# Round 1---UK 21

## 1NC

### Off

Politics DA

#### Infrastructure passes now---PC is key.

David Leonhardt, 10-1-2021, "Democrats, Divided," New York Times, https://www.nytimes.com/2021/10/01/briefing/infrastructure-bill-democrats-divided.html

“It’s a serious setback,” Carl Hulse, The Times’s chief Washington correspondent, told me, “but I don’t think it’s the end of the effort.”

Perhaps the most surprising part of last night’s developments is that many analysts believe that congressional Democrats have made progress toward a deal over the past 24 hours — even if they are not there yet, and the talks could still collapse.

The background

The Senate has already passed the infrastructure bill, and Democrats overwhelmingly favor it. But House progressives have refused to vote for it without assurances that moderate Democrats also support the other major piece of Biden’s agenda — a larger bill (sometimes called a “safety net” bill) that would expand health care access and education, fight climate change and reduce poverty, among other measures.

Progressives are worried that if they pass the infrastructure bill, moderates will abandon the safety-net bill, which is a higher priority for many Democrats.

These are precisely the sort of disagreements that Democrats managed to surmount in recent years. During the debate over Obama’s health law, for example, moderates were worried about its size and ambition, while progressives were deeply disappointed about what it lacked (including an option for anybody to buy into Medicare). Yet nearly all congressional Democrats ultimately voted for the bill, seeing it as far preferable to failure.

This time, moderates and progressives are having a harder time coming to an agreement. The left, unhappy about the compromises it needs to make, has decided to use tougher negotiating tactics than in the past — thus the lack of an infrastructure vote last night. And the moderates, like Senator Joe Manchin of West Virginia and Senator Kyrsten Sinema of Arizona, have been publicly vague about what they are willing to support in the safety-net bill.

Encouragingly for Democrats, Manchin’s stance did become clearer yesterday, potentially allowing the party to come to a deal on both major bills. It is not out of the question that a deal could come together quickly and the House might vote on the infrastructure bill today or next week.

Manchin said yesterday that he favored a safety-net bill that cost about $1.5 trillion, rather than the $3.5 trillion many other Democrats, including Biden, favor. He also listed several policies that he could support in the bill, including higher taxes on the rich; a reduction in drug prices; and expansions of pre-K, home health care, clean energy and child tax credits.

These are many of the same priorities that progressives have, even if Manchin’s proposed cost means that the party will need to make hard choices about what to exclude from the bill. But the terms of the negotiations now seem clearer than they have been.

Manchin himself suggested as much. “We need a little bit more time,” he said yesterday, according to Chad Pergram of Fox News. “We’re going to come to an agreement.”

Several political analysts echoed that confidence:

Matt Glassman of Georgetown: “Oddly, now that the progressives have done their flex, I think the prospects for a deal increased a bit.”

Russell Berman, The Atlantic: “These setbacks are not final or fatal, and time is still on their side. The deadlines Democrats missed this week were largely artificial, and House leaders said a vote on the infrastructure bill could still happen as early as Friday.”

Karen Tumulty, Washington Post: “My theory: We are moving toward a deal. … What everyone is waiting for at this point is an announcement by Biden of a deal, and a call from the president for Democrats to rally around it.”

The Democrats have enormous incentives to come to agreement. If they fail, Biden’s domestic agenda is largely sunk, and the party will have forfeited a chance to pass major legislation while controlling the White House, the Senate and House — a combination that does not come along often. Democrats will also have to face voters in next year’s midterms looking divided if not incompetent.

All of that suggests they will find a path to an agreement. But it’s far from assured. The tensions within the party are more serious than they have been in years.

#### The plan costs 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 solves ag.

Jahn 19 — Chris; contributor and president of The Fertilizer Institute. (“America is in desperate need of infrastructure investment: Senate highway bill a step in the right direction” The Hill. August 7, 2019. <https://thehill.com/blogs/congress-blog/politics/456602-america-is-in-desperate-need-of-infrastructure-investment-senate)>

It’s no secret that our country’s infrastructure is in desperate need of investment after years of neglect. We’ve all groaned and said some choice words when hitting deep potholes or been late to an appointment due to road or bridge closures. As our network of roads and bridges have continued to crumble, the situation has degraded from an occasional personal inconvenience to a serious barrier to national economic growth and prosperity. The infrastructure network we depend upon to move people and commercial goods has long outlived its designed lifespan and is operating on borrowed time. For agriculture, recent flooding in the Midwest highlights how vulnerable our network is, the extensive nature of disrepair and how quickly critical food supply chains can be severed. These disruptions are not just headaches for the fertilizer and farming industries; they can potentially lead to higher prices on everyday goods for all consumers. Last week Sens. [John Barrasso](https://thehill.com/people/john-barrasso) (R-Wyo.), [Tom Carper](https://thehill.com/people/tom-carper) (D-Del.), [Shelley Moore Capito](https://thehill.com/people/shelley-moore-capito) (R-W.Va.) and [Ben Cardin](https://thehill.com/people/benjamin-cardin) (D-Md.) demonstrated much needed leadership by introducing [“America’s Transportation Infrastructure Act of 2019,”](https://www.epw.senate.gov/public/index.cfm/2019/7/epw-committee-leaders-introduce-most-substantial-highway-legislation-in-history) legislation that would provide $287 billion over five years to maintain and repair our crumbling roads and bridges. The funding level authorized in the bill is a nearly 30 percent increase over current levels and will be a much-needed economic shot in the arm for all communities and local economies across the country. Our country’s roads and bridges have always played a critical role in getting plant nutrients to farmers’ fields when they are needed. But with [railroad rate increases](https://www.theregreview.org/2019/06/24/moore-us-freight-customers-taxed-higher-rail-rates/), rail service challenges and stalled reform efforts due to oversight board vacancies, roadway infrastructure is more important now than ever. Unfortunately, the state of our road system is hurting our industry’s ability to deliver fertilizer to customers. Last year we had truck drivers waiting in line for up to 11 hours to pick up fertilizer due to bottlenecks and breakdowns in road networks. This year we saw heavy rains wash away deteriorating roads and bridges that should have long ago been repaired and upgraded to standards that keep our economy growing and our communities connected. The Senate proposal would provide $6 billion over five years to address the backlog of bridges in poor condition nationwide and alleviate and prevent future network delays. The importance of the timeliness of fertilizer deliveries cannot be overstated. The safe and reliable delivery of fertilizer to ensure that nutrients can be applied at just the right time in the growing process is absolutely essential to both keeping crop yields high enough to sate global demand and protecting the environment. The Fertilizer Institute (TFI) has for years been tirelessly promoting 4R Nutrient Stewardship, a collection of best management practices which include using the Right fertilizer source, at the Right rate, at the Right time and in the Right place. The 4Rs have been identified by multiple conservation and environmental stakeholders as one of the most impactful pathways to keep fertilizer on fields where it belongs and out of waterways where it doesn’t. A key part of that formula is getting it there at the Right time and a reliable infrastructure network is necessary to make that happen. In addition to providing needed investment in roads and bridges, the Senate legislation supports increased research for carbon capture and storage projects. Thanks to years of investment, nitrogen fertilizer production efficiency has essentially reached its technical efficiency limit due to the laws of chemistry. Carbon capture and recycling is and will continue to be a strategy to reduce emissions from the nitrogen fertilizer production process. In 2016, our industry captured 8 million metric tons of carbon dioxide, the equivalent of removing 1.7 million cars from the road for a year. Additional investments in research and development in this area will help continue to reduce emissions by making the technology more feasible, efficient and scalable for future use. At the end of the day, the fertilizer industry relies heavily on the timely delivery of product to growers where and when they need it so they can grow the food, fuel and fiber to feed a growing world. Our country’s farmers are the best and most productive in the world and the United States is the globe’s top agricultural exporter. A robust and well-maintained infrastructure network to facilitate the movement of critical inputs is necessary to ensure that doesn’t change. “America’s Transportation Infrastructure Act” will help ensure U.S. agriculture has a 21st century transportation network that allows it to thrive and grow in a competitive global marketplace.

#### Strong US ag solves great power war.

Castellaw 17—Lieutenant General, former President of the non-profit Crockett Policy Institute (John, “Opinion: Food Security Strategy Is Essential to Our National Security,” <https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security>)

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

### Off

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#### Interpretation---core antitrust laws apply throughout the economy.

David Gerber 20. October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15.

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Violation---the plan’s expansion only applies extraterritorially---that’s not economy-wide.

#### Vote Neg:

1. Limits---sectors are unbounded, permitting any procedural change to all industries.

2. Ground---centralizes generics with literature prominence.

### Off

States CP

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

#### ---expand the scope of state antitrust laws to substantially increase prohibitions on anti-competitive business practices by the private sector by at least expanding the extraterritorial scope of core antitrust laws.

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

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

#### Solves---states can pursue autonomous antitrust enforcement even when conflicting with federal law.

Erik **Knudsen 20.** Erik G. Knudsen is a partner in the Corporate Department and Private Equity Buyouts & Investment Group. Erik focuses his practice on complex business transactions, including leveraged buyouts, strategic mergers, acquisitions, investments and joint ventures, reorganizations, growth equity and venture capital investments, and divestitures. He has led transactions in a wide variety of industries, including healthcare, internet, technology, real estate, distribution and manufacturing. "Trends In State Antitrust Enforcement: Colorado Expands Attorney General’s Authority To Challenge Transactions On Competition Grounds." JD Supra. 4-16-2020. https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950

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.

### Off

FTC DA

#### The FTC’s increasing its enforcement of privacy regs---they’re 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.

#### The plan drains finite FTC resources.

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

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

#### That trades off with 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 causes 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.”

### Off

Notice-and-Comment 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 anti-competitive business practices by the private sector by at least expanding the extraterritorial scope of its core antitrust laws.

#### Solves 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 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 extinction.

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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

K

#### Anti-trust pacifies the working class, buys time to mystify unsustainable accumulation, and maps competition onto subjectivity, devaluing life.

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

I. Neoliberal Reason

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

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

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

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

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

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

II. From Keynesian State Capitalism to Neoliberal Deregulation

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

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

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

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

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

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

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

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

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

#### Cap causes extinction and structural violence.

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

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

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

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

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

#### Vote Neg for anti-capitalist commons.

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

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

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

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

### Off

Regs CP

#### The United States federal government should ban extraterritorial price fixing through non-antitrust regulations and use criminal fines and treble damages for punishment.

