# 1NC

## 1

#### Text: The Federal Trade Commission should determine that “unfair methods of competition” pursuant to Section 5 of the FTC Act prohibits nearly all anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws in service of socialism, and bring associative enforcement actions.

#### The FTC can use Section 5 to broadly regulate anticompetitive practices---that solves.

Vaheesan 17 – Regulations Counsel, Consumer Financial Protections Bureau.

Sandeep Vaheesan, May 11 2017, “RESURRECTING “A COMPREHENSIVE CHARTER OF ECONOMIC LIBERTY”: THE LATENT POWER OF THE FEDERAL TRADE COMMISSION,” UPenn Journal of Business Law, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1548&context=jbl

Under progressive leadership, one federal agency, the FTC, could resurrect antitrust law as “a comprehensive charter of economic liberty.”22 Modern administrative law and Congressional delegation of policymaking authority grant the FTC expansive power to interpret the antitrust provision of Section 5 of the FTC Act.23 In enacting this statute, Congress articulated a grand progressive-populist vision of antitrust. It wanted the FTC to police “unfair methods of competition” that injure consumers, prevent rivals from competing on the merits, and allow large corporations to dominate our political system.24 Congress intended the FTC’s antitrust authority to encompass more than the prohibitions in the Sherman and Clayton Acts and to nip anticompetitive problems in the embryonic stage before corporations gained undue power over consumers, small suppliers, competitors, and the American political system.25

Since the early 1980s, the FTC has championed antitrust law centered on economic efficiency. In 2015, the FTC codified this approach in a Statement of Enforcement Principles laying out its interpretation of Section 5’s prohibition on unfair methods of competition.26 The FTC stated that it would use its Section 5 authority to advance “consumer welfare,” which is functionally similar to the allocative efficiency goal, and apply the rule of reason framework.27 In articulating this narrow interpretation of Section 5, the FTC contradicted Congress’s political economic vision in 1914, which sought to prevent not only short-term injuries to consumers, but also exclusionary practices by large businesses and the accumulation of private political power. And in making the rule of reason the centerpiece of its analytical framework, the FTC adopted a convoluted test that cannot advance the Congressional vision underlying Section 5.

Despite being a champion of the efficiency paradigm since 1981, the FTC under progressive leadership in the future could still change course and be true to the Congressional intent from when the agency was created more than a century ago. In setting out an interpretation of Section 5, whether through enforcement actions or rulemakings, the FTC should anchor Section 5 in the expansive political economic vision of Congress. By enacting the FTC Act, Congress sought to prevent—rather than remedy after the fact—three principal harms from concentrated economic power: wealth transfers from consumers and producers to monopolies, oligopolies, and cartels; private blockades against entry and competition in markets; and the accumulation of economic and political power in corporate hands. To advance Congress’s antitrust vision, the FTC should adopt presumptions of illegality for a variety of competitively suspicious conduct, such as mergers in concentrated industries, exclusionary practices by firms with market dominance or near-dominance, and restraints on retail competition; and challenge monopolies and oligopolies that inflict significant harm on the public. When seeking to preserve or restore competitive market structures, the FTC should pursue simple structural remedies over complicated behavioral fixes.

## 2

#### Frenzy of deals now because Biden’s antitrust push won’t be implemented for years

David French and Sierra Jackson, Reuters, July 12, 2021, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown

Dealmakers expect a new wave of transformative U.S. mergers and acquisitions (M&A), as companies rush to complete deals before President Joe Biden's antitrust push takes shape, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an unprecedented M&A frenzy, as companies borrow cheaply and spend mountains of cash they have accumulated on transformative deals to reposition themselves for the post-pandemic world. Almost $700 billion worth of U.S. deals were announced in the second quarter, the highest on record.

The dealmaking bonanza is set to continue, as companies seek to take advantage of the time window during which regulators frame precise rules to implement Biden's order, advisers to the companies said. The M&A slowdown will come only when regulators implement the rule changes, possibly in two years or more, they added.

"The order itself will be less likely to have a chilling effect on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were bracing for a tougher antitrust environment under Biden even before last week's executive order. Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

#### Immediately expanding scope of antitrust liability brings that to a halt—undermines dynamism and global competitiveness

Thierer 21– Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Large firm dynamism key to tech leadership vs China – competitiveness and AI

Lee, senior lecturer at the University of Hong Kong Faculty of Business and Economics, ‘19

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

But the administration should not forget the law of unintended consequences -- effective antitrust measures could stifle the ability of American tech companies to compete with their Chinese challengers. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing consumer welfare, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But the wider the antitrust authorities reach, the more likely they are to damage the tech giants' global competitiveness. This applies especially in the key field of artificial intelligence, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, lots of data. Such data can only be collected at scale, which conflicts with hipster antitrust notions of size. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a disadvantage to China.

The idea of size is one of many fundamental differences separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed so-called "super apps" that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, that lead is shrinking, and if China does overtake the U.S. in artificial intelligence, it will likely be a result of advantages in data and government policy.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have broader implications beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able to close the growing competitive chasm.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to shape user privacy norms, establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that aggressive antitrust sanctions would risk inhibiting American companies from maintaining the scale necessary to compete with their Chinese rivals.

AI supremacy will be a defining feature of superpower status. And if future researchers one day examine how the U.S. lost the war for artificial intelligence, the hindsight of history may show that the current antitrust debate was the fatal turning point.

#### Tech innovation prevents nuclear conflict—US leadership key

Kroenig and Gopalaswamy 18 – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full displayin its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

## 3

States CP

#### Text: The fifty states and all relevant United States territories should increase prohibitions on nearly all anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws in service of socialism.

#### Solves the AFF and isn’t preempted

HLR 20 – Harvard Law Review

“Note: Antitrust Federalism, Preemption, and Judge-Made Law,” Harvard Law Review, Vol. 133, June 2020, LexisNexis

I. THE ANTITRUST FEDERALISM LANDSCAPE

Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords" -- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws -- and one "shield" -- immunity from federal antitrust law for state actions. The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action.

All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages -- the first sword -- was granted to the states by Congress in Hart-Scott-Rodino. On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions -- the shield -- in Parker v. Brown, noting that the Sherman Act did not explicitly mention its application to state action. Finally, when the Court confirmed that states' ability to make their own antitrust laws -- the second sword and the one discussed in this Note -- was not preempted in California v. ARC America Corp., it considered the same Sherman Act silence.

