# Round 4---Texas 21

## 1NC

### Off

Notice-and-Comment CP

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. That agency should begin notice-and-comment rulemaking to substantially increase prohibitions on anticompetitive business practices by the private sector to limit the tribal sovereign immunity exemption to cases where the tribe was the inventor or purchaser of a patent.

#### 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 key to democracy.

Harry First & 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 prevents extinction.

Christopher Kutz 16. PhD, University of California, Berkeley. JD, Yale University. Professor, University of California, Berkeley, School of Law. “Introduction: War, Politics, Democracy”. On War and Democracy. 2016. https://doi.org/10.1515/9781400873937-003

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

T-Prohibitions

#### Interp---prohibitions are distinct from remedies that only block the anticompetitive elements of a practice, rather than the practice itself.

Jo Seldeslachts et al. 7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### Business practices are ongoing conduct defined by the behaviors of many market participants.

Kerry Lynn Macintosh 97. Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis.

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Violation---the plan only increases behavioral remedies that target anticompetitive aspects of the practice---topical Affs must increase prohibitions on the practices themselves.

#### Vote Neg:

#### 1. Limits---there are infinite ways to ameliorate anticompetitive aspects of a practice through behavioral remedies---only structural prohibitions make the topic manageable for the Neg---it’s key to prep and clash.

#### 2. Ground---our interp ensures the Aff must “break up” big industries---that’s key to ensure link uniqueness and build in offense based on the core controversy on a topic with very few DAs.

### Off

K

#### Antitrust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19. Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism”. Democracy at Work. 12-9-2019. <https://www.democracyatwork.info/eu_competition_monopoly_in_capitalism>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Cap causes extinction and structural violence.

Jamie Allinson 21. \*Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. \*China Miéville, author of several highly acclaimed and prize-winning novels, including October: The History of the Russian Revolution. \*Richard Seymour, author of numerous works of non-fiction. His writing appears in the New York Times, London Review of Books, Guardian, Prospect, and Jacobin. \*Rosie Warren, Editor at Verso and 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

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 to endorse global socialist movements.

Carles Muntaner 15. \*MD/PhD, Professor at the University of Toronto’s Lawrence S. Bloomberg Faculty of Nursing and Dalla Lana School of Public Health. \*Edwin Ng, PhD, Dalla Lana School of Public Health, University of Toronto. \*Haejoo Chung, Professor at Korea University’s School of Health Policy and Management. \*Seth J. Prins, PhD, Associate Professor of Epidemiology and Sociomedical Sciences, Columbia University. “Two decades of Neo-Marxist class analysis and health inequalities: A critical reconstruction”. Social Theory & Health. 8-5-2015. doi: 10.1057/sth.2015.17

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

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

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

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

### Off

Regs CP

#### The United States federal government should:

#### - Maintain the current scope of its core antitrust laws and announce its intent to do so.

#### - Establish and enforce that it is illegal for private actors to bring patent and intellectual property cases against a tribal government that is not the inventor or purchaser of a patent.

#### Solves and competes---only the FTC and the DOJ enforce antitrust laws.

Michael Kades 19. Director for markets and competition policy at the Washington Center for Equitable Growth. “The state of U.S. federal antitrust enforcement”. 9-17-2019. https://equitablegrowth.org/research-paper/the-state-of-u-s-federal-antitrust-enforcement/?longform=true

Discussion about the current U.S. antitrust enforcement regime has been less systematic. Critics have pointed to where they believe federal enforcers have dropped the ball, such as the failure to challenge specific merger transactions or to attack the business practices of certain technology platforms. Defenders of the two federal agencies in charge of enforcement—the U.S. Department of Justice’s Antitrust Division and the Federal Trade Commission—have pointed to the areas where the agencies have been aggressive (such as the Department of Justice’s case against American Express Co.) or tenacious (such as the FTC’s enforcement agenda against hospital mergers).

### Off---FTC DA

FTC DA

#### Antitrust efforts are focused on the supply chain now---that’s key to solve the crisis.

J. Steven Patterson 2/3/22. Partner at Hunton Andrews Kurth, with Austin Maloney. “Retail Industry 2021 Year in Review: FTC Studying Supply Chain Disruption, With Orders to Nine.” https://www.natlawreview.com/article/retail-industry-2021-year-review-ftc-studying-supply-chain-disruption-orders-to-nine

Supply chain disruptions have been front-page news throughout the COVID-19 pandemic. From the beginning when Americans began stockpiling basic items like sanitizer and toilet paper, to current shortages caused by increased consumer products spending and shipping delays, retailers have been faced with an environment that is constantly changing and requires nimble response. Now, the issue is getting formal treatment from the Federal Trade Commission (FTC), which is conducting a study to “shed light on the causes behind ongoing supply chain disruptions and how these disruptions are causing serious and ongoing hardships for consumers and harming competition in the US economy.” But looming behind that topical mission statement is a deep dive into the commercial strategies of large retailers and their suppliers that could have wide impacts on future FTC policy and priorities in the retail space.

In November 2021, the FTC voted 4-0 to use its authority under Section 6(b) of the FTC Act to order a study compiling information on the impact of competition in the ongoing supply chain disruptions. The FTC issued Special Orders to nine companies (three each) in the retail, wholesale and supply chain sectors, requiring them to provide answers to a broad array of questions covering supply chain disruptions. The orders seek detailed information aimed to uncover the cause of disruptions and to identify strategies employed by key competitors to maintain their market position in challenging times. In addition, the FTC is soliciting voluntary comments from market participants regarding their views on how supply chain issuesare affecting competition in consumer goods markets. The announced purpose of the study is to explore whether supply chain disruptions caused by the pandemic have led to bottlenecking, shortages, anticompetitive conduct or higher prices for consumers.

The FTC’s vote to conduct the study comes on the heels of an extended lobbying campaign by a number of interests calling for a comprehensive investigation of dominant retailers (and in some cases, dominant suppliers) and advocating aggressive related enforcement actions. In February 2021, the Center for Science in the Public Interest (CSPI) sent the FTC a lengthy letter requesting an investigation of trade promotion, category captain and online retail practices in the grocery retail industry. The CSPI letter complained that these practices drive up entry costs, put leading brands in control of retail decisions conferring greater advantages and ultimately limit customer choice on what products to buy. In March 2021, the National Grocers Association (NGA) held a press conference and released a white paper calling for a crackdown on so-called “power buyers” in grocery retail. The NGA stated that small food retailers are being squeezed by big retailers that allegedly use their scale to command more favorable supply terms, lower pricing, special product package sizes and first call on high-demand items. The NGA added that the disparity was especially pronounced during the COVID-19 pandemic, as independent grocers were often unable to stock their shelves and forced to pass on higher prices for essential products to customers, whereas increasing consolidation gave large competitors an advantage. The NGA reiterated its concerns in July 2021 at the FTC’s Open Commission meeting and in testimony before a US Senate Judiciary Committee hearing on competition in the food industry.

Subsequently, in October 2021, a coalition of independent grocers, pharmacies, restaurants, convenience stores and farmers formed the Main Street Competition Coalition (MSCC) “to encourage enforcement of the RobinsonPatman Act against anti-competitive tactics by dominant firms across industries.” The Robinson-Patman Act is a law prohibiting price discrimination by a seller among competing buyers for the same commodity, which is seldom enforced by the government. MSCC members include the NGA, National Community Pharmacists Association, American Beverage Licensees, National Association of Convenience Stores, Energy Marketers of America, Protect Our Restaurants, Organic Farmers Association, National Association of Truck Stop Operators, Western Growers Association and the National Beer Wholesalers Association. Eight members of the MSCC sent a letter to the FTC seeking assistance “in addressing the anticompetitive effects of economic discrimination,” and requested that the FTC order a study and “look beyond price effect to include other dimensions of competition, including impacts on quality, service and convenience as a result of economic discrimination and increasing consolidation.” As part of this inquiry, the MSCC asked the FTC to investigate arrangements between dominant retailers and suppliers to determine whether these arrangements result in economic discrimination that harms smaller rivals, including whether so-called “channels of trade” distinctions are being used to evade laws against economic discrimination; and examine whether economic discrimination and buyer power have led to concentration throughout supply chains, especially in the food and agriculture sector.