#### The CP PICs out of antitrust legislation and the FTC and DOJ as enforcers---other regs 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

CFIUS CP

#### The United States federal government should define extraterritorial price fixing as a threat to national security.

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

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

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

### Adv 1---1NC

#### Alt causes to dollar decline overwhelm their internal link.

Lucas Leiroz 20. Research fellow in international law at the Federal University of Rio de Janeiro. “Dollar declines as global currency,” InfoBRICS. 11-25-2020. https://infobrics.org/post/32332

**The decline of the dollar** as a world currency **has set a new record recently.** In October, the euro replaced the dollar as the preferred currency for international payments for the first time in seven years. In the same month, the growth of the pound sterling and the Japanese yen as alternative models of global payment was impressive, indicating even more rejection of the American currency, until now considered absolutely hegemonic.

About 37.82% of the money transfers that the Society for Worldwide Interbank Financial Telecommunications (Swift) reported last month were in euros, which means that there has been an increase of more than six percentage points since the end of last year - meanwhile, the use of the dollar has fallen by about from 4, 6 percentage points since last December, reaching 37.64% of transactions in the month of October.=

**Several factors influence the recent phenomenon of the dollar’s reduction.** The fall in the use of the American currency occurs in the midst of events such as the world economic crisis generated by the pandemic of the new coronavirus, the problematic American elections and the trade war between Washington and Beijing. All of these facts contribute to a greater instability in the dollar system, which leads to its rejection. What worries the supporters of such a system, however, is the fact that **none of these factors has a** predicted **solution** in the near future, **indicating a possible increase in the dollar's decline** in the coming months or years.

Since its peak in March, the dollar has weakened more than 11%, according to data collected by Bloomberg. Experts believe that **its valuation may decline** **even further** in the coming months **if vaccines against the new coronavirus become widely available** by 2021, considering that investors may switch from American assets to international assets, if they see more economic movements in the rest of the world with the distribution of vaccines. Thus, the advances in vaccine research and the good results of tests tend to further hinder dollar negotiations and favor transactions in alternative currencies, as they favor a betting scenario and diminish an exaggerated search for financial security.

In parallel, **the yuan has become a very attractive asset for global investors** looking for stability and profit in recent times, as government bonds denominated in US dollars, yen and euros offer little, if not negative, returns when considering interest rates or exchange. Chinese five-year government bonds continue to offer an annual yield of more than 3%, while US government debt with the same maturity offers only 0.4%. In addition, China's rapid economic recovery after the coronavirus outbreak helped the yuan to reach a great advantage in relation to the US dollar. Experts believe that by the end of 2020, more than 40% of China's outstanding foreign debt will be denominated in yuan. It is important to emphasize that at the present time, the dollar remains the main financing currency in the world, with about half of all international loans and debt securities in dollars, according to a report published by the Bank for International Settlements in July. 85% of all foreign exchange transactions are currently carried out in dollars. Therefore, the current figures, while impressive, do not indicate an abrupt decline or an "end of the dollar era" for the coming months. What we are witnessing is the beginning of a long process of decline, which may or may not be reversed according to the progress of the factors that led to such decrease.

In fact, the international monetary system, controlled by the dollar for decades, is undergoing structural and profound changes. The yuan's rise in international trade and investment flows indicates that the Chinese currency already has “global currency characteristics”, having the necessary conditions to dispute the dollar's hegemony. But the coming scenario does not seem to be that of a new hegemonic currency.

#### No impact to dollar decline.

Pettis 14 (Michael, professor of finance at Peking University’s Guanghua School of Management, Senior fellow at the Carnegie Endowment for International Peace, MBA, Finance, Columbia University; MIA, Development Economics, Columbia University , October 05, 2014; “Are We Starting to See Why It’s Really the Exorbitant “Burden”, http://carnegieendowment.org/2014/10/05/are-we-starting-to-see-why-its-really-exorbitant-burden/hr5x)

In the days of the gold standard it was possible for an advanced economy like the US to suffer from the first condition. Today it suffers from none of the three conditions. 5. Let me explain why it does not suffer from the first. If the US is a net recipient of capital inflows, it is simply taking the other side of the accounting identity I listed earlier: an excess of savings over investment in one part of an economic system requires an excess of investment over savings in another part. If Japan, with its undervalued currency and repressed interest rates, forced its savings rate up above its already high investment rate in the 1980s, and used the excess to by US government bonds, the US had to see its investment rate exceed its savings rate. There are only three ways in which the US can increase investment relative to savings, or reduce savings relative to investment: It can increase productive investment. It can increase nonproductive investment, especially in real estate, as foreign inflows unleash a stock and real estate market bubble, or it can increase consumption, as these bubbles unleash a wealth effect which causes ordinary Americans to increase their consumption relative to their income (i.e. reduce their savings). In either case US debt rises faster than US debt-servicing capacity. Unemployment can rise as the expansion in imports relative to exports causes American factories to cut back on production and fire workers. Of course fired workers no longer produce but they still must consume, so the savings rate drops. These are the only three possible outcomes. If productive investment in the US has been constrained by the lack of American access to capital – domestic or foreign – as was the case in the 19th Century, it is possible that reserve currency status increases American employment and wealth creation. But in advanced economies productive investment is never constrained by lack of capital. It is almost always the case, in other words, that an increase in net foreign investment to the US (and to most advanced countries by the way) must result in some combination of a speculative investment boom, a consumption boom or a rise in unemployment. What typically happens is that in the beginning we get the first two, until debt levels become too high, after which we get the third. 6. Bryan Riley and William Wilson, two economists from the Heritage Foundation, in their response to Jared Bernstein’s article, provided their reasons in a blog entry last month for arguing that in principle the benefits of use of the dollar as the dominant reserve currency exceed the cost to the US of this higher debt or higher unemployment. Their piece was fairly short, and so I don’t want to suggest that I am representing the full scope of their disagreement, but they suggest that the benefits are: Seignorage. The largest benefit has been “seignorage,” which means that foreigners must sell real goods and services or ownership of the real capital stock to add to their dollar reserve holdings. Low Interest Rates. The U.S. has been able to run up huge debts denominated in its own currency at low interest rates. The dollar’s role as the world’s reserve currency reduces U.S. interest rates because foreign investors like to invest in the relatively safe U.S. economy. Lower Transaction Costs. U.S. traders, borrowers, and lenders face lower transaction costs and foreign exchange risk when they can deal in their own currency. It’s easier to do business with people who take dollars. Power and Prestige. The dollar’s dominant reserve status gives the United States political power and prestige. Britain’s loss of reserve-currency status in the 20th century coincided with its loss of political and military preeminence. 7. I think this is a pretty fair summary of the arguments generally used in favor of supporting “king dollar”, and I think they are worth addressing specifically. To address seniorage, the benefits of seniorage are really what the whole debate is about. If the US believes that it is important for the global trading system that the US produce enough reserves for a growing global economy, and if the global trading system benefits the US, it should do so. As long as the growth in global reserves is less than the growth in the US economy, the associated rise in debt is sustainable. But, and this is the Triffin Dilemma, if reserves and other government accumulation of US assets grow faster than US GDP, seniorage results in an unsustainable increase in US debt (or unemployment). In my previous blog entry I argued that the former may have been the case in the 1950s, but as global GDP growth exceeds US GDP growth, as more countries and regions join in the global trading system, and as there is convergence between advanced and backward economies, the growth in US debt needed to capture these benefits either becomes unsustainable or, to restrain the growth in debt, requires a rise in US unemployment. 8. To address lower interest rates, I showed in my book why foreign purchases of US government bonds do not lower US interest rates. At best they simply distort the US yield curve and in the long term even raise them. I will not repeat the full explanation here, especially as there is a bit of circularity in the argument and counterargument: If the exorbitant burden causes unemployment to rise, as Austin and Bernstein argue, fiscal revenues must drop and fiscal expenses must rise, causing total government debt to rise by the same, or more (because most of us would agree that demand created by government spending is less efficient than demand created by trade) than the capital inflows available to fund government debt. So the additional supply of funding is only equal to or less than the additional demand for funding. But if you think unemployment doesn’t rise, as Riley and Wilson might argue (I am not sure if they do or don’t), then total debt doesn’t rise, or it doesn’t rise much, and the additional funding should cause interest rates to decline. In order to keep this short I would suggest simply that we consider the following. The larger a country’s foreign current account deficit, by definition the greater the inflow of foreign money to purchase its assets, mainly government bonds in the case of the US and many other countries. The higher a country’s current account surplus, by definition the greater the outflow of money to purchase foreign assets, and the less domestic money available to purchase domestic assets. Is it reasonable, then, to assume that the larger a country’s current account deficit, the lower its interest rates, while the larger a country’s current account surplus, the higher its interest rates? This is what the low-interest-rate argument implies. 9. To address transaction costs, while it is true that trading in US dollars reduces transaction costs for American businesses, it is hard to believe that these transaction costs are not priced into the imports and exports of their foreign counterparts. More importantly, it is not clear that reducing central bank purchases of US government bonds will cause transaction costs to rise. The vast bulk of trading volume does not consist of central bank purchases of US government bonds. It is trade and investment related. If foreign central banks were limited in their ability to stockpile US dollar reserves, foreign exchange transaction costs would barely budge. 10. To address power and prestige, while it may be true that Britain’s loss of reserve-currency status in the 20th century coincided roughly with its loss of political and military preeminence, I think it is incorrect to imply that Britain lost power and prestige after the Great War mainly or even partly because sterling lost its status as the dominant reserve currency (which in fact really occurred some time in the 1930s and 1940s). It was the destruction, during the first two years of the Great War, of London’s role in trade finance (which formed the vast bulk of international lending at the time, with nearly the entire trade finance market moving to neutral Amsterdam and New York), followed by its aerial pounding in WW2, that caused London to lose its financial pre-eminence. Even today it is hard to associate London’s current role as either the first or second most important financial center in the world, depending on how you measure it, with the status of sterling as a reserve currency. What is more, the US dollar only became the pre-eminent reserve currency in the 1930s and 1940s, but the US was the leading economic power – nominally, per capita, and technologically – by the 1870s. I would argue that US power and prestige probably has more to do with the size and dynamism of its economy, with the creativity of Hollywood and New York in entertainment and fashion, with technological innovation in San Francisco, Boston, New York, Austin, and elsewhere, with its composers and artists in New York, San Francisco, and elsewhere, with its overwhelming military superiority, with its universally-valued ideal of ethnic inclusiveness and individualism, with its Ivy League and elite universities, with its think tanks, with its astonishing scientists, and with a host of other factors more important than the currency denomination of central bank reserves.

