# Round 6---Texas 21

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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 private sector anticompetitive business practices by removing the Shipping Act antitrust exemption.

#### Solves and engages notice-and-comment.

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

A. The Agency Solution

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

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

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

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

#### 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.

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#### The scope of competition law defines it goals---attempts to meet current goals by banning practice are implementation questions.

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
* Should competition policy also include considerations of economic inequality or environmental effects?
* Can competition law remain effective if it is used for more than safeguarding fair competition?

#### That means the aff must replace the consumer welfare standard.

Trevor Wagener 21. "The Curse of Tradeoffs: Neo-Brandeisians vs. Consumers". Disruptive Competition Project. 5-21-2021. https://www.project-disco.org/competition/052121-the-curse-of-tradeoffs-neo-brandeisian-antitrust-versus-consumers/

Neo-Brandeisians seek to replace the longstanding objective and principles-based framework of the consumer welfare standard in antitrust enforcement with an amorphous, process-based framework guided by an ethos one Neo-Brandeisian described as: “Big is bad. Just don’t let big firms merge. The end.” A movement dedicated to replacing a consumer welfare-maximizing approach with an assortment of competing goals has proven unable to offer a quantified, systematic cost-benefit analysis justifying such a radical change, instead relying upon anecdotal evidence and moving prose. The many goals of the Neo-Brandeisian approach are often rhetorically appealing, but the rhetoric hides a simple truth: When you target every variable, you effectively target none. Addressing a wide range of goals through antitrust policy requires de-emphasizing consumer welfare, creating fundamental tradeoffs expected to harm consumers relative to the status quo.

The willingness to sacrifice consumer welfare in order to achieve other ends is a defining characteristic of Neo-Brandeisian antitrust. This is illustrated by concrete Neo-Brandeisian critiques, which typically emphasize perceived harms to businesses rather than harms to consumers. For example, the Neo-Brandeisian activist group American Economic Liberties Project (AELP) published a pair of policy briefs on May 3 that criticize online service operators for a litany of purported inconveniences to businesses over a combined 22 pages, but struggle to quantify any harms to ordinary consumers and users. Those few purported harms to consumers that AELP raised are distinctly qualitative rather than quantitative, consistent with the broader reluctance of prominent Neo-Brandeisian thinkers to conduct a rigorous quantitative cost-benefit analysis of their antitrust policy prescriptions relative to the consumer welfare standard.

#### Vote negative for limits and ground---only “change goals” creates key economy and legal disads over what antitrust should consider---the affs topic races to tiny exemptions and technical changes with no core ground.

### Off

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#### Competition reifies nationalism---it defines “us” through total war---the virtuous cycle of Darwinist competition eliminates morality.

Pauli Kettunen 97. Professor of Political History in the Social Science Faculty of University of Helsinki. "The society of virtuous circles." Models, modernity and the Myrdals (1997): 158-159. https://www.researchgate.net/profile/Pauli-Kettunen/publication/310465167\_myrdal97/data/582ee82d08aef19cb815235b/myrdal97.doc

There was, thus, a possibility of virtuous circle between national integration and welfare, and international integration and balance. Here, however, Myrdal's "created harmony" was clearly a criterion of an immanent critique of the Welfare State. Applying my account of the Nordic notion of society, I would interpret his position in the following way. On the national level planning made efficiency, solidarity and democracy become values and properties of society and 'us'. These values of national society and national 'us' each had an international dimension. Democracy meant international manifestation of the democratic model of society; solidarity was widened to international solidarity; and efficiency meant international economic competitiveness. But there was a big difficulty: it was very obvious that 'us' defined through international competitiveness and 'us' defined through international solidarity were not identical. The actor of the virtuous circle of national and international integration could not be 'us' defined through international competitiveness but here 'us' had to be based upon "the international idealism of all people, which I believe is a reality", as Myrdal wrote in 1960 (Myrdal 1960, 214).

This past vision of future may be contrasted with the recent description of present by Riccardo Petrella, a leading figure in the adminstration of social reseach in the European Union. The year is 1995. According to Petrella economic competitiveness

has become the prime objective bit just of enterprises but also of the State and of society as a whole. ... The 'gospel of competition', like all ideologies, boils down to a few simple ideas. We are engaged willy nilly - so the industrialists, economists, political leaders and academics tell us - in a ruthless technological, industrial and economic war encompassing the entire planet. The aim is to survive, and survival hinges on being competitive. Otherwise there is no short- and long-term salvation, no growth, no economic and social welfare. The chief role of State, local authorities and trades unions is to provide the most suitable environment for enterprises to be, become or stay competitive in the world economic war. (Petrella 1995, 11-12)

Petrella's sarcastic description of Darwinist competition for survival is a description of a way in which national society is reproduced in the globalized economy after the liberation of finance markets and after the disappearance of the Cold War confrontation and moral competition between different types of society. It is important to note that in his criticism of the enthusiastic construction of national competition strategies, Petrella is not in the first place talking about "bad" strategies of social dumping and the lowering of social costs. Rather, he is talking about "good" value-added strategies which are based on process and product innovation, education and training, increased competence, stronger attention to "human capital" by means of "human resource management", etc.

Petrella warns about breaking up of the social contract. But he is not talking about the same thing as Touraine who writes that we "no longer belong to a society, a social class or a nation to the extent that our lives are in part determined by the world market, and in part confined to a world of personal life, interpersonal relations and cultural traditions" (Touraine 1994, 373). Neither is Petrella talking about the dissolution of society in the sense of Lash and Urry who point to vanishing borders and growing reflexivity of actors in the process of globalization. On the contrary, Petrella identifies a very national and very influential way of reacting and contributing to globalization, in which competition of nations, firms and individuals is the main expression of "reflexive modernization" (cf. Beck, Giddens & Lash 1994).

There are, no doubt, different views about the role of nation-state and national society in globalizing capitalism. In this book The Work of Nations. Preparing ourselves for 21st century capitalism (1991) Robert B. Reich, the Secretary of Labor in the Clinton administration, argues for the thesis that there are no more national economies, there is only a global economy. But according to Reich, this very condition can liberate the national society of the imperatives of international economic competition. The national society could survive and even strengthen as a basis of social solidarity and as a basis of policies which contribute to the progress of global economy (Reich 1991, 301-315).

National society without national economy - without stopping to discuss the probability of this vision we may see that it is different from Myrdal's national and international "created harmony", despite the "international idealism" common to Myrdal and Reich.

However, the vision of another Harvard economist, Michael E. Porter, seems to offer more influential way of giving both role and meaning to national society. His book The Competitive Advantage of the Nations (1990) is an argument for a central role of nation as "home base" for globally operating and globally competitive enterprises. Crucial competitive advantages are created in national contexts, especially those that are based on innovation and competence. This argument attracts policy-makers and -planners. Even the defence of the Nordic institutions of industrial relations may get new legitimation as it is taught that high standards of working life and participation of employees are sources of innovation and thus competitiveness. The way is open to positive value-added competition strategies. In their connection many good things can be included in the argumentation for economic competitiveness. You can argue for moral, ecological, or aesthetic values without being obliged to use moral, ecological, or aesthetic arguments; you just prove that they promote economic competitiveness.

Obviously, this is a kind of virtuous circle. And it is not so very different from the old virtuous circle of the Swedish Model or Myrdal's thought. It is important to note that the vulgarized Keynesian notion of the virtuous circle between increased production and increased consumption does not adequately catch the main economic concern of Myrdal and other Swedish Social Democrats. They had a remarkable supply-side interest already in the 1930s, expressed, for example, in the plan of the Myrdals for the raising of the quality of human material in Sweden (cf. Esping-Andersen 1992, 45). A major concern was to release the creative resources of the people. This was a precondition for social equality and welfare, but still more, promoting social equality was seen as the means by which these human resources would be released.

Now, there is here a crucial difference between the old and new virtuous circles. Social equality and social solidarity have been dropped outside the virtuous circle in the project for competitive innovation. It is not through more equality that people are supposed to become more innovative and more competitive. And in the Nordic countries we carry a historical burden to which the Myrdals for their part contributed: all good things have to form a virtuous circle and only such things are good that can be placed in the virtuous circle of society.

#### Vote Neg to challenge the Westphalian frame---taken-for-granted nationalism is up for contestation and determines the scope of justice---the “who” of politics predetermines the “what” of policy---only shifting the grammar of argument can address the global nature of crisis.

Nancy Fraser 5. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. “Reframing Justice in a Globalizing World, NLR 36, November–December 2005.” New Left Review. https://newleftreview-org.proxy.library.emory.edu/issues/ii36/articles/nancy-fraser-reframing-justice-in-a-globalizing-world

Globalization is changing the way we argue about justice.footnote1 Not so long ago, in the heyday of social democracy, disputes about justice presumed what I shall call a ‘Keynesian-Westphalian frame’. Typically played out within modern territorial states, arguments about justice were assumed to concern relations among fellow citizens, to be subject to debate within national publics, and to contemplate redress by national states. This was true for each of two major families of justice claims—claims for socioeconomic redistribution and claims for legal or cultural recognition. At a time when the Bretton Woods system facilitated Keynesian economic steering at the national level, claims for redistribution usually focused on economic inequities within territorial states. Appealing to national public opinion for a fair share of the national pie, claimants sought intervention by national states in national economies. Likewise, in an era still gripped by a Westphalian political imaginary, which sharply distinguished ‘domestic’ from ‘international’ space, claims for recognition generally concerned internal status hierarchies. Appealing to the national conscience for an end to nationally institutionalized disrespect, claimants pressed national governments to outlaw discrimination and accommodate differences among citizens. In both cases, the Keynesian-Westphalian frame was taken for granted. Whether the matter concerned redistribution or recognition, class differentials or status hierarchies, it went without saying that the unit within which justice applied was the modern territorial state.footnote2

To be sure, there were always exceptions. Occasionally, famines and genocides galvanized public opinion across borders. And some cosmopolitans and anti-imperialists sought to promulgate globalist views.footnote3 But these were exceptions that proved the rule. Relegated to the sphere of ‘the international’, they were subsumed within a problematic that was focused primarily on matters of security, as opposed to justice. The effect was to reinforce, rather than to challenge, the Keynesian-Westphalian frame. That framing of disputes about justice generally prevailed by default from the end of the Second World War to the 1970s.

Although it went unnoticed at the time, this framework lent a distinctive shape to arguments about social justice. Taking for granted the modern territorial state as the appropriate unit, and its citizens as the pertinent subjects, such arguments turned on what precisely those citizens owed one another. In the eyes of some, it sufficed that citizens be formally equal before the law; for others, equality of opportunity was also required; for still others, justice demanded that all citizens gain access to the resources and respect they needed in order to be able to participate on a par with others, as full members of the political community. The argument focused, in other words, on exactly what should count as a just ordering of social relations within a society. Engrossed in disputing the ‘what’ of justice, the contestants apparently felt no necessity to dispute the ‘who’. With the Keynesian-Westphalian frame securely in place, it went without saying that the ‘who’ was the national citizenry.

Today, however, this framework is losing its aura of self-evidence. Thanks to heightened awareness of globalization, and to post-Cold War geopolitical instabilities, many observe that the social processes shaping their lives routinely overflow territorial borders. They note, for example, that decisions taken in one territorial state often have an impact on the lives of those outside it, as do the actions of transnational corporations, international currency speculators, and large institutional investors. Many also note the growing salience of supranational and international organizations, both governmental and non-governmental, and of transnational public opinion, which flows with supreme disregard for borders through global mass media and cybertechnology. The result is a new sense of vulnerability to transnational forces. Faced with global warming, the spread of aids, international terrorism and superpower unilateralism, many believe that their chances for living good lives depend at least as much on processes that trespass the borders of territorial states as on those contained within them.

Under these conditions, the Keynesian-Westphalian frame no longer goes without saying. For many, it has ceased to be axiomatic that the modern territorial state is the appropriate unit for thinking about issues of justice, and that the citizens of such states are the pertinent subjects of reference. The effect is to destabilize the previous structure of political claims-making—and therefore to change the way we argue about social justice.

This is true for both major families of justice claims. In today’s world, claims for redistribution increasingly eschew the assumption of national economies. Faced with transnationalized production, the outsourcing of jobs, and the associated pressures of the ‘race to the bottom’, once nationally focused labour unions look increasingly for allies abroad. Inspired by the Zapatistas, meanwhile, impoverished peasants and indigenous peoples link their struggles against despotic local and national authorities to critiques of transnational corporate predation and global neoliberalism. Finally, wto protestors directly target the new governance structures of the global economy, which have vastly strengthened the ability of large corporations and investors to escape the regulatory and taxation powers of territorial states.

In the same way, movements struggling for recognition increasingly look beyond the territorial state. Under the umbrella slogan ‘women’s rights are human rights’, for example, feminists throughout the world are linking struggles against local patriarchal practices to campaigns to reform international law. Meanwhile, religious and ethnic minorities, who face discrimination within territorial states, are reconstituting themselves as diasporas and building transnational publics from which to mobilize international opinion. Finally, transnational coalitions of human-rights activists are seeking to build new cosmopolitan institutions, such as the International Criminal Court, which can punish state violations of human dignity.

In such cases, disputes about justice are exploding the Keynesian-Westphalian frame. No longer addressed exclusively to national states or debated exclusively by national publics, claimants no longer focus solely on relations among fellow citizens. Thus, the grammar of argument has altered. Whether the issue is distribution or recognition, disputes that used to focus exclusively on the question of what is owed as a matter of justice to community members now turn quickly into disputes about who should count as a member and which is the relevant community. Not just the ‘what’ but also the ‘who’ is up for grabs.

Today, in other words, arguments about justice assume a double guise. On the one hand, they concern first-order questions of substance, just as before. How much economic inequality does justice permit, how much redistribution is required, and according to which principle of distributive justice? What constitutes equal respect, which kinds of differences merit public recognition, and by which means? But above and beyond such first-order questions, arguments about justice today also concern second-order, meta-level questions. What is the proper frame within which to consider first-order questions of justice? Who are the relevant subjects entitled to a just distribution or reciprocal recognition in the given case? Thus, it is not only the substance of justice, but also the frame, which is in dispute. The result is a major challenge to our theories of social justice. Preoccupied largely with first-order issues of distribution and/or recognition, these theories have so far failed to develop conceptual resources for reflecting on the meta-issue of the frame. As things stand, therefore, it is by no means clear that they are capable of addressing the double character of problems of justice in a globalizing age.footnote4

In this essay, I shall propose a strategy for thinking about the problem of the frame. I shall argue, first, that theories of justice must become three-dimensional, incorporating the political dimension of representation alongside the economic dimension of distribution and the cultural dimension of recognition. I shall also argue that the political dimension of representation should itself be understood as encompassing three levels. The combined effect of these two arguments will be to make visible a third question, beyond those of the ‘what’ and the ‘who’, which I shall call the question of the ‘how’. That question, in turn, inaugurates a paradigm shift: what the Keynesian-Westphalian frame cast as the theory of social justice must now become a theory of post-Westphalian democratic justice.

Specificity of the political

Let me begin by explaining what I mean by justice in general and by its political dimension in particular. In my view, the most general meaning of justice is parity of participation. According to this radical-democratic interpretation of the principle of equal moral worth, justice requires social arrangements that permit all to participate as peers in social life. Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction. Previously, I have analysed two distinct kinds of obstacles to participatory parity, which correspond to two distinct species of injustice. On the one hand, people can be impeded from full participation by economic structures that deny them the resources they need in order to interact with others as peers; in that case they suffer from distributive injustice or maldistribution. On the other hand, people can also be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing; in that case they suffer from status inequality or misrecognition.footnote5 In the first case, the problem is the class structure of society, which corresponds to the economic dimension of justice. In the second case, the problem is the status order, which corresponds to its cultural dimension. In modern capitalist societies, the class structure and the status order do not neatly mirror each other, although they interact causally. Rather, each has some autonomy vis-à-vis the other. As a result, misrecognition cannot be reduced to a secondary effect of maldistribution, as some economistic theories of distributive justice appear to suppose. Nor, conversely, can maldistribution be reduced to an epiphenomenal expression of misrecognition, as some culturalist theories of recognition tend to assume. Thus, neither recognition theory nor distribution theory alone can provide an adequate understanding of justice for capitalist society. Only a two-dimensional theory, encompassing both distribution and recognition, can supply the necessary levels of social-theoretical complexity and moral-philosophical insight.footnote6

That, at least, is the view of justice I have defended in the past. And this two-dimensional understanding of justice still seems right to me as far as it goes. But I now believe that it does not go far enough. Distribution and recognition could appear to constitute the sole dimensions of justice only so long as the Keynesian-Westphalian frame was taken for granted. Once the question of the frame becomes subject to contestation, the effect is to make visible a third dimension of justice, which was neglected in my previous work—as well as in the work of many other philosophers.footnote7

The third dimension of justice is the political. Of course, distribution and recognition are themselves political in the sense of being contested and power-laden; and they have usually been seen as requiring adjudication by the state. But I mean political in a more specific, constitutive sense, which concerns the nature of the state’s jurisdiction and the decision rules by which it structures contestation. The political in this sense furnishes the stage on which struggles over distribution and recognition are played out. Establishing criteria of social belonging, and thus determining who counts as a member, the political dimension of justice specifies the reach of those other dimensions: it tells us who is included in, and who excluded from, the circle of those entitled to a just distribution and reciprocal recognition. Establishing decision rules, the political dimension likewise sets the procedures for staging and resolving contests in both the economic and the cultural dimensions: it tells us not only who can make claims for redistribution and recognition, but also how such claims are to be mooted and adjudicated.