## 4

FTC tradeoff

#### The plan forces tradeoffs in FTC enforcement efforts---they’re in a merger tsunami and barely staying afloat

Rose ’19 - Department Head and Charles P. Kindleberger Professor of Applied Economics in the MIT Economics Department. She served as Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the DOJ from 2014 to 2016, and was the director of the National Bureau of Economic Research Program in Industrial Organization from 1991 to 2014.

Nancy Rose, FTC Hearing #13: Merger Retrospectives, April 12, 2019, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-14-merger-retrospectives>

So I want to start with the last question that was on the set that Dan and Bruce circulated for this panel. Should the FTC devote more resources to retrospectives, even at the cost of current enforcement? And I was delighted to see Commissioner Slaughter be so passionate in her defense of the need for more resources. This goes to what I feel is the most significant, and yet still largely invisible message, in the ongoing debate over competition policy, which is that antitrust enforcement in the United States is chronically and substantially underfunded.

For years, the appropriation requests have been modest in their increases. Oversight hearings and interactions with the Hill have too often featured the mantra, “when business picks up, our talented and hardworking staff just do more with less.” I will say I think the career staff at both the FTC and the DOJ Antitrust Division are among the most dedicated, highly-skilled, and hardest-working professionals.

It was my great privilege to work with a number of them at DOJ, and I know that colleagues who have worked at the FTC feel the same way. They deserve our greatest appreciation and applause and not just from those of us who work in antitrust policy, but from the entire American public, on whose behalf they tirelessly work.

But there is a limit to the number of hours in a day and the number of days in a week and the well below market compensation for the lawyers and economists who work in the agencies, which is another significant problem, is insufficient to demand that staff give up all rights to leave their buildings, occasionally see their families, or catch up on sleep.

So I think it’s inevitable that if we’re asking agencies to reflect on the effectiveness of their decision-making through programs like retrospective programs, it is going to come out of someplace else. And I fear that given the ongoing intensity of the merger wave, that’s going to come out of enforcement.

We are amid an ongoing sustained, what’s been called by some, tsunami of mergers. Each year there are thousands of mergers noticed to the agencies and thousands more below the HSR thresholds, that work by Thomas Wollmann at the University of Chicago suggests, skate through to consummation with practically no probability of review or action, the occasional consummated merger enforcement action notwithstanding.

The dollar volume of mergers is at historic levels and that suggests that there are a lot of mega mergers competing for enforcement resources. In addition, litigation costs continue to climb, both for challenging mergers or bringing Section actions, especially as parties with especially deep pockets escalate litigation defenses, correctly calculating that even adding some tens of millions of dollars in antitrust litigation costs would be just rounding error in their merger financing.

And, finally, I would say it’s inconceivable to me that there are not at least some counsel that are advising parties that a good time to bring marginal mergers forward is when the agencies are stretched thin by major investigations or multiple litigations.

#### Despite shortages, they’re effectively regulating hospital mergers---the plan reverses that.

Muris ’20 – Professor of Law at George Mason, former Chairman of FTC, Senior Counsel at Sidney Austin LLP, JD from UCLA,

Timothy Muris, “Response to Subcommittee on Antitrust, Commercial, and Administrative Law Committee on The Judiciary U. S. House of Representatives” April 17, 2020, <https://judiciary.house.gov/uploadedfiles/submission_from_tim_muris.pdf>

Finally, the Committee asks about agency resources and performance. The last section below briefly addresses the continual need for the antitrust agencies to address business practices as they evolve, as well as their own performance record. Such evaluation is necessary: ever a UCLA Bruin, I remain devoted to legendary coach John Wooden‘s maxim that “when you are through learning, you are through.” The section thus offers multiple examples of successful and bipartisan FTC efforts to improve enforcement to the benefit of consumers. In the key healthcare sector, American consumers continue to benefit from the FTC’s hard work. After losing seven consecutive hospital merger challenges before I arrived, upon my direction the FTC worked to devise a new enforcement plan by incorporating fresh economic thinking and issuing retrospective case studies showing that several hospital mergers had indeed harmed consumers. This plan resulted in a successful challenge to a consummated hospital merger that served as a template for future enforcement, leading to Obama administration victories in three separate courts of appeal endorsing the FTC’s approach. Such success did not require abandonment of the consumer welfare standard, nor a dramatic increase in agency resources. Indeed, as discussed below, my predecessor as FTC chairman, Bob Pitofsky, did much more for American consumers using the consumer welfare standard with just 1,000 staff than did the agency in the 1970s when it had far greater resources (1,800 staff by the turn of the decade), but was motivated by an antitrust policy that was, instead, at war with itself.

#### High healthcare costs will collapse the economy from a bubble burst or terminal budget overstretch---no alt causes

Evan Horowitz, Fivethirtyeight, January 11, 2018, The GOP Plan To Overhaul Entitlements Misses The Real Problem, <https://fivethirtyeight.com/features/to-cut-the-debt-the-gop-should-focus-on-health-care-costs/>

There is no wide-reaching entitlement funding crisis, no deep-rooted connection between runaway debts and the broad suite of pension and social welfare programs that usually get called entitlements. The problem is linked to entitlements, but it’s much narrower: If the U.S. budget collapses after hemorrhaging too much red ink, the main culprit will be rising health care costs.

Aside from health care, entitlement spending actually looks relatively manageable. Social Security will get a little more expensive over the next 30 years; welfare and anti-poverty programs will get a little cheaper. But costs for programs like Medicare and Medicaid are expected to climb from the merely unaffordable to truly catastrophic.

Part of that has to do with our aging population, but age isn’t the biggest issue. In a hypothetical world where the population of seniors citizens didn’t increase, entitlement-related health spending would still soar to unprecedented heights — thanks to the relentlessly accelerating cost of medical treatments for people of all ages.1

What’s needed, then, is something far more focused than entitlement reform: an aggressive effort to slow the growth of per-person health care costs. Or — if that’s not possible — some way to ensure that the economy grows at least as fast as the cost of health care does.

Diagnosing the debt: It’s not about demographics

America’s long-term budget problem is very real. Already, the federal government has a pile of publicly held debts amounting to around $15 trillion, or about 75 percent of the country’s entire gross domestic product. That’s the highest level since the 1940s, yet the debt burden is expected to double by 2047 and reach 150 percent of the GDP, according to the Congressional Budget Office.2

It makes sense to list entitlement spending among the culprits for the growing national debt, given that these programs have grown from costing less than 10 percent of the GDP in 2000 to a projected 18 percent in 2047. Part of this is simple demographics: As America ages, more of us become eligible for Social Security and Medicare, thus driving up expenses.3

But there’s a crack in this demographic explanation: It only makes sense for the next 10 to 15 years. That’s the period of rapid transition when graying baby boomers will boost the population of seniors from around 50 million to more than 70 million. A change like that should indeed produce a surge in entitlement spending as those millions submit their enrollment forms.