Although the FTC’s study is premised on supply chain disruptions related to the COVID-19 pandemic, many of the grievances aired by small retailers are not unique to the current circumstances. Thus the information sought by the Special Orders is much more encompassing than the simple remit laid out in the FTC’s resolution to conduct the study. For example, the model Special Orders specifically include requests related to company strategies that preexisted the pandemic, as well as general questions about the Order recipients that will be relevant after present disruptions subside, such as inventory, product pricing and allocation, trade promotions, category captains, suppliers, logistics and future business plans. The study, therefore, provides the FTC with a process to develop a deeper understanding of how the retail supply chain functions in the most successful companies and how those companies employ the business practices complained of by smaller competitors. By allowing the FTC to gather substantial information and documents through the compulsory processes outside the law enforcement context, this study can play a key role in how the FTC identifies and analyzes emerging competition trends and issues in the retail sector. The FTC previously held workshops on practices in the retail industry such as slotting allowances and category captains but those workshops and ensuing reports have not resulted in FTC enforcement. The FTC’s new leadership has indicated the agency will enforce the antitrust laws more aggressively; whether or not the FTC pursues enforcement action based on its findings in the current 6b study is an issue worth monitoring for all players in the retail industry.

#### The plan trades off.

Lauren Feiner 22. 1/19/22. News Associate @ CNBC. “FTC Chair Lina Khan says agency won’t back down in the face of intimidation from Big Tech.” https://www.cnbc.com/2022/01/19/ftc-chair-lina-khan-says-agency-wont-back-down-in-the-face-of-intimidation.html

As it stands, Khan said the agency does have to choose its workload wisely, which often involves trade-offs about what it can pursue. Given those constraints, the question of which enforcement actions could have a deterrent effect becomes an important one, she said.

“We have to make very difficult choices about which billion-dollar deals we’re going to ensure we’re closely investigating, but there are very real trade-offs in terms of what that work is going to come at the expense of,” she said.

“What are instances in which certain types of actions could have a market-wide impact?” Khan said, giving an example of a question the agency might consider. “If we are able to obtain a particular settlement or consent decree or get a good outcome in court, what are instances in which that could really change the dynamic in the entire market rather than just, you know, here or there?”

#### Supply chain disruptions cause global war.

Bradley Martin 21, director of the RAND National Security Supply Chain Institute, and a senior policy researcher RAND Corporation, “Supply Chain Disruptions: The Risks and Consequences,” 11/15/21, https://www.rand.org/blog/2021/11/supply-chain-disruptions-the-risks-and-consequences.html

By now the impacts of supply chain disruption are becoming all too familiar: shortages, inflation, factory closures, goods waiting at ports to be unloaded. All these impacts are serious enough, but another more-hidden concern lurks just beneath the surface: the impact of supply chain failure on national security, broadly defined as a nation's ability to protect and ensure the well-being of its population.

This definition of “national security” is broader than just the defense industry or military-related efforts; it also could encompass the very ability of a nation to ensure economic well-being, public health, and protection of a nation's key infrastructure. Supply chain disruptions cause general economic disruption and key commodity shortages, which then in turn can, in fact, drive aggressive national behavior and international instability. And ironically, this reactive aggressive national behavior can happen even if the health of a national economy itself depends upon continued international economic interdependence. Indeed, this very interdependence can create vulnerabilities. So a systematic effort, cutting across agencies and public and private sectors, could be one way to ensure these vulnerabilities are understood and mitigated.

Supply Chain Disruption and Conflict

Dispersed supply chains develop because actors find it's economically advantageous to seek the least-expensive and most-productive sources of supply. These dispersed chains develop for good reasons, but they create complicated interdependencies whose risks and vulnerabilities are sometimes not even understood, let alone mitigated.

While the reasons for creating these chains lie largely with private interest, the effects of disruption—which can come from sources ranging from malign human action to natural disaster—are rarely localized. When shortages occur in one industry, the disruptions in one area nearly always spill into adjacent companies and sectors. Whole economies feel the impact, not isolated actors.

The impact on vulnerable populations may be particularly dire. Supply chain disruptions do not just create higher prices and shortages among high-end consumer products, such as cars. They also affect more-basic commodities such as generic drugs or energy, increasing the cost of living and the provision of basic needs.

This kind of disruption can create instability more generally, promoting conditions for conflict between and within nations. For the most part, nations try to maintain access to markets and resources by peaceful means such as stockpiling, direct investment in partner nations, and use of other financial incentives. However, there is no guarantee that such competition will remain peaceful.

As affluent nations and individuals can find ways to mitigate shortages, they may create blocs of “haves” and “have nots,” where some actors have enough but others cannot meet basic needs. “Haves” may find ways to more directly change distribution, most likely at the expense of other “have nots.” Or “have” nations may try to forcefully safeguard what they have gained and work to exclude competitors. In all these cases, the actors are facing shortages, occasioned by interdependence, and seeking security for themselves in ways that actually promote wider international systemic instability.

Escalation of Conflict

In some cases, supply chain disruptions can have an even more-direct impact than general disruption, causing shortages of commodities the nation must have to ensure national security. This kind of disruption can go beyond matters of justice, equity, and general prosperity to threatening a nation's very ability to defend itself and look after its citizens. Some examples are pharmaceuticals and personal protective equipment, energy, food, raw materials used in manufacturing, and semiconductors used in multiple different systems including military applications. Such shortages can make the need for a national government to act more dire and immediate and thus raise the risk of conflict. In some cases, particular types of raw materials only exist in certain places, so shifting to more-secure sources isn't even possible.

Supply chain disruptions create both leverage for some nations and reasons for other nations to minimize leverage. For example, Taiwan currently dominates the market for semiconductors, which in some respects gives it leverage with other actors, including the mainland People's Republic of China (PRC). Semiconductors are capital-intensive—a new fabrication facility for semiconductors costs approximately $4 billion, with some estimates as high as $12 billion, and can take three or more years to build.

This does not even account for the skilled labor, and points to the difficulty of readily shifting production. As a result, Taiwan gains considerable leverage over the PRC and indeed the world. However, this very dominance, plus its proximity to the PRC and its dependence on the PRC for other commodities, may in fact raise the incentive for the PRC to take aggressive military action to ensure access to a key commodity. Such action could range from a “quarantine” to military threats to an actual invasion.

Aggressive action may stop well short of outright war, yet still be very dangerous for actors in the system. The problem of security vulnerability overall is complicated by the complexity and spread of supply chains across the world. A nation might not be able to successfully secure a commodity just by aggressive action against a single other nation. However, that action against another nation certainly could have the unintended effect of causing supply chains to fail in a more general manner. Aggressiveness, while understandable and probably predictable, might therefore also be extremely dangerous and unproductive.

Conflict and Instability

Nations have gone to war in the past over natural resource shortages or in an effort to secure key markets and labor pools. The need to secure resources and markets was an explicit premise in German and Japanese actions leading to World War II. Such conflict has occurred even during times of significant interdependence between nations, such as in the European system prior to World War I. Historically, nations have not yet resorted to war to ensure supply chain security, but it might be a mistake to assume that such action could never occur when circumstances become sufficiently dire. Interdependence does create incentives to cooperate to avoid disruption, but may offer few alternatives for some desperate nations if some part of the interdependent chain is broken.

### Off

States CP

#### The 50 states and all relevant subnational entities should:

#### - Enforce federal antitrust laws to substantially increasing prohibitions on anticompetitive business practices by the private sector to limit the tribal sovereign immunity exemption to cases where the tribe was the inventor or purchaser of a patent.

#### - Enact parallel statutes adopting the same principle.

### Off---Japan DA---Cyber

Japan DA

#### The plan is applied extraterritorially---that offends Japan.

Herbert Hovenkamp 3. 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 economic alliance.

Takaaki Kojima 2. 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 undermines Indo-Pacific cybersecurity.

