# Off

## Court clog

#### Litigation is controlled now---the aff kills it

Emily S. Taylor Poppe 21, Assistant Professor of Law at the University of California, Irvine School of Law, “Institutional Design for Access to Justice”, UC Irvine Law Review, 11 U.C. Irvine L. Rev. 781, February 2021, Lexis

This law-centric orientation is strikingly different from that of most Americans, despite popular claims about their litigiousness. Most individuals never even identify the civil legal problems they experience as "legal." Only a tiny minority will ever seek legal advice in response to a problem, and most are more likely to do nothing than to file a lawsuit. Decades of empirical scholarship have confirmed that despite the prevalence of civil legal problems in everyday life, there is remarkably little recourse to formal law. [FOOTNOTE BEGINS] DAVID M. ENGEL, THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE 3 (2016) (noting that "specious claims of a litigation explosion have been made so often that they have rooted themselves in the national psyche"). [FOOTNOTE ENDS]

#### Antitrust litigation is uniquely complex and resource-intensive---a spike trades-off with judicial functioning in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs. Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact. In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party. Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm. Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best: A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time? [\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

## Politics

### 1nc – grid

#### Infrastructure will pass, but it will take Biden PC

Will Marshall (opinion editor) 10/12/2021 [“Democrats need a win — now” online @ <https://thehill.com/opinion/finance/576292-democrats-desperately-need-a-win>, loghry]

In politics, success tends to beget success. That truism apparently eluded leftwing Democrats on Sept. 30 when they refused to vote for President Biden’s $1.2 trillion bipartisan infrastructure bill. Instead of basking in accolades for having passed a second landmark achievement to go with Biden’s $1.9 trillion American Rescue Plan, Democrats are treating the public to an extended exhibition of their inability to forge the internal consensus necessary to govern. Even as clogged U.S. ports and long delays in delivering goods of all kinds underscore the urgent need for upgrading the nation’s economic infrastructure, the Congressional Progressive Caucus vows to persist in blocking the bill if they don’t get their way on a follow-on reconciliation bill that would spend trillions more on new social entitlements and climate protection. That’s sewn anger and mistrust among moderate House Democrats, who were promised a vote and stood ready to pass the infrastructure bill last month. House Speaker Nancy Pelosi (D-Calif.) set a new deadline for a vote — Halloween, fittingly enough. To arrest the administration’s faltering momentum, Democrats need a big political win, and soon. Buffeted by vaccine hesitancy and the delta variant’s surge, as well as the chaotic U.S. exit from Afghanistan, the president’s approval ratings have tumbled by 10 points since June. That’s a worry for Democratic candidates, especially former Virginia Gov. Terry McAuliffe, who’s locked in a tight race for a second term in a state Biden won by 10 points in 2020. The impasse over infrastructure is odd in two respects. First, progressives claim they too want to spend big on nation-building at home. But it doesn't seem to be their top priority. Their message couldn’t be clearer: Redistributing wealth takes precedence over strengthening the economy. Is that really the message Democrats want to run on in next year’s midterm elections? Even more perplexing, the White House, and sometimes the president himself, seemed to encourage leftist obstruction as a way of pressuring two moderate Democratic senators, Joe Manchin (W.Va.) and Kyrsten Sinema (Ariz.), into supporting the $3.5 trillion reconciliation bill. The strong-arm tactics haven’t worked, and have left bruised feelings among not only the senators but also many moderate House Democrats who also don’t support the entire progressive wish list. Now the fate of both bills is uncertain as the White House belatedly struggles to broker a compromise that balances the needs of both leftwing and centrist Democrats. What we’ve witnessed is anything but a deft exercise in coalition management. Despite all the heady rhetoric about ushering in “transformative change,” it was never likely that Democrats would pass changes on a New Deal scale with razor-thin majorities in the House and Senate. What’s more, Democrats representing battleground districts and states face electorates that are skeptical of the left’s big tax and spending ambitions. Since they make the difference between their party being in the majority or out of power, their values and interests also must be accommodated. Nonetheless, it’s hard not to sympathize with President Biden’s desire to “go big” in helping Americans hit hard by the long COVID-19 pandemic and recession. That’s a tribute to his empathy, and fortunately for him and the country, it’s a goal he can still achieve. The imperative now is to get both bills unstuck by persuading progressives to compromise on a reconciliation package with a price tag between $1.9 trillion and $2.3 trillion. Democrats need to fashion a more disciplined and focused reconciliation package that aims at doing a few things right rather than throwing money at a plethora of new entitlements. A blueprint at the Progressive Policy Institute, where I serve as president, sets three core, progressive priorities: supporting working families and children, combating climate change and expanding access to affordable health care for those in need. It would cost roughly $2 trillion and could plausibly be paid for by raising taxes on the wealthy and strengthening federal tax compliance. A Build Back Better package totaling between $2 trillion and $3 trillion for both bills is within striking distance for Biden and his party. Only on the dreamscape of democratic socialism can spending of that magnitude be considered chump change. By historical standards, it’s big change. The left’s latest gambit is to pass all the programs in their original $3.5 trillion grab bag but set them to expire after a few years so they appear less expensive in the Congressional Budget Office’s official 10-year score. This is bad policy that would make it easier for a future Republican Congress to simply let programs expire rather than trying to abolish them, as Republicans failed to do with ObamaCare. “For President Biden’s legacy, it’s important to make these longer-term investments and not have short-term cliffs,” said Rep. Suzan DelBene (D-Wash.), leader of the mainstream New Democrat Coalition. The “haircut” gimmick is also dubious politics, because it’s harder to communicate to voters a clear rationale for a jumble of smallish or temporary new programs than a few big initiatives with real power to change lives. Democrats control the White House and, however tenuously, Congress. They don’t have the luxury of endless negotiations aimed at appeasing the left. To regain political momentum, Democrats need a win. The best way to get one is to pass the infrastructure bill as soon as possible and work on a pragmatic reconciliation bill that better reflects their philosophically diverse coalition.