Centred on issues of membership and procedure, the political dimension of justice is concerned chiefly with representation. At one level, which pertains to the boundary-setting aspect of the political, representation is a matter of social belonging. What is at issue here is inclusion in, or exclusion from, the community of those entitled to make justice claims on one another. At another level, which pertains to the decision-rule aspect, representation concerns the procedures that structure public processes of contestation. Here, what is at issue are the terms on which those included in the political community air their claims and adjudicate their disputes.footnote8 At both levels, the question can arise as to whether the relations of representation are just. One can ask: do the boundaries of the political community wrongly exclude some who are actually entitled to representation? Do the community’s decision rules accord equal voice in public deliberations and fair representation in public decision-making to all members? Such issues of representation are specifically political. Conceptually distinct from both economic and cultural questions, they cannot be reduced to the latter, although, as we shall see, they are inextricably interwoven with them.

To say that the political is a conceptually distinct dimension of justice, not reducible to the economic or the cultural, is also to say that it can give rise to a conceptually distinct species of injustice. Given the view of justice as participatory parity, this means that there can be distinctively political obstacles to parity, not reducible to maldistribution or misrecognition, although (again) interwoven with them. Such obstacles arise from the political constitution of society, as opposed to the class structure or status order. Grounded in a specifically political mode of social ordering, they can only be adequately grasped through a theory that conceptualizes representation, along with distribution and recognition, as one of three fundamental dimensions of justice.

Three levels of misrepresentation

If representation is the defining issue of the political, then the characteristic political injustice is misrepresentation. Misrepresentation occurs when political boundaries and/or decision rules function to deny some people, wrongly, the possibility of participating on a par with others in social interaction—including, but not only, in political arenas. Far from being reducible to maldistribution or misrecognition, misrepresentation can occur even in the absence of the latter injustices, although it is usually intertwined with them. At least two different levels of misrepresentation can be distinguished. Insofar as political decision rules wrongly deny some of the included the chance to participate fully, as peers, the injustice is what I call ordinary-political misrepresentation. Here, where the issue is intra-frame representation, we enter the familiar terrain of political science debates over the relative merits of alternative electoral systems. Do single-member-district, winner-take-all, first-past-the-post systems unjustly deny parity to numerical minorities? And if so, is proportional representation or cumulative voting the appropriate remedy? Likewise, do gender-blind rules, in conjunction with gender-based maldistribution and misrecognition, function to deny parity of political participation to women? And if so, are gender quotas an appropriate remedy? Such questions belong to the sphere of ordinary-political justice, which has usually been played out within the Keynesian-Westphalian frame.

Less obvious, perhaps, is a second level of misrepresentation, which concerns the boundary-setting aspect of the political. Here the injustice arises when the community’s boundaries are drawn in such a way as to wrongly exclude some people from the chance to participate at all in its authorized contests over justice. In such cases, misrepresentation takes a deeper form, which I shall call misframing. The deeper character of misframing is a function of the crucial importance of framing to every question of social justice. Far from being of marginal significance, frame-setting is among the most consequential of political decisions. Constituting both members and non-members in a single stroke, this decision effectively excludes the latter from the universe of those entitled to consideration within the community in matters of distribution, recognition, and ordinary-political representation. The result can be a serious injustice. When questions of justice are framed in a way that wrongly excludes some from consideration, the consequence is a special kind of meta-injustice, in which one is denied the chance to press first-order justice claims in a given political community. The injustice remains, moreover, even when those excluded from one political community are included as subjects of justice in another—as long as the effect of the political division is to put some relevant aspects of justice beyond their reach. Still more serious, of course, is the case in which one is excluded from membership in any political community. Akin to the loss of what Hannah Arendt called ‘the right to have rights’, that sort of misframing is a kind of ‘political death’.footnote9 Those who suffer it may become objects of charity or benevolence. But deprived of the possibility of authoring first-order claims, they become non-persons with respect to justice.

It is the misframing form of misrepresentation that globalization has recently begun to make visible. Earlier, in the heyday of the postwar welfare state, with the Keynesian-Westphalian frame securely in place, the principal concern in thinking about justice was distribution. Later, with the rise of the new social movements and multiculturalism, the centre of gravity shifted to recognition. In both cases, the modern territorial state was assumed by default. As a result, the political dimension of justice was relegated to the margins. Where it did emerge, it took the ordinary-political form of contests over the decision rules internal to the polity, whose boundaries were taken for granted. Thus, claims for gender quotas and multicultural rights sought to remove political obstacles to participatory parity for those who were already included in principle in the political community. Taking for granted the Keynesian-Westphalian frame, they did not call into question the assumption that the appropriate unit of justice was the territorial state.

Today, in contrast, globalization has put the question of the frame squarely on the political agenda. Increasingly subject to contestation, the Keynesian-Westphalian frame is now considered by many to be a major vehicle of injustice, as it partitions political space in ways that block many who are poor and despised from challenging the forces that oppress them. Channelling their claims into the domestic political spaces of relatively powerless, if not wholly failed, states, this frame insulates offshore powers from critique and control.footnote10 Among those shielded from the reach of justice are more powerful predator states and transnational private powers, including foreign investors and creditors, international currency speculators, and transnational corporations. Also protected are the governance structures of the global economy, which set exploitative terms of interaction and then exempt them from democratic control. Finally, the Keynesian-Westphalian frame is self-insulating; the architecture of the interstate system protects the very partitioning of political space that it institutionalizes, effectively excluding transnational democratic decision-making on issues of justice.

From this perspective, the Keynesian-Westphalian frame is a powerful instrument of injustice, which gerrymanders political space at the expense of the poor and despised. For those persons who are denied the chance to press transnational first-order claims, struggles against maldistribution and misrecognition cannot proceed, let alone succeed, unless they are joined with struggles against misframing. It is not surprising, therefore, that some consider misframing the defining injustice of a globalizing age. Under these conditions, the political dimension of justice is hard to ignore. Insofar as globalization is politicizing the question of the frame, it is also making visible an aspect of the grammar of justice that was often neglected in the previous period. It is now apparent that no claim for justice can avoid presupposing some notion of representation, implicit or explicit, insofar as none can avoid assuming a frame. Thus, representation is always already inherent in all claims for redistribution and recognition. The political dimension is implicit in, indeed required by, the grammar of the concept of justice. Thus, no redistribution or recognition without representation.footnote11

In general, then, an adequate theory of justice for our time must be three-dimensional. Encompassing not only redistribution and recognition, but also representation, it must allow us to grasp the question of the frame as a question of justice. Incorporating the economic, cultural and political dimensions, it must enable us to identify injustices of misframing and to evaluate possible remedies. Above all, it must permit us to pose, and to answer, the key political question of our age: how can we integrate struggles against maldistribution, misrecognition and misrepresentation within a post-Westphalian frame?

### Off

States CP

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

#### - Enforce federal antitrust laws to substantially increase prohibitions on private sector anticompetitive business practices by removing the Shipping Act antitrust exemption.

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

#### Solves---states have authority and capability.

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In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

### Off

FTC DA

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

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

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

#### The plan drains finite FTC resources and personnel.

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

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

#### That trades off with privacy enforcement.

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

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

#### Unchecked algorithmic bias causes extinction.

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

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

### Off

Regs CP

#### The United States federal government should:

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

#### - Adopt new regulations under the Shipping Act of 1984 that cap shipping rates at market value and require shipping alliances to invest in port infrastructure.

#### 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

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.

### Econ Adv---1NC

#### Trump did the aff

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The Federal Maritime Commission Authorization Act of 2017 was signed into law by President Donald Trump on Dec. 4, 2018, marking the first **substantive revision to the U.S. Shipping Act**, 46 U.S.C. § 40101 et seq. (the Shipping Act) since 1998 and providing several of the most significant changes to the Shipping Act since 1984. The substantive changes to the Shipping Act primarily **address antitrust issues** **related to recent consolidation in the maritime industry and the emergence of ocean carrier alliances**. The amended Shipping Act signals an important development for the maritime industry in the U.S. It is aimed at preserving competition in U.S. trades and assuring future capital investment in maritime and transportation infrastructure, the vital link in supply chains across the U.S. and the world. President Donald Trump, with bipartisan support, signed into law the Federal Maritime Commission Authorization Act of 2017 (the Act) on Dec. 4, 2018, as part of the Frank LoBiondo Coast Guard Authorization Act of 2018 (S. 140). The Act represents the first substantive revision to the U.S. Shipping Act, 46 U.S.C. § 40101 et seq. (the Shipping Act) since 1998, and includes several of the most significant changes to the Shipping Act since 1984. The principal changes to the Shipping Act primarily address antitrust issues related to recent consolidation in the maritime industry and the emergence of ocean carrier alliances. These changes are expected to help protect marine terminal service providers as well as other U.S. marine equipment and services providers, and to preserve investment in domestic shore-side maritime infrastructure. History of the Shipping Act Enacted in 1916, the Shipping Act confers authority upon the Federal Maritime Commission (FMC) to regulate maritime commerce in the U.S. The Shipping Act regulates common carriers (both non-vessel and vessel operating) and marine terminal operators (MTOs) and affords limited antitrust protections to filed agreements among regulated parties. In 1984, the Shipping Act was revised to eliminate a longstanding requirement for affirmative FMC approval of agreements and the requirement for carriers to file tariffs with the FMC. Pursuant to the 1984 amendment, parties may file agreements with the FMC, which become effective 45 days after filing unless, in the interim, the agency obtains injunctive relief in court to block the agreement. Carriers now publish tariffs, rather than filing them with the FMC. The last amendment to the Shipping Act occurred in 1998 as the Ocean Shipping Reform Act of 1998, following a five-year study of the effect of the Shipping Act on maritime trade and commerce. The 1998 amendment allowed carriers and shippers to enter confidential rate agreements providing discounted rates in exchange for cargo volume commitments. In 2005, the FMC issued a regulatory ruling extending authority to non-vessel operating common carriers (NVOCCs) to enter such confidential rate agreements with shippers. After the 1998 amendment, the maritime industry experienced significant and widespread consolidation. In addition to carrier mergers and acquisitions concentrating the bulk of containership capacity in U.S. trades to fewer than a dozen large carriers, the formation of vessel carrier alliances caused further substantial consolidation. Currently, there are three major carrier alliances representing 80 percent of all container trade. Within the alliances, there has been further consolidation, e.g., the creation of Ocean Network Express (ONE) by the merger of Japanese carriers. In 2017, Congress began serious efforts to review and amend the Shipping Act to address these changes to the maritime industry, all of which have affected U.S. infrastructure investment. The legislative efforts represent the first step toward bolstering the U.S. maritime industry. Significant Revisions to the Shipping Act The newly enacted Federal Maritime Commission Authorization Act of 2017 **amends key sections of the Shipping Act**, particularly in the areas of 1) **competition regulation and remedies for violations of the Shipping Act's antitrust provisions,** 2) ocean transportation intermediary (OTI) licensure requirements and 3) adjustments to filing requirements. Each of these topics is discussed in further detail below: 1. Regulation of Competition in Ocean Carriage The Act amends multiple sections in the Shipping Act with the design of **prohibiting anti-competitive behavior** that would have a material adverse effect on U.S.-based maritime infrastructure and marine services and equipment providers. Section 703 requires the FMC to conduct "an analysis of the impacts on competition for the purchase of certain covered services by alliances of ocean common carriers" on an annual basis. This statutory mandate is intended to **promote active FMC oversight** of the ocean carrier alliances to ensure that U.S.-based infrastructure interests are not unfairly disadvantaged. Section 704 focuses upon alliances' impact on "certain covered services ... with respect to a vessel": (A) the berthing or bunkering of the vessel; (B) the loading or unloading of cargo to or from the vessel to or from a point on a wharf or terminal; (C) the positioning, removal, or replacement of buoys related to the movement of the vessel; and The definition of "certain covered services" is noteworthy given that it generally covers those services that ocean carrier alliance members procure at U.S. marine terminals. Section 709 utilizes this term in prohibiting ocean carriers from negotiating for "certain covered services" with MTOs in violation of antitrust laws or in a manner inconsistent with the purposes of the Shipping Act. The Act prohibits ocean carriers from engaging in excessively anti-competitive strategies when collectively negotiating with terminal service providers. This provision is designed to protect MTOs by avoiding a situation where MTOs and other service providers are forced to negotiate with the carriers acting collectively with such a concentration of bargaining power that rates are pressured to unsustainable levels, which may impair future investment in U.S. maritime terminal and port infrastructure. **The Act provides specific tools and remedies to the FMC and courts to enforce the provisions precluding anticompetitive behavior of regulated entities**. Section 710 grants the FMC authority to seek injunctive relief against actions of regulated entities that "substantially lessen competition in the purchasing of certain covered services." Section 710 expands the scope of factors the FMC must consider when seeking injunctive relief to include the aggregate effect of agreements on competition, rather than reviewing the agreements' isolated impacts. In addition, Section 709 preserves the U.S. Department of Justice's (DOJ) authority to prosecute anticompetitive behavior that violates the U.S. antitrust laws. This section confirms that DOJ has a role in the enforcement process. Section 708 further amends the Shipping Act to **restrict anticompetitive actions** of common carriers. This section specifically prohibits a common carrier from "continu[ing] to participate simultaneously in a rate discussion agreement and an agreement to share vessels, in the same trade" if the continued participation would likely produce an unreasonable reduction in service or increase in transportation cost. Finally, the Act requires the U.S. Comptroller General to conduct a study of recent bankruptcies of ocean carriers. This provision flows from the recent bankruptcy of Hanjin Shipping, which saddled MTOs, shippers and suppliers with significant losses ranging from non-payment to lengthy delivery delays and loss or seizure of cargo. The purpose of this amendment to the Shipping Act is aimed at mitigating and understanding bankruptcy risks in the era of carrier alliances through a detailed review of these bankruptcies and their potential effect in the era of substantial carrier capacity concentrations and alliance activities.