Patrick M. Cronin 21. Asia-Pacific Security Chair at Hudson. "U.S.-Japan Alliance in Full Bloom". 4-15-2021. <https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom>

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

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

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

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

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

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

#### Cyberattacks go nuclear.

Ahyousha Khan 20. Research associate at the Strategic Vision Institute, an Islamabad-based think tank. "Artificial Intelligence without Cyber Resilience in South Asia". South Asia Journal. 7-16-2020. <http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/>

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

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

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

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

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

### Framing---1NC

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

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

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

#### They have the burden of rejoinder to refute our specific predictions---we cite a variety of warrants including data, models, and logic defended by experts.

#### Predictions are good---they don’t have to be perfect to be useful.

Michael Ward 16. Professor of Political Science, Trinity College of Arts & Sciences, Duke University. “Can We Predict Politics? Toward What End?” Journal of Global Security Studies 1(1): 80-91. 2016. Emory Libraries.

There will be many successes (and failures) in the years ahead as the policy and scholarly world turns to a more rigorous examination of their understandings through predictions, not just locally in elections, but globally as well in a wider range of human endeavors.

The bottom line with theory is that for the most part, it looks back at the world and describes how things occurred. Often, it attempts to develop a teleology of why things occurred. Rarely is there a track record kept of whether the theory was borne out in cases not initially considered and where there is some ex ante evaluation, the theoretical response is often to add greater nuance to encompass the situations or cases that were not well covered. Theory building does not generally lead to new ideas. This is a well-known facet of inquiry that has been presented and debated for decades, if not longer. Predictions, failed as well as successful, have greater potential for moving the needle on what we know. The cure for bad theory is more theory; the cure for bad predictions is better and often different understandings of what is implied by the underlying (and changing) social dynamics.

Data Constraints

One of the difficulties of doing predictions is that data are often hard to obtain for the future. More practically, all quantitative and quality investigations are limited to information about the past. The typical response to this kind of approach is to employ all the available information, because more information is always better. In the quantitative world, this results in an undesirable dependence between the data collected and the model posited. This dependence typically results in overfitting in which the model has been sculpted to the available data but might not characterize additional data (such as the future or different cases). The same can happen qualitatively wherein new cases are sought to fit different aspects of the theory being examined or constructed.

Even if we do not have time to wait for data on the future to appear as a way of examining the external validity of our explanations, we still have the past. Ideally, we should divide our cases and samples into different groups, one of which we use to estimate the model and evaluate its characteristics as we refine or estimate it statistically. These cases are known as the training cases. A second set of observations, known as the test data, can be then examined to see if they also conform to the theory/model. This procedure, by now a gold standard in most of science, is known as cross-validation and serves as a way to anneal one’s investigations against being too tied to the data at hand.

What Are the Pros and Cons of a Predictive Approach to Social Science?

The main pro is that the predictive enterprise helps us evaluate how well we are doing so that we can improve our understanding of the world. It is the gold standard of a scientific approach. We do not yet have an experimental framework for many important subjects. As a result, it is important to make sure we can get the same kind of results with new information that we got with the data we began investigating. That means we have to either save some data back (a great idea), use the future to see how well our modeled understandings perform, or preferably both. There are only nascent traditions of this in the social sciences at present. Keeping track of your success is not collecting significant coefficients. Keeping track matters. One consequence is that we cannot just keep using the same data over and over. And over. One reason that many hate predictions is that talking heads make many predictions in the media, but few of them ever keep track of how well they are doing. Their goal is somewhat akin to a venture capitalist’s make enough bets that eventually one of them is correct enough that you get to make a lot more bets. Ascher (1979) long ago showed that the talking heads were most often wrong. This is still true. You would think that they would get better over time, but there is little evidence that this is the case.

We also will be driven into making more precise investigations once we start to predict. We will not be satisfied with annual data for most things. Nor will we necessarily be satisfied with national-level information because it becomes even more apparent in the predictive domain that the world is neither flat nor homogeneous. As a result, we should get more precise understandings of how things play out in our social world. At the same time, we have to recognize that our predictions are probabilistic and contain a large amount of uncertainty, more so than in other endeavors.

As a result of these two aspects, better and more precise understandings of our social world, it is possible to be more relevant to decision makers at all levels. This does not mean just inside the beltway. It also means decision makers at CDC (Centers for Disease Control) as well as those in non-governmental organizations around the world.

What are the cons? Several arguments are usually brought to the fore.

The world is inherently unpredictable. But we are studying it anyway. Go figure. The refrain to this litany is often “but I know what is going to happen in this instance.” Maybe, but let us keep track and find out if you are right. This is the talking heads premise, and it is demonstrably false. Making cause and effect statements about politics does imply that politics is in part, at least, predictable.

This will empower the establishment and impoverish those without power. Actually, it might. But at the same time, it provides ways in which those outside the capitals can also affect the future. Why will prediction be more valuable to the establishment than it is to the rest of society? Is the same thing true of explanation and substantive knowledge? Western society is based in part on the idea that knowledge is a valuable thing for all. It is true that some take more advantage of it than others. But having open and available knowledge can be important for many diverse groups. As an example, we might think that clandestine organizations can benefit from open knowledge, even precise actionable knowledge, but as we think these thoughts, most of us might not be thinking about transnational activist networks but rather large governmental organizations. However, it is clear that non-governmental actors are also consumers of knowledge.

It is possible to predict things without true understanding or knowledge. Sure, but rarely is this true for any but the simplest of systems. I am reminded of the wonderful essay by Calvin Trillin describing the chicken on Mott Street in New York’s Chinatown that played and always won Tic-Tac-Toe. The chicken did not understand the game. But the chicken always won.6 It is ridiculous to suggest that we have models that predict as accurately as the (now gone) Mott Street chicken but have the same understanding of the “chicken” game. Even if it were the case (and I repeat it is not), could the opposite really be true? If you have deep understanding of the world, should you not be able to generate accurate predictions of how it will work in situations you have not seen before? Will proximate effects lead us toward distant causes much like proximate causes can lead us to distant effects?

We will disrupt the space-time continuum. If we can predict conflict, for example, we will be able to prevent it. Or start it where we want. And then we will no longer be able to predict conflict. One of my models attempts to predict where there will be coups de état and other types of irregular regime changes on a monthly level. Maybe if Muhammadu Buhari, who assumed the presidency of Nigeria at the end of May 2015, sees our manuscript, he might be able to prevent any irregular leadership change from occurring in the next six months. And maybe that would be bad. Or good. But in any case, I am pretty sure that the Nigerian president is already aware of the fragility of the Nigerian political landscape. This is a frequent type of criticism of forecasting. I think we can wait for this to become a real problem before we stop trying to develop better understandings of the world.

Real social effects occur glacially. Predictions will be focused on epiphenomenal changes that won’t matter in the long run. How do you know?

In summary, we need less theory because most theory is an attempt to rescue or adapt extant theory. We need more predictions in order to keep track of how well we understand the world around us. They will tell us how good our theories are and where we need better explanations. Predictions are like cell phones. First, they seem arcane and bizarre. Then, in a few short years, there is no one around who remembers life without cell phones and your kids use them in ways you don’t understand. The 2012 US presidential election was the first that was famously and accurately predicted. But it will be the first of many. All future voters will vote in an era in which accurately predicting the election will be the norm, not the exception, though as in the UK in 2015, there will be exceptions. This will have consequences for democracy. In the same way that having a product recommended to us on the web is now normal, this will become the new normal. Data science (and more data) will guide us to a better understanding of our future than we have now. Whether you are involved with commercial organizations, local government, non-governmental organizations (NGOs), the federal government, or international organizations, prediction will be part of the daily ebb and flow of information, and we shall become used to seeing accurate predictions about a wide variety of political phenomena.

But, as we get more accurate, will we be able to begin manipulating outcomes? Engineer results? It may not seem like it to everyone, but political beliefs are malleable. In fact, survey researchers are feigning shock at discovering that political surveys tend to politicize respondents. Republicans can turn into Democrats, and vice versa. Will we get equally adept at predicting what kinds of information, interactions, and initiatives will turn the tide in a particular election? Facebook and Google—and many other less famous firms—think so, and are gearing up for the 2016 election with tools that go way beyond surveys that can be used for that purpose.