By 2030, however, this wave will start to ebb, leaving the elderly share of the population at a roughly stable 20 to 21 percent all the way through 2060, based on the size of the population following the boomers and slower-moving forces like lengthening lifespans.

But think what this should mean for entitlement spending. As the population of seniors levels out in those later years, costs should naturally stabilize — at least, if demographics were really the driving factor.

This is exactly what you see for Social Security. The CBO expects total Social Security spending to leap up over the next decade but then settle at just over 6 percent of the GDP, at which point it will cease to be a major contributor to rising entitlement spending or growing debts. Social Security is thus a minor player in our long-term budget drama; if you cut the program to the bone, shrinking future payouts so that they won’t add a penny to the deficit, the federal debt would still reach 111 percent of the GDP in 2047.4

Likewise, cuts to welfare and poverty-related entitlements like food stamps and unemployment insurance are unlikely to improve the debt forecast. In fact, spending on these entitlements has been dropping since the high-need years around the Great Recession and is expected to shrink further in the decades ahead — partly because payouts aren’t adjusted to keep up with economic growth, and partly because the birth rate has been falling and several programs are geared to families with children.5

But the scale of the problem is totally different when you turn to health care. Spending on entitlement-related health programs — including Medicare, Medicaid and subsidies required by the Affordable Care Act — will never shrink or stabilize, according to projections. The CBO predicts these costs will grow over 65 percent between now and 2047 — and then go right on growing after that, heedless of the fact that the percentage of the population that’s over 65 should no longer be increasing.

Why is health care eating the budget? Per-person costs

Demographics aren’t responsible for the projected explosion in health care costs. More important than the growing number of elderly Americans is the growing cost per patient — the rising expense of treating each individual

The CBO found that the lion’s share — 60 percent — of the projected increase in health spending comes from costs that would continue to increase even if our population weren’t getting older.

The reasons for this are many, including the rising cost of prescription drugs and the fact that hospital mergers have reduced competition. But since 2000, per capita health costs in the U.S. have, on average, grown faster than the GDP. And while these costs rose more slowly after the Great Recession and the implementation of the Affordable Care Act, analysis from the Centers for Medicare and Medicaid Services suggests this slower growth rate won’t last.

Which is bad news for these programs, because if the problem were demographic, it’d be easier to solve. By mixing the kind of program cuts Republicans generally support with targeted tax increases favored by some Democrats, you could meet the short-term challenge posed by retiring baby boomers and raise enough money to cover the larger — but stabilizing — population of eligible seniors. But with ever-rising costs, there is no stable future to prepare for. To keep these programs funded, you’d need a wholly different approach — indeed a whole new perspective on mounting federal debt and the role of entitlements.

The future is a race between rising health care costs and economic growth, a race that the economy is losing. Each time health costs outpace the GDP, it creates what the CBO calls “excess cost growth,” which feeds the federal debt. If the government could close this gap, the long-term budget outlook would be a lot rosier.

There are two ways to solve this issue: Either contain health care costs — say through price regulation or more competitive markets — or boost economic growth enough to pay for this expensive health care. Success on either front would make health care spending look more manageable over future decades and lighten the debt load.

Entitlement reform needs health care reform to work

Few of the proposals that commonly fall under the heading of entitlement reform target the health care cost problem, which limits their ability to reduce the long-term debt.

Even when they do address health care, often the result is to shift — rather than solve — the problem. Say lawmakers decide to dramatically cut Medicare. That would indeed ease the government’s debt problem. But the underlying dynamic — the race between health costs and the GDP — wouldn’t really change. Seniors would still need health care, and per-person costs would likely still grow (maybe even faster, since Medicare is a relatively efficient program).

On top of all this, there’s also a deep-seated political barrier: It’s no good if one party picks its favored solution only to watch the other party dismantle it when they next take over. You need political consensus to make changes stick, and America is notably short on consensus right now.

In the end, though, it won’t do to just throw up our hands. Absent some workable solution, spending on health care will sink the federal budget, generating levels of debt that would hold back the economy and potentially spark a global crisis of confidence in the United States’ ability to borrow.

#### Healthcare driven budgetary overstretch causes global instability.

Brown, PhD, Professor of Practice and Vice Chair, Public Administration and International Affairs at Syracuse, worked as an economist at the International Monetary Fund and as Chief Economist for Eastern Europe, Africa, and the Middle East at BNP Paribas, ‘13

(Stuart S., “Global Power: Key Issues,” in *The Future of US Global Power: Delusions of Decline*, Palgrave, p. 57-58)

In the first instance, structural26 budget deficits are more likely to be symptoms of incipient overstretch then prima facie evidence of national decline. Overstretch suggests a need to realign commitments and resources, hence spending and revenues. In principle, persistently large deficits demand adjustments that need not materially impact the underlying drivers of longer-term prosperity. In contrast, if fiscal imbalances prove sufficiently chronic, they can eventually trigger growth-inhibiting alterations in microeconomic incentives. In such cases, incipient overstretch can mutate into a more primary threat to the system's underlying dynamism.

In its classical formulation, “imperial overstretch” refers to unrestrained and exorbitant foreign military campaigns. The latter can be said to redound to the detriment of great powers by crowding out more productive capital investments. Yet in contrast to widespread impression, the US fiscal challenge does not primarily reflect out-of-control defense spending and the burden of foreign entanglements. If this were the case, then the feasibility of financing an ever-expanding global power projection would be brought into question. This neither minimizes the sizable resources the US commits to military-related spending nor denies that cutbacks in such spending can help facilitate overall fiscal adjustment. Rather, the point is that an endemic failure to rein in explosive economy-wide health care costs with the latter's implications for public sector health insurance programs – the real fiscal challenge – will do more to endanger macroeconomic stability and eventually erode the material foundation of US power (see chapter 8).

By viewing (health-care driven) fiscal deficits as a necessary manifestation of overstretch is misguided for a more basic reason. The root of the US fiscal problem involves unsustainable commitments – particularly in the area of health expenditure – made by government to its citizens. It is decidedly not a question of any dearth of national resources to adequately meet the health needs of the population at large. As the richest country in the world, the US possesses more than enough resources to achieve this goal. The relevant political and social question is whether the population’s basic health requirements are best met via ever-expanding entitlements requiring increasingly higher levels of taxation.