#### Antitrust reform requires PC and trades off with other legislative priorities.

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

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

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

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

#### Infrastructure bill is key to revitalize grids and cybersecurity.

Riley ’21 — Tonya, Researcher and reporter at the Washington Post. "The Cybersecurity 202: Democrats' new infrastructure bill highlights cybersecurity concerns." Washington Post. 3-12-2021. https://www.washingtonpost.com/politics/2021/03/12/cybersecurity-202-democrats-new-infrastructure-bill-highlights-cybersecurity-concerns/. accessed 3-17-2021 //ART

The House's new $312 billion infrastructure bill, as part of that push, aims to secure the country's most critical infrastructure – and increase the cybersecurity of essential services, including hospitals, broadband, and the electric grid. A recent string of high-profile cyberattacks pushed long-neglected cybersecurity issues to the center of national policy discussions. “The infrastructure in the United States is in sore need of updates and the fact that Congress is now recognizing the importance of upgrading not just physical infrastructure, but cybersecurity infrastructure is a sign of a new importance and awareness of cybersecurity,” says John Gilligan, president and CEO of the Center for Internet Security, a cybersecurity nonprofit. Key cyberse'curity-related investments in the bill include $10 billion to help hospitals guard against cyber criminals and roughly $3.5 billion for electric grid security. Mounting high-profile cybersecurity incidents have made the problem hard to ignore. “Over the last year, we’ve seen the devastating results of inaction: major power outages, water shortages, health care facilities stretched to the limit, and communities left behind due to the digital divide,” Energy and Commerce Committee Chairman Frank Pallone Jr. (D-N.J.) said in a statement introducing the bill. In February, Florida police revealed that a hacker tried to poison the water supply of the town of Oldsmar. And although not the result of a cyberattack, the fallout of a mass grid failure in Texas raised alarms from researchers and lawmakers about cybersecurity weaknesses in America's power systems that could lead to a much worse outage. During the coronavirus pandemic, hospitals have been hit with a surge of dangerous attacks in which attackers locked up data and systems in exchange for a ransom, leaving hospital services unavailable. Congress is also scrambling to respond to a Russian attack on software company SolarWinds, which resulted in the hacking of at least nine federal agencies, as well as a recent Chinese-tied campaign against a vulnerability in Microsoft software. Both are used heavily by the government and critical industries including the energy sector. Biden last month signed an executive order requiring a review of the security of America's supply chains and is expected to sign another executive order addressing cybersecurity improvements in critical software systems. A bipartisan group of members of the House Committee on Homeland Security yesterday introduced a bill that would cement the role of the Cybersecurity and Infrastructure Security Agency in protecting critical infrastructure. Incidents such as the one in Florida are a wake-up call that the U.S. government needs to do more to defend critical infrastructure, said the committee's ranking Republican, Rep. John Katko (N.Y.), who led the bill. “These systems operate many vital components of our nation’s critical infrastructure and remain under constant attack from cyber criminals and nation state actors,” he said in a statement.

#### Cyber-attacks on the electric grid are imminent recent attacks prove means and motive

Layton, Chief Intelligence Officer 16 (Tim, @SurfWatch Labs, Principal for Cisco’s Global Enterprise Cybersecurity Theatre, Principal for EMC’s Security & Risk Management, Vice President for Wells Fargo, 4/1/16, “U.S. Electric Grid - America the Vulnerable,” DOA: 8/22/16, <http://www.securityweek.com/us-electric-grid-america-vulnerable>)

In the new digital age, the **threat of** cyber attack reaches every part of modern society. Electrical power runs just about every aspect of life for most people, and most are not prepared when the power source is interrupted or goes away. A public announcement could be made one week ahead of time, and the majority of people would still be in the same vulnerable position if the power were to go away abruptly. Last year Lloyd's published a report titled "Business Blackout" where they shared their analysis and findings of an imminent cyber attack on the U.S. power grid. In their attack scenario, attackers were able to inflict physical damage on 50 of the 700 generators on the electrical grid on the east coast where there is a substantial population of people in major cities that includes New York City, Washington D.C. and Boston. In this situation, 93 million people were affected by a blackout. **There would** most certainly **be** mass chaos among the population, **and** the **total impact to the USA** in the Lloyd's report **is** estimated at $243 billion dollarsandrising to over $1 trillion in extreme cases. In an already fragile and recovering economy, an attack like this could ~~cripple~~ [devastate] the country and most certainly disrupt any momentum the economy had been able to gain. Not only is **this** scenario possible, I believe it is imminent. Based on existing intelligence, it is reasonable to assume that nation-states already possess all the information they need to launch such an attack on the U.S. power grid - they choose not to because of political implications. I also believe the USA possesses the same capabilities. It isn't just nation-states that we need to be concerned with, as radical terrorist groups are highly motivated to bring harm to the American people and economy. Current State of Affairs The U.S. power system is outdated, and it was never designed with network security in mind. Experts have described the U.S. power grid as decrepit and seriously out of date. **By** connecting U.S. electric plants to the Internet**, a** new and **bountiful** supply of attack points and back doors **have** been **opened up to attackers**. Further complicating the security challenges in the new digital frontier is hundreds of contractors create and sell software and equipment to the energy companies. This software and hardware has weaknesses that can be exploited. The companies themselves serve as a portal into the electric grid because they are connected their customers. Just three months ago, the Ukraine power grid suffered a cyber attack and the outage impacted 225,000 people. This is the first time the U.S. Government officially recognized that a blackout was caused by a malicious cyber attack. Security researchers attribute the attack to a Russian hacking group known as Sandworm. Malicious software was used in this attack to remotely switch off breakers **controlling** the **power** to the public. A coordinated attack was launched by the criminals that aimed at keeping legitimate customers from reporting their power outages. We know based on history with malware, **once the** software **is** **out** in the wild, **it** can be modified **for future attacks** and **with** a **high degree of success**. We have seen this pattern in other industry verticals such as the financial sector. Within the energy sector, here are just a few examples of reported attacks or attempted attacks: • In 2012 and 2013 Russian hackers were able to successfully send and receive encrypted commands to the U.S. power generators. • The Department of Homeland Security (DHS) announced last year that unauthorized cyber hackers were able to inject malicious software into the grid operations that allowed spying on U.S. energy companies. • In October of last year, US law enforcement officials reported a series of cyber attacks that were attempted by ISIS targeting the U.S. power grid. • In December 2015, the Associated Press reported that "security researcher Brian Wallace was on the trail of hackers who had snatched a California university's housing files when he stumbled into a larger nightmare: cyber attackers had opened a pathway into the networks running the United States power grid." Home Security Deputy Secretary Alejandro Mayorkas acknowledged in an interview, "we are not where we need to be" on cybersecurity. \*edited for ableist language