#### The plan 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.

#### It ends the Japan economic alliance.

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)).

#### That turns their China and LIO scenarios.

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.

### Adv 2---1NC

#### 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**.**

#### No econ decline impact.

Stephen M. Walt 20. Robert and Renée Belfer professor of international relations at Harvard University. "Will a Global Depression Trigger Another World War?" Foreign Policy. 5-13-2020. https://foreignpolicy-com.proxy.library.emory.edu/2020/05/13/coronavirus-pandemic-depression-economy-world-war/

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

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

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

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

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

#### No impact to the LIO.

Graham Allison 18. Professor of Government at Harvard. “The Myth of the Liberal Order.” Foreign Affairs 97.4: 124-133

Among the debates that have swept the U.S. foreign policy community since the beginning of the Trump administration, alarm about the fate of the liberal international rules-based order has emerged as one of the few fixed points. From the international relations scholar G. John Ikenberry's claim that "for seven decades the world has been dominated by a western liberal order" to U.S. Vice President Joe Biden's call in the final days of the Obama administration to "act urgently to defend the liberal international order," this banner waves atop most discussions of the United States' role in the world. About this order, the reigning consensus makes three core claims. First, that the liberal order has been the principal cause of the so-called long peace among great powers for the past seven decades. Second, that constructing this order has been the main driver of U.S. engagement in the world over that period. And third, that U.S. President Donald Trump is the primary threat to the liberal order-and thus to world peace. The political scientist Joseph Nye, for example, has written, "The demonstrable success of the order in helping secure and stabilize the world over the past seven decades has led to a strong consensus that defending, deepening, and extending this system has been and continues to be the central task of U.S. foreign policy." Nye has gone so far as to assert: "I am not worried by the rise of China. I am more worried by the rise of Trump." Although all these propositions contain some truth, each is more wrong than right. The "long peace" was the not the result of a liberal order but the byproduct of the dangerous balance of power between the Soviet Union and the United States during the four and a half decades of the Cold War and then of a brief period of U.S. dominance. U.S. engagement in the world has been driven not by the desire to advance liberalism abroad or to build an international order but by the need to do what was necessary to preserve liberal democracy at home. And although Trump is undermining key elements of the current order, he is far from the biggest threat to global stability. These misconceptions about the liberal order's causes and consequences lead its advocates to call for the United States to strengthen the order by clinging to pillars from the past and rolling back authoritarianism around the globe. Yet rather than seek to return to an imagined past in which the United States molded the world in its image, Washington should limit its efforts to ensuring sufficient order abroad to allow it to concentrate on reconstructing a viable liberal democracy at home. CONCEPTUAL JELL-O The ambiguity of each of the terms in the phrase "liberal international rules-based order" creates a slipperiness that allows the concept to be applied to almost any situation. When, in 2017, members of the World Economic Forum in Davos crowned Chinese President Xi Jinping the leader of the liberal economic order-even though he heads the most protectionist, mercantilist, and predatory major economy in the world-they revealed that, at least in this context, the word "liberal" has come unhinged.

#### No impact to biodiversity, which is the terminal impact to chemical innovation.

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.

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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.

## 2NC

### Cap K---2NC

#### Disciplining DA – Invert your standard for solvency – “feasibility” concerns are propaganda and inculcate violent subjectivity.

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

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience.

The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25

Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26

Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27

Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

#### Any combo poisons the well.

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

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

#### Boom & Bust: Market competition inevitably creates economic busts and proves capitalism’s contradiction.

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

When Things Fall Apart

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Off-shoring: Domestic competition necessitates global consolidation and protectionism.

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

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

#### 1. Ag collapse – short term.

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

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

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

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

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

#### 2. Carbon bubble, peak oil

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

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

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

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

#### 3. Mineral cycles – that’s Allinson – copper, lithium, manganese hit bottlenecks. Tipping points happen before we know them AND goods are not substitutable.

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

Endless growth will generate minerals scarcity within decades

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

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

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

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

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

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

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

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

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

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

The Covid slump of 2020-21 was basically a supply-side shock due to the global spread of the Covid-19 virus and the failure of governments in the major economies (with a few exceptions) to prevent its spread. There were delayed and bungled measures along with weakened health systems, so economies had to close down as lockdowns and isolation measures were the only answer to avoiding catastrophe. Economically, that meant supply stopped, and then that led to a collapse in demand as people were laid off and businesses crashed.

But recovery is now under way (more or less) in most major economies. Demand was propped up in the major advanced economies through massive government fiscal spending and central bank injections of credit for businesses (particularly large ones). And now through a combination of lockdowns and the incredibly fast development and rollout of effective vaccinations (thanks to publicly funded science), the major economies are now able to recover.

But in the G7 economies this initial recovery has the aspect of a “sugar rush.” The “sugar” of fiscal stimulus and historic levels of easy credit is infusing capitalist businesses and household spending with an energy boost.

Indeed, during the pandemic slump sections of capitalism did not suffer at all; on the contrary, they gained hugely, e.g., the social media and tech sector, the mega-distribution companies, and Big Pharma.

Better-off households also suffered less (at least materially) as they continued to be paid, could work at home, and saved income significantly. This led to a house purchase boom as these sectors of labour looked to change their lifestyles post-Covid.

At the same time, zero interest rates and cheap credit allowed financial institutions to make hay in financial markets and billionaire wealth rocketed as stock and bond markets hit historic highs.

But, for most manual workers in the cities and in low-paid service industries, the pandemic slump was a disaster and with little prospect of returning to “normal” for them in the recovery.

And it’s the advanced capitalist economies and the East Asian states that are recovering best in 2021-22. The so-called global South suffered hugely in the pandemic, with record levels of excess deaths and a massive rise in unemployment and poverty levels. Fiscal support from governments was limited and the rollout of vaccines to get economies going again is way short. Estimates are that the target vaccination levels in these countries will not be achieved until 2023-4!

So, what we are going to see is the major capitalist economies of the West and China returning to pre-pandemic levels of national output by the end of this year or in early 2022, but Latin America, Africa, South Asia failing to do so.

What are the weaknesses and contradictions of the recovery in those economies?

Before the pandemic, the world economy was slowing down. Real GDP growth rates in the G7 were dropping to just 1 percent or lower; the so-called emerging economies had growth rates down to 3 percent (hardly enough to cover increases in population). World trade was declining. Even the giant economies of China and India had slowed.

The main reason was that growth in investment in productive assets that can boost the productivity of labor and expand technology and employment had also slowed. In my view, investment and productivity growth are key to developing the productive forces of modern capitalist economies, and they were failing because under capitalism, profitability is the driving force behind investment.

And according to the best estimates, US and global profitability levels are at historic lows. This is the long-term result of the basic contradiction of capitalism: between raising the productivity of labour and sustaining profitability. Over the long term, this cannot be done, and this is the economic Achilles heel of capital.

At first sight, this result seems strange when we read of the huge profits being made by the likes of the so-called FAANGS (the tech and social media monopolies) and Amazon. But these are the exceptions that prove the rule. On average, the profitability of firms in the productive sectors of capitalist economies are low.

That’s partly why profits have been reinvested into financial and other unproductive sectors like property where profitability is higher.

Indeed, it is estimated that before the pandemic, about 15-20 percent of companies in the major economies were what are called “zombies,” i.e., not making enough profit to invest or expand, but just enough to pay wages and service their debts. They are the “living dead” in capitalist terms. At the same time, however, corporate debt is at record highs in most countries, raising the risk of bankruptcies if interest rates were to rise.

All this makes it unlikely that we shall see any significant change post-pandemic from what we saw in the post-great recession decade, i.e., slow growth in investment, low wage growth, poor productivity growth, rising inequality, and unchanged or worsened global poverty.

In the US, a lot has been made about Biden’s turn away from the neoliberal consensus toward Keynesianism. What has he done, why has he done it, and what has been its impact so far?

The pandemic fiscal packages introduced by various G7 governments and, of course, by the Biden administration were emergency measures by states to avoid complete meltdown and catastrophe from the pandemic. In my view, they do not signify a change of ideology or policy by pro-capitalist governments. The usual talk is “let’s get out of this slump and preserve capitalist businesses using state funds and credit and then worry about paying it all down later.” The “later” is still to come.

Biden’s fiscal packages have been heralded as a sea change in government policy and a return to Keynesian macro-management and stimulation of capitalist economies. But first, let’s leave aside the fact that Keynesian stimulus and macro-management was mainly a myth anyway and really the product of a war economy after 1945 which was ditched in the mid-1970s.

Instead let us consider the actual impact of the Biden packages. The latest estimates by Goldman Sachs, hardly a voice of the left, is that after all the machinations of Congress by the end of this year, the Biden package will be equivalent to about 1 percent of US GDP each year for the rest of Biden term. But Biden is going to pay for these partly by increasing taxation by 0.75 percent of GDP a year.

Given that the best estimates of so-called multiplier effects on GDP from fiscal stimulus are about one, that means the net effect of the Biden packages, if fully implemented, might boost US real GDP growth by 0.25 percent a year. The current forecast for long-term us real GDP growth is just 1.8 percent a year. So, the “great” return to Keynes by Biden will be minimal.

If Biden manages to get his larger proposals for increased spending on infrastructure and social welfare spending through Congress, what impact will that have on the US and world economies?

If the Biden package will have a limited effect on the US economy, any spillover effect into other economies will be even less substantial. The EU is also planning an economic recovery package that will boost government funds in EU countries with already large debt burdens like Italy and Spain. But again, the impact on the capitalist sectors of these economies will be minimal. Japan is about to announce a fiscal package that aims to “balance the books” over the next decade – hardly stimulus then! Indeed, the latest growth forecast for japan is a further slowing from its pre-pandemic pace of less than 1 percent a year.

And apart from China, Vietnam, and the small East Asian states, the rest of the global South has little prospect of any fiscal stimulus or economic recovery. Most estimates from international agencies are that these economies will not recover to pre-pandemic GDP levels before 2023 and will never recover to pre-pandemic trajectories of economic growth. There is a permanent “scarring” of these weak peripheral capitalist economies.

There has been a whole range of bourgeois commentators like Lawrence Summers warning about the threat of inflation. What’s your assessment about the arguments about inflation? What are the dangers of a return to what in the 1970s was called stagflation, a combination of slow growth and increased inflation?