## Case

### Advantage

#### 1)- Cap is sustainable --- Capitalism successfully navigates crises – markets are self-correcting and efficiency gains solve their consumption impact

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(“Energy Justice in Theory and Practice: Building a Pragmatic, Progressive Road Map,” in The Palgrave Handbook of the International Political Economy of Energy, Springer, Aug 5, pg. 687-692)

The Immense Leap in Material Well-Being Global Energy

Justice provides important data on several key energy-intensive activities that deeply affect daily life (heat, light, power and transportation). In Fig. 28.1 , I augment that data with measures on population, income and total energy consumption, as well as technological change and developments

Graphical user interface

Description automatically generated

Fig. 28.1 Indicators of progress in human material conditions ( Sources: Based on data from: Benjamin, K. and Michael H. Dworkin, Global Energy Justice (Cambridge University Press, 2014, pp. 48, 312), heat, light transportation, power; Douglas North, Understanding the Process of Economic Change (Princeton, Princeton University Press, 2005), p. 89 US Bureau of the Census, https://www.census.gov/populaton/international/data/worldpop/table\_history.php , UN 1999 where available, average of lower and upper summary elsewhere. Wikipedia for 2000, https://en.wikipedia.org/wiki/World\_population\_estimates ; J. Bradford De Long, Estimates of World GDP, One Million BC–Present, Standard Chartered, Technology: Reshaping the Global Economy, January 19, 2015, p. 11, technologies. https://en.wikipedia.org/wiki/Westphalian\_sovereignty )

in the state. Figure 28.1 identifies rates of growth in key activities that define the material conditions in which people live. I use a 100-year view to calculate the rate of improvement, which is consistent with efforts to analyze distributive justice.

Lighting, heating, power and transportation are energy-intensive activities that receive a great deal of attention in the discussion of energy poverty and justice. Light, heat and power are central to defining the standard of living and, hence, the energy justice analysis. The direct link between energy consumption and income is also central to that discussion. Starting with the emergence of capitalism and accelerating in the industrial era, these four services exhibited a dramatic decline in cost, which made them affordable for an ever increasing number of people.

I include three measures of the overall outcome of the economic development process—population growth, output per capita and energy consumption per capita. North ( 2005 , p. 89) points to population for an obvious reason: Statistical data ... can get us part way in describing the magnitude of changes in the landscape. They provide dramatic evidence of the revolutionary changes in the human condition. Man’s subjugation of the uncertainties related to the physical environment is most clearly manifested in the explosive increases in population since the beginning of the modern age in the eighteenth century .... [T]his dramatic change along with major development in knowledge, technological progress, and scientific breakthroughs that contributed to this explosive development. The close correlation between GDP per capita and population is clear. GDP per capita and its growth have been the primary focal point of the analysis of economic growth and development for quite some time. The close correlation between GDP per capita and energy consumption per capita has also been a focal point of analysis. 12

The graph also identifies several technologies that are widely seen as ushering in fundamental shifts in economic activity. An important and obvious point to be made is that these involve power and transportation technologies. Three of the recent examples involve energy—steam, internal combustion engine and electricity. Substituting mechanical power for human and animal power constitutes a major leap. The shift to electricity, considered a General Purpose Technology (Jovanovic and Rousseau 2005 ), 13 was one of the key factors in the second industrial revolution. Finally, at the bottom, the graph shows key developments in the structure of policy making. The nation-state was a key development that enabled the process of economic growth to gain traction (Acemoglu and Robinson 2012 , Figure 5). The Westphalian state was a key development. Efforts to organize relations between states were the subject of a stream of treaties, but the graph shows the major eff orts to organize multilateral relations in the twentieth century.

It is important to keep in mind that the graph is truncated. Prior to the year 1400, the rate of growth in the factors that affect material well-being was virtually nil. The data underscore the immense progress made in the material condition of society in the past three centuries. The dramatic change in the rates of progress is coincident with the emergence of capitalism and, in particular, the industrial revolution. The key message for the purpose of this analysis is strikingly clear. If we accept the proposition that human civilization dates back about 12 millennia, then the capitalist era is about 4% of human history. The industrial era covers the second half of that period. Measured by population, per capita income, heat, power, transportation, lighting, about 90 % of human progress has taken place in the most recent 2 % of human history, the very short period of capitalist industrialization. 14

The Virtuous Cycle of Progress and the Potential for Justice

The progressive capitalist frame for a theory of justice launches from this dramatic change in the human condition. Obviously, it postdates much of the thinking of the ancient philosophers and early modern (preindustrial) political theorists who naturally make up a large part of the intellectual and cultural heritage of the Western concept of justice, as discussed at length the Global Energy Justice . There has been a dramatic transformation of the terrain of justice in three ways.

• The capitalist industrial revolution has not only produced a dramatic improvement in the human condition, it has also created the possibility/hope/expectation that there will be a massive and continuing improvement in the material well-being of people. Mankind has been freed from endless poverty and expects continuous economic growth and improvement in material conditions.

• The improvement in material well-being comes with (and is in part dependent on) an increasing interdependence of economic activity (a refined division of labor and globalization).

• Increasing wealth and improvements in communications (which are made possible by changes in energy technology, i.e. electrification) have allowed more and more people to engage and participate more directly and force-fully in self-governance.

In the capitalist industrial era we no longer have to treat human history as a kind of zero-sum, depleting resource story. The current generation should not be chastised for overconsuming scarce resources as long as it produces the means to maintain and improve the prospects of future generations. For the past quarter of a millennium, the groundwork for a much higher standard of living has been laid by each successive generation. Perez ( 2002 ) argues that capitalist development needs to be progressive in the sense I use the term. Technology is the fuel of the capitalist engine (Perez 2002 , p. 155). The potential for production and productivity growth is considerable. What is needed for its realization is a new space for the unhindered expansion of markets, favoring economics of scale and fostering a new wave of investment. This essentially means that adequate regulation ... has to be established and an institutional framework favoring the real economy over the paper economy needs to be put in place ... So the rhythm of potential growth is modulated by the qualitative dynamics of effective demand (Perez 2002 , pp. 114–116). Since market saturation is one of the main limits encountered in deploying the growth potential of a technology revolution, ensuring consistent extension of markets is the way to facilitate the pursuit of those goals. Consequently, it is progressive distribution and worldwide advances in development that can best guarantee a continued expansion of demand (Perez 2002 , p. 124). The impact of progressive capitalism on the terrain of justice involves more than simple progress. It also reflects the structure and process by which capitalism creates progress. Two key processes are involved. A discussion of these broad issues is beyond the scope of this chapter and has been offered elsewhere (Cooper 2015 ). Here I emphasize two points that are central to the discussion of energy justice.