#### Risk of a nuclear cyberattack is high – nuclear terrorism, meltdowns, false flag missile strikes – breaks down national security

NTI 15 (The Nuclear Threat Initiative – THE NUCLEAR THREAT INITIATIVE PROTECTS LIVES, THE ENVIRONMENT AND OUR QUALITY OF LIFE NOW AND FOR FUTURE GENERATIONS. Every day, we work to prevent catastrophic attacks with weapons of mass destruction and disruption—nuclear, biological, radiological, chemical and cyber. – “ADDRESSING CYBER-NUCLEAR SECURITY THREATS” – Nuclear Threat Initiative – Oct 25, 2015 – http://www.nti.org/about/projects/addressing-cyber-nuclear-security-threats/)

What if a hacker shut down the security system at a highly sensitive nuclear materials storage facility, giving access to terrorists seeking highly enriched uranium to make a bomb? What if cyber-terrorists seized control of operations at a nuclear power plant--enabling a Fukushima-scale meltdown? Or, worse, what if hackers spoofed a nuclear missile attack, forcing a miscalculated retaliatory strike that could kill millions? The cyber threat affects nuclear risks in at least two ways: It can be used to undermine the security of nuclear materials and facility operations, and it can compromise nuclear command and control systems. Traditional nuclear security practices have been focused on preventing physical attacks—putting in place “guns, guards, and gates” to prevent 1) theft of materials to build a bomb, 2) sabotage of a nuclear facility, or 3) unauthorized access of nuclear command, control, and communications systems. Important progress has been made in this "traditional" nuclear security arena, but the threat of a cyber attack is escalating. All countries are vulnerable, and nuclear cybersecurity practices haven't caught up to the risk. Across the nuclear sector worldwide, the technical capacity to address the cyber threat is extremely limited, even in countries with advanced nuclear power and research programs. Measures to guard against the cyber-nuclear threat are virtually non-existent in states with new or emerging nuclear programs. Expertise in the field of nuclear cybersecurity is in short-supply, and the International Atomic Energy Agency (IAEA), which provides countries with assistance and training in this area, does not have the resources necessary to address the growing threat. The threat extends to the command, control, and communications (NC3) for nuclear weapons. Even in the United States, officials have stated that it cannot be fully confident that these systems will operate as planned if attacked by a sophisticated cyber opponent. Such attacks could jeopardize the confidence of U.S. officials of our nuclear systems, lead to false warning or even potentially allow an adversary to take control of a nuclear weapons system.

## T

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

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

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

#### Prohibit means forbid by authority

Merriam-Webster No Date https://www.merriam-webster.com/dictionary/prohibition and https://www.merriam-webster.com/dictionary/prohibiting

Definition of prohibition 1: the act of prohibiting by authority Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice’ and are subject to judicial review

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984). [\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates "two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692. [\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982). [\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen. [\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous. In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanageably large.

#### 3) VOTE NEG---for fairness & education

## States

#### TEXT: The attorneys general of the 50 states and relevant territories, through the National Association of Attorneys General’s Multistate Antitrust Task Force, should prohibit drug patent settlements that include any considerations that would not have been available as a direct consequence of showing that the patent was invalid.

#### A multistate AG antitrust enforcement solves the aff---causes federal follow-on

Artega 19 (Juan A. Arteaga is an experienced antitrust attorney and a former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, The Role of US State Antitrust Enforcement, Global Competition Review, 11-19, <https://www.lexology.com/library/detail.aspx%3Fg%3Dd423301d-f4d1-4550-a99c-1880869e67e7+&cd=11&hl=en&ct=clnk&gl=us>, y2k)

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. In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions. 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. Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period. 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. 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. 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. 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. 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. 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. 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’. 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. 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. Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states. Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC. In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include: In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general have sued to block the transaction even though the DOJ, along with seven state attorneys general, have approved the deal after securing certain structural and behavioural remedies. After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who has been leading the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’ The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees)in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful. None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support. In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision. After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’ After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies. Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses: the federal and state antitrust laws under which state enforcers operate; the processes through which state enforcers coordinate with each other and their federal counterparts; the opportunity for coordination and conflict between state enforcers and private counsel during litigation; strategic and practical considerations when engaging with state attorneys general; and certain noteworthy enforcement actions that state enforcers have recently prosecuted. Statutory regime governing US state antitrust enforcement Civil enforcement of federal antitrust laws Enforcement actions on behalf of state governmental entities Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services. In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees. In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges. In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market. In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy. While general harm to a state’s economy can serve as a basis for injunctive relief, stateattorneyscannot base their request for damages on such harm. Parens patriae enforcement actions A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’. Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations. In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees. State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’. In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies. Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens. In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies. State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their pending challenge to T-Mobile’s proposed acquisition of Sprint, nearly 20 state attorneys general have alleged that the transaction will result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies. Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three. There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation; (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages); (3) exclude harm suffered by indirect purchasers of the goods and/or services in question; (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries; and (5) arise out of actual financial losses rather than general harm to their state’s economy. Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation. In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing[ [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court. In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which the state attorneys general challenging the T-Mobile/Sprint merger have done. Civil enforcement of state antitrust lawsMost states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act. In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.

State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’. Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.