#### Biden’s XO solves the aff

Matt Leonard, 21. Reporter. “Biden takes aim at consolidation in ocean, rail with new executive order on increasing competition.” July 13, 2021. https://www.supplychaindive.com/news/biden-executive-order-ocean-rail-consolidation/603078/

President Joe Biden will sign an executive order Friday that takes aim at corporate consolidation with the goal of increasing competition among businesses, [according to a release from the White House](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/). The wide-ranging order includes 72 initiatives and enlists more than a dozen agencies to fulfill its goals. It specifically calls on the Surface Transportation Board and Federal Maritime Commission to use their regulatory power to encourage changes within the heavily **consolidated carrier market**. When it comes to rail, the executive orderpoints out railroads tend to own their tracks and prioritize their own freight. The order calls on the STB torequire track owners to provide rights of way to passenger trains and strengthen requirements for fair treatment of freight companies. Separately, it orders the FMC to ensure that U.S. exporters aren't being charged "exorbitant" fees by carriers. Press Secretary Jen Psaki [said Thursday](https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/08/press-briefing-by-press-secretary-jen-psaki-july-8-2021/) it would have the FMC work alongside the Justice Department "to **crack down on** unjust and unreasonable fees" and **anticompetitive behavior by carriers**. The effort by the Biden administration to tamp down on the power of heavily consolidated transportation industries comes at a time when the international supply chain has been [heavily strained by increased demand](https://www.supplychaindive.com/news/ocean-shipping-freight-transpacific-rates-capacity-maersk-peak/601255/) and myriad disruptions. In talking about the order, Psaki said that carriers have often used the power of their consolidation to force higher prices on shippers. "On domestic freight railroad, the executive order urges the Surface Transportation Board to ... allow shippers **to more easily challenge inflated rates** when there is no competition between routes," Psaki said. The order specifically calls out the practice of detention and demurrage. These fees charged by ocean carriers have levied controversy for years, leading [to the FMC releasing guidance](https://www.supplychaindive.com/news/fmc-detention-demurrage-final-guidance-ocean-shipping/577038/) for the industry last year. But the supply chain has become increasingly congested over the last 16 months, leading to [increased dwell time in ports](https://www.supplychaindive.com/news/california-port-congestion-los-angeles-long-beach-data/594715/), which exacerbates the issue of detention and demurrage fees for shippers, [experts have said](https://www.supplychaindive.com/news/demurrage-detention-per-diem-port-congestion-fmc-enforcement-container-maersk/602885/). And while increased dwell time means that the fees are becoming more common, [a recent report from Container xChange](https://www.supplychaindive.com/news/demurrage-detention-per-diem-port-congestion-fmc-enforcement-container-maersk/602885/) found they're also getting more expensive. The FMC is already investigating [reports that carriers aren't following the guidance](https://www.supplychaindive.com/news/fmcs-dye-fact-finding-29-port-detention-demurrage/594924/) issued last year. "**In recent months, we have increased our scrutiny of the ocean carrier alliances** **to identify evidence of anticompetitive behavior** regarding rates and capacity, and we will continue to do so as the COVID-19 and import surge crisis continues. We welcome the assistance and cooperation from other agencies, including the Department of Justice," FMC Chairman Daniel B. Maffei said in an emailed statement Friday. On detention and demurrage, Maffei said, "it remains a top priority of the agency to identify and take action against those who flout the Commission’s recent interpretive rule on reasonable regulations and practices." Gerald A. Morrissey, a partner at Holland & Knight, said the order likely won't provide any new powers to the FMC or STB, but have the agencies work with the regulatory frameworks they already operate under. Morrissey pointed out that the agencies are given their powers by Congress. He noted that the order outlines support for the STB and FMC "to do all that they can." "And I would expect that that means, you know, all that they can under existing authority," Morrissey said.

#### The LIO is doomed---backlash and technology destroy the foundations of the US-led order.

Walter Russell Mead 21. James Clarke Chace Professor of Foreign Affairs and the Humanities at Bard College, the Global View columnist at The Wall Street Journal, and a Distinguished Fellow at the Hudson Institute. "The End of the Wilsonian Era". Foreign Affairs. https://www.foreignaffairs.com/articles/united-states/2020-12-08/end-wilsonian-era

This task was complicated by the Cold War, but “the free world” (as Americans then called the noncommunist countries) continued to develop along Wilsonian lines. Inevitable compromises, such as U.S. support for ruthless dictators and military rulers in many parts of the world, were seen as regrettable necessities imposed by the need to fight the much greater evil of Soviet communism. When the Berlin Wall fell, in 1989, it seemed that the opportunity for a Wilsonian world order had finally come. The former Soviet empire could be reconstructed along Wilsonian lines, and the West could embrace Wilsonian principles more consistently now that the Soviet threat had disappeared. Self-determination, the rule of law between and within countries, liberal economics, and the protection of human rights: the “new world order” that both the George H. W. Bush and the Clinton administrations worked to create was very much in the Wilsonian mold.

Today, however, the most important fact in world politics is that this noble effort has failed. The next stage in world history will not unfold along Wilsonian lines. The nations of the earth will continue to seek some kind of political order, because they must. And human rights activists and others will continue to work toward their goals. But the dream of a universal order, grounded in law, that secures peace between countries and democracy inside them will figure less and less in the work of world leaders.

To state this truth is not to welcome it. There are many advantages to a Wilsonian world order, even when that order is partial and incomplete. Many analysts, some associated with the presidential campaign of former U.S. Vice President Joe Biden, think they can put Humpty Dumpty together again. One wishes them every success. But the centrifugal forces tearing at the Wilsonian order are so deeply rooted in the nature of the contemporary world that not even the end of the Trump era can revive the Wilsonian project in its most ambitious form. Although Wilsonian ideals will not disappear and there will be a continuing influence of Wilsonian thought on U.S. foreign policies, the halcyon days of the post–Cold War era, when American presidents organized their foreign policies around the principles of liberal internationalism, are unlikely to return anytime soon.

THE ORDER OF THINGS

Wilsonianism is only one version of a rules-based world order among many. The Westphalian system, which emerged in Europe after the Thirty Years’ War ended in 1648, and the Congress system, which arose in the wake of the Napoleonic Wars of the early nineteenth century, were both rules-based and even law-based; some of the foundational ideas of international law date from those eras. And the Holy Roman Empire—a transnational collection of territories that stretched from France into modern-day Poland and from Hamburg to Milan—was an international system that foreshadowed the European Union, with highly complex rules governing everything from trade to sovereign inheritance among princely houses.

As for human rights, by the early twentieth century, the pre-Wilsonian European system had been moving for a century in the direction of putting egregious violations of human rights onto the international agenda. Then, as now, it was chiefly weak countries whose oppressive behavior attracted the most attention. The genocidal murder of Ottoman Christian minorities at the hands of Ottoman troops and irregular forces in the late nineteenth and early twentieth centuries received substantially more attention than atrocities carried out around the same time by Russian forces against rebellious Muslim peoples in the Caucasus. No delegation of European powers came to Washington to discuss the treatment of Native Americans or to make representations concerning the status of African Americans. Nevertheless, the pre-Wilsonian European order had moved significantly in the direction of elevating human rights to the level of diplomacy.

Wilson, therefore, was not introducing the ideas of world order and human rights to a collection of previously anarchic states and unenlightened polities. Rather, his quest was to reform an existing international order whose defects had been conclusively demonstrated by the horrors of World War I. In the pre-Wilsonian order, established dynastic rulers were generally regarded as legitimate, and interventions such as the 1849 Russian invasion of Hungary, which restored Habsburg rule, were considered lawful. Except in the most glaring instances, states were more or less free to treat their citizens or subjects as they wished, and although governments were expected to observe the accepted principles of public international law, no supranational body was charged with the enforcement of these standards. The preservation of the balance of power was invoked as a goal to guide states; war, although regrettable, was seen as a legitimate element of the system. From Wilson’s standpoint, these were fatal flaws that made future conflagrations inevitable. To redress them, he sought to build an order in which states would accept enforceable legal restrictions on their behavior at home and their international conduct.

That never quite materialized, but until recent years, the U.S.-led postwar order resembled Wilson’s vision in important respects. And, it should be noted, that vision is not equally dead everywhere. Although Wilson was an American, his view of world order was first and foremost developed as a method for managing international politics in Europe, and it is in Europe where Wilson’s ideas have had their greatest success and where their prospects continue to look strongest. His ideas were treated with bitter and cynical contempt by most European statesmen when he first proposed them, but they later became the fundamental basis of the European order, enshrined in the laws and practices of the EU. Arguably, no ruler since Charlemagne has made as deep an impression on the European political order as the much-mocked Presbyterian from the Shenandoah Valley.

THE ARC OF HISTORY

Beyond Europe, the prospects for the Wilsonian order are bleak. The reasons behind its demise, however, are different from what many assume. Critics of the Wilsonian approach to foreign affairs often decry what they see as its idealism. In fact, as Wilson demonstrated during the negotiations over the Treaty of Versailles, he was perfectly capable of the most cynical realpolitik when it suited him. The real problem of Wilsonianism is not a naive faith in good intentions but a simplistic view of the historical process, especially when it comes to the impact of technological progress on human social order. Wilson’s problem was not that he was a prig but that he was a Whig.

Like early-twentieth-century progressives generally and many American intellectuals to this day, Wilson was a liberal determinist of the Anglo-Saxon school; he shared the optimism of what the scholar Herbert Butterfield called “the Whig historians,” the Victorian-era British thinkers who saw human history as a narrative of inexorable progress and betterment. Wilson believed that the so-called ordered liberty that characterized the Anglo-American countries had opened a path to permanent prosperity and peace. This belief represents a sort of Anglo-Saxon Hegelianism and holds that the mix of free markets, free government, and the rule of law that developed in the United Kingdom and the United States is inevitably transforming the rest of the world—and that as this process continues, the world will slowly and for the most part voluntarily converge on the values that made the Anglo-Saxon world as wealthy, attractive, and free as it has become.

Wilson was the devout son of a minister, deeply steeped in Calvinist teachings about predestination and the utter sovereignty of God, and he believed that the arc of progress was fated. The future would fulfill biblical prophecies of a coming millennium: a thousand-year reign of peace and prosperity before the final consummation of human existence, when a returning Christ would unite heaven and earth. (Today’s Wilsonians have given this determinism a secular twist: in their eyes, liberalism will rule the future and bring humanity to “the end of history” as a result of human nature rather than divine purpose.)

Wilson believed that the defeat of imperial Germany in World War I and the collapse of the Austro-Hungarian, Russian, and Ottoman empires meant that the hour of a universal League of Nations had finally arrived. In 1945, American leaders ranging from Eleanor Roosevelt and Henry Wallace on the left to Wendell Willkie and Thomas Dewey on the right would interpret the fall of Germany and Japan in much the same way. In the early 1990s, leading U.S. foreign policymakers and commentators saw the fall of the Soviet Union through the same deterministic prism: as a signal that the time had come for a truly global and truly liberal world order. On all three occasions, Wilsonian order builders seemed to be in sight of their goal. But each time, like Ulysses, they were blown off course by contrary winds.

TECHNICAL DIFFICULTIES

Today, those winds are gaining strength. Anyone hoping to reinvigorate the flagging Wilsonian project must contend with a number of obstacles. The most obvious is the return of ideology-fueled geopolitics. China, Russia, and a number of smaller powers aligned with them—Iran, for example—correctly see Wilsonian ideals as a deadly threat to their domestic arrangements. Earlier in the post–Cold War period, U.S. primacy was so thorough that those countries attempted to downplay or disguise their opposition to the prevailing pro-democracy consensus. Beginning in U.S. President Barack Obama’s second term, however, and continuing through the Trump era, they have become less inhibited. Seeing Wilsonianism as a cover for American and, to some degree, EU ambitions, Beijing and Moscow have grown increasingly bold about contesting Wilsonian ideas and initiatives inside international institutions such as the UN and on the ground in places from Syria to the South China Sea.

These powers’ opposition to the Wilsonian order is corrosive in several ways. It raises the risks and costs for Wilsonian powers to intervene in conflicts beyond their own borders. Consider, for example, how Iranian and Russian support for the Assad regime in Syria has helped prevent the United States and European countries from getting more directly involved in that country’s civil war. The presence of great powers in the anti-Wilsonian coalition also provides shelter and assistance to smaller powers that otherwise might not choose to resist the status quo. Finally, the membership of countries such as China and Russia in international institutions makes it more difficult for those institutions to operate in support of Wilsonian norms: take, for example, Chinese and Russian vetoes in the UN Security Council, the election of anti-Wilsonian representatives to various UN bodies, and the opposition by countries such as Hungary and Poland to EU measures intended to promote the rule of law.

Meanwhile, the torrent of technological innovation and change known as “the information revolution” creates obstacles for Wilsonian goals within countries and in the international system. The irony is that Wilsonians often believe that technological progress will make the world more governable and politics more rational—even if it also adds to the danger of war by making it so much more destructive. Wilson himself believed just that, as did the postwar order builders and the liberals who sought to extend the U.S.-led order after the Cold War. Each time, however, this faith in technological change was misplaced. As seen most recently with the rise of the Internet, although new technologies often contribute to the spread of liberal ideas and practices, they can also undermine democratic systems and aid authoritarian regimes.

Today, as new technologies disrupt entire industries, and as social media upends the news media and election campaigning, politics is becoming more turbulent and polarized in many countries. That makes the victory of populist and antiestablishment candidates from both the left and the right more likely in many places. It also makes it harder for national leaders to pursue the compromises that international cooperation inevitably requires and increases the chances that incoming governments will refuse to be bound by the acts of their predecessors.

The information revolution is destabilizing international life in other ways that make it harder for rules-based international institutions to cope. Take, for example, the issue of arms control, a central concern of Wilsonian foreign policy since World War I and one that grew even more important following the development of nuclear weapons. Wilsonians prioritize arms control not just because nuclear warfare could destroy the human race but also because, even if unused, nuclear weapons or their equivalent put the Wilsonian dream of a completely rules-based, law-bound international order out of reach. Weapons of mass destruction guarantee exactly the kind of state sovereignty that Wilsonians think is incompatible with humanity’s long-term security. One cannot easily stage a humanitarian intervention against a nuclear power.

The fight against proliferation has had its successes, and the spread of nuclear weapons has been delayed—but it has not stopped, and the fight is getting harder over time. In the 1940s, it took the world’s richest nation and a consortium of leading scientists to assemble the first nuclear weapon. Today, second- and third-rate scientific establishments in low-income countries can manage the feat. That does not mean that the fight against proliferation should be abandoned. It is merely a reminder that not all diseases have cures.

What is more, the technological progress that underlies the information revolution significantly exacerbates the problem of arms control. The development of cyberweapons and the potential of biological agents to inflict strategic damage on adversaries—graphically demonstrated by the COVID-19 pandemic—serve as warnings that new tools of warfare will be significantly more difficult to monitor or control than nuclear technology. Effective arms control in these fields may well not be possible. The science is changing too quickly, the research behind them is too hard to detect, and too many of the key technologies cannot be banned outright because they also have beneficial civilian applications.

In addition, economic incentives that did not exist in the Cold War are now pushing arms races in new fields. Nuclear weapons and long-range missile technology were extremely expensive and brought few benefits to the civilian economy. Biological and technological research, by contrast, are critical for any country or company that hopes to remain competitive in the twenty-first century. An uncontrollable, multipolar arms race across a range of cutting-edge technologies is on the horizon, and it will undercut hopes for a revived Wilsonian order.

IT’S NOT FOR EVERYBODY

One of the central assumptions behind the quest for a Wilsonian order is the belief that as countries develop, they become more similar to already developed countries and will eventually converge on the liberal capitalist model that shapes North America and western Europe. The Wilsonian project requires a high degree of convergence to succeed; the member states of a Wilsonian order must be democratic, and they must be willing and able to conduct their international relations within liberal multilateral institutions.

At least for the medium term, the belief in convergence can no longer be sustained. Today, China, India, Russia, and Turkey all seem less likely to converge on liberal democracy than they did in 1990. These countries and many others have developed economically and technologically not in order to become more like the West but rather to achieve a deeper independence from the West and to pursue civilizational and political goals of their own.

In truth, Wilsonianism is a particularly European solution to a particularly European set of problems. Since the fall of the Roman Empire, Europe has been divided into peer and near-peer competitors. War was the constant condition of Europe for much of its history, and Europe’s global dominance in the nineteenth century and early twentieth century can be attributed in no small part to the long contest for supremacy between France and the United Kingdom, which promoted developments in finance, state organization, industrial techniques, and the art of war that made European states fierce and ferocious competitors.

With the specter of great-power war constantly hanging over them, European states developed a more intricate system of diplomacy and international politics than did countries in other parts of the world. Well-developed international institutions and doctrines of legitimacy existed in Europe well before Wilson sailed across the Atlantic to pitch the League of Nations, which was in essence an upgraded version of preexisting European forms of international governance. Although it would take another devastating world war to ensure that Germany, as well as its Western neighbors, would adhere to the rules of a new system, Europe was already prepared for the establishment of a Wilsonian order.

But Europe’s experience has not been the global norm. Although China has been periodically invaded by nomads, and there were periods in its history when several independent Chinese states struggled for power, China has been a single entity for most of its history. The idea of a single legitimate state with no true international peers is as deeply embedded in the political culture of China as the idea of a multistate system grounded in mutual recognition is embedded in that of Europe. There have been clashes among Chinese, Japanese, and Koreans, but until the late nineteenth century, interstate conflict was rare.

In human history as a whole, enduring civilizational states seem more typical than the European pattern of rivalry among peer states. Early modern India was dominated by the Mughal Empire. Between the sixteenth century and the nineteenth century, the Ottoman and Persian Empires dominated what is now known as the Middle East. And the Incas and the Aztecs knew no true rivals in their regions. War seems universal or nearly so among human cultures, but the European pattern, in which an escalating cycle of war forced a mobilization and the development of technological, political, and bureaucratic resources to ensure the survival of the state, does not seem to have characterized international life in the rest of the world.