• First, the explanation asserts that capitalism has given birth to recursive feedback loops, virtuous circles and cycles, of creative destruction and construction that creates a spiral of progress.

• Second, the division of labor advances relentlessly, which ultimately increases human capital and promotes democratic equality.

The stark contrast between the twenty-first-century digital mode of production that is emerging and the twentieth-century mode of production described by Perez ( 2004 , 2009 ) underscores this process in several ways. First, the mass market production of the twentieth century was very much driven by fossil fuel consumption. The digital mode of production is much more dependent on electricity. Second, technologies are emerging to power more and more activity with electricity. Third, the heterogeneity of products creates niche markets. Fourth, the new division of labor is much more global and complex, shifting a great deal of activity and autonomy to the edge of the networks.

The virtuous cycles of economic progress are interconnected in the sense that they tend to produce the key ingredients to solve the next great challenge that faces the economic system. Perez builds this into her model of capital-ism by linking Schumpeter’s concept of creative destruction to the equally powerful process of creative construction. The result is a spiral of development. While analysis of this process is also beyond the scope of this chapter, one aspect of the current phase of development is critical to the discussion of energy justice. Industrial revolutions produce the ingredients necessary to solve the challenges that they faced.

This is certainly true of the third industrial revolution in the energy sector, the electricity sector in particular. Dynamic technological development has produced the tools for the transformation of the energy sector that can solve the problem of climate change, while dealing with the challenge of energy jus-tice. The central station model of base-load facilities combined with high cost peaking power and massive amounts of pollution, including greenhouse gas emissions, has been undercut by dramatically declining cost for distributed renewables and storage. The Information and Communications Technologies revolution has now made it possible to integrate and manage demand and supply rather than build central station, fossil-fuel-based powered facilities that passively follow load. Economic analyses of the cost of addressing energy justice that were offered as it became a topic of increasing attention a decade ago are obsolete as a result of dramatic innovation and competition (Cooper 2014b ). An electricity sector centered on smaller scale, more flexible resources should facilitate and lower the cost of addressing both energy poverty and cli-mate change. This technological revolution not only delivers affordable electricity, but it also does so in a manner that utilizes local resources and fosters local autonomy.

As has always been the case, however, there is a struggle between the incumbent and the new entrant technologies over the speed and ultimate configuration of the new system and which values will be expressed by the system. In short, the energy sector, in general, and the electricity sector, in particular, are at the “turning point” (Perez 2002 ) or “critical juncture” (Robinson and Acemoglu 2012 ) of the “quarter-life crisis of the digital mode of production” (Cooper 2013b ). Political economy is about driving the economy in the right direction with policy. While the outcome is uncertain, the technological progress suggests that prospects are good for a successful deployment of the third industrial revolution.

#### 2)- Cap good and root cause narrative wrong – inefficiencies in the market cause environmental damage net more

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Pierre. “Solving global warming: Don’t “tear down capitalism.” Just be a bit more like Sweden” <https://ora.ox.ac.uk/objects/uuid:274c499d-d4ed-436c-aa90-24634aeecbee/download_file?safe_filename=BASSwedenDecarb.pdf&file_format=application%2Fpdf&type_of_work=Journal+article>

It is surprising and frustrating that, at a time of increasingly overwhelming evidence that human caused global warming poses a serious problem, public support in the United States for actions of the magnitude required has stubbornly remained tepid for decades. Despite wholehearted denial that there is even a problem— a stance which makes them unique even among the world’s conservative political parties—the US’ Republican party is able to garner the support of about half of all voters. While the United States is not alone in failing to meet the challenge of global warming, its status as one of the world’s top emitters of carbon dioxide (the chief cause of global warming) makes its recalcitrance especially problematic.

In my experience, inaction on restraining carbon dioxide emissions does not stem from insufficient understanding of the science or insufficient fear of the consequences of warming. Instead, it is more due to excessive fear of the nature of the solutions. On the political right, this takes the form of a fear that it is all a thinly disguised leftist plot to impose socialism. Naomi Klein’s recent book, This Changes Everything: Capitalism vs the Climate, plays directly into this fear. Klein’s thesis is that capitalism is structurally unable to meet the challenge of getting fossil fuels out of the economy (Klein 2014; see also the November interview with Klein on the Bulletin’s website: http://thebulletin.org/naomi-klein-climate-change-makes-hotter-and-meanerworld8910). But while Klein is right about many things, including the problem’s urgency and the need for most of the world to take a different course from what is happening right now, she is quite wrong about the root cause of the current inadequate response to global warming.

The problem is not too much capitalism, but rather too little of it, and even a lack of faith in the power of the ingenuity unleashed by capitalism to solve big problems. As currently practiced, US capitalism, far from being the archetype of a free-market economy, is riddled with fossil fuel subsidies and hobbled by politically powerful corporate stakeholders who have used their influence to protect the value of their fossil-fuel assets, regardless of how bad this may be for the rest of the economy. And even free markets cannot function properly if burdened by “externalities,” such as polluters not having to pay for the damage they cause. It’s a case of privatizing the profits while shunting the expenses off to the public.

To break the current impasse, we need to look to success stories for reassurance that decarbonization

#### 3)- Carbon capture is necessary to reach emissions targets – we’ve gone past core tipping points and can’t decarbonize in time absent CCS

Moniz 19 - 13th Secretary of Energy (2013 to 2017) and is the founder and CEO of the Energy Futures Initiative

Fredd Krupp is president of the Environmental Defense Fund, Ernest Moniz, “Cutting Climate Pollution Isn’t Enough — We Also Need Carbon Removal,” Text, TheHill, September 23, 2019, <https://thehill.com/opinion/energy-environment/462609-cutting-climate-pollution-isnt-enough-we-also-need-carbon-removal>.

It has been almost four years since the Paris climate agreement was signed. But as leaders gather in New York this week for the United Nations Climate Change Summit, the world remains far off track from meeting the Paris objective of limiting global warming to well below 2 degrees Celsius -- and pursuing efforts at 1.5 degrees.

To meet that target, the world must achieve a 100 percent clean economy — one that produces net zero emissions, or no more climate pollution than can be removed from the atmosphere — soon after mid-century, with the United States and other advanced economies reaching that milestone no later than 2050. It’s a daunting but doable task.