What do we expect to see in the global security system? First, we know that a wider variety of actors will be consuming and generating data on their activities. Indeed, we know that a wider variety of national and non-state actors are using predictive models of behavior that might broadly be considered in the realm of political violence, ranging from strikes and protests to attacks and casualties. China, Russia, the European Union, and the UK, as well as the United States and the United Nations and the North Atlantic Treaty Organization, all have substantial forecasting capabilities in the global realm. Some of these forecasts are made on a weekly basis, and others are more long term, looking out a couple of decades. But the fact that predictive heuristics are now part and parcel of normal statecraft is important and recent. Moreover, non-state actors are not to be left out and are beginning to evolve toward greater foresight. Consider that an International Red Cross that is able to predict domestic conflicts will be better able to pre-position supplies and expertise to deal with the human toll of such conflicts. A monitoring of violent government actions that can predict the safest time to remove NGO personnel in conflict zones is another example of a predictive tool that can affect the global security system in new and beneficial ways.

The global security system is complicated, multilayered, unknown, and changing. In some ways, it is exactly like the solar system. However, it may change more quickly but maybe less dramatically.7 By developing explanations and subjecting them to critical evaluations, we learned more. We can learn more again. We can build Antikythera Mechanisms. Though they may or may not tell us about the next sociopolitical eclipse in the international security system, they are likely to help us get rid of bad ideas.

### Adv---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**.**

## 2NC

### T Prohibitions

#### “Prohibitions” require outright bans on a practice.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

We also have measures that help capture the annual level of regulatory scrutiny given merger activity in a particular antitrust jurisdiction: our core explanatory variables. 'Antitrust Actions' refers to an antitrust jurisdictions annual sum of monitorings, remedies, and prohibitions. Where 'Monitorings' are the number of transactions cleared but with commitments by the antitrust authority to monitor post-merger behavior, 'Remedies' are the number of transactions cleared but forced to undertake behavioral or structural remedies to ameliorate anti-competitive concerns, and 'Prohibitions' are the number of transactions that are out-right prevented by the antitrust authority.16 Accordingly, antitrust actions represent an annual count of the possible merger policy actions taken by a particular jurisdiction with respect to merger behavior: with monitorings, remedies and prohibitions representing the three sub-categories of actions. Table 1 reports summary statistics – based on the observations employed in the empirical estimations – for the Mergers variable and the three types of Antitrust Actions broken down by the twenty-eight antitrust jurisdictions.

#### That’s different from remedies that ameliorate only anticompetitive elements---which is the aff.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Antitrust authorities in recent years have shown a proclivity to employ remedies to ameliorate the anti-competitive elements of proposed mergers instead of engaging in out-and- out prohibitions. For instance, the European Commission (EC) has largely relied on structural and behavioral remedies by only blocking one merger since 2001. In the US, remedies constituted only twenty-three percent of US merger policy actions in the late 1980s; but by the year 2000, remedies were employed in over sixty percent of US merger cases requiring antitrust action (Parker & Balto, 2000). The increased adoption of remedies spurred the U.S. Federal Trade Commission (FTC) into studying the success of divestitures as a remedy for anti-competitive concerns: that already-mentioned study (U.S. FTC, 1999) found divestitures to generally create viable competitors.2 Accordingly, the FTC issue guidelines for remedies in 1999, the EC followed suit by issuing guidelines in 2001, and the U.S. Department of Justice (DOJ) in 2004 (Duso, Gugler & Yurtoglu, 2007). The codification of remedies as an important merger policy tool in these three highly visible authorities would seemingly influence less-experienced authorities which look to established authorities for guidance and benchmarking in the development of antitrust practices. An example of an overt influence by established authorities on less-experienced authorities rests with the European Union's (EU) accession criteria mandating that candidate-nation antitrust policies conform to EU policies (Dutz & Vagliasindi, 2000). Figure 1 corroborates the above conjecture on the diffusion of remedies as a favored practice by illustrating that the average ratio of remedies to prohibitions has substantially increased over the 1995-2005 period; thus, remedies have become by-far the most popular merger-policy tool in the cross-national environment for antitrust.

#### The aff is NOT an increase in prohibitions---it increases “regulations” because the practice can still continue.

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

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

#### Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### Independently, behavioral remedies incentivize circumvention---decks AFF solvency

Carrie C. Mahan 19. Partner at Weil, Gotshal & Manges LLP, with Natalie M Hayes, associate at Weil, Gotshal & Manges LLP. “MERGER REMEDIES GUIDE SECOND EDITION,” eds. Ronan P Harty & Nathan Kiratzis. https://www.weil.com/~/media/files/pdfs/2019/nonstructural-remedies.pdf

Criticisms

While non-structural relief can help agencies preserve the procompetitive benefits of a trans- action while protecting against the risk of potential competitive harm, conduct remedies are still vulnerable to criticism. In contrast to structural remedies, which are generally ‘simple, relatively easy to administer, and sure’ to preserve competition,46 behavioural remedies raise various concerns,47 including the following:

• They are difficult to draft and clearly define. The agencies acknowledge that when design- ing conduct remedies, ‘displacing the competitive decision-making process widely in an industry, or even for a firm, is undesirable.’48 Accordingly, ‘effective conduct remedies are tailored as precisely as possible to the competitive harms associated with the merger to avoid unnecessary entanglements with the competitive process.’49 This can be easier said than done; however, because ‘the behavior that such remedies seek to prohibit or require is often difficult to fully specify.’50 It may also be challenging to determine the appropriate duration of a conduct remedy given the difficulty in assessing how long it will take new entry or expansion to occur.

• The outcomes are uncertain. It is no easy task to design a conduct remedy that will appro- priately replicate the competitive dynamics of a particular market. Even when well-crafted, conduct remedies ultimately set static rules that do not fully account for changes in the market. Thus, conduct remedies may eventually distort the market because they may restrict the merged firm from engaging in conduct that would be pro-competitive as the market changes.51

• They may incentivise circumvention. In addition to potentially being overly intrusive or burdensome, conduct remedies ‘attempt[ ] to require a merged firm to operate in a manner inconsistent with its own profit-maximizing incentives’.52 Imposing such restrictions does not eliminate the firm’s incentive to pursue profit. Instead, such restrictions may introduce incentives for non-compliance, and conduct remedies are easier to circumvent than struc- tural remedies.53

• They are expensive and difficult to monitor or enforce. Conduct remedies ‘tend to entangle the Division and the courts in the operation of a market on an ongoing basis’.54 They require continued monitoring and are challenging to enforce, particularly requirements such as non-discrimination clauses and information firewalls.55 Unfortunately, the agencies may not always have the tools or resources to do so effectively. Therefore, a prominent criticism of conduct relief is that it imposes direct and potentially substantial costs upon the govern- ment and the public.56

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

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

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

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

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

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

#### 2. Link turn. It’s the only clear bright line---if the business practice described by the aff can still legally occur post-plan, it is not prohibited.

Martin G. Vallespinos 20. LLM, University of Michigan Law School; Manager at Ernst & Young Detroit, “Can the WTO Stop the Race to the Bottom? Tax Competition and the WTO,” 40 Va. Tax Rev. 93, Lexis

Prohibited subsidies, as described in Article 3 of the SCM Agreement, are disallowed outright, and WTO members can unilaterally impose countervailing measures against the country sponsoring them. This category [\*146] includes (i) subsidies that are contingent, in law 237or in fact 238upon export performance 239and (ii) subsidies that are contingent upon the use of domestic over imported goods.