In the short term, inflation has returned to many economies. This is because of the sugar rush of consumer demand as economies open up again and people start spending down savings built up during the pandemic slump, while companies search for raw materials and components to restart businesses. Coupled with a significant disruption of global value chains, supply cannot meet demand and bottlenecks have created an inflation of prices in raw materials and consumer goods and services.

But is this as transitory as the federal reserve and other central banks claim (though to be fair, there are divergent views within these banks)? Some, like Summers, argue that credit and fiscal stimulation boost demand without engendering enough supply because there is a secular stagnation in investment and productivity in modern economies.

Others argue that credit injections and monetary easing after the great recession did not lead to inflation. On the contrary, easing only boosted financial and property prices. The Keynesian view is that inflation only happens when wage costs rise, i.e., inflation is caused by labor rather than capital. And that is not happening so far.

My view is that price inflation in goods and services in capitalist economies comes about through a combination of demand generated by new value (as expressed in wages and profits) and the pace of money supply growth. But it is the change in value production that matters most.

Capitalist economies have experienced a slowdown in new value growth for decades, so inflation rates have slowed to a trickle. Central banks have tried very hard with monetary easing to get some inflation (2 percent targets, etc.) and failed. Tinkering with interest rates and money quantities cannot deliver even moderate inflation in these conditions.

So, after this initial burst, inflation will rise above pre-pandemic rates (i.e., 2 percent or so) only if the world capitalist economies generate faster growth in new value (unlikely) and/or there are sustained levels of double-digit growth money supply (possible). The latter is what central banks control, and they are divided on how long to maintain that.

This raises larger theoretical questions on the left. Many believe that Keynesianism or Modern Monetary Theory can stimulate growth and bring about a more egalitarian capitalist order. You have challenged these ideas in your blog, The Next Recession. Why do Marxists argue that Keynesianism can’t overcome capitalist crisis in general and in this slump?

The key to answering this is to recognize that capitalists decide whether economies grow or go into slump. By that I mean capitalists will only invest in means of production and employment if there is a profit to be made. Profit calls the tune under capitalism. And as mentioned above, average profitability in the major capitalist economies is low; corporate debt is high, and many firms are just surviving through cheap credit and not investing productively.

But Keynesian theory does not consider capitalist economies from the perspective of profitability. It’s effective demand that decides. If government spending can increase demand, then it can get capitalist economies going. If Marxist theory is a better explanation of capitalist accumulation, then if profitability of capital stays low and does not recover to new higher levels post-pandemic, then government spending will be ineffective.

#### This is a brink argument for us---We haven’t passed every tipping point and it can only get worse---the alternative solves and market based environmental mechanisms doom us to catastrophe.