For states and peoples in much of the world, the problem of modern history that needed to be solved was not the recurrence of great-power conflict. The problem, instead, was figuring out how to drive European powers away, which involved a wrenching cultural and economic adjustment in order to harness natural and industrial resources. Europe’s internecine quarrels struck non-Europeans not as an existential civilizational challenge to be solved but as a welcome opportunity to achieve independence.

Postcolonial and non-Western states often joined international institutions as a way to recover and enhance their sovereignty, not to surrender it, and their chief interest in international law was to protect weak states from strong ones, not to limit the power of national leaders to consolidate their authority. Unlike their European counterparts, these states did not have formative political experiences of tyrannical regimes suppressing dissent and drafting helpless populations into the service of colonial conquest. Their experiences, instead, involved a humiliating consciousness of the inability of local authorities and elites to protect their subjects and citizens from the arrogant actions and decrees of foreign powers. After colonialism formally ended and nascent countries began to assert control over their new territories, the classic problems of governance in the postcolonial world remained weak states and compromised sovereignty.

Even within Europe, differences in historical experiences help explain varying levels of commitment to Wilsonian ideals. Countries such as France, Germany, Italy, and the Netherlands came to the EU understanding that they could meet their basic national goals only by pooling their sovereignty. For many former Warsaw Pact members, however, the motive for joining Western clubs such as the EU and NATO was to regain their lost sovereignty. They did not share the feelings of guilt and remorse over the colonial past—and, in Germany, over the Holocaust—that led many in western Europe to embrace the idea of a new approach to international affairs, and they felt no qualms about taking full advantage of the privileges of EU and NATO membership without feeling in any way bound by those organizations’ stated tenets, which many regarded as hypocritical boilerplate.

EXPERT TEXPERT

The recent rise of populist movements across the West has revealed another danger to the Wilsonian project. If the United States could elect Donald Trump as president in 2016, what might it do in the future? What might the electorates in other important countries do? And if the Wilsonian order has become so controversial in the West, what are its prospects in the rest of the world?

Wilson lived in an era when democratic governance faced problems that many feared were insurmountable. The Industrial Revolution had divided American society, creating unprecedented levels of inequality. Titanic corporations and trusts had acquired immense political power and were quite selfishly exploiting that power to resist all challenges to their economic interests. At that time, the richest man in the United States, John D. Rockefeller, had a fortune greater than the annual budget of the federal government. By contrast, in 2020, the wealthiest American, Jeff Bezos, had a net worth equal to about three percent of budgeted federal expenditures.

Yet from the standpoint of Wilson and his fellow progressives, the solution to these problems could not be simply to vest power in the voters. At the time, most Americans still had an eighth-grade education or less, and a wave of migration from Europe had filled the country’s burgeoning cities with millions of voters who could not speak English, were often illiterate, and routinely voted for corrupt urban machine politicians.

The progressives’ answer to this problem was to support the creation of an apolitical expert class of managers and administrators. The progressives sought to build an administrative state that would curb the excessive power of the rich and redress the moral and political deficiencies of the poor. (Prohibition was an important part of Wilson’s electoral program, and during World War I and afterward, he moved aggressively to arrest and in some cases deport socialists and other radicals.) Through measures such as improved education, strict limits on immigration, and eugenic birth-control policies, the progressives hoped to create better-educated and more responsible voters who would reliably support the technocratic state.

A century later, elements of this progressive thinking remain critical to Wilsonian governance in the United States and elsewhere, but public support is less readily forthcoming than in the past. The Internet and social media have undermined respect for all forms of expertise. Ordinary citizens today are significantly better educated and feel less need to rely on expert guidance. And events including the U.S. invasion of Iraq in 2003, the 2008 financial crisis, and the inept government responses during the 2020 pandemic have seriously reduced confidence in experts and technocrats, whom many people have come to see as forming a nefarious “deep state.”

International institutions face an even greater crisis of confidence. Voters skeptical of the value of technocratic rule by fellow citizens are even more skeptical of foreign technocrats with suspiciously cosmopolitan views. Just as the inhabitants of European colonial territories preferred home rule (even when badly administered) to rule by colonial civil servants (even when competent), many people in the West and in the postcolonial world are likely to reject even the best-intentioned plans of global institutions.

Meanwhile, in developed countries, problems such as the loss of manufacturing jobs, the stagnation or decline of wages, persistent poverty among minority groups, and the opioid epidemic have resisted technocratic solutions. And when it comes to international challenges such as climate change and mass migration, there is little evidence that the cumbersome institutions of global governance and the quarrelsome countries that run them will produce the kind of cheap, elegant solutions that could inspire public trust.

WHAT IT MEANS FOR BIDEN

For all these reasons, the movement away from the Wilsonian order is likely to continue, and world politics will increasingly be carried out along non-Wilsonian and in some cases even anti-Wilsonian lines. Institutions such as NATO, the UN, and the World Trade Organization may well survive (bureaucratic tenacity should never be discounted), but they will be less able and perhaps less willing to fulfill even their original purposes, much less take on new challenges. Meanwhile, the international order will increasingly be shaped by states that are on diverging paths. This does not mean an inevitable future of civilizational clashes, but it does mean that global institutions will have to accommodate a much wider range of views and values than they have in the past.

There is hope that many of the gains of the Wilsonian order can be preserved and perhaps in a few areas even extended. But fixating on past glories will not help develop the ideas and policies needed in an increasingly dangerous time. Non-Wilsonian orders have existed both in Europe and in other parts of the world in the past, and the nations of the world will likely need to draw on these examples as they seek to cobble together some kind of framework for stability and, if possible, peace under contemporary conditions.

For U.S. policymakers, the developing crisis of the Wilsonian order worldwide presents vexing problems that are likely to preoccupy presidential administrations for decades to come. One problem is that many career officials and powerful voices in Congress, civil society organizations, and the press deeply believe not only that a Wilsonian foreign policy is a good and useful thing for the United States but also that it is the only path to peace and security and even to the survival of civilization and humanity. They will continue to fight for their cause, conducting trench warfare inside the bureaucracy and employing congressional oversight powers and steady leaks to sympathetic press outlets to keep the flame alive.

Those factions will be hemmed in by the fact that any internationalist coalition in American foreign policy must rely to a significant degree on Wilsonian voters. But a generation of overreach and poor political judgment has significantly reduced the credibility of Wilsonian ideas among the American electorate. Neither President George W. Bush’s nation-building disaster in Iraq nor Obama’s humanitarian-intervention fiasco in Libya struck most Americans as successful, and there is little public enthusiasm for democracy building abroad.

#### Shipping alliances are not anti-competitive.

Epictetus E. Patalinghug, 19. Consultant, Wallace Business Forum. "A Study on International Shipping in the Philippines." June 2019. https://appfi.ph/images/2019/Publications/IntlShippingEPatalinghug.pdf

The international shipping industry plays an important role in the international supply chain and in the smooth functioning of global trade and in expanding global markets. An application of the conventional structure-conduct-performance (SCP) paradigm shows that the international shipping industry satisfies the three characteristics of being a competitive industry: (1) at least five (5) reasonably strong or comparable rivals, (2) none of the strong rivals must possess a dominant position (e.g. 40% or more of the market share), and (3) there is ease of entry of new competitors**. The trend toward forming or joining shipping alliances does not pose as barriers to entry in the** international **shipping industry**. Regulations concerning the shipping industry at the global level are the jurisdiction of the International Maritime Organization (IMO) – a United Nations agency based in London. The principal responsibility of enforcing IMO regulation rests with the countries in which merchant ships are registered. In the Philippines, the regulation of ports is separated from the regulation of shipping. The Philippine Ports Authority (PPA) is a government corporation mandated to handle the planning, development, and management of seaports, while the Maritime Industry Authority (MARINA) governs the activities of the shipping sector, particularly vessel seaworthiness and the training and development of seafarer/ship manpower. The Bureau of Customs (BOC) is tasked to undertake assessment and collection of customs revenues and to supervise and control all export and import cargoes not just in seaports, but also in airports, terminal facilities, container yards, and freight stations. The stakeholders of the industry can be classified into four groups: (1) international shipping lines and its related service providers such as the truckers, customs brokers, freight forwarders, arrastre operators, and stevedoring workers; (2) regulators such as PPA, MARINA, and BOC; (3) private port operators such as the International Container Terminal Services, Inc. (ICTSI) and Asian Terminals, Inc. (ATI); and the consumers and port users such as the exporters, importers, bonded warehouse operators, door-to-door consolidators, and traders. The International Commercial Terms (INCOTERMS) provide a set of rules relating to international commercial law. It defines the party responsible for undertaking the activity or the party liable for paying the service covered in the commercial transaction agreed between two parties. INCOTERMS are widely used in international transactions and serve as rules that clearly communicate the tasks, costs, and risks associated with the transport and delivery of goods from the seller to the buyer. For example, under the FOB (free on board) rule, the local seller at the origin assumes full responsibility for the cargo until it is on board the vessel. The buyer is responsible for all the costs once the cargo is aboard the vessel in a port. The practice of separating surcharges from freight rate is allowed by international maritime treaties such as the World Trade Organization (WTO) Agreement, United Nations Conference on Trade and Development (UNCTAD) Convention of Code of Conduct for Liner Conferences, European Union (EU) Maritime Transport Agreement, and notices issued by the US Federal Maritime Commission (FMC). There is intense competition in the international shipping industry. Shippers and freight forwarders have many options in choosing which shipping line or mode of transport to employ in order to move their cargo to a specific destination. An issue is raised locally that intense competition in the international shipping industry created an oversupply of vessels that led some shipping companies to impose origin and destination surcharges on top of basic freight rates to recover their losses. A proposed Joint Administrative Order has been drafted by DOF, DTI, and DOTr (but not finalized) towards regulating the fees and charges of international shipping lines doing business in the Philippines (DOF, DTI, and DOTr, 2019). International shipping contributes to the increased Philippine trade with ASEAN neighbors as well as with China, Japan, South Korea, India, Hongkong, Taiwan, Germany, and the United States. Robust and dynamic trade performance likewise led to Philippine economic growth in the recent years. The participation of private companies in port operation and management of major Philippine ports is an appropriate policy direction towards improving port efficiency. Port efficiency is an important determinant of shipping costs. Manila ranks well below the global performers, such as Singapore and Shanghai, both in port productivity and port efficiency. Port efficiency is determined by port size and infrastructure, private sector participation, quality of both cargo-handling and logistics services, operational efficiency of port management, and conducive public-policy framework. The better the infrastructure, the higher the probability of an efficient port. Poor infrastructure accounts for more than 40% of transport costs. Inefficient ports have higher handling costs.

#### Covid wrecked port revenue – disproves the advantage

Port Authority of NY/NJ, 21. “COVID-19 PANDEMIC IMPACT ON PORT AUTHORITY FACILITY VOLUMES CONTINUES INTO MARCH 2021.” April 26, 2021. https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2021-press-releases/covid-19-pandemic-impact-on-port-authority-facility-volumes.html

The monthly data comparisons of 2021 to 2019 establish meaningful and consistent pre-COVID baselines for tracking activity trends at Port Authority facilities as the COVID-19 pandemic persists into a second calendar year. The Port Authority continues to project a total of $2.7 billion in lost revenue from the beginning of the pandemic through the end of 2021, and a $3 billion revenue loss covering the 24-month period from March 2020 through March 2022.

#### Plan not key – ports don’t go away post-plan; they will still be used to support jobs and private investment regardless of what size ships go through them and whether or not shipping alliances exist.

#### Status quo solves solves price gouging – conclusion of their article proves FMC is acting – Emory reads yellow

1ac Nick Savvides 21, Reporter for The Loadstar. “More complaints against 'profiteering' carriers expected as shippers' costs soar,” March 18, 2021. <https://theloadstar.com/more-complaints-against-profiteering-carriers-expected-as-shippers-costs-soar/>)

He claimed this wasn’t just price increases due to the pandemic, “they were baked into the negotiations,” he said, which was “price gouging”. And that is what prompted the complaint to the FMC. He continued to allege that the lines were, in effect, profiteering, and asked: “With rates at such inflated levels what is the motivation for the lines to return to normal levels of operation?” MCS’s business from Asia is worth $120m, but the cost of transport increased by $30-40m overnight, which will be passed on to the consumer and will lead to inflation of 20%-40% in the sector MCS operates – inflation is created artificially by the shipping lines, Mr Master said. In a letter to chairman of the FMC Daniel Maffei, Mr Master said he believed it was clear that government and the FMC were aware of the critical nature of the issue “and the havoc that it is wreaking on American businesses and consumers”. He added: “Federal shipping and antitrust laws appear to provide federal regulators with the tools needed to investigate this outrageous conduct by ocean carriers.” He said rapid action was needed to mitigate the worst effects being felt “right now, on a daily basis, by American businesses and consumers”. In effect, Mr Master accuses the carriers of operating a cartel, allowing them to manipulate the market illegally. “The formation of these cartels has allowed foreign shipping interests to co-ordinate pricing and business practices, and take advantage of economic conditions to charge extortionate prices to US customers,” he alleged. Mr Master would like to see reparations to shippers for their losses, and the lines forced to meet their contractual obligations. Furthermore, MCS would like the FMC to ensure that the lines address container shortages and the “dislocation” of containers, with not enough empties in Asia and too many in congested US ports. Finally, the MCS CEO pointed to the “serious co-ordination issues in the operation of the US ports”. He said: “Truckers performing drayage services, delivering full containers to shippers and receivers, must be able to schedule normal appointments to avoid current untenable delays. Steamship lines currently levy penalties on the US shippers for delays which are beyond their control.” Moreover, truckers have been unable to secure appointments to return the empty boxes, which has resulted in more financial penalties. “These penalties, which are ultimately borne by American consumers in the form of consumer price inflation, must stop,” demanded Mr Master.

**(Kansas evidence ends)**

**(article continues)**

The detention and demurrage issues have been well documented, as they formed part of commissioner Rebecca Dye’s Fact Finding 29 mission, as has the conduct of the carriers, though up to now the FMC has been unable to act because it had not received a complaint. With the first grievance now documented, the FMC will analyse the MCS complaint – but Mr Master added he believes many more will follow.

**Slow growth impacts inevitable – it’s too late to reverse. Emory reads yellow.**

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Secular Stagnation

This unbrave new world has been emerging for some time, as US power has **declined** relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world **financial crisis** of 2007, which revealed the bankruptcy of unregulated market capitalism, **weakened** faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The **skewed** distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became **intolerable** as growth rates declined. A combination of **aging** populations, **accelerating** technology, and global **populism/nationalism** promises to make this growth decline **very difficult** to reverse. What Larry Summers and other international political economists have come to call “**secular stagnation**” increases the likelihood that **illiberal** globalization, **multipolarity**, and **rising nationalism** will define our future. Summers11 has argued that the world is entering a **long** period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order **more difficult to resuscitate** post-Trump. Domestic politics will become **more** polarized and dysfunctional, as competition for **diminishing** resources intensifies. International collaboration, ad hoc or through institutions, will become **politically toxic**. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that **limited** the damage of previous downturns, will be **unavailable**. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will **further curb** the **investments** essential for future growth. Another demonstration of the **intersection** of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy **response** to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing **wage rates** and remittance **revenues** for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will **profoundly** alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and **future** conditions these institutions will become the **battlegrounds**—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the **final nail in the coffin** of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may **embrace renewed collaboration** in global **trade** and **finance**, macroeconomic management, environmental sustainability and the like, but **repairing the damage** requires the heroic assumption that America’s own identity has not been **fundamentally** altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically proTrump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are **structural**, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of **diffusing material power**, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

#### No econ decline impact.

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

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

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

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

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

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

#### No US-China war.

Timothy Heath 17. Senior international defense research analyst at the nonprofit, nonpartisan RAND Corporation and member of the Pardee RAND Graduate School faculty, and William R. Thompson, Distinguished and Rogers Professor at Indiana University and an adjunct researcher at RAND. "U.S.-China Tensions Are Unlikely to Lead to War". National Interest. 4-30-2017. https://nationalinterest.org/feature/us-china-tensions-are-unlikely-lead-war-20411?page=0%2C1