Export contingency can be "de jure" or "de facto." De jure export contingency derives from "the very words of the relevant legislation, regulation[,] or other legal instrument constituting the measure." 240De facto export contingency is met when "the facts demonstrate that the granting of a subsidy ... is in fact tied to actual or anticipated exportation or export earnings." 241The WTO jurisprudence regarding "de facto" contingency, however, is not uniform and WTO panels have set forth various alternative tests. In Australia-Automotive Leather II, the Panel established a standard of "close connection" between the grant of a subsidy and export performance. 242In Canada-Aircraft, the Panel and the Appellate Body ("AB") implemented the so called but-for test, which interprets the "tied to" language to be equivalent to a relationship of "conditionality" between the grant of a subsidy and export performance. 243Therefore, de facto contingency is met when "the facts demonstrate that the tax benefit would not have been granted ... but for anticipated exportation or export earnings." 244In the same case, the AB clarified that "it does not suffice to demonstrate solely that a government granting a subsidy anticipated that exports would result." 245This means that, in the AB's view, the granting authority's expectations on exports may not be sufficient to meet the standard, so the subsidy must be objectively contingent upon export [\*147] performance. 246In pursuit of a more objective criteria, the AB suggested that, "where relevant evidence exists, the assessment could be based on a comparison between, on the one hand, the ratio of anticipated export and domestic sales of the subsidized product ... and on the other hand, the situation in the absence of the subsidy." 247But both the Panel and AB further clarified that an assessment based on ratios is incapable by itself of establishing that a given subsidy is de facto contingent on export performance "in the absence of any meaningful analysis regarding how a subsidy's design and structure contributes to the presence of an incentive for a recipient to [favor] export sales over domestic sales." 248

With respect to domestic use contingency, Article 3.1(b) contains no reference to contingency in law or in fact. Nevertheless, the AB has found that Article 3.1(b)'s scope covers both de jure and de facto contingency. 249Also, both the Panel and the AB have concluded that the general guidance regarding evaluations of de facto export contingency should be applicable to de facto domestic use contingency. Finally, it should be mentioned that the Panel and AB decisions are not binding precedential authority but rather can be only strongly persuasive authority. Therefore, countries should be aware of all these alternative tests when designing their tax policies, as there is no certainty as to which criteria WTO decision makers may apply in the event of a dispute (e.g. but-for test, close connection test, assessments based on ratios, etc.).

A subsidy that is not considered "prohibited" can still satisfy the specificity criteria and become an actionable subsidy if it meets the two following requirements:

(1) Specificity: an actionable subsidy is considered specific when the eligibility to receive the benefits is limited to certain enterprises, industries, or areas; 250and

(2) Adverse effect: an actionable subsidy is considered adverse when it produces a serious prejudice to the interests of another member, an injury to its domestic industry, or a nullification or impairment of benefits accruing directly or indirectly to other members under the GATT. 251

#### 3. Data base of anti-trust literature from 2000 to the present shows it’s aff leaning.

Fiona M. Scott Morton 19. Theodore Nierenberg Professor of Economics at the Yale University School of Management. Previous deputy assistant attorney general for economics at the Antitrust Division of the U.S. Department of Justice. B.A. in economics from Yale University and Ph.D. in economics from the Massachusetts Institute of Technology. "Modern U.S. antitrust theory and evidence amid rising concerns of market power and its effects," Equitable Growth, https://equitablegrowth.org/research-paper/modern-u-s-antitrust-theory-and-evidence-amid-rising-concerns-of-market-power-and-its-effects/?longform=true

The experiment of enforcing the antitrust laws a little bit less each year has run for 40 years, and scholars are now in a position to assess the evidence. The accompanying interactive database of research papers for the first time assembles in one place the most recent economic literature bearing on antitrust enforcement in the United States. The review is restricted to work published since the year 2000 in order to limit its size and emphasize work using the most recent data-driven empirical techniques. The papers in the interactive database are organized by enforcement topic, with each of these topics addressed in a short overview of what the literature demonstrates over the past 19 years. These topics are: Horizontal mergers—mergers and acquisitions involving direct competitors Coordinated effects—the study of conditions under which competitors in an industry tacitly collude Vertical mergers—mergers and acquisitions where a company acquires another company to which it sells goods or services or from which it buys goods or services Exclusionary conduct—actions in the marketplace that deny a competitor access to either suppliers or customers Loyalty rebates—a type of conduct that occurs when a company gives a discount to a buyer for limiting its purchases from the company’s competitors Most Favored Nation clause—this clause requires a seller to give a specific buyer the best terms offered to other (often competing) buyers Predation—the strategy of taking losses in the short run in order to drive out a competitor and retain or gain a monopoly position, permitting prices the later exercise of market power Common ownership—the impact on competition when mutual funds and other types of institutional investors are the largest owners of product market competitors Monopsony power—the anticompetitive exercise of market power by employers (firms) in the labor market for workers Macroeconomics and market power—the impact of competition issues on the larger economy

**---DATA BASE OMITTED---**

The bulk of the research featured in our interactive database on these key topics in competition enforcement in the United States finds evidence of significant problems of underenforcement of antitrust law. The research that addresses economic theory qualifies or rejects assumptions long made by U.S. courts that have limited the scope of antitrust law. And the empirical work finds evidence of the exercise of undue market power in many dimensions, among them price, quality, innovation, and marketplace exclusion. Overall, the picture is one of a divergence between judicial opinions on the one hand, and the rigorous use of modern economics to advance consumer welfare on the other.

#### Remedies v Prohibitions are a considerable debate.

Hiba Hafiz 8/9/21. Assistant Professor of Law at Boston College Law School; Affiliate Fellow, Thurman Arnold Project, Yale University. “Rethinking Breakups.” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3892326

The U.S. Department of Justice (DOJ) and FTC have leveraged these core antitrust statutes to investigate and challenge Big Tech firms like Google, Facebook, and Amazon, and the Biden Administration has appointed leading progressive antitrust advocates in the White House, DOJ, and FTC to preside over the “TrustBusting Biden Presidency”. 22 In addition, Congress has sought to buttress current law with proposals to expand this arsenal through reform legislation strengthening merger policy, antitrust agency authority, and expanding the range of prohibited conduct under Section 2 beyond current judicial interpretations of its scope. 23 States have joined the anti-monopoly movement with abuse of dominance legislation that goes beyond federal antitrust law, prohibiting a wider spectrum of dominant firm conduct and even firm dominance itself.24

But while there has been significant movement in the executive and legislative branches to tackle the problem of “bigness” through more robust agency practice and more expansive substantive law extending the scope of firm antitrust liability, exactly how to remedy the problem once firms are found to contravene the law is the subject of considerable debate.

### Cap K

#### 3. 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.

#### 3. 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

#### 2. 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.

#### Global economic development is entangled with resource extraction, exploitation, and alienation – it has been historically deployed to impose Western dominance under the guise of furthering “linear human development”.

Francisco Durante et. al. 21. Markus Kröger, and William LaFleur. PhD candidate in the Political, Societal, and Regional Change Doctoral Programme in affiliation with the Aleksanteri Institute and Faculty of Social Sciences, University of Helsinki. Associate Professor of Development Studies, University of Helsinki and Academy of Finland. PhD candidate in the Political, Societal, and Regional Change Doctoral Programme, Faculty of Social Sciences, University of Helsinki. OUR EXTRACTIVE AGE Expressions of Violence and Resistance. Routledge. 2021. Pg. 24-26.

