodity exports to a slowing Chinese economy. Overall, the trend will be towards closer U.S.-Japan-Australia strategic alignment and security cooperation over the next 15 years. India’s economic growth is impressive, and could substantially improve with better governance and economic reform. India shares a democratic political system with the United States and Japan, but its international ambitions and diplomatic capacities are likely to remain limited for the foreseeable future. Both Japan and the United States are increasing security and economic cooperation with India, complemented by enhanced trilateral strategic dialogue and joint military exercises, such as the annual Malabar exercise hosted by India. India’s non-aligned tradition will likely prevent mutual security commitments, but opportunities for security cooperation have expanded and are likely to continue to do so over the coming years. Europe has an important role to play in Asia’s security landscape and should ideally be coordinating more with the United States and Japan in forging a common approach to “grey zone” challenges, whether they are in Eastern Europe or the East China Sea. However, many European capitals view Asia through the lens of economic cooperation with China and show little inclination to oppose Beijing’s territorial ambitions, aggressive mercantile behavior, or repression of dissent. China, meanwhile, finds it increasingly easy to divide Europe and put pressure on individual member states. The United Kingdom’s surprise announcement that it would join the AIIB in 2015 provides an example of how important it is for the United States and Japan to convince European allies that they too have a stake in the security order in Asia. At the same time, Japan’s new security cooperation agreements with the United Kingdom and France point to the potential for greater alignment between the Atlantic and Pacific allies on challenges facing the Asia-Pacific region. Terrorism The threat from violent extremist Islamic organizations shows no sign of diminishing over the next 15 years. Originating in the Middle East, some of these organizations have spread through North Africa, South Asia, and into Southeast Asia. These organizations draw sympathizers, often inspired by global social media, from among minority populations in developed countries in Europe, North America, and Asia. These organizations change names, and new leaders emerge. They have grandiose ambitions to establish new Muslim states, such as the Islamic State in Iraq and the Levant; they control territory, as does Boko Haram in Nigeria; and they plan and inspire terrorist attacks in countries with both Islamic and secular governments around the world. Although the actual number of victims of terrorist attacks is relatively small, the random nature of these attacks and the intense media coverage substantially impact policies in developed countries. Most governments in the world oppose these groups, but have varying degrees of capacity to confront them, and cooperation is hampered by suspicion and policy differences in other areas. Reducing this threat will depend on a combination of military and law enforcement measures against the radical elements, improvement of governance and economic progress in countries in which social conditions give rise to support for these radical organizations, and developments within Islamic communities that further discredit terrorism as a legitimate action. Cyber The cyber domain will become increasingly important through 2030 as the Internet continues to grow and take on more important functions. The “Internet of things” and Internet Protocol Version 6 will dramatically increase the size of the Internet. Nationally sponsored cyber attacks on public and private companies in other countries have occurred, and it will be a major challenge to agree on limiting these attacks short of war. Cyber espionage is also growing rapidly, and there are differences among major countries in their choice of targets and techniques. It is a short step from cyber espionage to cyber attacks, and the lack of international understanding and agreement is potentially dangerous. The North Korean and Russian regimes both appear to have used the Internet to strike at targets in foreign countries, including the United States. The United States, Japan, and other advanced industrial countries have lost hundreds of billions of dollars in intellectual property to commercial cyber espionage, in many cases aided and abetted by authoritarian regimes. Cybercrime is another widespread and complex issue that should bring the major nations together in a common cause, at least for activities that they all consider to be criminal. A final unresolved international cyber issue is the degree of control over the Internet. China, Russia, and other authoritarian countries insist that their sovereignty extends beyond network facilities on their territory, while the United States and Japan favor an open Internet driven by private sector cooperative efforts. Despite the growing dependence of all countries on a functioning Internet, the major powers have not agreed formally or informally on principles to outlaw, prevent, or deter major cyber war—large-scale government-sponsored attacks on the power grids, transportation systems, or other critical infrastructure of another country. The link between cyber space and outer space also merits further attention. Additionally, major states have failed to establish and uphold rules and norms for economic espionage in cyber space. In both the United States and Japan, government organizations and responsibilities for protecting government networks are relatively recent and in the developmental stage. A legal and effective relationship between government and the private sector—inventor and operator of most of the important networks—has not yet been firmly established in either country. Moreover, both countries face a significant shortage of skilled cybersecurity professionals. The Commission calls special attention to the vulnerabilities that might be introduced into Japan’s electric grid and power generation system as it plans for fundamental restructuring of the ownership and operating structures of this critical network. Electric power generation and distribution networks are truly fundamental critical infrastructure. Every other infrastructure system (for example, rail transportation, fuel pumps for gasoline refueling stations, signal systems for road and rail networks, etc.) ultimately depends on reliable electric power supplies. The critical nodes of a nation’s electrical system (transformers, switching stations, generation plants, etc.) are controlled by computers. Cyber disruption of those computers could damage or destroy essential components of a national power network. Space The space domain will also be increasingly important to Japan and the United States through 2030, for both economic prosperity and national security. In 2014, China and Russia between them conducted almost twice as many space launches as the United States and Japan combined. As space has become more crowded, it has also become more contested. China’s antisatellite test in 2007 made clear the risks that kinetic weapons pose to civilian and military satellites. That test produced more than 2,600 pieces of large debris (greater than 10 centimeters) and at least 150,000 pieces of small debris (greater than 1 centimeter), the vast majority of which are in orbits projected to last a decade or longer. Other threats to satellites, such as jamming, high-powered microwaves, and laser blinding, can threaten satellites in a wider range of orbits. The threat to satellites in orbit is growing. The 1967 Outer Space Treaty prohibits nuclear weapons in space and contains a general exhortation against other hostile space activities, but has had little effect on the development of anti-satellite weapons. By 2030, China will become as dependent on satellites for both military and commercial purposes as the United States, Japan, and other advanced countries. Therefore, it may be possible to reach understandings, if not treaties, concerning the regulation of hostile activities in space.