Graham Allison's April 12 article, “ How America and China Could Stumble to War ,” explores how misperceptions and bureaucratic dysfunction could accelerate a militarized crisis involving the United States and China into an unwanted war. However, the article fails to persuade because it neglects the key political and geostrategic conditions that make war plausible in the first place. Without those conditions in place, the risk that a crisis could accidentally escalate into war becomes far lower. The U.S.-China relationship today may be trending towards greater tension, but the relative stability and overall low level of hostility make the prospect of an accidental escalation to war extremely unlikely. In a series of scenarios centered around the South China Sea, Taiwan and the East China Sea, Allison explored how well-established flashpoints involving China and the United States and its allies could spiral into unwanted war. Allison’s article argues that given the context of strategic rivalry between a rising power and a status-quo power, organizational and bureaucratic misjudgments increase the likelihood of unintended escalation. According to Allison, “the underlying stress created by China’s disruptive rise creates conditions in which accidental, otherwise inconsequential events could trigger a large-scale conflict.” This argument appears persuasive on its surface, in no small part because it evokes insights from some of Allison’s groundbreaking work on the organizational pathologies that made the Cuban Missile Crisis so dangerous. However, Allison ultimately fails to persuade because he fails to specify the political and strategic conditions that make war plausible in the first place. Allison’s analysis implies that the United States and China are in a situation analogous to that of the Soviet Union and the United States in the early 1960s. In the Cold War example, the two countries faced each other on a near-war footing and engaged in a bitter geostrategic and ideological struggle for supremacy. The two countries experienced a series of militarized crises and fought each other repeatedly through proxy wars. It was this broader context that made issues of misjudgment so dangerous in a crisis. By contrast, the U.S.-China relationship today operates at a much lower level of hostility and threat. China and the United States may be experiencing an increase in tensions, but the two countries remain far from the bitter, acrimonious rivalry that defined the U.S.-Soviet relationship in the early 1960s. Neither Washington nor Beijing regards the other as its principal enemy. Today’s rivals may view each other warily as competitors and threats on some issues, but they also view each other as important trade partners and partners on some shared concerns, such as North Korea, as the recent summit between President Donald Trump and Chinese president Xi Jinping illustrated. The behavior of their respective militaries underscores the relatively restrained rivalry. The military competition between China and the United States may be growing, but it operates at a far lower level of intensity than the relentless arms racing that typified the U.S.-Soviet standoff. And unlike their Cold War counterparts, U.S. and Chinese militaries are not postured to fight each other in major wars. Moreover, polls show that the people of the two countries regard each other with mixed views —a considerable contrast from the hostile sentiment expressed by the U.S. and Soviet publics for each other. Lacking both preparations for major war and a constituency for conflict, leaders and bureaucracies in both countries have less incentive to misjudge crisis situations in favor of unwarranted escalation. To the contrary, political leaders and bureaucracies currently face a strong incentive to find ways of defusing crises in a manner that avoids unwanted escalation. This inclination manifested itself in the EP-3 airplane collision off Hainan Island in 2001, and in subsequent incidents involving U.S. and Chinese ships and aircraft, such as the harassment of the USNS Impeccable in 2009. This does not mean that there is no risk, however. Indeed, the potential for a dangerous militarized crisis may be growing. Moreover, key political and geostrategic developments could shift the incentives for leaders in favor of more escalatory options in a crisis and thereby make Allison’s scenarios more plausible. Past precedents offer some insight into the types of developments that would most likely propel the U.S.-China relationship into a hostile, competitive one featuring an elevated risk of conflict. The most important driver, as Allison recognizes, would be a growing parity between China and the United States as economic, technological and geostrategic leaders of the international system. The United States and China feature an increasing parity in the size of their economies, but the United States retains a considerable lead in virtually every other dimension of national power. The current U.S.-China rivalry is a regional one centered on the Asia-Pacific region, but it retains the considerable potential of escalating into a global, systemic competition down the road. A second important driver would be the mobilization of public opinion behind the view that the other country is a primary source of threat, thereby providing a stronger constituency for escalatory policies. A related development would be the formal designation by leaders in both capitals of the other country as a primary hostile threat and likely foe. These developments would most likely be fueled by a growing array of intractable disputes, and further accelerated by a serious militarized crisis. The cumulative effect would be the exacerbation of an antagonistic competitive rivalry, repeated and volatile militarized crisis, and heightened risk that any flashpoint could escalate rapidly to war—a relationship that would resemble the U.S.-Soviet relationship in the early 1960s. Yet even if the relationship evolved towards a more hostile form of rivalry, unique features of the contemporary world suggest lessons drawn from the past may have limited applicability. Economic interdependence in the twenty-first century is much different and far more complex than in it was in the past. So is the lethality of weaponry available to the major powers. In the sixteenth century, armies fought with pikes, swords and primitive guns. In the twenty-first century, it is possible to eliminate all life on the planet in a full-bore nuclear exchange. These features likely affect the willingness of leaders to escalate in a crisis in a manner far differently than in past rivalries. More broadly, Allison’s analysis about the “Thucydides Trap” may be criticized for exaggerating the risks of war. In his claims to identify a high propensity for war between “rising” and “ruling” countries, he fails to clarify those terms, and does not distinguish the more dangerous from the less volatile types of rivalries. Contests for supremacy over land regions, for example, have historically proven the most conflict-prone, while competition for supremacy over maritime regions has, by contrast, tended to be less lethal. Rivalries also wax and wane over time, with varying levels of risks of war. A more careful review of rivalries and their variety, duration and patterns of interaction suggests that although most wars involve rivalries, many rivals avoid going to war. Misperceptions and strategic accidents remain a persistent feature of international politics, and it may well be that that mistakes are more likely to be lethal in periods of adjustment in relative power configurations. Rising states do have problems negotiating status quo changes with states that have staked out their predominance earlier. Even so, the probability of war between China and the United States is almost certainly far less than the 75 percent predicted by Allison. If the leaders of both countries can continue to find ways to dampen the trends towards hostile rivalry and maintain sufficient cooperation to manage differences, then there is good reason to hope that the risk of war can be lowered further still.

#### High global food prices and food insecurity are structurally inevitable

Anthony Faiola, 21. Columnist for the Washington Post. “Amid drought, conflict and rocketing prices, a global food crisis could be approaching, top expert warns.” December 15, 2021. https://www.washingtonpost.com/world/2021/12/15/global-food-crisis-pandemic/

Global food prices are [soaring](https://www.washingtonpost.com/world/2021/07/04/global-food-prices-covid/?itid=lk_inline_manual_3). Fertilizer costs are [sky-high](https://www.washingtonpost.com/us-policy/2021/11/14/inflation-economy-biden-prices/?itid=lk_inline_manual_3)**.** In Afghanistan, nearly 23 million people — more than half the population — are [expected to face](https://www.washingtonpost.com/world/2021/10/25/afghanistan-food-crisis/?itid=lk_inline_manual_3) potentially life-threatening food insecurity this winter. Madagascar [is confronting](https://www.washingtonpost.com/world/2021/10/25/afghanistan-food-crisis/?itid=lk_inline_manual_3) its worst drought in 40 years, with more than a million people there in need in urgent food aid. Is a new global food crisis coming? In an interview this week, Maximo Torero Cullen — chief economist at the United Nations’ Food and Agriculture Organization — told me the answer is: Not yet, but we could be on the brink. The world is witnessing an increase in localized and conflict-driven food crises, particularly in sub-Saharan Africa. But across the globe, the food price surges of recent months are still not as bad as the two critical spikes sparked by weather, biofuel production and surging Asian demand in 2007-2008 and 2011-2012. That doesn’t mean we won’t get there. Because of the pandemic, [global hunger shot up by an estimated 118 million people worldwide in 2020,](https://www.washingtonpost.com/world/2021/07/12/coronavirus-peru-hunger-inequality/?itid=lk_inline_manual_9) jumping to 768 million people, the most since as far back as 2006. The number of people living with food insecurity — or those forced to compromise on food quantity or quality — surged by 318 million, to 2.38 billion. As vaccination rollouts lag in the developing world, Cullen told Today’s WorldView that he fears the slower economic recoveries in low- and medium-income nations could worsen the food insecurity picture further in 2022.

#### No food wars.

David Bier 11. Immigration policy analyst at the Cato Institute’s Center for Global Liberty and Prosperity. Citing Steven Pinker, Johnstone Family Professor of Psychology at Harvard University. “Steven Pinker: Resource Scarcity Doesn’t Cause Wars”. 11-28-2011. <http://www.globalwarming.org/2011/11/28/steven-pinker-resource-scarcity-doesnt-cause-wars/>

Once again it seems to me that the appropriate response is “maybe, but maybe not.” Though climate change can cause plenty of misery… it will not necessarily lead to armed conflict. The political scientists who track war and peace, such as Halvard Buhaug, Idean Salehyan, Ole Theisen, and Nils Gleditsch, are skeptical of the popular idea that people fight wars over scarce resources. Hunger and resource shortages are tragically common in sub-Saharan countries such as Malawi, Zambia, and Tanzania, but wars involving them are not. Hurricanes, floods, droughts, and tsunamis (such as the disastrous one in the Indian Ocean in 2004) do not generally lead to conflict. The American dust bowl in the 1930s, to take another example, caused plenty of deprivation but no civil war. And while temperatures have been rising steadily in Africa during the past fifteen years, civil wars and war deaths have been falling. Pressures on access to land and water can certainly cause local skirmishes, but a genuine war requires that hostile forces be organized and armed, and that depends more on the influence of bad governments, closed economies, and militant ideologies than on the sheer availability of land and water. Certainly any connection to terrorism is in the imagination of the terror warriors: terrorists tend to be underemployed lower-middle-class men, not subsistence farmers. As for genocide, the Sudanese government finds it convenient to blame violence in Darfur on desertification, distracting the world from its own role in tolerating or encouraging the ethnic cleansing. In a regression analysis on armed conflicts from 1980 to 1992, Theisen found that conflict was more likely if a country was poor, populous, politically unstable, and abundant in oil, but not if it had suffered from droughts, water shortages, or mild land degradation. (Severe land degradation did have a small effect.) Reviewing analyses that examined a large number (N) of countries rather than cherry-picking one or toe, he concluded, “Those who foresee doom, because of the relationship between resource scarcity and violent internal conflict, have very little support from the large-N literature.”

#### No risk of nuclear terrorism.

John Mueller 20. Senior fellow at the Cato Institute. Member of the political science department and senior research scientist with the Mershon Center for International Security Studies at Ohio State University. "Nuclear Alarmism: Proliferation and Terrorism". Cato Institute. 6-24-2020. <https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism>

However, thus far, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. That lack of action may be because, after a brief exploration of the possible routes, they — unlike generations of alarmists — have discovered that the tremendous effort required is scarcely likely to be successful.34

Obtaining a Finished Bomb: Assistance by a State

One route a would‐​be atomic terrorist might take would be to receive or buy a bomb from a generous like‐​minded nuclear state for delivery abroad. That route is highly improbable, however, because there would be too much risk — even for a country led by extremists — that the ultimate source of the weapon would be discovered. As one prominent analyst, Matthew Bunn, puts it, “A dictator or oligarch bent on maintaining power is highly unlikely to take the immense risk of transferring such a devastating capability to terrorists they cannot control, given the ever‐​present possibility that the material would be traced back to its origin.” Important in this last consideration are deterrent safeguards afforded by “nuclear forensics,” which is the rapidly developing science (and art) of connecting nuclear materials to their sources even after a bomb has been exploded.35

Moreover, there is a very considerable danger to the donor that the bomb (and its source) would be discovered before delivery or that it would be exploded in a manner and on a target the donor would not approve of — including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence.36

In addition, almost no one would trust al Qaeda. As one observer has pointed out, the terrorist group’s explicit enemies list includes not only Christians and Jews but also all Middle Eastern regimes; Muslims who don’t share its views; most Western countries; the governments of Afghanistan, India, Pakistan, and Russia; most news organizations; the United Nations; and international nongovernmental organizations.37 Most of the time, it didn’t get along all that well even with its host in Afghanistan, the Taliban government.38

Stealing or Illicitly Purchasing a Bomb: Loose Nukes

There has also been great worry about “loose nukes,” especially in postcommunist Russia — weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. A careful assessment conducted by the Center for Nonproliferation Studies has concluded that it is unlikely that any of those devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because they (like all nuclear weapons) require continual maintenance.39 Even some of those people most alarmed by the prospect of atomic terrorism have concluded, “It is probably true that there are no ‘loose nukes,’ transportable nuclear weapons missing from their proper storage locations and available for purchase in some way.“40

It might be added that Russia has an intense interest in controlling any weapons on its territory because it is likely to be a prime target of any illicit use by terrorist groups, particularly Chechen ones of course, with whom it has been waging a vicious on‐​and‐​off war for two decades. The government of Pakistan, which has been repeatedly threatened by terrorists, has a similar interest in controlling its nuclear weapons and material — and scientists. As noted by Stephen Younger, former head of nuclear weapons research and development at Los Alamos National Laboratory, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.“41 Even if a finished bomb were somehow lifted somewhere, the loss would soon be noted and a worldwide pursuit launched.

Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that would destroy the bomb if it were tampered with. And there are other security techniques: bombs can be kept disassembled with the components stored in separate high‐​security vaults, and security can be organized so that two people and multiple codes are required not only to use the bomb but also to store, maintain, and deploy it. If the terrorists seek to enlist (or force) the services of someone who already knows how to set off the bomb, they would find, as Younger stresses, that “only few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” Weapons designers know how a weapon works, he explains, but not the multiple types of signals necessary to set it off, and maintenance personnel are trained in only a limited set of functions.42

There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray — Pakistan is frequently brought up in this context and sometimes North Korea as well. However, even under those conditions, nuclear weapons would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory; would still have locks (and in the case of Pakistan would be disassembled); and could probably be followed, located, and hunted down by an alarmed international community. The worst‐​case scenario in that instance requires not only a failed state but also a considerable series of additional permissive conditions, including consistent (and perfect) insider complicity and a sequence of hasty, opportunistic decisions or developments that click flawlessly in a manner far more familiar to Hollywood scriptwriters than to people experienced with reality.43

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

Interest

In addition, the evidence about the degree to which al Qaeda has pursued, or even has much interest in, a nuclear weapons program is limited and often ambiguous. For example, in 2004, the 9/11 Commission insisted that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years.” The only substantial evidence it supplies for that assertion comes from an episode that supposedly took place around 1993 in Sudan, when Osama bin Laden’s aides were scammed when they tried to buy some uranium.55 Information about that caper apparently comes from a man who defected from al Qaeda in 1996 after he had been caught stealing $110,000 from the organization. He tried selling his story around the Middle East, but only the Americans were buying. In his prize‐​winning The Looming Tower, Lawrence Wright relays the testimony of the man who allegedly purchased the substance for bin Laden, as well as that of a Sudanese intelligence agent. Both assert that, although there were various other scams going around at the time, the uranium episode never happened.56

Various sources suggest that radical elements in bin Laden’s entourage were interested in pursuing atomic weapons or other WMDs when the group was in Afghanistan in the 1990s. However, the same sources indicate that bin Laden had little interest in that pursuit and essentially sabotaged the idea by refusing to fund it, or even to initiate planning for it.57 Analyst Anne Stenersen notes that evidence from a recovered al Qaeda computer indicates that only some $2,000–$4,000 was earmarked for WMD research, all of it apparently for (very crude) chemical work with some potentially for biological weapons. For comparison, she points out that the millennial terrorist group Aum Shinrikyo appears to have invested $30 million in its sarin gas manufacturing program alone.58 There are also reports that bin Laden had some “academic” discussions in 2001 about WMDs with some Pakistani nuclear scientists who did not, actually, know how to build a bomb.

Khalid Sheikh Mohammed, the apparent mastermind behind the 9/11 attacks, reportedly says that al Qaeda’s atom bomb efforts never went beyond searching the Internet.59 After the fall of the Taliban in 2001, technical experts from the Central Intelligence Agency and the Department of Energy examined information uncovered in Afghanistan and arrived at conclusions generally supportive of that assertion. They found no credible information that al Qaeda had obtained fissile material or a nuclear weapon, and no evidence of “any radioactive material suitable for weapons.” They did uncover, however, a “nuclear‐​related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons related issues.“60 Physicist and weapons expert David Albright is more impressed with the evidence, but he concludes that any al Qaeda atomic efforts were “seriously disrupted” — indeed, “nipped in the bud” — by the invasion of Afghanistan in 2001, and that after the invasion, the “chance of al Qaeda detonating a nuclear explosive appears on reflection to be low.“61

Rumors and reports that al Qaeda managed to purchase an atomic bomb, or several, have been around now for well over a decade, beginning around 1998. One alleges, for example, that bin Laden gave a group of Chechens $30 million in cash and two tons of opium in exchange for 20 nuclear warheads. If any of those reports were true, one might think the terrorist group (or its supposed Chechen suppliers) would have tried to set one off by now or that al Qaeda would have left some trace of the weapons behind in Afghanistan after it made its very hasty exit in 2001.