Universalizing Exploitation as Natural In an attempt to conceptualize the violence of modern extractivist practices, it is necessary to trace the seeds of this onto-logic as it has operated through the centuries and forms the functional core of the modern world-system and world-ecology (see Moore, 2015). What is now referred to as extractivism did not spontaneously emerge in European colonial times, nor does it characterize only one economic system (capitalism), but indeed permeates other modern iterations—socialism and its variants included (Gudynas, 2018). Scholars have shown that modern extractivist practices began to take root, or at least gather significant momentum, around 500 years ago (Wallerstein, 1974; Mintz, 1986; Escobar, 1995; Acosta, 2013; Gudynas, 2015; Moore, 2015; Willow, 2018). Thus, extractivist practices are inextricably entangled with European colonialism, the development of the modern world system, and the Enlightenment and scientific revolution (Merchant, 1983). Scholars such as Moore (2015) and Escobar (2016) argue that the economic forces and imaginaries creating the contemporary world system started to become dominant during the longue durée of the 16th century and thereafter became hegemonic among states of all ideologies, permeating the epistemological culture of most governments and international politics. Extraction and anthropocentric appropriation, which are ecologically destructive and aimed at building empires, have even deeper roots, with world systems analysts pointing to a 5,000-year history of imperial capital demolishing environments (Frank and Gills, 1993). A clear example of anthropocentric appropriation is the long and wide-ranging history of deforestation (Perlin, 2005). However, what differentiates the ancient deforestations and other extractions from the past 500 years of extractivism is the scale, and the greater domination of certain mindsets, by the advancement of modern technology alongside political and military power. These have gradually wiped out prior and co-existing, nurturing, regenerative, and sacredness-based understandings and ontologies of the earth (Merchant, 1983). Yet Merchant (2013) traces the foundation of modernity’s relations of the domination of nature to Greek and Christian narratives which helped to pave the way for the modern colonialcapitalist era. Similarly, Harvey emphasizes how the idea of the “domination of nature” has strongly influenced both scientific writing and the popular imagination since the Enlightenment era (2014, p. 247). More precisely, the historian Andrew Fitzmaurice (2007), writing on the origins of the concept of terra nullius, provides a lucid account of this conception of the world as it was maintained through the Ancient, Christian, and Enlightenment histories of Europe—at first philosophical and later legal—and which holds the key to the ontological basis for a logic of extractivism. The ontological basis for the logic of extractivism was first promulgated by the ancient Greeks as “natural law” before being codified by the Romans as the “law of first taker” (or ferae bestiae, the law of wild beasts), and eventually reified as res nullius, or “a thing belonging to no one” under international law in the late 19th century (Fitzmaurice, 2007). The genealogy of the natural law concept is significant on at least two accounts. First, the law asserts that property, and therefore humanity, is established through the exploitation of the potential of things in the physical world. Where the exploited thing in question has no (human) owner, it comes under ownership of the exploiting party (Fitzmaurice, 2007). It is the notion of exploitation in natural law—dependent on assumptions about property and the dominance of humans over “nature”—where the seed of this extractivist ontologic begins to express itself. Second, the interpretation of the ferae bestiae was central to debates in Europe on the justification of colonial dispossession and domination. For example, Francisco de Vitoria, a theologian at the School of Salamanca in the 16th century, used ferae bestiae to argue against Spanish colonial plunder (Fitzmaurice, 2007; de Vitoria, 2010). However, the English inverted the interpretation of this law (e.g. John Locke’s Second Treatise of Government, Chapter V), reasoning that by not having properly exploited nature—that is, through their labor—the native populations of the Americas (and later Aboriginal Australians) had not established their humanity, and therefore, did not hold just dominion over the lands on which the Europeans first encountered them (Fitzmaurice, 2007). The colonists had only to exploit the nature (and people) of their newfound lands through their labor in order to take ownership of them. Thus, exploitation was first carried out through direct physical violence so as to carve out lands for the new immigrants to “properly” exploit, followed by transformations of these landscapes that more closely resembled those they had left across the Atlantic. Extractivist violence was thus the central tool and mindset in consolidating and legitimizing Western colonial dominance. This extractivist mindset paved the way for centuries of violence and destruction against indigenous communities and ecosystems. It is no stretch to see that this reinterpretation of natural law via ferae bestiae required additional forms of subjugation, including the racialization of non-Europeans, which was added to the already-operative linear notion of human development as progressing from savage to civilized. This rationale marked a turning point in the modern colonial project and set the stage for a world economy that increasingly and more intensively hinged upon an extractivist conception of world-making, as filtered down through the centuries from ancient Greece and Christianity. By the end of the 17th century, there was a gathering ethos of gaining mastery over nature through technology and the new science of mechanics, which supported a Western worldview of exploitation, subduing prior notions of a “nurturing earth mother” (Merchant, 1983, p. 116). It is notable that this process turned global only within the past 500 years, marking the era of global extractivisms. The onto-logic of exploitations-cum-extractivisms established a prerequisite for the advent of the modern world-system and appears pervasive in all forms that the system now takes, having intensified even more in the past century. We find an increasing number of scholars utilizing extraction and extractivism to understand new forms of violent regimes that have emerged only in the 20th and 21st century, ranging from neoliberal to progressive governments’ macro-developmental projects (e.g. Gudynas, 2015; Svampa, 2019).

#### 2. Cap competition causes resource shortages---existential crises.

John Gibbons 21. Environmental journalist and co-author of the Routledge International Handbook of Environmental Journalism. Resolving the paradox of satisfying the needs of all while using far less energy. Irish Times. 5-6-2021. https://www.irishtimes.com/news/science/resolving-the-paradox-of-satisfying-the-needs-of-all-while-using-far-less-energy-1.4542693

‘Drastic changes’

“Our intention is to imagine a world that is fundamentally transformed, where state-of-the-art technologies merge with drastic changes in demand to bring energy (and material) consumption as low as possible, while providing decent material conditions and basic services for all”, the authors state. Only through such a radical transformation, they add, can human needs be met within critical planetary boundaries.

At present, those daring to suggest alternatives to our current model of constant economic growth or promoting steady state economics are likely to be dismissed as new age cultists or “degrowth fetishists” trying to make everyone poor.

The new study, according to lead author, Joel Millward-Hopkins of the University of Leeds, “offers a response to the cliched populist objection that environmentalists are proposing that we return to living in caves”.

The paper points out that “inequality and especially affluence, are now widely recognised as core drivers of environmental damage”. Consider that in the year since the Covid-19 pandemic began, the collective wealth of the world’s billionaires has ballooned by some $3.9 trillion (€3.2 trillion) while hundreds of millions of the world’s poorest people were plunged deeper into poverty and financial insecurity as a result of the pandemic.

Trickle-down economics

This further debunks the concept known as trickle-down economics, the notion that tax breaks for the wealthy would somehow flow towards wider society. Resources are instead being rapidly siphoned upwards towards the already wealthy and economically powerful.

The paper points out that current levels of energy usage “underpin numerous existential crises, resource scarcity and the geopolitical instabilities these issues can catalyse, especially in a growth-dependent global economy”. While there have been significant improvements in energy efficiency, these have “largely served to boost productivity and enable further growth”.

Crucially, beyond a certain point, increases in energy use in a given society deliver little or no additional benefits to that society. The study envisages, with the aid of technologies, radical demand-side transformations that largely eliminate excessive consumption and focuses available resources instead on providing the conditions required for flourishing. These include basic physical health and safety, access to clean air and safe water, good quality (largely plant-based) nutrition, and the opportunity for social and political participation.

Resolving the paradox of how to satisfy the needs of all while using far less energy and fewer resources depends on sharp global reductions in meat-eating, down by some 85 per cent in rich countries. A massive expansion of public transport globally would greatly reduce energy and emissions while allowing people to meet their transport needs without the expense of owning and running resource-intensive private cars.

Globally, much of the existing housing stock needs to be replaced over time with modern buildings with very low heating and cooling energy requirements. This would be another vital step in achieving decent living conditions with far less energy than at present.

#### 3. War w/ calculi that enable conflict---alt solves.

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

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

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

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

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

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

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

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

#### Modern development is characterized by extractivism – logics of maximizing output subtend world-making under a capitalist era that cause violence at resource frontiers and environmental degradation.

Francisco Durante et. al. 21. Markus Kröger, and William LaFleur. PhD candidate in the Political, Societal, and Regional Change Doctoral Programme in affiliation with the Aleksanteri Institute and Faculty of Social Sciences, University of Helsinki. Associate Professor of Development Studies, University of Helsinki and Academy of Finland. PhD candidate in the Political, Societal, and Regional Change Doctoral Programme, Faculty of Social Sciences, University of Helsinki. OUR EXTRACTIVE AGE Expressions of Violence and Resistance. Routledge. 2021. Pg. 20-21.