#### China rise sets a precedent for global war.

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It has been decades since international relations in the world order dictated true competition for sea control, sea lines of communication, access to world markets, and diplomatic partnerships. However, it is becoming increasingly alarming that nations such as Iran, China and Russia seek to accumulate/consolidate power and re-define international maritime norms, potentially at the peril of diplomatic, economic, and military bonds that link NATO allies and critical partners.

Iran claims control of the Strait of Hormuz and has put the threat of closure or denial at the core of its asymmetric war strategy. In a 2019 statement in response to the U.S. plan to end waivers on Iranian oil exports, Alireza Tangsiri, head of the Iranian Revolutionary Guard Corps navy force confirmed that the Straits of Hormuz was a critical arrow in Iran’s proverbial military quiver. Tangsiri remarked that “If we are prevented from using it; we (Iran) will close it. In the event of any threats, we will not have the slightest hesitation to protect and defend Iran’s waterway.” 1

Renewed tensions between Iran and the United States, heightened further following the Trump administration’s decision to target Iranian Major General Qasem Soleimani, have renewed Iranian narratives about closing the Straits of Hormuz in an effort to break another set of renewed western sanctions. Carrying one-fifth of the world’s traded sweet crude oil, a possible interruption of oil and gas exports through the strategic waterway would have a significant, negative, impact on the global economy. 2 Moreover, it is not only oil. According to the International Energy Association, huge amounts of natural gas are also transported on that route with an estimated 33 billion cubic meters of gas, including from Iran and Qatar, passing through the Strait of Hormuz each year. 3

Likewise, China’s attempts to rationalize and assert control of 80 to 90 percent of the South China Sea, including waters allocated to neighboring sovereign states under the U.N. Convention on the Law of the Sea (UNCLOS) are equally troubling. 4 As author Bill Hayton aptly describes it in book The South China Sea: The Struggle for Power in Asia, the South China Sea is “both the fulcrum of world trade and the crucible for conflict.” 5 The challenge posed by China’s refusal to abide by international law in the South China Sea may potentially re-define the practical application of the concept of maritime freedom. Beijing is bullying its way through its selective application of UNCLOS to a maritime entitlement five times larger than permitted via the convention (China ratified UNCLOS in 1996) and customary international law, carving out an illegitimate sphere of influence. 6 In effect, if Beijing gets its way, the South China Sea will become a seaward extension of Chinese territory and the ruling Chinese Communist Party will ipso facto dictate what foreign vessels and aircraft can and cannot do. 7 The cascading effects for other critical SLOCs, from the Persian Gulf to the ever increasingly more accessible Arctic routes, could be severe if other coastal states, such as Iran and Russia, decide to press their own revisionist interpretations of maritime law. 8

Many Russia watcher and analysts support the premise that Russia, through its confrontation with the Ukrainian Navy in the Kerch Straits in November of 2018 and its subsequent restrictions on shipping, is similarly trying to rewrite the rules in the Sea of Azov, just as China has done in the South China Sea. Experts such as James Holmes, a professor of maritime strategy at the United States Naval War College, agree that the Russian actions in the Black Sea region pose a challenge to international maritime law.