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

In an article titled [“Understanding the Challenges of Avoiding a Ghastly Future,”](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) 17 climate scientists from around the globe state that, “The scale of the threats to the biosphere and all its lifeforms—including humanity—is in fact so great that it is difficult to grasp for even well-informed experts.” Yes we’ve heard about increasing global temperatures, but these scientists lay out the much longer list of symptoms that will come as a result of unmitigated climate disaster: mass species extinction, unprecedented migration, more pandemics, extreme weather, and food, water, and land shortages. These compounded crises are on the horizon if we do not fight for a top-to-bottom overhaul of society and an end to the for-profit economic system of capitalism. Under a subhead “Political Impotence” these scientists detail the contradictory reality of a rapidly worsening climate situation and the increasing clash of national interests that, if left intact, dooms the type of international collaboration necessary to avert full-scale climate disaster. The situation is so bad that it has forced a section of the global ruling class to act. The World Economic Forum’s 2020 conference was [dubbed](https://time.com/5771889/davos-climate-change/) by *Time* a “Climate Conference,” Biden released his climate-driven infrastructure proposals, and corporations have pledged to cut emissions. All of this can be glimmers of hope to some. But the pace of change that’s possible on the basis of a competitive, free-market economy, even one that has resolved to fight climate change, is far too slow. We need a socialist transformation of society on a green basis, which will only be achieved by a genuine revolt of the global working class. **State of the Climate** Having already surpassed an increase of 1.0° C above pre-industrial global temperatures, we are on track to reach 1.5° C between 2030 and 2052. Even if the emissions reduction goals of the much hailed Paris Climate Agreement were met (which they are not almost anywhere) we would reach 2.6-3.1° C of warming by 2100. According to the international scientific community, anything above 1.5° C would be catastrophic. CO2, methane, and nitrogen levels (three long-lived greenhouse gases that cause warming) all [started to dramatically increase in 1750](https://www.acs.org/content/acs/en/climatescience/greenhousegases/industrialrevolution.html) with the rise of the coal-fueled industrial revolution and the rise of British capitalism. Imperialism spread these fossil-fuel-burning, resource-extracting, and industry-building methods around the globe. Today, electricity and heat production are the biggest source of emissions leading to a warming planet ([25% globally](https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data)), followed by agriculture, forestry, and other land use (24%), and then industry at 21%. Since 1992, CO2 emissions from energy and industry have [increased by 60%](https://www.iea.org/reports/net-zero-by-2050). From 1990 to 2005 emissions from agriculture [increased by 17%](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter8-1.pdf). The bulk of these greenhouse gas emissions from the rise of capitalism to today have [come directly from corporations](https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change). Scientists have warned that we have [either reached or surpassed](https://www.cbsnews.com/news/climate-change-tipping-points-amazon-rainforest-antarctic-ice-gulf-stream/) a number of climate tipping points, which are a “point of no return” in the climate system that mean unavoidable and dramatic consequences. The conversion of the Amazon rainforest into a savannah, the melting of the West Antarctic ice sheet, and the complete collapse of the Gulf Stream are all decisively underway, meaning a collapse of biodiversity, huge dumps of carbon and methane into the atmosphere, extreme sea level rise, and uncontrollable weather. Climate-related extreme weather disasters [jumped by 83%](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) globally in the last 20 years, killing 1.23 million people. Major floods have doubled and severe storms have increased by 40%. Last year saw the worst wildfire season in the West on record and the Southeast broke the record of number of tropical storms and hurricanes. This will only get exponentially worse. Right now, the West Coast is experiencing its [worst drought in 1,200 years](https://www.usatoday.com/story/news/nation/2020/04/16/drought-worst-western-megadrought-here-study-says/5145929002/). Lack of rainfall and snowpack (frozen reservoirs that release water during spring and summer) are spelling what could be the worst fire season yet, with two fires each in California, Arizona, and New Mexico already this season. With a warming climate and worsening droughts, extreme water shortages will be [“nearly ubiquitous”](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) west of Missouri by 2040 according to projections from the federal government. The Ogallala Aquifer, which supplies nearly a third of the country’s irrigation groundwater and supports [one sixth of the world’s grain production](http://duwaterlawreview.com/crisis-on-the-high-plains-the-loss-of-americas-largest-aquifer-the-ogallala/), could be gone by the end of the century. In response to droughts, New Mexican officials have directed farmers who rely on water from the Rio Grande and other rivers to [avoid planting crops](https://www.krqe.com/news/new-mexico/extreme-drought-pushes-local-farmers-to-get-creative-to-water-crops/) unless absolutely necessary. Floods, drought, storms, fire, and global warming pose a dramatic threat to our homes, our communities, and our water and food supply. A half-billion people around the world already live in places that are turning into desert because of destructive agricultural practices and a warming climate that will eliminate the potential for anything to grow. [One billion people](https://sciencepolicyreview.org/2020/08/coral-reefs-are-critical-for-our-food-supply-tourism-and-ocean-health-we-can-protect-them-from-climate-change/) globally rely on coral reefs for food, which now face extinction from warming oceans. Sea level rise, caused by melting ice at the poles will cause extreme flooding, eliminating coastal land for food production and displacing entire communities. By 2060, an estimated [13 million](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) people in the U.S. will be forced to move away from submerged coastlines, which would represent the largest internal migration in American history. In 2019, weather-related hazards forced 24.9 million people across 140 countries to move. Estimates suggest there will be anywhere from [200 million](https://reliefweb.int/report/world/cost-doing-nothing-humanitarian-price-climate-change-and-how-it-can-be-avoided) to [1 billion](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) environmental migrants by 2050 when you factor in permanent food and water shortages. This means, in the worst case scenario, one in seven people globally will be forced to move because of climate change in the next 30 years. Already in the U.S. a historic surge at the southern border has largely been driven by devastating hurricanes and prolonged droughts in El Salvador and Honduras. Massive migration will further strain dwindling resources. As one example, by 2100 it is possible that Atlanta, GA [could receive a quarter million new residents](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) from sea-level rise displacement alone. But Atlanta may very well lose its water supply by then to drought and face worsening heat-driven wildfires. And if all this wasn’t bad enough, increasingly dense cities in many countries and strained public services from forced climate migration threaten worse outcomes for future disease outbreaks. Scientists are already [warning of more deadly pandemics to come](https://internationalsocialist.net/en/2021/03/coronvirus), largely linked to deforestation and a loss of biodiversity. One of the most terrifying and underreported realities is that it is “scientifically undeniable” that we are already on the path of a [sixth major extinction](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full). One million (out of 7-10 million) species are at threat of immediate extinction, 40% of plants are endangered, and insects (including pollinators who help us grow food) are disappearing rapidly. An extinction event on this scale will have profoundly destabilizing and complex consequences on global ecosystems. It will contribute to more warming, worse food shortages, poorer water and air quality, more frequent and intense flooding and fires, and compromised human health. **The Cost of the Climate Crisis** All of these horrifying consequences of the unrestricted use of fossil fuels have been known to scientists, politicians, and CEOs for decades. But as scientists really started to ring the alarm bells in the early 80s, deregulation of industry and global expansion under the neoliberal era took carbon emissions to record highs. Capitalism’s virtually unrestricted pillage of the natural world in the interest of profits has gone so far that it now threatens its own economic and political security. Capitalism has never factored environmental impact into its profit-making formula. This despite the fact that all of its wealth comes from the raw resources of the earth, and the work done to them by workers. According to a recent UN report, if any company did have to pay the cost of their environmental damage, not one of them would actually be profitable. We’ve been operating under a severe climate deficit for centuries, but our economic and political system has blatantly ignored this fact because living sustainably is fundamentally contradictory to capitalism’s constant need to expand, cut costs, and maximize profits. In the last 20 years, an estimated [$2.97 trillion](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) in global economic losses have come as the result of climate-related extreme weather events. In the most extreme climate warming scenarios, the U.S. alone could lose [$520 billion](https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/) a year from climate change damages. Food and water shortages, destroyed infrastructure, worse and more widespread human illness and instability, the collapse of tourism economies, and more will be extraordinarily expensive. The International Energy Agency (IEA), which informs climate policy globally and has historically encouraged the use of fossil fuels, issued a [shocking report](https://www.iea.org/reports/net-zero-by-2050) this month that sets the goal of reaching net zero carbon emissions by 2050. They say that this means halting sales of new internal combustion engine passenger cars by 2035, phasing out all coal and oil plants by 2040, and halting any new investment in oil or natural gas this year. This means a massive scaling up of renewable energy technologies, and the creation of new ones. To illustrate the gargantuan shift this would require, they explain that for solar power, it would be the equivalent of “installing the world’s current largest solar park roughly every day.” This will also mean tripling investments in clean energy worldwide by 2030 to about $4 trillion. Unfortunately, the IEA has been complicit in perpetuating a global economy whose foundations are fossil fuels, so how do we turn this freight train around? **International Response** Joe Biden hosted a climate summit in April that brought together world leaders, almost all of whom belong to countries who have failed their completely inadequate Paris Climate Agreement promises, but who engaged in showboating discussions about the climate crisis nonetheless. Chinese President Xi Jinping attended the summit, where he doubled down on his previous commitment to reach peak emissions before 2030 and [carbon neutrality by 2060](https://www.bbc.com/news/science-environment-54256826). But shortly after, Chinese minister Wang Yi [issued a statement saying](https://www.nytimes.com/2021/04/23/climate/biden-climate-summit.html) “If the United States no longer interferes in China’s internal affairs, then we can have even smoother cooperation that can bring more benefits to both countries and the rest of the world.” Essentially, China’s cooperation with Biden on the climate is contingent on broader relations between the two countries, which are deteriorating due to [inter-imperialist rivalry](https://www.socialistalternative.org/2021/05/08/biden-and-xi-escalate-us-china-conflict/). In order to meet Xi Jinping’s carbon neutrality pledge, China will need to invest $21 trillion to remove carbon from its energy system by 2060. In order to meet this goal, there has been a rapid expansion of Chinese “green finance.” Over the past five years, China’s “green finance” sector has become the [second largest in the world](https://www.scmp.com/news/china/politics/article/3128167/what-green-finance-and-why-it-important-chinas-carbon-neutral) after the U.S. Climate could well become a key battleground in the two countries’ battle for global dominance. Biden has proposed a $2.25 trillion infrastructure package in the U.S., which promises money to update and weatherize infrastructure, transition away from gas-powered cars, and ramp up research and development of renewable energy technologies among other things. In his speech unveiling the plan, Biden [mentioned China six times](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234), and explicitly framed it as an attempt to build up U.S. manufacturing and the economy to undermine growing Chinese economic influence. The Chinese economic model includes a very high level of state intervention into the economy. This has given the Chinese ruling class a certain advantage in scaling up key sectors. Seeing this, Biden is suggesting a level of state intervention into the economy not seen in decades in the U.S. This is accepted by a section of big business itself who recognize that it’s the only [option](https://time.com/5771889/davos-climate-change/) given the scale of the crisis. So what about other countries at the summit? For poorer countries who have been devastated by COVID-triggered economic crises and continue to face outbreaks because of wealthy countries’ vaccine hoarding (see page 11), trillion dollar climate spending packages are simply not an option. Biden’s infrastructure package will barely scratch the surface of what is necessary to address the climate crisis in the U.S., which historically is the number one emitter of greenhouse gases. And Biden’s pledge of [$2.5 billion for overseas climate finance](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) is as insulting as his pledge to send [20 million vaccine doses](https://www.nytimes.com/2021/05/17/us/politics/biden-coronavirus-vaccine.html) abroad. Poor countries, many of whom have economies that are [completely dependent on dirty energy](https://qz.com/1970294/economies-reliant-on-oil-will-lose-trillions-to-climate-action/#:~:text=Small%20nations%20such%20as%20South,18%25)%20are%20also%20vulnerable.) (like Nigeria, Venezuela and Iraq), were promised [$100 billion a year](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) in climate finance starting in 2020, but this is yet another Paris agreement promise left unmet. Leaving poor countries that are saddled with debt due to the legacy of imperialism and colonization to fend for themselves on the climate (or the pandemic) is the murderous logic of capitalism’s reliance on the nation state. An “America first” approach to the climate is doomed to fail and will only fuel mass migration and leave millions of poor and working people from the Global South seeking refuge at the doorstep of advanced capitalist countries. **The Ruling Class’ Divided Response** Even Biden’s very limited infrastructure package faces huge challenges ahead. Democrats will have to be fully united (meaning winning over centrist Democrat Joe Manchin, who represents the second-largest coal producing state of West Virginia) and use a special process called budget reconciliation to pass the package in its full form. Republicans, especially those representing fossil-fuel-dependent states like Texas, have already signalled strong opposition. The growing price tag of the climate crisis is driving divisions in the ruling class about what to do, as evidenced by the emerging debate around Biden’s infrastructure package. Many banks who have invested heavily in major polluters for decades will act as fetters on a transition to sustainability because abandoning these investments would represent a big loss on their balance sheet. However, even among the titans of finance capital, there is a growing recognition that climate change carries tremendous fiscal risks. BlackRock, the world’s biggest asset manager, has suggested that climate change will lead to a “fundamental reshaping of finance.” In a similar vein, corporations like Amazon, Coca-Cola, and Microsoft have begun to pledge carbon neutrality in the coming decades. For these companies, disastrous climate scenarios pose the biggest threat to their medium and longer-term profits, meaning they’re willing to invest up front now. For Biden, the threat of losing the cold war with China and seeing the further weakening of U.S. imperialism globally has forced him to act as well. In June 2020, Goldman Sachs announced that spending on renewable power would soon overtake oil and gas drilling, and that clean energy provided a [$16 trillion investment opportunity through 2030](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234). They pointed to the growing cost of fossil fuel development (which will increase if fossil fuel subsidies are removed as proposed in Biden’s infrastructure plan), which could lead to higher oil and gas prices and spur more investment in renewables. It is possible that we do see politicians and big business interests make a shift towards renewable energy to avoid full climate collapse, and to get in on a growing market. We should of course hold our applause for the companies and politicians who have waited until it was clear they would lose money to do anything at all, and we shouldn’t hold our breath that any of it will be enough anyways. **What Next?** What is concretely needed to address this crisis is a global plan to completely rebuild energy grids that rely 100% on renewables in the next decade; ending new production of gas-run cars, scaling up electric vehicle production and massively expanding public transit; developing renewable fuel alternatives for planes, trains, and cargo ships and completely phasing out fossil fuel dependence; retrofitting, weatherizing, and building new green housing and infrastructure to withstand extreme weather and accommodate climate refugees; reforesting the planet and overhauling our food system top-to-bottom, full scale replacing of mass monocrop agriculture with local, organic alternatives; and investing to historic proportions in yet-undiscovered technologies that can help deal with the crisis of water contamination and shortages, infectious disease, coral reef and pollinator population collapse, and so much more. Despite a shift in the ruling class’ approach, it will inevitably be too slow because of the logic of capitalism. Inter-imperialist rivalries mean countries will work separately to develop and then hoard climate technology, instead of collaborating to most rapidly produce and share out the best innovations. Poor countries will be left behind. Corporations will continue to invest their profits in the financial markets as opposed to expanding their productive capacity in the direction needed by humanity. Fossil fuel interests, the agricultural industry, other major polluters, and their loyal politicians will work to block a transition to a sustainable future with ferocity. While we’re seeing increased state intervention globally, the levels required to mitigate all of these bottlenecks and speed the process up enough to put us on track is extraordinarily unlikely. That is why we need to take things into our own hands. Mass climate protests have clearly put this issue onto the agenda, and we need a dramatic ramping up of this movement. School strikes should be coordinated and planned as soon as schools open again in the fall, and should be ongoing with a plan to involve more students, teachers, and staff. The youth-led movement also urgently needs to link up with the broader working class. In the short term this could look like striking students appealing to local unions to join them for demonstrations and days of action. This will crucially need to include workers in polluting industries. [Ten million people globally](https://thehill.com/opinion/energy-environment/494427-fossil-fuels-save-the-workers-kill-the-industry) work directly for the fossil fuel industry, and many more rely indirectly on these and other highly polluting jobs. To build a powerful movement with political and economic power, demands for the environment need to be linked with demands to retrain these workers in new, sustainable fields with no loss of pay or benefits and a guarantee of high wages and union recognition. This type of organizing could win crucial victories for expanding renewable energy, reforestation, and general resource protection. This would help buy time. Fundamentally though, these battles will need to be waged again and again on a mass scale to address the many complex dynamics of the climate crisis caused by a system that is based on the exploitation of workers and the earth. What is actually necessary for a long-term solution to climate disaster is a complete restructuring of a society on a socialist basis. This can only be won by the global working class asserting itself in a mighty struggle against the capitalist system. Mitigating the climate crisis on the time frame necessary requires an end to a for-profit system and its replacement with a democratically planned economy run by the working class itself. This means bringing the energy industry, the transport sector, key sections of manufacturing and finance fully into public ownership. On this basis, millions could be put to work helping rebuild a green economy, the accumulated wealth of polluting industries could be reallocated to green and socially productive projects, scientific innovation would be unleashed as global collaboration would replace nationalist competition, and instead of profits for a few, all economic activity would be geared towards meeting global human need, including averting the climate crisis. In this society, economic decisions would necessarily include environmental and social impact. On the basis of a truly democratically-run economy, we could make rapid decisions about the resources of society and put the full weight of the global working class behind stopping the climate crisis in its tracks. Winning this society will require the biggest ever united struggle of the global working class against capitalism. While the size of this task is mammoth, the future of humanity depends on it.

### CFIUS---2NC

#### 1. “Do both” means FTC resources---antitrust blockage means CFIUS won’t interfere.

Jayden R. Barrington 19. J.D. Candidate 2020, University of San Diego School of Law; B.B.A. 2017, University of San Diego. “CFIUS Reform: Fear and FIRRMA, an Inefficient and Insufficient Expansion of Foreign Direct Investment Oversight”. 21 Transactions: TENN. J. Bus. L. 77 (2019).