Extractivism characterizes the modern era. We define extractivism in this publication as a particular way of thinking and the properties and practices organized towards the goal of maximizing benefit through extraction, which brings in its wake violence and destruction. Extractivism plays out particularly brutally at resource frontiers, invisible to the majority of the distant users of the commodities appropriated under this frontier logic (Moore, 2015). Yet globalization has made the effects—physical, social, and mental—of the ever-intensifying extractivisms more visible, as they increase in scale and scope to maintain the global rush into modernity (Kröger, 2015). Ignorance about the tolls of extractivism and an increase in hyper-extractive activity is no longer an excuse. Nonetheless, the violence played out against humans and other living beings, as well as against lived environments on the multiple frontiers of extractivisms need to be further scrutinized (Acosta, 2013; Taylor, 2015; Gudynas, 2015; McNeish, 2018; de la Cadena and Blaser, 2018; Svampa, 2019; Kröger and Nygren, 2020). The modern era has seen a rise in the scope and scale of extractivist violence. A major driving factor has been the global expansion of extractive activities by traditional powers and rising economic powers, such as China (see Li and Shapiro in this volume). However, technological advances have played a significant role in transforming ontologies, practices, and spiritual, reciprocal, or sacredness-based relations with the environment and the planet (Merchant, 1983). In addition, these technological advances support an increased volume of extraction (Gudynas, 2015; Dunlap and Jakobsen, 2020) and allow a window into the extractivist activities taking place. In previous eras these activities might have remained unseen, playing out at frontiers in marginalized spaces (Peluso and Watts, 2001; Arboleda, 2020). However, the logic of extractivism is still firmly in place. The violent logic of taking resources—without reciprocity, without stewardship—has gained traction in the past two decades, despite an increase in on-the-ground resistance and some localized regulatory attempts to hamper its operations and impacts (Jalbert et al., 2017; Willow, 2018; Kröger, 2013; 2020a). In addition to the evident push for natural resource extraction, the underlying logic of extractivism is increasingly revealed to be a fundamental driving force of capitalism—as well as of other modern world-systems (Szelényi and Mihályi, 2020). In fact, the extractivist logic, operating through depletion, has been in operation for thousands of years (e.g. over-logging, deforestation, etc.), as empires have been built and capital amassed for wealthy families, enterprises, and colonizing powers (Frank and Gills, 1993; Perlin, 2005). While empires have been resisted by local communities for thousands of years, less has been written about this because history tends to be written by the winners, the established “civilizations,” and states. This kind of resistance based on rooted dwelling and anti-state attitudes is still visible, as e.g. Scott (2017), de la Cadena and Blaser (2018), and Kröger (2020a) have elucidated ethnographically. As non-modernist framings stemming from these communities have proliferated (Kröger, 2013), sectors of the global economic system that have not historically been directly associated with the concept of extractivism, such as the financial and digital sectors, are now increasingly being understood as “extractive,” “colonial,” and a feature of contemporary capitalism(s) (Thatcher et al., 2016; Gago and Mezzadra, 2017; Mezzadra and Neilson, 2017; Couldry and Meijas, 2019; Sadowski, 2019; Dunlap and Jakobsen, 2020). These new arenas of extractivism are multi-faceted and change rapidly as the technological capability and creativity for their myriad uses (and abuses) continues to evolve, as we see in chapters in this volume by Chagnon et al., Li and Shapiro, and Nicholson.

## 1NR

### T CWS

#### The plan also violates the word core.

Tracy C. Miller and Alden Abbott 21. Tracy C. Miller, Senior Policy Research Editor. Alden Abbott, Senior Research Fellow. "POLICY SPOTLIGHT: Antitrust Policy and the Consumer Welfare Standard". Mercatus Center. 3-24-2021. https://www.mercatus.org/publications/antitrust-and-competition/policy-spotlight-antitrust-policy-and-consumer-welfare

Since the late 1970s, the Supreme Court has emphasized consumer welfare as the core antitrust policy goal, which was a change from earlier decisions emphasizing the evils of big business and the importance of protecting smaller companies. Judicial decisions under the consumer welfare standard subsequently have enunciated fact-specific standards that seek to preserve incentives for business conduct that benefits consumers. These decisions have also granted dominant firms greater freedom to engage in aggressive competition to better satisfy consumers. The focus of these cases has been whether business behavior tends toward maximizing output (taking into account quantity, quality, and improvements in innovation), consistent with unrestricted competition.

The Case for a Different Approach

* Critics of current antitrust policy argue that enforcement has been ineffective, as evidenced by a decline in competition and an increase in the average market share of firms in recent decades.
* A growing number of scholars have concluded that the consumer welfare standard is inadequate. These scholars support a populist approach that pursues a broader range of objectives such as promoting fairness, protecting labor rights, and limiting monopoly as measured by firm size and market share.
* These concerns have resulted in studies by the House Subcommittee on Antitrust, Commercial, and Administrative Law and by the Washington Center for Equitable Growth that endorse digital platform regulation, new Federal Trade Commission rulemaking, and legislation to strengthen antitrust laws, with a greater emphasis on bright-line rules.
* In February 2021, Senator Amy Klobuchar, chair of the Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, introduced legislation that would greatly toughen the standard for evaluating mergers and lower the bar for convicting a firm of illegal monopolization.
* Other expansive antitrust reform proposals, including possible regulation or structural breakups of big platforms, may be considered by the House Subcommittee on Antitrust, Commercial, and Administrative Law.

Defense of the Consumer Welfare Standard

1. Reforming antitrust policy in a way that would abandon the consumer welfare standard is likely to do more harm than good.
2. Studies claiming that competition is declining are based largely on flawed premises. Although digital platform markets are often more concentrated than most markets in the past, firms with a large market share may still be under pressure to compete owing to the potential of existing firms and startups to develop innovative new products and services.
3. Reforms proposed by various antitrust critics such as breaking up dominant firms or prohibiting most mergers and acquisitions are likely to make consumers worse off, sacrificing the benefits of declining per-unit costs that accompany large-scale production and integration of complementary services controlled by one firm.

Broadening the scope of what constitutes a violation of antitrust law would likely create a great deal of uncertainty for firms as they seek to compete effectively and grow their market shares. Further, trying to assign weights to vaguely defined notions of fairness and labor rights along with consumer welfare would create confusion and could lead to arbitrary decisions that are not consistent with the rule of law.

#### 2. Only accessible literature base.

Commissioner Noah J. Phillips 18. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century”. https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf

So, today, we take on the very modest task of looking both at vertical mergers and the consumer welfare standard. Both have made headlines of late, which is not always true in the antitrust world. The Department of Justice’s ongoing litigation regarding the mergers of AT&T and Time Warner has drawn a great bit of attention, in particular, to vertical merger law and the economic theories surrounding it.

And we have heard a great deal, almost every week, on op-ed pages, on television and so forth, regarding the consumer welfare standard. So this is an important time, it is an appropriate time for the FTC to be convening a hearing on these two topics.

#### 3. It strikes a middle ground with both sides’ offense. Tons of proposals and disad scenarios.

Ariel Ezrachi 18. Slaughter and May Professor of Competition Law, The University of Oxford. Director, Oxford University Centre for Competition Law and Policy. EU Competition Law Goals and The Digital Economy. “Ezrachi - Goals and the digital economy - Working paper.pdf” https://d1wqtxts1xzle7.cloudfront.net/57115872/Ezrachi\_-\_Goals\_-\_Aug\_2018-with-cover-page-v2.pdf?Expires=1638214770&Signature=Mpj92d9khmpS0HyzF3CslPfb5dW85lbsqJCFgU7D3GFTj70U5Gmz8RSwdhVHuxhj9i9BowILCRURtQhqIJ7K04JEI63btRTbEl8KxIr46OUPivr09yML6cP3LePcVM91a6QIQCxZHlvD-CWrhFPrhKwhltMKdr2MAeQwKl~C8BcVvhWta42~SbQV5rolyiYlJSdi-Ud4-RMCW6ezyaWhgw3yaulQnnIBg7BvfT04pXgG9Ljo9ZfYx1Y1rJA8B7S~WqSCszmjSrZUoQSPjD8sxw9RuBoJVxBWrXAYIYyF9Fa-df-uhBY24PMlRIMzpOK~xHfcyxo7AQ1pGVd-3rg8QA\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

In this respect, it is interesting to consider the enforcement approach in the US and its relevance to EU competition regime. This is particularly so in light on current debate in the US on the need and desirability of changing the benchmark for antitrust assessment, the efficacy of US antitrust law, and its ability to deal with increased concentration and market power.145 That debate stems from the evolution of US antitrust law which has seen it being narrowed in scope over the years,146 and the rise of voices which argue in favour of widening the notion of consumer welfare and the realm of US antitrust. The alleged decline in competitiveness of US markets has led to an array of proposals (which range from moderate intervention to condemnation of bigness) and to numerous counter arguments.147

---FOOTNOTE 147 STARTS---

147 On the US debate on ‘Hipster Antitrust’ (or ‘New Brandeis Movement’) see for example: Carl Shapiro ‘Antitrust in a Time of Populism’ [2018] International Journal of Industrial Organization (forthcoming); Lina Khan ‘The New Brandeis Movement: America’s Antimonopoly Debate’ [2018] Journal of European Competition Law & Practice 131; Daniel A Crane, ‘Four questions for the neo-brandeisians’ [2018] CPI Antitrust Chronicle 63; Harry First ‘Woodstock antitrust’ [2018] CPI Antitrust Chronicle 57 ; Philip Marsden ‘Who should trust-bust? Hippocrates, not hipsters’ [2018] CPI Antitrust Chronicle 34; Howard A Shelanski, ‘Information, Innovation, and Competition Policy for the Internet [2013] U Pa LRev 1663; Herbert Hovenkamp ‘Whatever Did Happen to the Antitrust Movement?’ [2018] Notre Dame LRev (forthcoming).