# On

## Adv 1

#### The Cartel internal is 11 years old, there have been bloody cartel wars that entire time without an impact

#### Latin America doesn’t escalate

Cárdenas 11[Mauricio, senior fellow and director of the Latin America Initiative at the Brookings Institution, 3-17, “Think Again Latin America,” Foreign Policy, http://www.foreignpolicy.com/articles/2011/03/17/think\_again\_latin\_america?page=full]

"Latin America is violent and dangerous." Yes, but not unstable. Latin American countries have among the world's highest rates of crime, murder, and kidnapping. Pockets of abnormal levels of violence have emerged in countries such as Colombia -- and more recently, in Mexico, Central America, and some large cities such as Caracas. With 140,000 homicides in 2010, it is understandable how Latin America got this reputation. Each of the countries in Central America's "Northern Triangle" (Guatemala, Honduras, and El Salvador) had more murders in 2010 than the entire European Union combined. Violence in Latin America is strongly related to poverty and inequality. When combined with the insatiable international appetite for the illegal drugs produced in the region, it's a noxious brew. As strongly argued by a number of prominent regional leaders -- including Brazil's former president, Fernando H. Cardoso, and Colombia's former president, Cesar Gaviria -- a strategy based on demand reduction, rather than supply, is the only way to reduce crime in Latin America. Although some fear the Mexican drug violence could spill over into the southern United States, Latin America poses little to no threat to international peace or stability. The major global security concerns today are the proliferation of nuclear weapons and terrorism. No country in the region is in possession of nuclear weapons -- nor has expressed an interest in having them. Latin American countries, on the whole, do not have much history of engaging in cross-border wars. Despite the recent tensions on the Venezuela-Colombia border, it should be pointed out that Venezuela has never taken part in an international armed conflict. Ethnic and religious conflicts are very uncommon in Latin America. Although the region has not been immune to radical jihadist attacks -- the 1994 attack on a Jewish Community Center in Buenos Aires, for instance -- they have been rare. Terrorist attacks on the civilian population have been limited to a large extent to the FARC organization in Colombia, a tactic which contributed in large part to the organization's loss of popular support.

## Adv 3

-need AMR impact D, no disease ext, disease doesn’t cause war

develop drug resistance in future."

#### AMR evidence says there is no will to develop tech to solve, their solvency evidence says they boost current r&d not that they overcome a lack of will in the squo

#### No ABR impact

Jesse Pines 10, Professor, Emergency Medicine and Health Policy, George Washington University, “Should We Be Afraid of the Superbug?” FOREIGN POLICY, 9/3, www.foreignpolicy.com/articles/2010/09/03/should\_we\_be\_afraid\_of\_the\_superbug, accessed 9-14-14.

For a few days this August, much of the news media in the West became convinced that we were headed back to the 1800s, medically speaking. A study in the September 2010 issue of British medical journal the Lancet argued that bacteria carrying genes for NDM-1, a gene that imparts resistance to a key family of antibiotics, had made their way through India and Pakistan into Britain and were now threatening to derail medical treatment across the developed world. Linked with the always shady-sounding concept of "medical tourism" -- the practice of traveling to other countries for budget surgery -- the so-called "superbug," able to breed vicious and deadly infections, became an instant media panic during a slow news month. The Drudge Report and Andrew Breitbart's news website both featured it. A Guardian science columnist wrote, "Now, the post-antibiotic apocalypse is in sight."¶ Er, not so much. As with most August stories, the reality of superbugs is a bit more complex than the media has portrayed it. Yes, antibiotic-resistant bacteria are a threat, as this week's news of an outbreak among premature infants in London reminds us. But no one yet knows how bad NDM-1-related infections could be. Not only is it far too early to say we're headed for apocalypse, we've also got a lot to learn from superbugs -- namely, how our own over-use of antibiotics is making it more likely that a superbug of the future could live up to this summer's hype.¶ Alexander Fleming discovered the first antibiotic by accident in 1928, when he left out a bacterial culture for a month while on vacation and came back to find that some of the bacteria had been killed by a fungus named Penicillium. By the early 1940s, a commercial product, penicillin, was mass-produced to cure bacterial infections in humans, and medical practice hasn't been the same since.¶ These days, antibiotics are a major weapon in medicine's war on disease, used to treat everything from life-threatening infections like meningitis to more run-of-the-mill ear infections. For more advanced medical technologies, like chemotherapy or organ transplantation, antibiotics are needed to prevent and treat infections while patients heal. Neither treatment would be possible without antibiotics.¶ At this point, in fact, antibiotics are suffering from their own success. They are so engrained in the medical and social culture that over-prescription is a major problem. Recent surveys have found that 70 to 80 percent of doctors' visits for sinus infections result in an antibiotic prescription. But most sinus infections are caused by viruses, and antibiotics don't cure viral infections.¶ The medical sin of antibiotic overuse goes beyond mere ineffectiveness -- it actually can be harmful. Here's how it works: Bacteria are everywhere on our bodies, even when we are not sick. When we take antibiotics for a bacterial infection, they only kill certain bacteria (usually the ones making us sick). Then, as the body gets better, the surviving bacteria multiply and take over. Now and then a few remaining bacteria carry special resistance to antibiotics -- which is what kept them alive in the first place. With the other bacteria out of the way, the resistant bacteria (i.e., the superbug) can multiply and sometimes cause problems. For example, if one of those superbugs causes an infection, some antibiotics won't work anymore, and then you have an infection that is more difficult to treat.¶ One of the prototypical superbugs caused by antibiotic use (and overuse) is Methicillin-Resistant Staphylococcus aureus (MRSA). MRSA is resistant to many antibiotics, including penicillin, and causes a variety of problems in humans: mostly skin infections, but also more invasive diseases like pneumonia and bloodstream infections.¶ Another superbug that's been around for a while but has also taken a recent media tour is Clostridium difficile (C. diff), which can be spread when antibiotics wipe out normal intestinal bacteria that keep C. diff in check. A recent study found C. diff infection occurred in 13 out of every 1,000 hospitalizations. C. diff causes diarrhea, and in some cases a particularly severe and sometimes lethal infection of the colon.¶ Looking at bacteria carrying the NDM-1 gene, C. diff, and MRSA, it's not surprising that people would panic over the possibility of these or other, even more resistant, bugs of the future making our advances in antibiotics worthless. And it's a legitimate fear. Although there are antibiotics and other treatments that work against all known superbugs, bacteria will continue to evolve, developing stronger antibiotic resistance in the future. It is conceivable that bacteria will someday outsmart our best medical technologies.¶ But it is unlikely that it will happen any time soon. One reason is that there are many different classes of antibiotics, so while some don't work against superbugs, there are usually others that do. Antibiotics that have been shelved for years might even be re-introduced to fight superbugs, though obviously this would be less than ideal because of higher risk of side effects. A better and more likely solution is for drug companies and other scientists to discover new classes of antibiotics. The financial incentives for heading off a true superbug-led medical catastrophe would be huge -- something that always drives medical innovation quite nicely, as it did with treatments for HIV in the 1990s.