This structure gave the President fifteen days to make a final determination in the form of a Presidential Order .8 FINSA added criteria for the President to take into consideration and ensured that the President "is under no obligation to follow the recommendation of the Committee to suspend or prohibit an investment." 9 Nevertheless, before blocking a transaction, the President still needed to determine that (1) other laws did not sufficiently protect the country, and (2) that there existed "credible evidence" that if the transaction were to be executed, it would impair national security.80 For example, if the deal would otherwise be blocked by the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) due to antitrust concerns, then there is no reason CFIUS must intervene and the first requirement would not be met. The second requirement of credible evidence that national security would suffer is more subjective. An example of a deal that may not meet this criteria is the foreign sale of a company like Coca-Cola or Levi's; though loved American brands, their foreign ownership would not likely create realistically foreseeable threats to matters of national security.

#### 2. “Antitrust” and “national security” are distinct agents.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

So should we use antitrust to pursue national security goals, or forbear in enforcing it because of them? As the U.S. Constitution itself makes clear, there is no responsibility more essential for a government than the protection of its citizens. My humble premise is that, like other non-competition considerations, antitrust is an imperfect tool. And, when it comes to national security, the U.S. government has other tools. We have, for example, separate and distinct systems requiring mergers to be notified to one set of enforcers who monitor antitrust concerns and to another set of government officials responsible for national security review. This is not a bug, but a feature, of our government and economic policies more generally.

The Committee on Foreign Investment in the United Stated (CFIUS) is authorized to review national security implications of certain cross-border transactions.23 Note that CFIUS is not an antitrust tool, but a national security one. And a very effective one at that. Look no further than Broadcom’s recent (unsuccessful) bid for Qualcomm.

#### 3. National security means the counterplan is CFIUS not the FTC.

Elizabeth Balboa 17. Benzinga Staff Writer. "4 M&A Deals Blocked By US Presidents For The Sake Of National Security". . 9-14-2017. https://www.benzinga.com/news/17/09/10059329/4-m-a-deals-blocked-by-us-presidents-for-the-sake-of-national-security

The Federal Trade and Communications Commissions are known buzzkills when it comes to blocking corporate mergers.

But sometimes, in the face of extreme consequences, the role falls on a higher power.

On recommendation from the Committee on Foreign Investment in the United States, the U.S. president has blocked acquisitions four times in the last three decades, each on the grounds of national security.

#### 1. “National security” versus “antitrust.” They are policy alternatives with unique pros and cons ---that’s Steuer. AND they are a separate processes.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

My view is that antitrust works best as a tool for protecting competition, and an imperfect one for vindicating national security goals. There are separate tools for that, and they are important. But one area where antitrust needs to reckon with the strategic interests of other nations is when we scrutinize mergers or conduct involving state-owned entities. The assumptions underlying modern antitrust rest on free market principles, and contemplate markets in which firms compete to maximize profit. But state-owned entities may pursue other goals. That is particularly important to recognize as the U.S. government focuses increasingly on the impact of foreign investment in domestic technology. Where other countries are, in effect, distorting markets, antitrust enforcement needs to take that into account.

#### 2. We PIC out of “antitrust” and “anticompetitive”---it is the topic debate.

Reuters 15. "Pentagon Eyes Bill to Block Mergers and Acquistions for National Security Reasons". Newsweek. 12-22-2015. https://www.newsweek.com/pentagon-bill-mergers-and-acquisitions-weapons-national-security-ash-carter-408412

WASHINGTON (Reuters) - The Pentagon and other U.S. government agencies should complete a legislative proposal in coming weeks to let regulators block proposed mergers for national security reasons, instead of just antitrust concerns, a top official said on Tuesday. Defense Undersecretary Frank Kendall, who oversees arms weapons acquisitions and industrial base issues for the Pentagon, made the comments in an interview, after first mentioning the legislative push in September. In September he raised concerns about further consolidation among the biggest players in the U.S. weapons industry, warning that big weapons makers were not hesitant to use the power that came with increased size for their own corporate advantage. The comments came days after the U.S. Justice Department approved Lockheed Martin Corp's $9 billion takeover of Sikorsky Aircraft from United Technologies Corp, one of the biggest acquisitions in the weapons industry in years. At the time, Kendall said the U.S. Justice Department cleared Lockheed's acquisition of the helicopter maker because there was no direct anti-competitive issue, but the Pentagon did not want to see its industrial base whittled down to two or three very large suppliers. On Tuesday, Kendall said the Pentagon was working with the Justice Department and other agencies on a proposal that would add a national security provision to current law, much as mergers in other industrial sectors are subject to a "public interest" provision since they serve the nation. He said the proposal should be wrapped up soon and sent to lawmakers for their consideration. Kendall said the prospects for getting the legislation passed in a presidential election year were unclear, but it was important to address the issue. "It's a debate we should have," he said.

#### 1. Priority: National security supersedes competition law.

Spencer Weber Waller 19. John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law. “Antitrust and Democracy”, 46 FLA. St. U. L. REV. 807 (2019).

A statute which gives the executive branch, or a ministry, the explicit power to sacrifice competition for national security or some other significant national interest is equally defensible in terms of democratic values, regardless of the wisdom of any particular decision under those powers. For example, numerous jurisdictions have public interest standards in their merger laws allowing the approval or rejection of transactions on grounds other than their competitive effects. 145

While the United States does not have public interest standards in its merger regime, it does have three statutes allowing noncompetition factors to supersede competitive analysis in order to achieve national security objectives. First, mergers may be blocked on national security grounds, even if cleared by the competition agencies. 1 4 6 Second, the United States enacted Section 232 of the Trade Act of 1962, which allows the Secretary of Commerce to conduct investigations to determine the effect of imports on any article of the national security of the United States. 147 Finally, the Defense Production Act of 1950 (DPA) allows the President to exempt agreements between private parties from the application of the antitrust laws where such action was taken for the national defense. 1 4 8

#### 2. Signaling: CFIUS declarations prevent bad deals---solves better than court signalling.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

Even the threat of a CFIUS action can scuttle a deal that is problematic for national security, as it did in 2005, when China National Offshore Oil Company (CNOOC) proposed to acquire Unocal31; or in 2006, when Dubai Ports World considered purchasing the right to operate six major U.S. ports, including terminals in the New York/New Jersey area, Philadelphia, and New Orleans.32

CFIUS is effective and efficient, and Congress—led by my former boss, U.S. Senator John Cornyn—added to the quiver in August 2018 with the Foreign Investment Risk Review Modernization Act (FIRRMA). FIRRMA broadened CFIUS’s jurisdiction to include investment in a U.S. business that “maintains or collects personal data of United States citizens that may be exploited in a manner that threatens national security.”33 In the spring of last year, CFIUS informed the Chinese company Kunlun that its ownership of the popular gay dating app, Grindr, constituted a national security risk, prompting Kunlun to divest the app.34 CFIUS was apparently motivated by concerns that the Chinese government could blackmail individuals with security clearances or use its location data to help unmask intelligence agents.35

#### 3. Comparative: antitrust is neither necessary nor sufficient---CFIUS solves.

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

CONCLUSION Where does that leave us? We conclude where we began. Critics have been complaining that there are too few jobs in America and too much inequality. They have been calling for broadening the goals of antitrust and, at the very least, for more antitrust enforcement. More enforcement could be expected to have an impact on the concentration of power and on jobs, but even recalibrating the goals of antitrust law cannot, by itself, realistically be considered a panacea for eliminating unemployment or inequality overnight. At the same time, other countries already have broader goals written into their own laws, including their competition laws, which protect jobs and limit foreign investment. These laws create asymmetries that may be placing the United States at a disadvantage. Today, America has the opportunity to expand the goals of its laws to address these asymmetries, either through broadening the interpretation of current legislation-which could but need not include the antitrust laws-or by enacting new laws. Such changes would present the challenge of deciding who should apply these broader goals and how they should be prioritized and balanced. If the antitrust agencies are not the choice to assume this responsibility, an expanded CFIUS or a newly constituted foreign investment review board would be possible alternatives. These changes could foster an environment in which it would be easier for future trade agreements to assure a level playing field for the United States and its trading partners. The devil is in the details, of course, and the devil would feel right at home in this imbroglio. Broadening and strengthening antitrust enforcement and foreign investment review sounds simple enough but would raise a dizzying host of complications and uncertainties. Yet, just because something is hard to measure or hard to solve is no reason to ignore it. If loss of jobs and concentration of power are threatening to harm the nation's economy and are not being adequately checked, changing nothing would be an outcome but would not be a solution. Not all of the changes currently being proposed make equal sense, but for those that make the most sense, the time for serious deliberation is now.

#### 4. Applied extra-territorially. CFIUS blocks foreign mergers.

Larry G. Franceski et al. 16. Larry G. Franceski, Of Counsel, Norton Rose Fullbright. Stephen M. McNabb, Chief Legal Officer. Kim Caine, Partner. "President Obama Blocks Proposed Chinese Acquisition of Controlling Interest in German Chip Maker". No Publication. 12-2-2016. https://www.nortonrosefulbright.com/en-us/knowledge/publications/4a3ee7bd/president-obama-blocks-proposed-chinese-acquisition-of-controlling-interest-in-german-chip-maker

CFIUS is a multi-agency U.S. governmental committee established in 1975 to review transactions that could result in control of a U.S. business by a foreign person ("covered transactions") in order to determine the effect of such transactions on U.S. national security.2 Companies involved in a potentially covered transaction may voluntarily submit a notice with CFIUS, or a review may be initiated by CFIUS or by the President. Once a filing is submitted, CFIUS conducts a 30-day review. At that point, the Committee may issue a determination that no threat to national security is presented, and the transaction can proceed, or the Committee may determine that an additional 45-day investigation is warranted. At the end of the 45-day investigation, the Committee may offer no recommendation or make an adverse recommendation to the President, who then has 15 days to make a decision. In some circumstances, the parties agree to mitigation measures with CFIUS to address CFIUS concerns so that an adverse recommendation can be avoided. The President has almost unlimited authority to take "such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States."3 However, before invoking such authority, the President must conclude that other U.S. laws are inadequate or inappropriate to protect the national security, and must have "credible evidence" that the foreign investment will impair the national security. The President must consider a variety of factors in deciding to block a foreign acquisition, including, for example, the potential national security-related effects on U.S. critical infrastructure and whether the transaction is a foreign government-controlled transaction.4

### Advantage 1---2NC

#### The plan’s unilateral approach breaks the Japan antitrust agreement---courts and agencies apply case law extraterritorially.