The consequences of falling short are enormous. This year, the U.S. government’s fourth National Climate Assessment documented the huge economic and social impacts of unchecked warming. The Pentagon has repeatedly warned of the impacts on national security and our troops.

Achieving a 100 percent clean economy will require a swift transition to renewables and other zero-carbon energy sources. But we also need to face the reality that meeting the Paris target will require taking carbon out of the atmosphere at massive scale. In part, that’s because eliminating emissions will be very challenging for some sectors, especially the transportation industry and agriculture. Removing carbon from the atmosphere would also bring concentrations down, helping to stabilize the climate at safer levels. So, the push for clean energy must be supplemented by a suite of technologies known as carbon dioxide removal (CDR).

It is not a question of what we’d prefer. It’s a question of insurmountable math.

The crucial role carbon removal must play is becoming more widely recognized. The 2018 Intergovernmental Panel on Climate Change report stressed the importance of carbon removal, and the U.S. National Academies of Sciences, Engineering and Medicine late last year estimated that ten billion tons of CO2 will need to be pulled from the atmosphere annually by 2050, and double that by 2100. For context, today’s global emissions are less than 40 billion tons per year. If the 10 billion tons of CO2 from CDR were stored underground, that would be roughly double the world’s annual oil production.

The good news is that there are a surprisingly large number of promising pathways for carbon dioxide removal. Nature-based approaches include reforestation and forest management as well as agricultural practices that increase carbon stored in soils. Some of the attendant challenges include competition for land and permanence of the carbon sequestration.

Technological approaches include direct air capture — machines that actually suck carbon from the air — and technologically-enhanced natural processes, such as plants genetically modified with deep roots to fix carbon in the soil; enhanced mineralization, which uses certain reactive rocks to bind with carbon from the air; and accelerated ocean uptake in phytoplankton. These technologies are immature and require considerable research, development and demonstration to ensure viability and affordability at very large scale.

Despite the urgency, there is no dedicated federal effort to develop these crucial technologies; existing programs are piecemeal and largely focused on sequestering emissions from industrial and electricity generating sources.

The National Academies recommended the rapid establishment of a robust, focused, scalable and accelerated federal research program spanning the Departments of Energy and Agriculture, the National Oceanic and Atmospheric Administration and the National Science Foundation, among others. Such a program would encompass the full range of technological pathways that can remove CO2 from the environment. ‘’Clearing the Air,’’ an analysis of CDR’s value and a proposed plan to deploy it, has been completed by the Energy Futures Initiative. Over the next decade, the program scale would be about a billion dollars a year.

Carbon dioxide removal is not a magic bullet. We must do everything we can to deploy innovative low- and zero-carbon methods to generate electricity, heat homes, fuel vehicles, and power industry, creating new economic opportunities in the process. Tackling the climate crisis also requires placing a declining limit and a price on carbon pollution, as well as a significant increase in energy technology innovation and deployment across the board.

But CDR is also not a “Plan B.” It is a critical part of any “Plan A” for climate, a necessary complement to emission reduction. It can provide more flexibility and optionality in policy planning, which could ease the transition to a carbon-neutral economy while minimizing transition costs and providing greater assurance that science-based climate goals can be met in a timely manner. It would eventually enable a net negative global economy that could bring the atmospheric carbon concentrations down — and global temperatures with it.

We have delayed meaningful action for far too long. As a result, the scale and urgency of the challenge is such that we cannot simply work on doing better in the future. We need to correct what we did in the past. Carbon removal is the enabler.

#### 4)- NO shortages --- Tech and inevitable adaptation prevent environment scenarios and resource wars

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Ronald. March 12. “Climate Change Problems Will Be Solved Through Economic Growth” <https://reason.com/blog/2018/03/12/climate-change-problems-will-be-solved-t>

"It is, I promise, worse than you think," David Wallace-Wells wrote in an infamously apocalyptic 2017 New York Magazine article. "Indeed, absent a significant adjustment to how billions of humans conduct their lives, parts of the Earth will likely become close to uninhabitable, and other parts horrifically inhospitable, as soon as the end of this century."

The "it" is man-made climate change. Temperatures will become scalding, crops will wither, and rising seas will inundate coastal cities, Wallace-Wells warns. But toward the end of his screed, he somewhat dismissively observes that "by and large, the scientists have an enormous confidence in the ingenuity of humans....Now we've found a way to engineer our own doomsday, and surely we will find a way to engineer our way out of it, one way or another."

Over at Scientific American, John Horgan considers some eco-modernist views on how humanity will indeed go about engineering our way out of the problems that climate change may pose. In an essay called "Should We Chill Out About Global Warming?," Horgan reports the more dynamic and positive analyses of two eco-modernist thinkers, Harvard psychologist Steven Pinker and science journalist Will Boisvert.

In an essay for The Breakthrough Journal, Pinker notes that such optimism "is commonly dismissed as the 'faith that technology will save us.' In fact, it is a skepticism that the status quo will doom us—that knowledge and behavior will remain frozen in their current state for perpetuity. Indeed, a naive faith in stasis has repeatedly led to prophecies of environmental doomsdays that never happened." In his new book, Enlightenment Now, Pinker points out that "as the world gets richer and more tech-savvy, it dematerializes, decarbonizes, and densifies, sparing land and species." Economic growth and technological progress are the solutions not only to climate change but to most of the problems that bedevil humanity.

Boisvert, meanwhile, tackles and rebuts the apocalyptic prophecies made by eco-pessimists like Wallace-Wells, specifically with regard to food production and availabilty, water supplies, heat waves, and rising seas.

"No, this isn't a denialist screed," Boisvert writes. "Human greenhouse emissions will warm the planet, raise the seas and derange the weather, and the resulting heat, flood and drought will be cataclysmic. Cataclysmic—but not apocalyptic. While the climate upheaval will be large, the consequences for human well-being will be small. Looked at in the broader context of economic development, climate change will barely slow our progress in the effort to raise living standards."

Boisvert proceeds to show how a series of technologies—drought-resistant crops, cheap desalination, widespread adoption of air-conditioning, modern construction techniques—will ameliorate and overcome the problems caused by rising temperatures. He is entirely correct when he notes, "The most inexorable feature of climate-change modeling isn't the advance of the sea but the steady economic growth that will make life better despite global warming."