Bin Laden pronounced on the nuclear weapons issue a few times, talking about an Islamic “duty” or “right” to obtain the weapons for defense. Some of those oft‐​quoted assertions can be viewed as threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging any sort of capability. And as Louise Richardson concludes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them,” feeding “the exaggeration of the threat we face.“62

When examined, the evidence of al Qaeda’s desire to go atomic and about its progress in accomplishing that exceedingly difficult task, even in the comparative safety of its Afghan haven of the 1990s, is remarkably skimpy, if not completely negligible. The scariest stuff — a decade’s worth of loose nuke rumor, chatter, and hype — seems to have no substance whatever.

After an exhaustive study of available materials, Stenersen concludes that, although al Qaeda central may have considered nuclear and other nonconventional weapons, there “is little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.“63 And there is no reason to believe things got better for them after they were forcefully expelled from their comparatively unembattled base in Afghanistan.

In 1996, one of terrorism studies’ top gurus, Walter Laqueur, insisted that some terrorist groups “almost certainly” will use WMDs “in the foreseeable future.“64 Presumably any future foreseeable in 1996 is now history, but in contrast, terrorists in effect seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.“65 That is, keep it simple, stupid. Although there have been plenty of terrorist attacks in the world since 2001, all (thus far, at least) have relied on conventional destructive methods. There hasn’t even been much in the way of the occasional gas bomb, not even in Iraq where the technology is hardly much of a secret.

### Ports Adv---1NC

#### Status quo solves- Biden investing billions in strengthening ports and port security

Mark Szakonyi, 21. Executive Editor. “Port disruption gives Biden rare opening to galvanize freight investment.” March 31, 2021. https://www.joc.com/port-news/us-ports/port-disruption-gives-biden-rare-opening-galvanize-freight-investment\_20210331.html

Over the next five years, US ports need $5 billion in federal funding toward water navigational projects, according to the American Association of Port Authorities. Photo credit: Shutterstock.com. Editor's Note: According to a fact sheet released March 31, the Biden administration wants to invest $17 billion in inland waterways, coastal ports, surface ports of entry, and ferries. The congestion that has clogged major US port gateways and shows little sign of letting up in the coming months gives the Biden administration a rare opening to not just galvanize crucial port projects but focus the country’s approach to how it makes freight movement more competitive. In recent speeches, President Joe Biden has shown a keener attention to ports than his predecessor, and Pete Buttigieg, secretary of the Department of Transportation, said during a Wall Street Journal podcast on March 23 that the backups at US West Coast ports show they’re “in need of attention and some investment.” The top US port association is hoping that “some investment” translates to $29 billion over the next five years within Biden’s soon-to-be-released $2 trillion infrastructure plan. “This should be a call to action. The USA is getting outspent on port and maritime infrastructure by other trading nations, particularly China. It’s time to step up and address this,” Chris Connor, president of the American Association of Port Authorities (AAPA), told JOC.com. Over the next five years, US ports need $5 billion in federal funding toward water navigational projects; $20 billion for landside investments such as piers, wharves, and intermodal connections; and $4 billion for port security, according to the AAPA. More specifically, stimulus funding could guarantee the federal share of major navigational projects, as the likes of Houston, Mobile, and Jacksonville pursue deepening and widening projects. “Many ports are deep at the center of their navigational channel, but as you get toward the sides, the depth isn’t always where it needs to be. What that means is that you can have one ship coming in or out, but you can’t have one ship coming in and one ship going out simultaneously,” Connor said. But US supply chains need more than increased infrastructure funding, according to freight policy experts. For years, the federal government has struggled to create an ambitious enough multimodal National Freight Strategic Plan (NFSP) to guide federal, state, and local investments that meets current and forecasted cargo flows. That’s not to say some progress has been made since work on a strategic plan began with the 2012 passage of the Moving Ahead for Progress in the 21st Century (MAP-21) Act, said Elaine Nessle, executive director at the Coalition for America’s Gateways and Trade Corridors. A National Highway Freight Network was published in 2018, focusing federal investment on critical urban and rural corridors in addition to the primary highway system. However, that’s just the highway portion, putting the onus on the NFSP to provide a strategy that encompasses seaports, intermodal rail terminals, and inland waterways — all while being cognizant of the challenges facing exporters and changes e-commerce growth has brought to inbound supply chains. The most recent version, released by the Trump administration in September 2020, barely mentioned ports and lacks a detailed analysis of changing freight flows and the projects needed to support them. While the Department of Transportation under Trump pushed for rural freight projects and public-private partnerships, the administration deemphasized strategic planning and calls — including from the US Government Accountability Office, Congress’ watchdog — for more transparency on the decision-making behind infrastructure grants, Nessle said. By comparison, she said the Biden administration has a “magnifying glass” on supply chains and appears to be thinking “strategically and in a real-world setting.”

#### Plan not key – ports don’t go away post-plan, they will still be used to support military deployments and cargo regardless of what size ships go through them and whether or not alliances exist.

#### US naval readiness is structurally impossible

Justin Holloran Witwicki, 19. Master of Arts in Government. "The United States Navy as a Hollow Force-An Assessment of Naval Readiness from 2010 to 2017." Johns Hopkins University, 2020. https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/62333/WITWICKI-THESIS-2019.pdf?sequence=1

Conclusions and Recommendations

Evaluation of Readiness Indicators

**From 2010 through 2017, the military readiness of the United States Navy eroded to such an extent that defense analysts and government officials publicly questioned whether it had become a hollow force. Scholars in future years will, and should, find the answer to that question to be “yes**.” The research presented in the preceding pages demonstrated that no fewer than six factors detracted from the military readiness of the United States Navy from 2010 to 2017. Three additional elements were rejected as readiness challenges. Seven indicators of force hollowness were proposed by the Center for Naval Analyses in a 1996 study of post-Vietnam War naval readiness and subsequently reexamined by the Congressional Research Service in 2012. Of those seven, this thesis accepted five as applicable to the U.S. Navy during the 2010-2017 scope of inquiry. Recognizing that “there is no guarantee that the next hollow force will look like the last one,”400 this study then presented evidence that two further indicators – excessive operational tempo and the effects of global climate change – must be added to any holistic examination of naval readiness during this period. In the case of the former, operational tempo directly damaged naval readiness from 2010 to 2017 and resulted in the loss of 17 lives – as many as were lost in the attack on the USS Cole. In the case of the latter, while it is among the Navy’s most severe future readiness challenges, climate change did not sufficiently impact naval capabilities to warrant acceptance as an indicator of unreadiness during the early- and mid-2010s.

#### Plan doesn’t solve shipping carbon emissions – Alger evidence doesn’t say only mega ships pollute. All ships do.

#### Status quo solves – IMO sulfur cap, self-regulation

1ac Alger et al 21, global environmental politics scholar at the University of British Columbia. (Justin, with Jane Lister a Senior Research Fellow and Associate Director of the Centre for Transportation Studies at the Sauder School of Business, University of British Columbia, and Peter Dauvergne is Professor of International Relations at the University of British Columbia, Feb 18, 2021, Corporate Governance and the Environmental Politics of Shipping, https://brill.com/view/journals/gg/27/1/article-p144\_7.xml?language=en

Similarly, in 2008 the IMO adopted a sulfur cap of 0.5 percent of fuel composition to come into effect on 1 January 2020—a sizable decrease from the previous 3.5 percent limit. This regulation applies to all new and existing ships, generally requiring that ships substitute cleaner, more expensive fuel, but also requiring retrofitting of tanks and engines in many older ships. Individual flag states are still responsible for sanctions in the event of noncompliance, but **the IMO has adopted a particularly aggressive stance on sulfur emissions, raising its profile as an environmental priority and effectively ratcheting up pressure on industry. Given the pressure, major industry players are expected to comply,** with a projected cost for the container shipping industry of between $ 5 billion and $ 30 billion, depending on market rates for fuel.35 Regulations such as those for oil spills and the sulfur cap demonstrate that state-led governance of shipping can be effective with industry buy-in, often gained through political pressure. States can and have put limitations on certain activities with real consequences for the industry. But new safety designs, ship retrofitting, and cleaner fuels are costly. Given the potential cost of new regulations, major shipping companies have not sat idly by, instead taking the initiative to better shape the environmental governance of their industry through self-regulation.

#### Plan doesn’t solve – 1ac Hureau evidence doesn’t say that “megaships” (the container ships the plan places prohibitions on) are bad for the environment. This says ALL container ships are bad for the environment. The plan doesn’t solve that – container ships don’t go away post-plan. That means container ship pollution impacts are inevitable.

#### No correlation between ship size and environmental sustainability

Lebawit Lily Girma, 21. Lily is Skift's global tourism reporter. Prior to that, she wrote travel stories focused on culture and sustainability for BBC, CNN, and Travel + Leisure, and others. “It’s Not the Size of the Ship, It’s the Destination” What’s Missing From Big Cruise’s New Climate Action Goals?” November 11th, 2021. https://skift.com/2021/11/11/whats-missing-from-big-cruises-new-climate-action-goals/

Publicly available information on [new builds](https://www.cruisecritic.com/articles.cfm?ID=167) shows more mid-sized ships than not, but simultaneously the megaships to be delivered between December and 2022 are also getting bigger — such as Carnival’s 6,000-passenger capacity and LNG-powered AIDAcosma, Royal Caribbean’s Wonder of the Seas, which will then become the largest cruise ship in the world with up to 6,988 passengers at full occupancy, Disney Wish with 4,000 guest capacity, and Carnival Celebration holding over 6,465 passengers. “I think it’s important to point out that I don’t believe that there is a direct correlation between the size of the ship and the environmental impact or the sustainability piece,” said CLIA Europe’s Metsola on a media call, in response to Skift’s question on how CLIA reconciles the ongoing growth of megaships with the claim of sustainability. “I mean, I recognize that if we are talking about a very, very big cruise ship, you could argue that it is not necessarily sustainable to bring it to certain destinations.” Metsola added that it was more about the age of the ship. “I think the big ship question is really more related to the areas of operation and the ports and destinations that they can be brought sustainably, from a sort of social sustainability point of view.” But [which part of the world isn’t vulnerable](https://skift.com/2021/04/07/the-lasting-impact-of-a-year-with-no-cruises/) to the environmental and social impacts of megaships carrying passengers in the thousands at sea and into host cities and communities? “The more people you cram on the ship, you lower the per passenger cost for operating that cruise,” said Klein. “So you become more efficient — economies of scale. Screw the port, we can now bring 15,000 passengers to that port, hey that’s their problem, that’s sustainable for us.”

#### Megaships are environmentally friendly and more fuel efficient than alternatives

Harry Dempsey et al, 21. Dempsey is an industry reporter at Financial Times. Also Philip Georgiadis and Sylvia Pfeifer. “Too big to sail? The debate over huge container ships.” March 28, 2021. https://www.ft.com/content/3dc797d0-7268-49a4-b0b5-3d11479cbe7f

The biggest ships have the capacity to carry 24,000 20ft containers, enough to stretch 90 miles if they were loaded on a single-decked train. But there is a debate within the industry over whether vessels have outgrown the infrastructure needed to support them. The chief executives of AP Moller-Maersk and Hapag-Lloyd, two of the world’s largest container groups, have both said that the latest container ships were the right size to handle the demand for global freight. “This is one unfortunate incident,” said Rolf Habben Jansen, chief executive of Hapag-Lloyd. “I don’t think that should lead us to the conclusion that the ships are too big.” Ships of this size are both more efficient and environmentally friendly, he said. The sheer scale of modern container vessels means they are estimated to be two and a half times more energy-efficient than rail and seven times more than road, according to the World Shipping Council. Shipping analysts agree that the Suez Canal, which has been frequently expanded, should be able to accommodate such big vessels. But the largest container ships have reached the material limits of length: stacking containers higher makes such ships more susceptible to high winds, while stacking them wider can increase hydrodynamic forces that make them harder to steer in tight spaces, such as ports and canals.

#### Biden solves environmental standards in shipping industry

Kevin Cullinane & Hercules Haralambides, 21. Kevin Cullinane is a Professor of International Logistics and Transport Economics at the University of Gothenburg. Haralambides is a Professor of Maritime Economics and Logistics (MEL) in the Netherlands. "Global trends in maritime and port economics: the COVID-19 pandemic and beyond." *Maritime Economics & Logistics* 23 (2021): 369-380.

With the 2020 election of Joe Biden as president of the USA, the world is now seeking a real commitment to reversing the introversion and isolationism which characterized the Trump administration. Although Biden is no great proponent of the free trade ethos, in seeking to distance himself from the political and policy idiosyncrasies of his predecessor, he is likely to try and restore better relations with both China and the EU (the world is already seeing evidence of this) and to re-engage the USA with a multilateralist approach to trade relations and other international issues (Cullinane [2020](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR15)). Such a change in approach has been manifest in the representation of the USA within the IMO where, remarkably, the USA is now, volte-face, a stalwart of the environmental agenda, in vociferous pursuit of much more stringent measures to secure the best possible environmental performance from the international shipping industry.

## 2NC

### Cosmo K

#### Judging the aff’s constitutive political community is a reality creating principle.

Gerard Delanty 14. University of Sussex, UK “The prospects of cosmopolitanism and the possibility of global justice.” Journal of Sociology 2014, Vol. 50(2) 213–228 https://www.sciencespo.fr/ceri/plurispace/wp-content/uploads/2020/01/DELANTY\_Prospects-Cosmopolitanism.pdf

The notion that global justice is both a challenge and a possibility is a relatively new idea.1 Notions of justice have traditionally been confined to territorially limited political communities, generally nation-states, and global justice seen as a secondary or derivative matter. It was not very long ago that all questions of justice were thought to pertain to nationally defined political communities. This was certainly the assumption that Rawls made in A Theory of Justice in 1971, and which set the terms of debate for more than four decades. In the past two decades there has been a steady increase in what may be called discourses of global justice – including theoretical conceptualizations – and political practices that reflect notions of global justice. It would appear that global justice has become part of the Zeitgeist or the political imaginary of critical publics in contemporary societies as they address a range of global challenges.

To create new or possible worlds it is first of all necessary to be able to imagine them. The fact that we are unsure of what exactly constitutes global justice, but nonetheless speak of it, suggests that it is a reality of a certain kind. One might say it is a reality creating idea. The reality of global justice can now be declared to be a constitutive feature of political community. It is a way of judging the world and a way of thinking about the world, as well as a way of examining the world that challenges the exclusivity of national borders as determining the boundaries of justice. Global justice has a normative, a cognitive and an epistemological dimension: it offers principles against which injustice can be measured, it offers a language to speak about human interconnectedness, and it is a topic on which knowledge can be acquired through social research. The concern with global justice is central to the idea of cosmopolitanism, though not the only aspect of cosmopolitanism. In this article I am largely concerned with the political dimension of cosmopolitanism, which I see as the context in which to discuss global justice. The aim of the article is to explore the considerations that are at stake in assessing the prospects of cosmopolitanism today as a political project. I argue that there is scope for fruitful dialogue between sociology and political science around this question, which asks how a normative idea becomes an empirical phenomenon. In the first section I discuss the notion of global justice before outlining a theoretical approach to the analysis of cosmopolitanism. The third section of the article moves on to look at the conditions of the possibility of cosmopolitanism, before finally considering the prospects of cosmopolitanism.

#### 3. Debates over cosmopolitanism shape subjectivity---their model re-instantiates meta-norms that teach debaters to recreate the nation-state’s violence through social practices.

Gerard Delanty 14. Professor of Sociology and Social Political Thought (School of Law, Politics and Sociology) @ University of Sussex, UK “The prospects of cosmopolitanism and the possibility of global justice.” Journal of Sociology 2014, Vol. 50(2) 213–228 https://www.sciencespo.fr/ceri/plurispace/wp-content/uploads/2020/01/DELANTY\_Prospects-Cosmopolitanism.pdf

It is in the first instance a condition of openness to the world in the sense of the broadening of the moral and political horizon of societies. It entails a view of societies as connected rather than separated. Cosmopolitanism is made possible by the fact that individuals, groups, publics, societies have a capacity for learning in dealing with problems and, in particular, learning from each other. In this sense, then, cosmopolitanism is not a matter of diversity or mobility, but a process of learning. Dialogue is a key feature of cosmopolitanism since dialogue opens up the possibility of incorporating the perspective of others into one’s own view of the world. It can thus be associated with a communicative view of modernity. Rather than being an affirmative condition, it is transformative and is produced by social struggles rather than being primarily elite driven or entirely institutional. In this sense, cosmopolitanism can be related to popular and vernacular traditions rather than exclusively to the projects of elites (see Holton, 2009). From an epistemological perspective, cosmopolitanism involves the production of essentially critical knowledge, such as the identification of transformative potentials within the present.