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

Bilateral approach. The OECD has played a leading role in international efforts to avoid international conflicts over the extraterritorial application of competition law through the decades, “recognizing that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective sphere of sovereignty of countries concerned” and that “anticompetitive practices, investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries.”41 Since 1967, the OECD has adopted and revised a series of recommendations concerning cooperation between member countries that aim for two goals: more effective law enforcement and avoiding jurisdictional conflicts. In the context of the OECD recommendations, the concept of comity describes a voluntary policy calling for a country to give full and sympathetic consideration of other countries’ important interests while deciding the enforcement of its own competition law. Comity involves two aspects: first, a country’s consideration of how it may prevent its law enforcement actions from harming another country’s important interests, and second, a country’s consideration of another country’s request that it open or expand a law enforcement proceeding in order to remedy conduct that is substantially and adversely affecting that country’s interest. These aspects have come to be referred to as “negative comity” and “positive comity,” respectively. 42

Following the OECD recommendations, bilateral cooperation agreements have been concluded between the United States and several other industrialized states such as Australia, Canada, and Germany to avoid friction in competition law enforcement.43 The milestone would be the U.S. and E.U. agreement of 1991 that set forth, inter alia, positive comity as well as negative comity for the first time in a bilateral agreement. This agreement was supplemented by a more detailed agreement on positive comity in 1998, which even provides for the deferral of enforcement proceedings by the requesting side under certain conditions. Although enforcement cooperation has been strengthened, the European Commission has explained that eliminating the jurisdictional “imbalance” was one of the main reasons the E.C. negotiated the positive comity provisions in the supplement agreement.44 In the Commission’s view, “it is clearly preferable … that the United States avail itself of the principle of positive comity when considering anticompetitive behavior taking place within the European Community rather than seeking to apply U.S. competition law. Through positive comity the Commission can retain control, where it wishes, of enforcement procedures addressing such behaviour.”45

Bilateral conflicts have frequently arisen between Japan and the United States over the latter’s extraterritorial application of antitrust laws, as the two countries hold divergent positions with regard to state jurisdiction under international law and against the background of increasingly expanding trade between the two countries. The Japan-U.S. Agreement, which was concluded in October 1999, should be the test case as to how effective a bilateral agreement could work for avoiding or mitigating potential bilateral conflicts. Several points should be elaborated upon here.

First, Article II stipulates the obligation of the competition authority of each party to “notify the competition authority of the other party with respect to enforcement activities” that may “affect the important interests of the other party. ” This notification procedure is the foundation of cooperation and coordination in the agreement and “important interests” are interpreted to include not only interests concerning competition law enforcement but also interests concerning sovereignty and other legal or policy matters.46

Second, Article VI stipulates that “each party shall give full consideration to the important interests of the other party throughout all phases of its enforcement activities.” In seeking an appropriate accommodation of competing interests, such factors as the conduct’s relative significance to the anticompetitive activities, the relative impact of the anticompetitive activities on the important interests, etc., should be considered. These provisions represent so-called “negative comity” and are expected to work toward avoiding jurisdictional conflicts, which may be caused, for instance, by the extraterritorial application of U.S. antitrust law, through such consideration for balancing interests tests. However, the fundamental gap with regard to their respective positions on jurisdictional justification or sovereignty, as shown in the Nippon Paper case, could not be bridged by this provision of (negative) comity itself.

Although an unilateral attempt to extend the application of domestic legislation extraterritorially violates the basic principle of territoriality in international law, the need for regulatory measures to be applied across national borders has also become a reality with the growth of transnational economic and social relations and the consequent emergence of a borderless society on a global basis. In this respect, the position of Japan is too rigid in resisting to accept the need for the extraterritorial adjustment of national competence, as evidenced in the negotiations between Japan and the United States for regulating transnational activities involving unfair competition across national borders.47

As seen above, the Government of Japan still formally rejects the effects doctrine; however, adjustment of extraterritorial jurisdiction that justifies extending jurisdiction with respect to foreign companies’ conduct abroad could be based on (a modified version of) the objective territorial principle, as has been applied in the Wood Pulp cases by the European Court. This justification could be compatible with the recent practice of the JFTC on the Nordion case and on the Exxon Mobil merger review.

Third, Article V stipulates that if the competition authority of a party believes that anticompetitive activities “in the other country adversely affect the important interests of the former party … [it] may request that the competition authority of the other party initiate the appropriate enforcement activities.” The requested competition authority shall carefully consider whether to initiate enforcement activities. These provisions represent the so-called “positive comity” and the requested competition authority is expected to take into account “the importance of avoiding conflicts regarding jurisdiction,” which is explicitly set forth in the article.

Positive comity may play an important role in export restrains (market access) cases where the requesting country’s interest is protection of its exporters’ interests.48 It has been observed that the Soda Ash case has positive comity aspects, where after U.S. trade officials complained that U.S. soda ash producers faced barriers to access in Japan, the JFTC conducted an investigation and issued a cease and desist order against Japanese producers.49 In such cases as the Fuji Kodak case, the United States could have invoked positive comity; however, U.S. enforcement agencies would have had to consider the similar position of Kodak in the U.S. market as that of Fuji in the Japanese market. Positive comity’s role may be limited in certain categories of export cartel cases because of the exemptions under the Export Trade Act in Japan and under the Webb Pomerene Act, etc., in the United States.

Positive comity under the Agreement raised concerns that it would further intensify U.S. demands for more vigorous law enforcement against anticompetitive conduct relating to market access while requests of positive comity from Japan to the United States would be rare. Nevertheless, such concerns seem off the mark. Apart from the voluntary nature of positive comity, the alleged conduct’s illegality under the requested state is a prerequisite to invocation of positive comity, and if any complaint is filed on an alleged illegal conduct, the JFTC would consider the possibility of enforcement in any case. Furthermore, Japan may request positive comity in such cases as alleged abuse of antidumping procedures against Japanese exporters by a U.S. company in the United States, even though Japanese competition law does not apply to protect Japanese exporters’ interests. Again, if Japan considers that a U.S. film maker’s conduct in the United States is anticompetitive, it may request positive comity to the United States, regardless of the fact that Japan claims to have no extraterritorial jurisdictional reach over the film maker’s conduct in the United States. In these situations, jurisdictional “imbalance” between the two countries could, to some extent, be eliminated.

The effectiveness of this agreement in terms of avoiding conflicts remains to be judged from how it will be applied in practice. Although this agreement is an executive agreement that is to be implemented within the framework of existing laws and regulations of the two states, the obligation to consider negative and positive comity will facilitate cooperation and coordination with a view to reducing conflicts. Comity is essentially voluntary but its flexibility may work better in solving a potential conflict, which ultimately depends on good working relations between the two governments, especially between the enforcement agencies, based on mutual trust. At the same time, it must be remembered that U.S. courts will not be bound by this agreement; therefore, effectiveness of both negative and positive comity under this agreement has significant institutional limitations with respect to U.S. case law.

#### Economics key---uncertainty causes accommodation to China---assumes military ties.

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Lesson 2: Transactional Policies Undermine Alliances

It was not only the waning American military presence in the Pacific that sparked anxiety among U.S. allies in the 1970s. It was also the more transactional economic approach that Nixon embraced when he jettisoned the Bretton Woods system. The postwar alliance relationships the United States established in Asia were rooted in far more than defense guarantees. American trade and investment helped propel the region’s dramatic postwar growth, especially in allied nations like Japan and South Korea. The Vietnam War offered further economic benefits, fueling commercial exports and trade with allies and generating substantial U.S. economic assistance in return for allied contributions to the war effort.116 The United States upended these economic ties when it hit allies with a 10 percent tariff on imports and unraveled the Bretton Woods financial system while also winding down its wartime assistance.

Through these actions, the Nixon administration signaled that the United States was becoming less predictable and reliable — not only as a military ally, but as an economic partner as well. The end of dollar convertibility into gold, which became known as the “Nixon shock,” introduced new friction into U.S. alliance relationships right at the moment when U.S. allies were also beginning to explore new trade relationships with China. Over the next three decades, Asian allies sought increasingly closer economic ties with Beijing, which repeatedly capitalized on the perceived economic absence of the United States during both the Asian financial crisis and the more recent pandemic-induced recession. In short, transactional American economic policies accelerated the adoption of transactional allied security policies.

Looking forward, if the United States hopes to incentivize its allies to anchor rather augment, autonomize, or accommodate, it will need to focus on the economic underpinnings of its alliance relationships. Transactional relationships based only in shared short-term interests are difficult to maintain. Economic power and influence have given Beijing not just clout, but substantial leverage over U.S. allies and partners. One need look no further than China’s use of economic statecraft against Japan in 2010, the Philippines in 2012, Vietnam in 2014, South Korea in 2017, or Australia in 2020 to see the effect Beijing’s economic power is having in the region.117 Equally important, regional assessments of American decline are based largely on perceptions of waning U.S. economic influence and its inward turn on trade.118 U.S. leaders will need to assure allies that Washington has a plan to restore its economic leadership in the Pacific in addition to restoring its military presence. Better aligning U.S. alliances around shared principles and institutions will therefore be key for the United States going forward.

#### 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.

#### Newer evidence disproves their warrant---Dollar heg resilient---weaknesses would be short-term and resolvable.

B Prasanna 10-27. Financial reporter for NBC. "The Quandary around Dollar hegemony." cnbctv18. https://www.cnbctv18.com/views/the-quandary-around-dollar-hegemony-7308611.htm

The sharp 10 percent depreciation in the value of the US Dollar (measured in terms of Dollar Index) over the past six months had again led to a concern that the greenback is on its way out as the premier global reserve currency. This debasement theory has gained momentum as US debt zoomed past 100 percent of GDP, the Fed monetized more than $3 trillion in new debt issued in 2020 and more recently adopted flexibility to its long-held inflation target of 2 percent by advocating an average inflation targeting framework.

A peek into history reveals that the US Dollar has remained an anchor currency for the global economy in the post-World War II period. The initial Dollar weakness following the collapse of the Bretton Woods' system in the early 1970s which led a transition to a floating exchange rate system had only increased the dominant role of the US Dollar in the global economy. The Dollar recent weakness is largely driven by shorter-term cyclical factors and is unlikely to overpower in the long run.

The US dollar plays a central role in the international monetary and financial system. First and foremost, around half of international trade is invoiced in US dollars

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and 40 percent of international payments are executed in dollar terms. Around 85 percent of all foreign exchange transactions occur against the US dollar.