Horgan, Pinker, and Boisvert are all essentially endorsing what I have called "the progress solution" to climate change. As I wrote in 2009, "It is surely not unreasonable to argue that if one wants to help future generations deal with climate change, the best policies would be those that encourage rapid economic growth. This would endow future generations with the wealth and superior technologies that could be used to handle whatever comes at them including climate change." Six years later I added that that "richer is more climate-friendly, especially for developing countries. Why? Because faster growth means higher incomes, which correlate with lower population growth. Greater wealth also means higher agricultural productivity, freeing up land for forests to grow as well as speedier progress toward developing and deploying cheaper non–fossil fuel energy technologies. These trends can act synergistically to ameliorate man-made climate change."

Horgan concludes, "Greens fear that optimism will foster complacency and hence undermine activism. But I find the essays of Pinker and Boisvert inspiring, not enervating....These days, despair is a bigger problem than optimism." Counseling despair has always been wrong when human ingenuity is left free to solve problems, and that will prove to be the case with climate change as well.

#### 5)- Decline guarantees war --- Now uniquely likely

Liu 18 – Dr. Qian Liu, PhD in Economics from Uppsala University, Former Visiting Researcher at the University of California, Berkeley, Managing Director for Greater China at The Economist Group, Guest Lecturer at New York University, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11-13, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

#### Turns democracy

**Halperin 5 –** Morton Haperin, Senior Vice President of the Center for American Progress and Director of the Open Society Policy Center, 2005, The Democracy Advantage, p. 90

This chapter has made the case that **economic stagnation is a threat to de­mocratization**. Over 70 percent of democratic backtrackers experienced economic stagnation in the years preceding their political contraction**.** Moreover, democratizers with more prolonged recessions had a greater tendency to **revert to authoritarianism**.

**Extinction**

**Kasparov 17** (Garry Kasparov, Chairman of the Human Rights Foundation, former World Chess Champion, “Democracy and Human Rights: The Case for U.S. Leadership,” Testimony Before The Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues of the U.S. Senate Committee on Foreign Relations, February 16th, https://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf)

As one of the countless millions of people who were freed or protected from totalitarianism by the United States of America, it is easy for me to talk about the past. To talk about the belief of the American people and their leaders that this country was exceptional, and had special responsibilities to match its tremendous power. That a nation founded on freedom was bound to defend freedom everywhere. I could talk about the bipartisan legacy of this most American principle, from the Founding Fathers, to Democrats like Harry Truman, to Republicans like Ronald Reagan. I could talk about how the American people used to care deeply about human rights and dissidents in far-off places, and how this is what made America a beacon of hope, a shining city on a hill. America led by example and set a high standard, a standard that exposed the hypocrisy and cruelty of dictatorships around the world. But there is no time for nostalgia. Since the fall of the Berlin Wall, the collapse of the Soviet Union, and the end of the Cold War, Americans, and America, have retreated from those principles, and **the world has become much worse off as a result**. American skepticism about America’s role in the world deepened in the long, painful wars in Afghanistan and Iraq, and their aftermaths. Instead of applying the lessons learned about how to do better, lessons about faulty intelligence and working with native populations, the main outcome was to stop trying. This result has been a tragedy for the billions of people still living under authoritarian regimes around the world, and it is based on faulty analysis. You can never guarantee a positive outcome— not in chess, not in war, and certainly not in politics. The best you can do is to do what you know is right and to try your best. I speak from experience when I say that the citizens of unfree states do not expect guarantees. They want a reason to hope and a fighting chance. People living under dictatorships want the opportunity for freedom, the opportunity to live in peace and to follow their dreams. From the Iraq War to the Arab Spring to the current battles for liberty from Venezuela to Eastern Ukraine, people are fighting for that opportunity, giving up their lives for freedom. The United States must not abandon them. The United States and the rest of the free world has an unprecedented advantage in economic and military strength today. What is lacking is the will. The will to make the case to the American people, the will to take risks and invest in the long-term security of the country, and the world. This will require investments in aid, in education, in security that allow countries to attain the stability their people so badly need. Such investment is far more moral and far cheaper than the cycle of **terror, war**, refugees, and **military intervention** that results when America leaves a vacuum of power. The best way to help refugees is to prevent them from becoming refugees in the first place. The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There **existential threat** today is not found on a map, but it **is very real**. The forces of the past are making steady progress against the modern world order. **Terrorist** movements in the Middle East, extremist parties across Europe, a paranoid tyrant in **North Korea threatening nuclear blackmail,** and, at the center of the web, an **aggressive KGB dictator in Russia**. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And **they are thriving as the U.S. has retreated**. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but **this is what happens when there is no cop on the beat. American leadership begins at home**, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. **Leadership is required to make that case clearly and powerfully**. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of **democracy is the only** proven **remedy for** nearly **every crisis that plagues the world today. War, famine, poverty, terrorism**–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. **American leadership is required because there is no one else**, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you.

#### 6)- Disease is the other war around --- growth solves

**Fidler 8**

(David P., Professor of Law, Indiana University, University Center on American and Global Security, “After the Revolution: Global Health Politics in a Time of Economic Crisis and Threatening Future Trends,” Global Health Governance, Fall 2008/Spring 2009, Volume 2, Number 2)

Further, the global economic crisis is absorbing ever larger amounts of capital to keep governments, financial institutions, and corporations afloat, which drastically reduces the availability of resources for addressing the growing costs of providing adequate public health and health care for populations around the world. Even before the global economic crisis hit, experts argued that the unprecedented increases in national spending and development assistance for health were inadequate and, even worse, that many developed donor countries had not fulfilled existing aid pledges. 56 Thus, maintaining existing levels of domestic spending and development assistance on health would not be sufficient, but increased expenditures seem unlikely for years while the global economy recovers. The more likely scenario is reductions in health spending within national budgets and in foreign aid programs. Such reductions, even if shortlived, will have a severe impact on global health activities already desperately in need of more financial resources. Perhaps the cruelest irony of the global economic crisis is its emergence in the year WHO and global health stakeholders renewed the push for achieving primary health care for all. The report of the Commission on Social Determinants of Health advocated for primary health care in 2008.57 The World Health Report 2008 focused on primary health care, 58 and the WHO Director-General connected the new emphasis on primary health care to the Declaration of AlmaAta, which first launched the “health for all” strategy based on universal primary health care in 1978.59 However, 30 years ago, the Alma-Ata strategy was derailed by developments in the energy and economic sectors that sound ominously familiar, as the WHO Director-General recognized in September 2008: Nor could the visionary thinkers in 1978 have foreseen world events: an oil crisis [that began in 1979], a global recession [in the early 1980s], and the introduction [in the 1980s], by development banks, of structural adjustment programmes that shifted national budgets away from the social services, including health. As resources for health diminished, selective approaches using packages of interventions gained favour over the intended aim of fundamentally reshaping health care. The emergence of HIV/AIDS, the associated resurgence of tuberculosis, and an increase in malaria cases moved the focus of international public health away from broad-based programmes and towards the urgent management of highmortality emergencies.60 The effort to rejuvenate the primary health care movement in a year in which global food, energy, and economic crises emerged proved ill-timed, and the worsening nightmare of the global economic crisis threatens even more damage to the political, economic, and social conditions needed to achieve progress on universal primary health care. Put another way, political, economic, and intellectual capital for advancing the primary health care agenda will, for the foreseeable future, be in short supply. Instead, as with the energy and food crises, global health finds itself scrambling to address an emergency with potentially **devastating consequences** for the health of individuals and populations, health services and systems, and the social determinants of health.