#### Disease won’t cause extinction – intervening actors check, resilience, burnout, and adaptation

Adalja 16 — (AMESH ADALJA is an infectious-disease physician at the University of Pittsburgh, 6-17-2016, "Why Hasn't Disease Wiped out the Human Race?," *The Atlantic*, http://www.theatlantic.com/health/archive/2016/06/infectious-diseases-extinction/487514/, \*we do not endorse the problematic language in this evidence #NCCStarter

But when people ask me if I’m worried about infectious diseases, they’re often not asking about the threat to human lives; they’re asking about the threat to human life. With each outbreak of a headline-grabbing emerging infectious disease comes a fear of extinction itself. The fear envisions a large proportion of humans succumbing to infection, leaving no survivors or so few that the species can’t be sustained. I’m not afraid of this apocalyptic scenario, but I do understand the impulse. Worry about the end is a quintessentially human trait. Thankfully, so is our resilience. For most of mankind’s history, infectious diseases were the existential threat to humanity—and for good reason. They were quite successful at killing people: The 6th century’s Plague of Justinian knocked out an estimated 17 percent of the world’s population; the 14th century Black Death decimated a third of Europe; the 1918 influenza pandemic killed 5 percent of the world; malaria is estimated to have killed half of all humans who have ever lived. Any yet, of course, humanity continued to flourish. Our species’ recent explosion in lifespan is almost exclusively the result of the control of infectious diseases through sanitation, vaccination, and antimicrobial therapies. Only in the modern era, in which many infectious diseases have been tamed in the industrial world, do people have the luxury of death from cancer, heart disease, or stroke in the 8th decade of life. Childhoods are free from watching siblings and friends die from outbreaks of typhoid, scarlet fever, smallpox, measles, and the like. So what would it take for a disease to wipe out humanity now? In Michael Crichton’s The Andromeda Strain, the canonical book in the disease-outbreak genre, an alien microbe threatens the human race with extinction, and humanity’s best minds are marshaled to combat the enemy organism. Fortunately, outside of fiction, there’s no reason to expect alien pathogens to wage war on the human race any time soon, and my analysis suggests that any real-life domestic microbe reaching an extinction level of threat probably is just as unlikely. Any apocalyptic pathogen would need to possess a very special combination of two attributes. First, it would have to be so unfamiliar that no existing therapy or vaccine could be applied to it. Second, it would need to have a high and surreptitious transmissibility before symptoms occur. The first is essential because any microbe from a known class of pathogens would, by definition, have family members that could serve as models for containment and countermeasures. The second would allow the hypothetical disease to spread without being detected by even the most astute clinicians. The three infectious diseases most likely to be considered extinction-level threats in the world today—influenza, HIV, and Ebola—don’t meet these two requirements. Influenza, for instance, despite its well-established ability to kill on a large scale, its contagiousness, and its unrivaled ability to shift and drift away from our vaccines, is still what I would call a “known unknown.” While there are many mysteries about how new flu strains emerge, from at least the time of Hippocrates, humans have been attuned to its risk. And in the modern era, a full-fledged industry of influenza preparedness exists, with effective vaccine strategies and antiviral therapies. HIV, which has killed 39 million people over several decades, is similarly limited due to several factors. Most importantly, HIV’s dependency on blood and body fluid for transmission (similar to Ebola) requires intimate human-to-human contact, which limits contagion. Highly potent antiviral therapy allows most people to live normally with the disease, and a substantial group of the population has genetic mutations that render them impervious to infection in the first place. Lastly, simple prevention strategies such as needle exchange for injection drug users and barrier contraceptives—when available—can curtail transmission risk. Ebola, for many of the same reasons as HIV as well as several others, also falls short of the mark. This is especially due to the fact that it spreads almost exclusively through people with easily recognizable symptoms, plus the taming of its once unfathomable 90 percent mortality rate by simple supportive care. Beyond those three, every other known disease falls short of what seems required to wipe out humans—which is, of course, why we’re still here. And it’s not that diseases are ineffective. On the contrary, diseases’ failure to knock us out is a testament to just how resilient humans are. Part of our evolutionary heritage is our immune system, one of the most complex on the planet, even without the benefit of vaccines or the helping hand of antimicrobial drugs. This system, when viewed at a species level, can adapt to almost any enemy imaginable. Coupled to genetic variations amongst humans—which open up the possibility for a range of advantages, from imperviousness to infection to a tendency for mild symptoms—this adaptability ensures that almost any infectious disease onslaught will leave a large proportion of the population alive to rebuild, in contrast to the fictional Hollywood versions. While the immune system’s role can never be understated, an even more powerful protector is the faculty of consciousness. Humans are not the most prolific, quickly evolving, or strongest organisms on the planet, but as Aristotle identified, humans are the rational animals—and it is this fundamental distinguishing characteristic that allows humans to form abstractions, think in principles, and plan long-range. These capacities, in turn, allow humans to modify, alter, and improve themselves and their environments. Consciousness equips us, at an individual and a species level, to make nature safe for the species through such technological marvels as antibiotics, antivirals, vaccines, and sanitation. When humans began to focus their minds on the problems posed by infectious disease, human life ceased being nasty, brutish, and short. In many ways, human consciousness became infectious diseases’ worthiest adversary. None of this is meant to allay all fears of infectious diseases. To totally adopt a Panglossian viewpoint would be foolish—and dangerous. Humans do face countless threats from infectious diseases: witness Zika. And if not handled appropriately, severe calamity could, and will, ensue. The West African Ebola outbreak, for instance, festered for months before major efforts to bring it under control were initiated. When it comes to infectious diseases, I’m worried about the failure of institutions to understand the full impact of outbreaks. I’m worried about countries that don’t have the infrastructure or resources to combat these outbreaks when they come. But as long as we can keep adapting, I’m not worried about the future of the human race.