Finally, cosmopolitanism is related to subject formation: it is constitutive of the self as much as it is of social and political processes. This is reflected in the von Humboldtian – in this case Wilhelm von Humboldt’s – understanding of cosmopolitanism as a particular kind of consciousness that is best exemplified in education. In the acquisition of knowledge, the self undergoes a transformation, for Bildung is a form of self-formation and occurs through the encounter of the individual with the world. Bildung is a means of encountering the universal, as reflected in the category of the world, and is the aim of education.

These features of cosmopolitanism challenge the received view of normative ideas, such as global justice as transcending political community or as simply utopian. The conception of cosmopolitanism I am putting forward is that it is constitutive of modernity and part of the make-up of political community. This is why cosmopolitanism is not a zero sum condition – either present or absent – as its critics often argue and its defenders mistakenly argue in its support. It is present to varying degrees in contemporary societies.

In order to assess the prospects of cosmopolitanism it is therefore necessary to determine the extent to which cosmopolitan phenomena are present in the cultural model of societies and in their modes of social organization and institutions. By the cultural model, I mean the social imaginary of societies, that is the dominant forms of collective identity or self-understanding. The cultural model of all modern societies involves the amplification and metamorphosis of transcultural ideas such as liberty, justice, freedom, autonomy, rights, which of course are variously interpreted and are not always fully institutionalized. But the existence of such ideas (essentially meta-norms), means that societies have the cognitive means of reaching beyond themselves. For this reason, there is generally a tension in modern societies between the cultural model and institutions. Related to these levels of analysis is the dimension of subject formation, the cosmopolitan self. It is possible that any one time in the history of a society there is a tension between subject formation, the cultural model of society, and social institutions. It is for this reason that cosmopolitanism can be seen as a critical theory of society (see Delanty, 2009): it shares with the critical heritage the concern with possibilities within the present or the immanent transcendence of society.

I am emphasizing, then, the formative dimensions of cosmopolitanism, which in other words is a structure forming itself out of both the self and society. It entails a subject (the cosmopolitan subject), a discourse in which ideas, knowledge, modes of cognition are produced, and social practices. Viewed in such terms, cosmopolitanism is a process as opposed to a fixed condition. It is marked by conflict, contradictions, negotiation. The implications of this view are that evidence of cosmopolitanism must be found not in an end state – a cosmopolitan society or state as opposed to a non-cosmopolitan one – but in the process by which it emerges. It is the task of sociology to determine whether and how this process is occurring.

#### 4. Don’t weigh the aff under our interp---Misrepresentation---predetermining the “who” and “how” of policymaking blocks democratic arenas. Our public sphere of argument over the Westphalian frames is an act of justice through assertion of rights.

Nancy Fraser 05. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. “Reframing Justice in a Globalizing World, NLR 36, November–December 2005.” New Left Review. https://newleftreview-org.proxy.library.emory.edu/issues/ii36/articles/nancy-fraser-reframing-justice-in-a-globalizing-world

But the claims of transformative politics go further still. Above and beyond their other demands, these movements are also claiming a say in a post-Westphalian process of frame-setting. Rejecting the standard view, which deems frame-setting the prerogative of states and transnational elites, they are effectively aiming to democratize the process by which the frameworks of justice are drawn and revised. Asserting their right to participate in constituting the ‘who’ of justice, they are simultaneously transforming the ‘how’—by which I mean the accepted procedures for determining the ‘who’. At their most reflective and ambitious, accordingly, transformative movements are demanding the creation of new democratic arenas for entertaining arguments about the frame. In some cases, moreover, they are creating such arenas themselves. In the World Social Forum, for example, some practitioners of transformative politics have fashioned a transnational public sphere where they can participate on a par with others in airing and resolving disputes about the frame. In this way, they are prefiguring the possibility of new institutions of post-Westphalian democratic justice.footnote16

The democratizing dimension of transformative politics points to a third level of political injustice, above and beyond the two already discussed. Previously, I distinguished first-order injustices of ordinary-political misrepresentation from second-order injustices of misframing. Now, however, we can discern a third-order species of political injustice, which corresponds to the question of the ‘how’. Exemplified by undemocratic processes of frame-setting, this injustice consists in the failure to institutionalize parity of participation at the meta-political level, in deliberations and decisions concerning the ‘who’. Because what is at stake here is the process by which first-order political space is constituted, I shall call this injustice meta-political misrepresentation. Meta-political misrepresentation arises when states and transnational elites monopolize the activity of frame-setting, denying voice to those who may be harmed in the process, and blocking creation of democratic arenas where the latter’s claims can be vetted and redressed. The effect is to exclude the overwhelming majority of people from participation in the meta-discourses that determine the authoritative division of political space. Lacking any institutional arenas for such participation, and submitted to an undemocratic approach to the ‘how’, the majority is denied the chance to engage on terms of parity in decision-making about the ‘who’.

#### 3. Scarcity---the 1ACs framing naturalizes nationalism---our cosmopolitan ethics reject this economic-political order.

Raphael Lencucha 13. Faculty of Medicine, School of Physical and Occupational Therapy, McGill University. “Cosmopolitanism and foreign policy for health: ethics for and beyond the state”. BMC Int Health Hum Rights. 2013; 13: 29. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717113/

It is possible

To what extent is the cosmopolitan ideal possible in this contemporary economic and political environment? Would countries be able to contribute scarce resources to cosmopolitan initiatives to improve global health? This section will argue that the current economic and political orders are not natural barriers to such endeavors. This argument will confront the possible assertion that the cosmopolitan project is utopian and impractical amidst an environment of resource limitations and state-based distribution practices. Schrecker makes a persuasive argument against the natural occurrence of resource scarcity [55]. One theme of his argument is that particular (perceived) scarcities are in fact a result of political decisions. For example he refers to the findings of the Bellagio Study Group that estimate that “a package of interventions costing US$ 5.1 billion per year would save the lives of 6 million children per year in 42 countries that account for 90% of the global toll of under-5 child mortality” (p. 601) [55]. To put this number in perspective, in 2007 the Canadian GDP was US$ 1.3 trillion dollars [55]. The resources are in fact available to improve global health and it is only when the scarcity of these resources is “de-naturalized” that governments can begin to reorient their distribution practices. This argument is supported by Pogge’s argument that “rich” governments are actually complicit in the state of global injustices, by developing intergovernmental initiatives that favor their own self-interest, supporting the transfer of funds to corrupt governments, among other things [29].

A subtle yet important dimension of the scarcity argument is that much of the “scarcity” is a result of the self-interested frames adopted by states. This self-interest is a significant motivation for holding back resources for fear that they will not be invested in ways that will directly benefit the paying country. The shortfalls among UN agencies is one example of this phenomenon where there is reluctance to fund organizational work and to provide funds for specific, tangible, projects. Again this ties back to our previous argument that a cosmopolitan ethical frame can provide the impetus for system building and long-term planning. It is important to note that Schrecker observes that the many that call for the global redistribution of resources view it as untenable within the current state-orient framework [55]. He counters this view unambiguously by stating that “indeed, it is perverse in the extreme to reject the existence of health-related ethical obligations that cross national borders simply because no mechanisms exist to hold powerful social institutions, and the key actors within them, accountable for scarcities they cause or perpetuate, perhaps half a world away” (p. 603) [55].

#### 5. Means only the alt can solve the case.

Nancy Fraser 12. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. Can society be commodities all the way down? Polanyian reflections on capitalist crisis. 2012. ffhalshs-00725060f

Today, moreover, as many on the Left have long warned, and as Greeks have discovered to their dismay, the construction of Europe as an economic and monetary union, without corresponding political and fiscal integration, simply disables the protective capacities of member states without creating broader, European-level protective capacities to take up the slack. But that is not all. Absent global financial regulation, even very wealthy, free-standing countries find their efforts at national social protection stymied by global market forces, including transnational corporations, international currency speculators, financiers, and large institutional investors. The globalization of finance requires a new, post-westphalian way of imagining the arenas and agents of social protection. It requires arenas in which the circle of those entitled to protection matches the circle of those subject to risk; and it requires agents whose protective capacities and regulatory powers are sufficiently robust and broad to effectively rein in transnational private powers and to pacify global finance.

#### Socio-cognitive shifts are possible.

Gerard Delanty 14. University of Sussex, UK “The prospects of cosmopolitanism and the possibility of global justice.” Journal of Sociology 2014, Vol. 50(2) 213–228 https://www.sciencespo.fr/ceri/plurispace/wp-content/uploads/2020/01/DELANTY\_Prospects-Cosmopolitanism.pdf

Evidence of major change can never be easily found in the short term. Criticisms of cosmopolitanism that invoke the obvious presence of counter-cosmopolitan trends – which presumably presuppose cosmopolitan currents – are too short-sighted in focusing on a short time span or on reactive events. The Axial Age breakthrough itself took several centuries – 800 to 200 bc – to produce the first universalistic visions, which laid the foundations for the emergence of cosmopolitanism, and the tumultuous history of democracy is itself a reminder of the need to take a longer view on major social and political transformation. Thus the fact that there is much evidence of global injustice does not mean that global justice is absent from the self-understanding of contemporary critical publics or that it has no consequences. The thesis of this article is that the most compelling evidence resides less in manifest institutional change – despite considerable gains, as discussed in the preceding section – than in socio-cognitive shifts in learning competences. Thus the structuring impact that global justice has had on the political imagination in recent times is essentially more of a cognitive than a normative development in redefining the self-understanding of political community.

#### Imperialism now---aff provides an out AND solves oppression.

Daniele Archibugi 04. London School of Economics and Political Science, London, UK and Italian National Research Council, Italy European Journal of International Relations Copyright 2004. “Cosmopolitan Democracy and its Critics: A Review”. https://www.researchgate.net/profile/Daniele-Archibugi-2/publication/240701697\_Cosmopolitan\_Democracy\_and\_Its\_Critics\_A\_Review/links/5cc861b5299bf120978b3022/Cosmopolitan-Democracy-and-Its-Critics-A-Review.pdf

American Hegemony

Today’s world is dominated by a hegemonic bloc where a single state, the United States, is endowed with extraordinary powers and the mandate to defend very narrow economic interests (Chandler, 2001; Gower, 2001). This hegemon goes so far as to resort to military power in order to penetrate economic and political activity. Critics have described how many international organizations — such as the International Monetary Fund, the World Trade Organization and NATO — also serve the purpose of maintaining and preserving the interests of this new hegemonic bloc. Basing observation on real-world conditions, these critics argue that a project that aims to empower global institutions to coordinate and monitor national policies leads de facto to a decrease in the independence of the various states and, ultimately, reinforces the ideology of the current hegemonic power. Authors such as Zolo, Gowen and Chandler have noted how those same years that witnessed audacious projects for UN reform and the democratiza tion of global governance, also witnessed the significant military engagement of Western states. In the lead up to their use of force, these states employed a rhetoric dangerously resembling those discourses that long for a global order founded on the values of lawfulness and democracy.

I have already argued that the amount of power concentrated within the hands of the United States is excessive, and that its domestic democracy is no guarantee for the wise or lawful application of such power. However, the key is to find a strategy that can effectively oppose this hegemonic bloc. Contrary to Zolo, Gowen, Chandler et al., I dispute the ability of the old sovereignty dogma to provide a satisfactory alternative to US hegemony, or to any hegemony, for that matter. Until this moment, the appeal to sovereignty has served the purpose of aiding governments in abusing their citizens, rather than offering weaker states protection from the greed of the strongest states. The strengthening of international institutions, especially if inspired by the values of democracy, would most probably produce the desired effect of obliging the United States and its allies to engage in a foreign policy much more in line with their own constitutions. Barricading ourselves behind the notion of sovereignty merely for the sake of counterbalancing America’s hegemony may cause us to forget the millions of people who are subjected every day to oppression from their own governments. The recent conflict in Iraq seems to reinforce this point. On the one hand, the lack of international consensus and legitimacy did not constrain two democratic states, the USA and the UK, from waging war against international law. On the other hand, the international community lacked non-coercive instruments to protest against the violation of human rights by the Iraqi government since it had the status of representing a ‘sovereign’ state. The cosmopolitan perspective would, on the contrary, have urged the international community to take other actions, such as smart sanctions, to oppose and ultimately remove the Iraqi government.

#### Epistemic shifts are key---the future is defined by global crisis.

Sumiti Kataria and Hongmei Qu 21. School of Philosophy and Sociology, Jilin University. "The Coronavirus Pandemic: The Growing Relevance of Moral Cosmopolitan Justice?". SpringerLink. 10-23-2021. https://link.springer.com/article/10.1007/s40647-021-00334-6

The metaphysical modus operandi of cosmopolitanism demands an epistemological shift towards a hybrid account of moral responsibility, establishing reconciliation between national identity and global individualism. To reformulate the discourse on welfare and social progress, it is inevitable that we cogitate on the desire to move beyond the politics of populism, economic growth and profit-making approach of neo-liberalism emphasising on downsizing and disinvestment, purporting the reinterpretation of realist assertion international relations focusing on the conduct of inter-state conflict to the reflection on growing dependence and existing global inequality.

The adoption of HIF plan of action as an alternate model of arbitrary pricing mechanism of intellectual property rights can be a virtuous point of departure in furthering the accessibility and affordability level of the marginalised section to the health facilities, but at the same time, the focus should be on building a mechanism that also recognises the social and political impediments and emphasise on setting the global norms and operational guidelines to eliminate the structural barriers.

The multidimensional approach to cosmopolitanism attempts to construct a realm of fair distribution of duties and responsibilities that acknowledge the relevance of subsistence rights and the necessity of the global community to cooperate for creating an environment of social cohesion, providing the equal share of entitlements to the least-developed countries.

Conclusion

The essay tries to illuminate the strong interplay between the health catastrophe and its detrimental effects on the existing structural inequalities in the least-developed countries. Coronavirus revealed the hollowness of the pursuit of neo-liberal policy discourse. The conditions of human life were radically altered. The national government and international institutions failed miserably to ensure health faculties for the poor. The so-called civil society organisations, enchanting the slogan for strengthening the citizen entitlements to social and economic rights, kept staring at the plight of migrant labourers, and none took effective measures for the protection of the labouring class from hunger and starvation. We might overcome the coronavirus pandemic, but it is just a glimpse of the broader chains of crises waiting for us in the future. The global Pandemic has unravelled the dilemmas embedded in the premise of social theory. The correspondence of the development of diagnostic mechanism as a public policy formulation is much more complicated than outlining the diagnostic strategy in medical science based on scientific experimentation and following a cut-and-dried predetermined methodology. The societal problems are wicked and complex in nature. It requires not only the positivist problem-solving approach but also the capability to anticipate the casual chain of unseen future repercussions. Furthermore, consideration is needed to reconcile the pluralistic cultural values along with the reconstruction of unequal social and economic structure to restore the public faith in policy discourse (Rittel and Webber 1973).

#### 2. they’ve answered the wrong K and our alt isn’t “world government”---Realism concedes anti-hegemonic blocks want to democratize decision making and that shared, meta-institutions are possible. Any structuralist reading of realism can’t explain democracy.

Daniele Archibugi 04. London School of Economics and Political Science, London, UK and Italian National Research Council, Italy European Journal of International Relations Copyright 2004. “Cosmopolitan Democracy and its Critics: A Review”. https://www.researchgate.net/profile/Daniele-Archibugi-2/publication/240701697\_Cosmopolitan\_Democracy\_and\_Its\_Critics\_A\_Review/links/5cc861b5299bf120978b3022/Cosmopolitan-Democracy-and-Its-Critics-A-Review.pdf

Realist Critics

The disenchanted Realists remind us that the world’s mechanisms are very different from how cosmopolitan democracy’s dreamers imagine them to be. They argue that the principal elements regulating international relations are, ultimately, force and interest. Thus, every effort to tame international politics through institutions and public participation is pure utopia (Zolo, 1997; Hawthorn, 2000; Chandler, 2003). I do not disagree with attributing importance to force and interest, but it is excessive not only to consider them as the sole force moving politics, but also as being immutable. Even from a Realist perspective it would be wrong to think that the interests of all actors involved in international politics are opposed to democratic management of the decision-making process. A more accurate picture is that of opposing interests in tension with each other. Thus at the moment, there is on the one side the influence exerted over the decision-making process by a few centres of power (a few governments, military groups, large enterprises); and on the other side the demands of wider interest groups to increase their role at the decision-making table. Whether peripheral states, global movements or national industries, these latter groups are not necessarily pure at heart. They follow an agenda which is de facto anti-hegemonic because their own interests happen to be opposed to those of centralized power. To support these interests is not a matter of theory, but rather of political choice.