“It’s an effort to set a precedent that Russia can then apply to other seas that it would also like to dominate if not control, much as the South China Sea is an expanse that China would like to ‘own,’ ” he said. “If Russia can define the Azov Sea as Russian territorial waters, there is no reason in principle it could not do so in the wider Black Sea, the Baltic Sea, Sea of Okhotsk, et cetera. So this is an easy win for Moscow and an easy place to set that precedent.” 9

In all of the examples above, the international norms and UNCLOS regulated system of maritime trade, commerce and military endeavors has come under direct challenge. In all such cases, it is incumbent upon maritime nations that believe in the freedom of the sea and require international sea based trade to maintain their quality of being, help defend this centuries-old concept that the high seas are a global commons. International waters belong to everyone and no one, with few, minor and narrowly defined exceptions. No state owns it, and no state can make laws dictating what others do there. 10 Operations, such as the ones listed above, threaten the freedom of the seas, seek to intimidate neighboring states and coerce weaker nations into violation of international law.

On a daily basis, surface naval forces of the NATO Alliance’s nations and partners are conducting peaceful operations across the globe. These joint forces at sea protect freedom of maneuver, secure the sea-lanes for global trade and economic growth, defend and promote key national interests and prevent competitors and adversaries from leveraging the world’s oceans against us. The navies of the democratic and peaceful countries of the world and the international maritime community share concern over safeguarding strategic sea lines of communication.

Versatile and scalable naval forces fulfill these crucial roles, which are the necessary preconditions to ensure the free movement of trade and commerce and to safeguard the interests of NATO and partner nations all the while maintaining a strictly defensive posture. The persistent forward presence and power projection of the Alliance’s naval forces backed by credible combat capability deters potential aggression and seeks to limit regional frictions from escalating to greater levels of conflict. These forces strengthen conditions that enable mutual prosperity.

The freedoms to use the maritime domain—the oceans, the littorals, waterways, and seafloor; the rise of global information systems, especially the role of data in decision making and the security of data supporting operational decision making are shared fundamental areas of concern, not only for the individual nations and the Alliance in general, but also for the maritime industry.

Security in the global maritime commons is not a given. Without a comprehensive, shared understanding of what is occurring in the maritime domain, achieved through a robust Maritime Situational Awareness (MSA), vital opportunities to detect and mitigate threats or critical vulnerabilities at the earliest opportunity may be lost. A comprehensive MSA network is required to facilitate information sharing and can only be established with the cooperation of military forces, national law enforcement agencies, and close cooperation with the international maritime transportation industry. Understanding Pattern of Life is critical to identifying abnormalities that may be indicators to hostile or subversive actions.

The lack of modern and agile global and regional governance structures has generated friction between the globalized corporate sector, maritime authorities and military policy-makers that undermines the maintenance of persistence relationships necessary to enhance true maritime situational awareness. In an increasingly inter-connected, inter-dependent and rapidly changing globalized world, there continues to be an absence of persistent relationships between the ever-increasing number of key stakeholders in the global maritime community of interest.

Operating according to disparate mandates, objectives, areas of responsibility and jurisdiction, there is an obvious need to develop a shared network and develop a collaborative contribution to achieve a comprehensive MSA capability in which all stakeholders’ requirements are met and enhanced. In the maritime domain, our continued freedom of the global commons requires an understanding of persistent relationships, time, space, risk, oceanography, the global supply chain, critical infrastructure and the environment, as well as the nature of the risk, and the capabilities, readiness and location of one’s competitors. So as James Holmes so eloquently states, these clashes are not merely about the Strait of Hormuz or the South China Sea.

The world’s oceans and seas comprise a single interconnected body of water. Seagoing nations must stand on the principle that maritime freedom is likewise indivisible. If the maritime community in general relinquishes its inherent freedoms in the global commons in one body of water for the sake of placating a predatory coastal state such as China, the global maritime community stands the risk some other strong coastal state will mount similar challenges in some other strategic waterway.