## Adv 2

#### Economic decline doesn’t cause war, no diversionary theory, no pandemic wars, no China war

Walt 20 – [Stephen M. Walt is an American professor of international affairs at Harvard University's John F. Kennedy School of Government, 5/13/2020, “Will a Global Depression Trigger Another World War?” <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>] GBN-PK

By many measures, 2020 is looking to be the worst year that humankind has faced in many decades. We’re in the midst of a pandemic that has already claimed more than 280,000 lives, sickened millions of people, and is certain to afflict millions more before it ends. The world economy is in free fall, with unemployment rising dramatically, trade and output plummeting, and no hopeful end in sight. A plague of locusts is back for a second time in Africa, and last week we learned about murderous killer wasps threatening the bee population in the United States. Americans have a head-in-the-sand president who prescribes potentially lethal nostrums and ignores the advice of his scientific advisors. Even if all those things magically disappeared tomorrow—and they won’t—we still face the looming long-term danger from climate change. Given all that, what could possibly make things worse? Here’s one possibility: war. It is therefore worth asking whether the combination of a pandemic and a major economic depression is making war more or less likely. What does history and theory tell us about that question? For starters, we know neither plague nor depression make war impossible. World War I ended just as the 1918-1919 influenza was beginning to devastate the world, but that pandemic didn’t stop the Russian Civil War, the Russo-Polish War, or several other serious conflicts. The Great Depression that began in 1929 didn’t prevent Japan from invading Manchuria in 1931, and it helped fuel the rise of fascism in the 1930s and made World War II more likely. So if you think major war simply can’t happen during COVID-19 and the accompanying global recession, think again. But war could still be much less likely. The Massachusetts Institute of Technology’s Barry Posen has already considered the likely impact of the current pandemic on the probability of war, and he believes COVID-19 is more likely to promote peace instead. He argues that the current pandemic is affecting all the major powers adversely, which means it isn’t creating tempting windows of opportunity for unaffected states while leaving others weaker and therefore vulnerable. Instead, it is making all governments more pessimistic about their short- to medium-term prospects. Because states often go to war out of sense of overconfidence (however misplaced it sometimes turns out to be), pandemic-induced pessimism should be conducive to peace. Moreover, by its very nature war requires states to assemble lots of people in close proximity—at training camps, military bases, mobilization areas, ships at sea, etc.—and that’s not something you want to do in the middle of a pandemic. For the moment at least, beleaguered governments of all types are focusing on convincing their citizens they are doing everything in their power to protect the public from the disease. Taken together, these considerations might explain why even an impulsive and headstrong warmaker like Saudi Arabia’s Mohammed bin Salman has gotten more interested in winding down his brutal and unsuccessful military campaign in Yemen. Posen adds that COVID-19 is also likely to reduce international trade in the short to medium term. Those who believe economic interdependence is a powerful barrier to war might be alarmed by this development, but he points out that trade issues have been a source of considerable friction in recent years—especially between the United States and China—and a degree of decoupling might reduce tensions somewhat and cause the odds of war to recede. For these reasons, the pandemic itself may be conducive to peace. But what about the relationship between broader economic conditions and the likelihood of war? Might a few leaders still convince themselves that provoking a crisis and going to war could still advance either long-term national interests or their own political fortunes? Are the other paths by which a deep and sustained economic downturn might make serious global conflict more likely? One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. 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.

-need to answer Chinese economic leadership and economic war

#### Resource and structural factors make growth unsustainable, technology overwhelmingly doesn’t solve, and it’s try or die for the transition

Trainer 16 – Ted Trainer, Conjoint Lecturer in the School of Social Sciences, University of New South Wales, 2016 (“Sustainability – The Simpler Way Perspective,” *Resilience*, May 10th, <http://www.resilience.org/articles/General/2016/07_July/Sustainability%20The%20Simpler%20Way%20Perspective.pdf>, AIvackovic)