Some Realists, however, reject not just the feasibility of the cosmopolitan project but also its desirability. These critiques are often confused; doubtless because a risk is perceived that the cosmopolitan project could, in the frame of contemporary political reality, be used in other directions. It is certainly relevant that Zolo, in order to construct his critique of cosmopolitan democracy, must continuously force the position taken by his antagonists. In Cosmopolis, he often criticizes the prospect of a global government, but none of the authors he cites — Bobbio, Falk, Habermas, Held — ever argued in its defence (on the other hand, the inevitability of world government is discussed in Wendt, 2003). These scholars limited their support to an increase in the rule of law and integration within global politics; they never argued in favour of the global concentration of coercive power. Cosmopolitan democracy is not to be identified with the project of a global government — which is necessarily reliant upon the concentration of forces in one sole institution — on the contrary, it is a project that invokes voluntary and revocable alliances between governmental and meta-governmental institutions, where the availability of coercive power, in ultima ratio, is shared between players and subjected to juridical control.

[marked]

It would be useful to carry out an experiment to verify how often a Realist’s critique of cosmopolitan democracy could also apply to state democracy. If the Realist approach were to be applied coherently, democracy could not exist as a political system. Despite all of its imperfections, democracy does exist, and this has been made possible due, in part, to the thinkers and movements — all visionary! — who have supported and fought for its cause far before it could ever become possible.

### Adv 1

#### The FMC already has the authority, the aff isn’t needed

J. Michael Cavanaugh & Christopher "Chris" DeLacy, 18. J. Michael Cavanaugh co-chairs Holland & Knight's Energy Team. His practice includes representation of clients in project development transactions also a faculty member at American University. Christopher DeLacy is the leader of the Political Law Group and a member of the Public Policy & Regulation team at Holland & Knight. “Congress Amends the U.S. Shipping Act, Broadening FMC Regulatory Authority.” December 5 2018. <https://www.lexology.com/library/detail.aspx?g=f7eb4790-b512-46b6-bf98-62b441f20ff9>

**Considerations and Takeaways**

The Act is an important development for the maritime industry in the U.S. It is aimed at **preserving competition** in U.S. trades and assuring future capital investment in maritime and transportation infrastructure, the vital link in supply chains across the U.S. and the world. The Act **grants the FMC specific authority to investigate any ocean carrier alliances** **that engage in anticompetitive action** during negotiations with other maritime industry players and contains a number of **amendments to the Shipping Act addressing anticompetitive behavior of carriers.**

* The FMC must review the effects of alliances on an annual basis and include this information in its report to Congress.
* Carrier alliances are prohibited from engaging in collective negotiation that would result in excessive anti-competitive impacts (i.e. unsustainable rates, reductions in capacity).
* The FMC will consider the aggregate effect of carrier alliance agreements on competition when determining whether to seek injunctive relief against certain activities.
* Carriers cannot participate in both a rate discussion and vessel sharing agreement operating in the same trade if such participation results in a reduction in service or increase in transportation cost.
* The DOJ will continue to have authority to prosecute anti-competitive behavior in violation of U.S. antitrust laws.

These provisions are intended to protect U.S.-based MTO infrastructure and other domestic stakeholders (i.e., harbor pilots, tug operators, equipment suppliers, etc.) from being forced to accept pricing from the ocean carriers in concerted action that will threaten their long-term sustainability and impede future investment in infrastructure and technology.

The Act provides **a clear mandate from Congress for the FMC to exercise substantial oversight over and review of ocean carrier alliance activity** with respect to the use of U.S. infrastructure. The addition of the term "certain covered services" in the U.S. terminal services industries focuses attention on important activities of U.S.-based service providers, which represent U.S. strategic supply chain assets as well as major U.S. employers. The Act protects these service providers by limiting ocean carriers from engaging in excessively anti-competitive strategies when collectively negotiating with terminal service providers.

Finally, the Act protects U.S. maritime interests by requiring the Comptroller General to conduct a study of a "major ocean carrier bankruptcy" for purposes of mitigating the effect of any future bankruptcy event on supply chains in the U.S. This provision has significant implications in light of the 2017 Hanjin Shipping bankruptcy and should bolster maritime commerce response to future such bankruptcies potentially involving alliance member lines. The overall effect of the Act will prove to be significant and should provide strong support to the long-term viability of U.S. maritime commerce.

#### Even if they win that the XO doesn’t solve, their own evidence says that the exemption only applies if they are submitted to and approved by the FMC. This means the AFF def isn’t inherent because we’ve read many cards about increasing FMC authority proven by recent prosecution against pricefixing. Emory reads Green.

Maiorano 21, is a Senior Competition Expert at OECD, Competition Division. (Frederica, 6-7-2021, “Directorate for Financial and Enterprise Affairs Competition Committee Working Party No. 2 on Competition and Regulation Competition Enforcement and Regulatory Alternatives – Note by the United States,” OECD, https://bit.ly/3mkAzKO)

Ocean shipping 12. The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 exempts certain agreements among ocean common carriers (i.e., those operating vessels and providing service to the public between the United States and a foreign country) from the antitrust laws and subjects them to oversight by the Federal Maritime Commission (FMC), an independent regulatory agency. The Act expressly confers an exemption from the antitrust laws for agreements on shipping rates, pooling arrangements, and shipping route allocations, so long as those agreements are first submitted to and reviewed by the FMC. This is the oldest surviving U.S. statutory antitrust exemption, having been originally adopted in 1916. The exemption covers not only agreements that have gone into effect under the Act, but also activities undertaken “with a reasonable basis to conclude” that they were pursuant to an agreement that has gone into effect. The antitrust exemption also covers intermodal through rates incorporating rail, truck, and ocean legs of particular cargo movements. 13. A carrier agreement does not require FMC “approval,” but is subject to several specific statutory conditions and goes into effect—and thereby becomes immunized from the antitrust laws—45 days after it is accepted for filing or submission of any additional information requested by the FMC. Once an agreement has been filed, the only way it can be challenged as anticompetitive is if the FMC successfully seeks to have a court enjoin the agreement on grounds that it is “likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.”8 14. Conduct that does not satisfy the statutory requirements for the antitrust exemption remains subject to the antitrust laws. For example, immunity does not extend to mergers and acquisitions involving ocean carriers. The DOJ has also successfully prosecuted pricefixing cases involving international trade lanes. A recent example involved a world-wide conspiracy involving price fixing, bid rigging, and market allocation in international ocean shipping services for roll-on, roll-off cargo to and from the United States and elsewhere. Roll-on, roll-off cargo is non-containerized cargo that can be both rolled onto and off of an ocean-going vessel; examples include new and used cars and trucks and construction and agricultural equipment. In 2015 and 2016, four companies (Wallenius Wilhelmsen Logistics AS, Kawasaki Kisen Kaisha Ltd., Nippon Yusen Kabushiki Kaisha, and Compañia Sud Americana de Vapores S.A.) pled guilty and were sentenced to pay total fines of $234.9 million, and four corporate executives pled guilty and were sentenced to an average of over 16 months in jail.9 15. The DOJ has long advocated that the general antitrust exemption granted by the Shipping Act is no longer justified and should be eliminated.10 In addition, the American Bar Association Antitrust Law Section’s monograph on Federal Statutory Antitrust Exemptions11 describes why the arguments traditionally asserted to justify the exemption (i.e., ruinous competition due to overcapacity) are dubious. The ABA Antitrust Law Section concludes that the conferences “typically result in inefficiently high rates” and have at least “some ability to inflate price.”12

### Adv 2

#### Alt causes deck navy readiness – fatigue, lack of sleep, crewing shortfalls

GAO, 21. Government Accounting Office. “Navy Readiness: Additional Efforts Are Needed to Manage Fatigue, Reduce Crewing Shortfalls, and Implement Training.” May 27, 2021. https://www.gao.gov/products/gao-21-366

Fast Facts

The Navy issued a policy in 2017 for managing fatigue after finding that it was a contributing factor in fatal ship collisions earlier that year. But the Navy has inconsistently implemented that policy and only 14% of officers are getting adequate sleep. In addition, the Navy routinely assigns fewer crewmembers to ships than its workload studies have determined are needed to safely operate them. We also found that the Navy has not accounted for the time that sailors will be expected to spend on modernized training when it is delivered, which may exacerbate sailor overwork and fatigue. Our [8 recommendations](https://www.gao.gov/product_recommendations/GAO-21-366) address these and other related issues. Highlights What GAO Found The Navy issued a fatigue management policy in 2017, but has inconsistently implemented it and sailors are not receiving adequate sleep. GAO conducted a survey in 2020 and estimates that 14 percent of officers received the then recommended 7 hours or more of sleep a day during their most recent deployment, while 67 percent received 5 hours or less. Navy data show that sailor effectiveness declines after prolonged periods without sleep, equating to impairment levels comparable to intoxication. The Navy updated its policy in December 2020—directing adherence to fatigue guidelines—and is taking steps to improve implementation, but is limited by a lack of quality information on sailor fatigue and the factors that cause lack of sleep. Without this information, the Navy cannot effectively manage fatigue to ensure crews operate ships safely. The Navy routinely assigns fewer crewmembers to its ships than its workload studies have determined are needed to safely operate them. Until recently, the Navy tracked and internally reported its crewing against the number of funded positions rather than against required positions, a practice which understated crewing shortfalls (see fig.). As a result, the Navy did not accurately measure the full extent of shortfalls, which almost doubled on average from 8 percent in October 2016 to 15 percent in September 2020. Although the Navy began tracking required positions in February 2021, this practice is not reflected in guidance. The Navy also uses funded positions, rather than requirements, to project its future personnel needs. Therefore, it is not accurately communicating to internal decisionmakers the number of personnel it will need as the fleet grows, which may prevent it from effectively mitigating current crewing shortfalls. Average Surface Fleet Enlisted Crew Positions Required, Funded, and Filled, Fiscal Years 2017 through 2020 The Ready Relevant Learning (RRL) initiative is intended to improve sailor performance, and the Navy has several ongoing and planned measures to assess its effectiveness. However, delivering modernized training will require significant upgrades to the Navy's information technology infrastructure, for which it has only recently begun planning. In addition, the Navy has not accounted for the time that sailors will be expected to spend on modernized training when it is fielded, which may exacerbate sailor overwork and fatigue.

#### IMO regulations on shipping curb emissions

Kevin Cullinane & Hercules Haralambides, 21. Kevin Cullinane is a Professor of International Logistics and Transport Economics at the University of Gothenburg. Haralambides is a Professor of Maritime Economics and Logistics (MEL) in the Netherlands. "Global trends in maritime and port economics: the COVID-19 pandemic and beyond." *Maritime Economics & Logistics* 23 (2021): 369-380.

The IMO and environmental regulation

The increasing influence of the environmental agenda on maritime business has already been alluded to. During the first few weeks of 2020, when COVID-19 had not yet been recognized as the problem it was to become, the focus of interest in the shipping industry was on the potential effect of the International Maritime Organization (IMO) 2020 global sulphur cap regulation, particularly with respect to its impact on the operational costs of ships and, thus, on the competitiveness of the shipping industry (Zis and Cullinane [2020](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR50)). Considerable uncertainty existed then, and persists still, as to the efficacy of scrubbers (Endres et al. [2018](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR18); Comer et al. [2020](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR13); Winnes et al. [2020](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR47)) and the availability of *very low sulphur fuel oil* (VLSFO), the price of which had reached record levels at USD 598/Metric tonnes in January 2020, as market players stockpiled compliant fuel in anticipation of (un)availability issues and even higher prices. In actuality, VLSFO prices slumped throughout 2020 (partially as the result of the previous stockpiling) and are only now recovering to their previous levels – USD 526 in Rotterdam as of 24 June 2021 (Ship & Bunker [2021](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR40)). In terms of reducing CO2 and other greenhouse gas (GHG) emissions from shipping, the IMO has been fiercely criticized for a lack of vision and expedient progress (Shi [2016](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR39)), particularly in relation to the imposition of market-based measures (Psaraftis et al. [2021](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR35)). This has prompted the European Commission, within the context of its *Green Deal* strategy, to include shipping in the European Union’s Emissions Trading system (EU ETS), irrespective of any future progress made by the IMO. This decision has caused considerable unrest in shipping industry circles, particularly amongst shipowners, and is perceived as a regional measure that undermines the merits of a multilateral approach to regulation, as advanced by the IMO. With respect to the IMO’s *short-term measures* for the abatement of CO2 emissions, at the meeting of its Marine Environment Protection Committee in June 2021 (MEPC 76), the IMO adopted amendments to its MARPOL Annex VI regulations, introducing two new instruments which are planned to come into force in January 2023: the Energy Efficiency Design Index for existing ships (EEXI) and the Carbon Intensity Indicator (CII). The latter effectively measures the energy efficiency of ships in relation to the transport work they undertake in moving freight and/or passengers, and this is then used to operationalize the EEXI, which is a technical instrument, directly comparable to the widely understood workings of the EEDI, but which is more generally applicable to existing ships, rather than just new ships. In the short term, it now seems that speed reductions might be the only feasible route to compliance with the new measures. Still, these new instruments have not evolved without considerable discussion and controversy, mostly raised by countries exporting perishable or time-sensitive products. The logic of their argument is that longer transit times (due to slow steaming) would impact negatively on the value of their exports (e.g. fruit or dairy products), and that the deterioration in product quality might in turn lead to modal shifts favouring air transport. Given the very high speeds of the benchmark year 2008 (24 knots), however, the speed reductions necessary to achieve the goals of all the short-term measures would be minimal and, as such, unlikely to lead to either product deterioration or modal shifts (Zis & Psaraftis [2021](https://link.springer.com/article/10.1057/s41278-021-00196-5#ref-CR51)).

#### The International Maritime Organization regulations solve container ship emissions. And, larger ships are better at reducing emissions. – lower speeds, less net emissions

Hua-An Lu & Jui-chen Yeh, 19. Lu is a researcher affiliated with National Taiwan Ocean University, has published multiple peer reviewed journal articles. Yeh works for DNV-GL Taiwan. DNV GL delivers advisory, certification and testing services to stakeholders in the energy value chain. "The impact of using mega containerships on operation and management of Shipping Lines." *Transportation Journal* 58.1 (2019): 38-64.

International Environment Protection Regulations

With much higher speeds than other ship types and nonlinear fuel consumption as a function of speed, containerships are considered to be the largest maritime carbon dioxide (CO2) emitters (Psaraftis and Kontovas 2010). Reducing maritime greenhouse gas (GHG) through more efficient propulsion and energy-saving engines became a necessary tendency for new-generation ships. The revision of international environmental protection regulations indirectly encouraged shipping lines to invest in larger ships **to reduce the quantities of GHG emitted**. The International Maritime Organization (IMO) passed two compulsory regulations, that is, an energy efficiency design index (EEDI) and a ship energy efficiency management plan (SEEMP), to control CO 2 emission from ship transports. The target of the EEDI is to reduce emissions to 30 percent by 2025. This regulation stimulates continued innovation and technical development of ships at the design phase. The SEEMP asks ship owners to plan an effective management program with specific controllable and manageable principles for their operating ships. These strict regulations indirectly forced shipping lines to use large ships with new technologies for cost savings and environmental protection. New-generation mega containerships were designed with not only low speeds but also better energy efficiency in both fuel consumption and emission performance than that of the previous generation ships. OECD (2015) verified that the fuel consumption of 19,000-TEU containerships with 22 knots of economic speed is less than that of 14,000 to 16,000–TEU containerships.

### T CWS

#### Consumer welfare is the consistent goal now---topical Affs must shift away from it.

Elyse Dorsey 20. “Antitrust in Retrograde: The Consumer Welfare Standard, Socio-Political Goals, and the Future of Enforcement”. https://gaidigitalreport.com/wp-content/uploads/2020/11/Dorsey-Antitrust-in-Retrograde.pdf

Antitrust law has largely flourished in the last 40 or so years, having established a newfound sense of self that is both coherent and capable of achieving its ends. It benefits from a longstanding and nonpartisan support for the consumer welfare standard.65 The Supreme Court has consistently, and on a nonpartisan basis, acknowledged the economic grounding and consumer welfare goals of the antitrust laws.66 The consumer welfare standard today thus serves as a common language unifying antitrust cases and analysis. Continued disagreements over original legislative intent have not forestalled this consensus, owing to this and many other benefits (developed below), including increased certainty, clarifying and narrowing the scope of applicable goals to consider, and facilitating the rule of law.67

#### 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. It’s the 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).

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