---FOOTNOTE 147 ENDS---

### Notice and Comments CP

#### Participation must be prior and considered---its key to legitimacy of rules and participation.

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

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

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

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

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

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

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

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

#### Perms sever the mandate of the plan---counterplan doesn’t fiat antitrust law but recommends a rule---process could result in no change---makes the affirmative conditional and a moving target.

[IF NOT READ YET]

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

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

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

#### 1---“Resolved”---means certain.

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

#### 2---“Should”---mandates certainty.

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

#### 3---“Substantial”---means full not merely possible.

Words & Phrases 64 (40 W&P 759)

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

#### \*4---“Prohibitions”---eliminates all possibility that the activity is legal---the counterplan is a restriction.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### 5---“Expansion” to “antitrust law” must be binding and immediate.

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

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

#### 6---“Expand the scope”---doesn’t occur until a case is won.

Gibson Dunn 21. Lawfirm. Gibson Dunn partner Howard S. Hogan served as an expert witness for 1-800 Contacts. "Second Circuit Issues Important Ruling on Trademark Settlements and Antitrust/IP Interface". Gibson Dunn. 6-14-2021. https://www.gibsondunn.com/second-circuit-issues-important-ruling-on-trademark-settlements-and-antitrust-ip-interface/

Finally, the decision in 1-800 Contacts also serves as a reminder that, in an era in which commentators are encouraging more aggressive and novel antitrust enforcement, the federal judiciary remains the ultimate arbiter of federal antitrust policy. Enforcers seeking to expand the scope of U.S. antitrust law must do more than bring novel cases—they must also prove their cases with hard facts in a court of law.

#### 1---Optimal policymaking---comparison of policymaking settings is key.

C. Scott Hemphill 09. Associate Professor and Milton Handler Fellow, Columbia Law School. “An Aggregate Approach to Antitrust: Using New Data and Rulemaking to Preserve Drug Competition”. Columbia Law Review. https://poseidon01.ssrn.com/delivery.php?ID=588125096113080096106002107108097121035031077054017013065114020077027104102087029081118107106002104019004112030074020109103121006086087059083005011081071001076076040034056104112070118104110067012020072022093015084126127025065066072121017026087065093&EXT=pdf&INDEX=TRUE

B. Antitrust Rulemaking

The previous section advocates a focused increase in the FTC’s “competition policy research and development.”174 If the FTC accepted the suggestion, it would eventually reach a firm, empirically grounded conclusion about the optimal policy for side deals, and thus either confirm or reject the conclusion reached in Part II. That conclusion could be deployed in a variety of policymaking settings, including litigation brought by the Agency, amicus practice, and advocacy for congressional legislation. This section considers a further possibility, that a comprehensive aggregate study of settlement practice could form the basis for substantive policymaking by the Agency in the form of rulemaking.

There is of course an enormous literature on the choice of courts versus agencies, adjudication versus rulemaking, and rules versus standards, and this Article does not engage the full complexity of those debates. My goal here is simply to suggest how the virtues of an aggregate perspective on settlement practice shift the balance in a way that favors agency rulemaking. In other words, the settlement issue highlights certain advantages of moving away from a court-centered model of antitrust law.

#### 2---Literature---rulemaking is an enormous debate---deleting it is unpredictable and anti-educational.

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

We agree that relying solely on adjudication to define the substance of § 5 has generated persistent ambiguity. However, relying on courtroom battles to create precedents that set expectations for the marketplace is not the only vehicle through which the Commission can establish what conduct constitutes an “unfair method of competition.” The Commission has in its arsenal a far more effective tool that would provide greater notice to the marketplace and that is developed through a more transparent and participatory process: rulemaking. Through engaging in rulemaking, the Commission could define “unfair methods of competition” through processes established by the Administrative Procedure Act38 (APA).39

There is an enormous body of literature on the choice between adjudication and rulemaking, and this Essay does not seek to fully address the various trade-offs.40 Instead, our goal is to reflect on the current state of antitrust enforcement and consider ways to address the ambiguity, burdens, and democratic deficiency that we discuss above.

#### The CP takes less than 60 days.

Prepared by the Office of the Federal Register. “A Guide to the Rulemaking Process”. https://www.federalregister.gov/uploads/2011/01/the\_rulemaking\_process.pdf

What is the time period for the public to submit comments?

In general, agencies will specify a comment period ranging from 30 to 60 days in the “Dates” Section of the Federal Register document, but the time period can vary. For complex rulemakings, agencies may provide for longer time periods, such as 180 days or more. Agencies may also use shorter comment periods when that can be justified.

#### Counterplan solves clarity and certainty.

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

Rulemaking would advance clarity and certainty about what types of conduct constitute—or do not constitute—an “unfair method of competition.”64 Commission studies of specific industries and business practices would guide which practices the FTC should use rulemaking to address. Indeed, as an enforcer and regulator across industries, the Commission is uniquely positioned to identify practices that it determines are anticompetitive. Below we offer two other considerations that could weigh in favor of FTC rulemaking.

#### Democracy does solve war.

Dan Reiter 17. Samuel Candler Dobbs Professor of Political Science at Emory University, PhD in political science from the University of Michigan, former John M. Olin post-doctoral fellow in National Security at Harvard University, “Is Democracy a Cause of Peace?”, Oxford Research Encyclopedia of Politics, January 2017, <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-287>

Toward Synthesis What conclusions should be drawn from the spuriousness and causal arrow critiques, both with regards to academic scholarship and policy? Should political scientists recognize that the theory that democracy causes peace has been empirically disproven, meaning that the theory should be rejected? When considering whether or not to spread democracy, should policy-makers no longer consider the benefit that democratization might spread peace? There is enough evidence to draw the conclusion that joint democracy does cause peace, and that the dyadic democratic peace is a law. None of the spuriousness critiques, though intriguing, have sufficiently withstood scholarly rebuttals to justify dismissing as spurious the very strong correlation between joint democracy and peace, especially given the experimental, case study, and other quantitative observational work that provide support for different elements of the democratic peace argument. That said, the spuriousness critiques suggest possible modifications of the law of the democratic peace, such as perhaps that the democratic peace could be weaker in less-developed regions. Regarding the causal arrow thesis, though there is evidence that peace may cause democracy as well as democracy causing peace, the evidence is much weaker that peace causes democracy but not vice versa. Further, the claim that peace causes democracy but not the reverse contains theoretical inconsistencies. That said, it is of course conceivable that future studies may emerge that cast decisive doubt on the proposition that democracy causes peace. Data collection in international relations is never going to be as decisive in supporting or refuting theory as data collection in fields like physics or chemistry, where highly precise, often non-probabilistic theory permits point predictions that can be tested many times in controlled laboratory settings. It also will not be as decisive as data collection in the medical sciences, where theories are probabilistic but experiments can be conducted on thousands of subjects and repeated dozens of times. That said, the evidence that dyadic democracy causes peace is as strong as the evidence supporting essentially any theoretical proposition in international relations, other than relatively trivial propositions such as that adjacent states are more likely to fight each other than nonadjacent states. Echoing his 1989 assessment, Levy ([2013](http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-287#acrefore-9780190228637-e-287-bibItem-0054), p. 587) remarked that in international relations “no one has identified a stronger empirical regularity” (Levy, [2013](http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-287#acrefore-9780190228637-e-287-bibItem-0054), p. 587). That is, if the dyadic democratic peace is not a law, it’s as close to a law that we have in international relations, and probably as close to a law as we are ever going to see.