Firstly, let’s set the scene; The deteriorating state of the planet. The resource base and environmental conditions on which the present levels of global production and consumption are built are obviously deteriorating at an alarming rate. Few if any would not be aware of this but it is important to briefly remind ourselves before focusing on how impossible it would be for this base to sustain affluence and growth for all. A glance at the situation reveals that resources are becoming more scarce and costly, including energy, productive land, minerals, food, fish, wood and water, and ecosystems are being severely damaged. We are losing species, forests, land, coral reefs, grasslands and fisheries at accelerating rates. A sixth era of massive biodiversity loss appears to have begun. We are polluting the planet with excess carbon dioxide, nitrogen and many toxic chemicals. The mass of big animals on the planet has declined sharply in recent decades, probably down by 90% in the sea. The World Wildlife Fund says that in general the quality of global ecosystems has deteriorated 30% since about 1970, and its “Footprint” measure indicates that we are now taking biological resources at a rate that would take 1.5 planets to provide in a sustainable way. (2014.) The reason for all this massive resource depletion and damage to the environment is simply that there is far too much producing and consuming going on. This is causing too many resources to be taken from nature and too many wastes to be dumped back into nature. Now consider the limits case: Could everyone live as we do? The 10-15% of the world’s people living in regions such as North America, Australia and Europe have per capita levels of resource use that are around 20 times the average for the poorest half of people. How likely is it that all the 9.7 billion people expected by 2050 could rise to the present rich world level of resource use? If they did live as we do then world annual resource production and consumption, and ecological damage, would be approaching 6 times as great as at present. Yet present levels of resource use and environmental impact are far from sustainable. The World Wildlife Fund’s ”Footprint” analysis yields an even higher multiple. They estimate that it takes about 8 ha of productive land to provide water, energy settlement area and food for one person living in Australia. So if 9 billion people were to live as we do we would need about 72 billion ha of productive land. But that is about 9 times all the available productive land on the planet. Now add the absurdly impossible implications of economic growth. But the foregoing argument has only been that the present levels of production and consumption are quite unsustainable. Yet we are determined to increase present living standards and levels of output and consumption, as much as possible and without any end in sight. In other words, our supreme national goal is economic growth. Few people seem to recognise the absurdly impossible consequences of pursing economic growth. If we rich countries have a 3% p.a. increase in economic activity until 2050 then our output, resource use and environmental impact will be around 4 times as great as it is now, and doubling every 23 years thereafter. Now what if by 2050 all the expected 9.7 billion people expected to be living on earth had risen to the “living standards” we in rich countries would then have given 3% economic growth. Total world output, resource, use and environmental impact would be approaching 15 times as great as they are now … unless technical advance and efficiency gains could greatly reduce them. (See below.) These multiplies must be the focal point in discussions of sustainability. Grasping the magnitude of the overshoot and of the unsustainability is crucial here. The numbers show that present, let alone probable 2050 rich world levels of consumption, are grossly unsustainable and could never be extended to all people. But can’t technical advance solve the problems? Most people hold the "technical fix faith", believing that technical advance will solve the resource and environmental problems and thereby make it unnecessary for us to question the commitment to affluence and growth. When considering the following evidence keep in mind that what we need is not just to stop increases in impacts as growth goes on -- we need to reduce impacts dramatically before sustainable levels are reached. There is a very strong case that technical advance is nowhere near capable of solving the sustainability problems facing us. Note that many miraculous technical developments, e.g., in physics, astronomy, genetics, and medicine, are not so relevant here where the focus is on the possibility of making big improvements in the efficiency and energy costs of producing energy and materials, and of cutting ecological impacts. Following are some of the main elements in the case. 1. Efficiency gains to date. It is not the case that technical achievements in the relevant areas have been very encouraging. Ayres and Vouroudis (2009) note that for many decades the efficiency of production of electricity and fuels, electric motors, ammonia and iron and steel has more or less plateaued. In many crucial areas such as producing energy and minerals (below) the trend is towards worse efficiency, i.e., the need is for increasing inputs per unit of output. 2. The deteriorating productivity growth rate. Technical advance is regarded as a major determinant of productivity growth and that has been in long term decline since the 1970s. Even the advent of computerisation has had a surprisingly small effect, a phenomenon now labelled the “Productivity Paradox.” In fact the UK productivity growth rate has recently has gone below zero; i.e., productivity has actually deteriorated. (Weldon, 2016.) 3. Little or no “decoupling” is occurring for materials or energy use. This is the most important issue; does recent history indicate that economic output has been or can be separated from materials and energy use, so that growth can continue while resource demand falls? The “Tech-Fix faith” is fundamentally dependent on the assumption that massive decoupling is possible. But all the evidence seems to say that the amount of materials or energy needed to produce a unit of GDP in rich countries has not improved much if at all in recent years. The box below refers to some of the evidence. Weidmann et al. (2014) say “…for the past two decades global amounts of iron ore and bauxite extractions have risen faster than global GDP.” “… resource productivity…has fallen in developed nations.” “There has been no improvement whatsoever with respect to improving the economic efficiency of metal ore use.” Giljum et al. (2014, p. 324) report in the world as a whole only a 0.9% p.a. improvement in the dollar value extracted from the use of each unit of minerals between 1980 and 2009, and that over the 10 years before the GFC there was no improvement. “…not even a relative decoupling was achieved on the global level.” They point out that the picture would have been worse had they included the many materials in rich world imports. Diederan’s account (2009) of the productivity of minerals discovery effort is even more pessimistic. Between 1980 and 2008 the annual major deposit discovery rate fell from 13 to less than 1, while discovery expenditure went from about $1.5 billion p.a. to $7 billion p.a., meaning the productivity of expenditure fell by a factor in the vicinity of around 100, which is an annual decline of around 40% p.a. Recent petroleum figures are similar; in the last decade or so the discovery rate has not increased but discovery expenditure more or less trebled. (Johnson, 2010.) Schandl et al. (2015) say “ … there is a very high coupling of energy use to economic growth, meaning that an increase in GDP drives a proportional increase in energy use.” “Our results show that while relative decoupling can be achieved in some scenarios, none would lead to an absolute reduction in energy or materials footprint.” In all three of their scenarios “… energy use continues to be strongly coupled with economic activity...” Alvarez found that for Europe, Spain and the US, GDP increased 74% in 20 years, but materials use actually increased 85%. (Latouche, 2014.) Similar conclusions re stagnant or declining materials use productivity etc. are arrived at by Aadrianse, 1997, Dittrich et al., (2014), Schutz, Bringezu and Moll, (2004), Warr, (2004), Berndt, (1990), Smil, (2014) and Victor (2008, pp. 55-56). (Note that economists often claim that the “energy intensity” of rich world economies is improving, but this is only because they fail to take into account the huge amounts of energy used overseas to produce imports, and “fuel switching”; see Kaufman, 2004.) 4. There is ecological deterioration in almost all domains. Technical advance has obviously not slowed, halted or reversed overall damage to the planet’s ecosystems. The “Environmental Kuznets Curve” thesis is an application of the decoupling claim to environmental impacts, asserting that as countries become richer impacts increase for a time but then plateau and fall. There is little doubt now that the thesis is not valid. Rich countries are in general not solving their most serious environmental problems. Alexander’s review (2014) concludes that for the world as a whole, ”… decades of extraordinary technological development have resulted in increased, not reduced, environmental impacts.” These many sources and figures show the extreme implausibility of the tech-fix faith that in future technical advances will enable us to stop worrying about limits and any need to dramatically reduce consumption or the obsession with economic growth. Conclusions on the limits to growth case. In view of these lines of argument it is difficult to see how anyone could disagree with the basic limits to growth case. Present ways are so grossly unsustainable there is no possibility of all people rising to the living standards we take for granted today in rich countries, let alone those we are seeking. Again the most important point is the magnitude of the overshoot. Most people have no idea of how far beyond sustainable levels of consumption we are or how big the reductions should be. For decades many scientists and agencies are have been emphasizing the validity and importance of the basic limits case. Sustainable ways that all could share appear to require us to go down to per capita rates of resource consumption around 10% of those we have now. It follows from the above discussion that the only solution is to shift to some kind of Simpler Way, i.e., to lifestyles, settlements and systems that make it possible for us to live well on a small fraction of our present rich world levels, with no economic growth.