Moreover, the deep and vibrant Dollar funding market plays a pivotal role in cross-border loans and international debt securities. The amount of outstanding international debt securities and cross-border loans that are denominated in US dollars is $22.6 trillion as of Q4 2019, or 26 percent as a share of world GDP, corresponding to about 50 percent of all outstanding international debt securities and cross-border loans. Given such share of Dollar funding in the global bank’s balance sheet as well as the increasing length and complexity of global supply chains, the spillovers of US monetary policy to the rest of the world has only strengthened over past few decades.

Second, in part because of its prominence in trade and financial transactions, the dollar is also the main currency of intervention for central banks. The US Dollar accounts for 61 percent of the official foreign exchange reserve of $12 trillion among various economies. Not surprisingly, given its dominance, most of the central banks aim to stabilize their own currency with respect to Dollar value.

Overall, the role of the dollar as both an intervention currency and an anchor currency helps propagate US monetary policy impulses from the center to the periphery and provides a common component to the global monetary environment.

Third, the dollar is viewed as the safest currency not only because the US has – by far – the world’s most liquid bond market, but mostly because investors trust the US system: its rule of law, protection of property rights and the independence of technocratic institutions. It is evident that at the time of financial and economic crises, the demand for dollar safe assets rises.

The simple reality is that we live in a dollar world –on the real side, where dollar invoicing is dominant, on the financial side, where dollar funding is important to global banks and non-financial corporations, and on the policy side, where dollar anchoring and the dollar reserves are prevalent. If anything, this dominance of the dollar has increased over time.

### Advantage 2---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.

#### 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.

## 1NR

### Impact---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

#### Current enforcement is streamlined to enable focus on algorithmic bias.

Jeffrey J. Amato and Jay R. Wexler 9/28/21. “United States: FTC Ramps Up Tech Investigations, Reduces Investigators' Hurdles.” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1115450/ftc-ramps-up-tech-investigations-reduces-investigators39-hurdles

At its September 14, 2021 open meeting, the Federal Trade Commission (FTC) announced the passage of eight "omnibus" resolutions by a 3-2 party-line vote to authorize quicker investigations into prioritized issues. The resolutions allow staff attorneys to use compulsory process demands, which are usually issued as civil investigative demands or subpoenas, with approval from only one commissioner. Previously, agency staff were expected to receive approval from the full commission prior to issuing demands for information from companies. The resolutions aim to facilitate investigations into: unlawful conduct directed at veterans and service members; unlawful conduct directed at children; bias in algorithms and biometrics enabling discriminatory practices; dark patterns and deceptive online conduct that lure users into making unwanted purchases; repair restrictions that allegedly harm competitors and consumers; abuse of intellectual property; common directors and officers and common ownership; and monopolization offenses.

#### Other 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.

#### 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.

#### Recent merger actions are in line with the FTC’s antitrust caseload.

Kaj Rozga and Douglas E. \*\*Litvack 8/10/21 – former Federal Trade Commission attorney with a breadth of antitrust experience and \*\*partner in DWT's Washington, D.C., office, 8/10/21. “Antitrust State of Play for Healthcare Providers Under a New Administration - Part I: Mergers and Acquisitions.” https://www.dwt.com/insights/2021/08/biden-administration-healthcare-antitrust

None of the recent actions of the Biden Administration or FTC are significantly out of step with the recent trend of vigorous merger enforcement against healthcare providers.

The healthcare industry has grown accustomed in the last decade to close scrutiny and frequent challenges to hospital and physician practice deals. A 2019 report from the FTC detailed at least nine hospital mergers and six physician group acquisitions that the agency challenged going back to 2008.5 Since then, it has challenged at least three more hospital deals, in addition to launching a merger retrospective study earlier this year to analyze the market effects of physician group and hospital consolidation.6

#### The FTC’s changing their approach to allow them to focus on enforcement cases

Lauren Feiner 21. News Associate at CNBC, 8/3/21. “FTC struggles to keep up with merger filings, tells some businesses to merge at own risk.” https://www.cnbc.com/2021/08/03/ftc-tells-some-businesses-to-merge-at-own-risk.html

By law, regulators have a set amount of time to review pre-merger filings before parties consummate their deals. Regulators can issue a so-called second request to halt the process and ask for more information, but after receiving those documents, they have a set period of time to review and choose whether to block the deal before parties can again move forward.

While declining to block a merger doesn’t count as a rubber stamp or preclude the regulator from seeking to unwind it in the future, it often provides businesses some reassurance to move forward in the process.

But due to constrained resources, Vedova said there are some deals the FTC simply cannot investigate fully within the timeframe set by law. As a result, the FTC has begun sending letters to parties in such deals that basically say the agency hasn’t completed its review but can’t hold up their merger any longer, so the parties should proceed at their own risk.

“Accordingly, even if the parties consummate the above-referenced transaction, the Commission may still take further action as the public interest may require, which may include any and all available legal actions and seeking any and all appropriate remedies,” a sample letter to such businesses says.

The FTC’s new approach will likely create more uncertainty for businesses whose deals remain under review outside of the standard timeline.

The FTC splits oversight of HSR merger review with the Department of Justice Antitrust Division. Still, both agencies have pleaded with lawmakers for years for more resources to deal with greater demands on their agencies. Both, for example, have filed within the last year major antitrust lawsuits against two of the largest businesses in the world: Facebook and Google.

Merger reviews can often take precedence over misconduct cases within the agencies due to the tight timeline regulators are bound to by law for M&A. The FTC’s new approach could give staff more room to work on non-merger cases even as the agency is faced with a surge in HSR filings.

#### FTC adjusted its process to handle the merger wave.

NYT 8/17/21. The New York Times. “Biden antitrust stance raises concern.” https://finance-commerce.com/2021/08/biden-antitrust-stance-raises-concern/

Antitrust activity is heating up this summer. New bipartisan legislation aimed at Big Tech was just introduced in the Senate, and federal agencies have adopted a skeptical stance on deal-making.

“I believe the antitrust agencies should more frequently consider opposing problematic deals outright,” Lina Khan, the chair of the Federal Trade Commission, wrote in a letter to Sen. Elizabeth Warren, D-Mass., released last week.

The tough talk advances the Biden administration’s position, expressed in a sweeping executive order last month, that cracking down on consolidation protects consumers, markets and workers. But some antitrust lawyers, including former regulators, told the DealBook newsletter that they feared this stance could chill legitimate deals and give enforcers the impression that approving any merger is politically fraught.

Mergers are surging in “astounding” numbers, the FTC said recently. A “tidal wave” of filings has strained resources, and the agency is adjusting its premerger review process, telling companies that they close at their own risk after the usual 30-day review deadline, as deals may later be deemed illegal. The agency already can challenge done deals, but the initial review framework is meant to minimize this insecurity, Christine Wilson, one of two Republican FTC commissioners, wrote in a statement. She said the FTC’s altered process might be driven as much by politics as by the rise in merger activity.

#### Not actually a tidal wave of mergers.

Kirk Arner 8/10/21. Legal fellow at the Hudson Institute, with Harold Furchtgott-Roth. “The Harmful Death of Modern Merger Review.” https://www.realclearmarkets.com/articles/2021/08/10/the\_harmful\_death\_of\_modern\_merger\_review\_789287.html

But is the FTC’s assertion actually true? Has the FTC been hit by an unprecedented “tidal wave” of merger filings?

No, it hasn’t.

According to the FTC’s own 2019 report, the number of HSR transactions requiring filings roughly doubled between 2010 and 2017, growing from a little over 1,100 transactions in 2010 to just north of 2,000 in 2017. Between 2017 and 2020, transactions stabilized at roughly 2,000 to 2,100 per year.

The available data through 2021 do suggest an uptick in filings. Between January and July of this year, there were 2,067 total transactions filed. Over 7 months, that’s an average of 295 per month. Projecting this average out over 12 months would result in 3,540 total transactions filed for the entirety of 2021.

This increase may seem stark. But when viewed in the proper historical context, it’s hardly a “tidal wave.”

We need only look to historical data for proof—in particular, data from 1995 through 2000. During these years, there was only one month with fewer than 300 transactions filed. The vast majority of months during this period had 400, 500, or more transactions filed per month. This stands in stark relief to the 295 transactions per month in 2021 to date.

The year 1998 is particularly instructive. That year, the month with the fewest transactions was January, with 614 filed. Transactions peaked in June, with 862 filed that month. In only 2 months of that year were there fewer than 700 transactions filed. The end result? An astonishing 9,264 transactions were filed that year—more than triple the projected rate for 2021.

#### 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.”

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

Nathaniel L. Asker 21. Partner in the Antitrust Department. Bernard (Barry) A. Nigro Jr., Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ. Aleksandr B. Livshits, special counsel in the antitrust department. 1-5-2021. “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.

#### 3. It directly undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### They’re wrong---the FTC has to be heavily involved in the plan.

1ac Alford 18 [ROGER ALFORD Deputy Assistant Attorney General Antitrust Division U.S. Department of Justice. "Antitrust Enforcement in an Interconnected World." https://www.justice.gov/opa/speech/file/1029821/download]

The increasingly international scope of antitrust enforcement is one reason that the Department of Justice, together with the U.S. Federal Trade Commission, updated and reissued the Antitrust Guidelines for International Enforcement and Cooperation last year.8 Among the issues that these Guidelines address is our application of U.S antitrust law to conduct outside the United States, and the factors that we consider in applying our laws to that conduct. Namely, before pursuing an enforcement action or seeking a remedy that might have impacts outside the United States, the Department of Justice considers whether the U.S. antitrust laws apply to the conduct and whether there are comity considerations that should be taken into account.

#### 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.

#### 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.

#### US AI sets norms globally

Justin Sherman 19 – cybersecurity policy fellow at New America, 3/6/19. “Essay: Reframing the U.S.-China AI “Arms Race”.” https://www.newamerica.org/cybersecurity-initiative/reports/essay-reframing-the-us-china-ai-arms-race/why-us-china-ai-competition-matters/

Competing AI development in the United States and China needs to be reframed from the AI arms race rhetoric, but that doesn’t mean AI development itself doesn’t matter. In fact, the opposite is true. We are in an era of great power competition, and U.S. policymakers must pay greater attention to artificial intelligence development domestically and in China, primarily for two reasons. First, artificial intelligence will have a profound impact on state power, mainly through economic growth and enhanced military capability. Second, global leaders in AI will set norms around its use—and around the use of technology in society writ large—which will have important influence on other “undecided” states and the future international order. This is why American policymakers should focus on engaging with China on AI projects without giving up critical expertise or technologies that could potentially enhance harmful applications of artificial intelligence, whether they are in governance, business, or the military.