#### Growth-oriented AI ensures extinction---BUT, degrowth orientation solves.

Salvador Pueyo 18. 8 Department of Evolutionary Biology, Ecology, and Environmental Sciences, Universitat de Barcelona. 10/01/2018. “Growth, Degrowth, and the Challenge of Artificial Superintelligence.” Journal of Cleaner Production, vol. 197, pp. 1731–1736.

The challenges of sustainability and of superintelligence are not independent. The changing 84 fluxes of energy, matter, and information can be interpreted as different faces of a general acceleration2 85 . More directly, it is argued below that superintelligence would deeply affect 86 production technologies and also economic decisions, and could in turn be affected by the 87 socioeconomic and ecological context in which it develops. Along the lines of Pueyo (2014, p. 88 3454), this paper presents an approach that integrates these topics. It employs insights from a 89 variety of sources, such as ecological theory and several schools of economic theory. 90 The next section presents a thought experiment, in which superintelligence emerges after the 91 technical aspects of goal alignment have been resolved, and this occurs specifically in a neoliberal 92 scenario. Neoliberalism is a major force shaping current policies on a global level, which urges 93 governments to assume as their main role the creation and support of capitalist markets, and to 94 avoid interfering in their functioning (Mirowski, 2009). Neoliberal policies stand in sharp contrast 95 to degrowth views: the first are largely rationalized as a way to enhance efficiency and production 96 (Plehwe, 2009), and represent the maximum expression of capitalist values. 97 The thought experiment illustrates how superintelligence perfectly aligned with capitalist 98 markets could have very undesirable consequences for humanity and the whole biosphere. It also 99 suggests that there is little reason to expect that the wealthiest and most powerful people would be 100 exempt from these consequences, which, as argued below, gives reason for hope. Section 3 raises 101 the possibility of a broad social consensus to respond to this challenge along the lines of degrowth, 102 thus tackling major technological, environmental, and social problems simultaneously. The 103 uncertainty involved in these scenarios is vast, but, if a non-negligible probability is assigned to 104 these two futures, little room is left for either complacency or resignation. 105 106 2. Thought experiment: Superintelligence in a neoliberal scenario 107 108 Neoliberalism is creating a very special breeding ground for superintelligence, because it strives 109 to reduce the role of human agency in collective affairs. The neoliberal pioneer Friedrich Hayek 110 argued that the spontaneous order of markets was preferable over conscious plans, because markets, 111 he thought, have more capacity than humans to process information (Mirowski, 2009). Neoliberal 112 policies are actively transferring decisions to markets (Mirowski, 2009), while firms' automated 113 decision systems become an integral part of the market's information processing machinery 114 (Davenport and Harris, 2005). Neoliberal globalization is locking governments in the role of mere 115 players competing in the global market (Swank, 2016). Furthermore, automated governance is a 116 foundational tenet of neoliberal ideology (Plehwe, 2009, p. 23). 117 In the neoliberal scenario, most technological development can be expected to take place either in the context of firms or in support of firms3 118 . A number of institutionalist (Galbraith, 1985), post119 Keynesian (Lavoie, 2014; and references therein) and evolutionary (Metcalfe, 2008) economists 120 concur that, in capitalist markets, firms tend to maximize their growth rates (this principle is related 121 but not identical to the neoclassical assumption that firms maximize profits; Lavoie, 2014). Growth 122 maximization might be interpreted as expressing the goals of people in key positions, but, from an 123 evolutionary perspective, it is thought to result from a mechanism akin to natural selection 124 (Metcalfe, 2008). The first interpretation is insufficient if we accept that: (1) in big corporations, the 125 managerial bureaucracy is a coherent social-psychological system with motives and preferences of 126 its own (Gordon, 1968, p. 639; for an insider view, see Nace, 2005, pp. 1-10), (2) this system is 127 becoming techno-social-psychological with the progressive incorporation of decision-making 128 algorithms and the increasing opacity of such algorithms (Danaher, 2016), and (3) human mentality 129 and goals are partly shaped by firms themselves (Galbraith, 1985). 130 The type of AI best suited to participate in firms' decisions in this context is described in a 131 recent review in Science: AI researchers aim to construct a synthetic homo economicus, the 132 mythical perfectly rational agent of neoclassical economics. We review progress toward creating 133 this new species of machine, machina economicus (Parkes and Wellman, 2015, p. 267; a more 134 orthodox denomination would be Machina oeconomica). 135 Firm growth is thought to rely critically on retained earnings (Galbraith, 1985; Lavoie, 2014, p. 136 134-141). Therefore, economic selection can be generally expected to favor firms in which these are greater. The aggregate retained earnings4 137 RE of all firms in an economy can be expressed as: 138 RE=FE(R,L,K)-w⋅L-(i+δ)⋅K-g. (1) 139 Bold symbols represent vectors (to indicate multidimensionality). F is an aggregate production 140 function, relying on inputs of various types of natural resources R, labor L and capital K (including intelligent machines), and being affected by environmental factors5 141 E; w are wages, i are returns to 142 capital (dividends, interests) paid to households, δ is depreciation and g are the net taxes paid to 143 governments. 144 Increases in retained earnings face constraints, such as trade-offs among different parameters of 145 Eq. 1. The present thought experiment explores the consequences of economic selection in a 146 scenario in which two sets of constraints are nearly absent: sociopolitical constraints on market 147 dynamics are averted by a neoliberal institutional setting, while technical constraints are overcome 148 by asymptotically advanced technology (with extreme AI allowing for extreme technological 149 development also in other fields). The environmental and the social implications are discussed in 150 turn. Note that this scenario is not defined by some contingent choice of AIs' goals by their 151 programmers: The goals of maximizing each firm's growth and retained earnings are assumed to 152 emerge from the collective dynamics of large sets of entities subject to capitalistic rules of 153 interaction and, therefore, to economic selection.