#### 7) - Degrowth transition is impossible – lack of support, consumption habits, and elite power domination

Burch-Hansen 18

(Hubert Buch-Hansen, Department of Business and Politics, Copenhagen Business School, “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy,” Ecological Economics, Volume 146, April 2018, pp. 157-163)

Political projects do not become hegemonic just because they embody good ideas. For a project to become hegemonic, (organic) intellectuals first need to develop the project and a constellation of social forces with sufficient power and resources to implement it then needs to find it appealing and struggle for it. In this context, it is worth noting that degrowth, as a social movement, has been gaining momentum for some time, not least in Southern Europe. Countless grassroots' initiatives (e.g., D'Alisa et al., 2013) are the most visible manifestations that degrowth is on the rise. Intellectuals – including founders of ecological economics such as Nicholas Georgescu-Roegen and Herman Daly, and more recently degrowth scholars such as Serge Latouche and Giorgos Kallis – have played a major role in developing and disseminating the ideas underpinning the project. A growing interest in degrowth in academia, as well as well-attended biennial international degrowth conferences, also indicate that an increasing number of people embrace such ideas.

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

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

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

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

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

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

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

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

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

At present, then, the degrowth project is in its “deconstructive phase”, i.e., the phase in which its advocates are able to present a powerful critique of the prevailing neoliberal project and point to alternative solutions to crisis. At this stage, not enough support has been mobilised behind the degrowth project for it to be elevated to the phases of “construction” and “consolidation”. It is conceivable that at some point, enough people will become sufficiently discontent with the existing economic system and push for something radically different. Reasons for doing so could be the failure of the system to satisfy human needs and/or its inability to resolve the multidimensional crisis confronting humanity. Yet, various material and ideational path-dependencies currently stand in the way of such a development, particularly in countries with large middle-classes. Even if it were to happen that the majority wanted a break with the current system, it is far from given that a system based on the ideas of degrowth is what they would demand.

#### 8)- Neoliberalism is inevitable --- crises cause elites to double down on austerity measures and structural adjustment that hasten privatization --- 2008 proves

Peck and Theodore, 19

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--Always assumed to be on its last legs but comes back - 2008 seen as comprehensive repudiation but still kicking

--“No alternative” is the reigning ideology – solution was austerity measures, taax cuts, structural adjsmtnet across the global South, challenges to public service provision/social security/healthcare, and financial elites got bailed out/deregulated

--Changes come and go – Dodd Frank and liquidity shock requirements got repealed – Syrizas in Greece still got austerity medicine and then wrecked in 2019 election by conservatives

Neoliberal, Neoliberalism, Neoliberalization: What’s in a Name?

That neoliberalism remains a circulating if contestable term, after decades of fitful and fickle usage, might be considered an achievement of sorts. Repeatedly disowned, denigrated, and dismissed, it nevertheless refuses to go away— at least circumstantial evidence, perhaps, that there is indeed “some there there.” This is not the place to revisit the extended genealogy of this troubled signifier and its contested historical geography (see Peck 2010; Cahill et al. 2018), except to observe that its turbulent fortunes, perhaps especially in the period since the Wall Street crash of 2008, have been revealing, while at the same time adding new layers of mystification and puzzlement to what has been a never-less-than-checkered history. What was to be a particularly heavyhanded reboot of this history began in the thick of that last crisis, a little over a decade ago. Perhaps unsurprisingly, the Wall Street crash was at the time widely interpreted as both a comprehensive repudiation and a system failure of neoliberalism by key figures on the left, from Eric Hobsbawm to Naomi Klein, who read the moment as terminal for the rolling project of financial deregulation and for the small-state consensus more generally, a view that was echoed by center-left economists such as Joseph Stiglitz and, although not in so many words, by the likes of Paul Krugman. Rather more surprisingly, there were also some mainstream politicians on the right and left flanks of the center ground, from France’s Nicolas Sarkozy to Australia’s Kevin Rudd, who in this uniquely disorientating context were moved to utter the hitherto unspeakable term, albeit only to declare its graceless exit (see Erlanger 2008; Rudd 2009). A common refrain across much of the commentary at the time, when real economies around the world and the credibility of those charged with their stewardship were both in freefall, was that the much-maligned state would be (had to be) making a comeback—in its own way echoing the arch-neoliberal conceits of governmental withdrawal and free-market governance, as if the state had ever really gone away. Projects of neoliberalization, it has been fairly clear all along to those willing to see, have never been synonymous with a simple diminution, or withdrawal, of the state, but instead have been variously concerned with its capture and reuse, albeit in the context of a generalized assault on social-welfarist or leftarm functions, coupled with an expansion of right-arm roles and capacities in areas like policing and surveillance, incarceration and social control, and the military. Nevertheless, this kind of state project was widely believed to have met its end a decade ago in the Wall Street meltdown.

What followed certainly did not align with the script of a terminal, once-and-for-all collapse of neoliberalism represented (again, somewhat misleadingly) as a bracketable “era” of free-market governance. As if to affirm Thatcher’s premature dismissal that there was “no alternative” to market rule, what followed in the wake of the financial crisis was, far from a retreat of neoliberalism, more like an audacious exercise in doubling down. Longterm austerity measures were (re)imposed in nations rich and poor, including those countries once regarded as the tutelary “heartlands” of the project, and its proving grounds, the United States and the United Kingdom. A new generation of structural adjustment programs targeted not only populations across the global South but also Greece, Detroit, and elsewhere. There were sustained, if scattergun, assaults on many of the old targets—public services, public budgets, and public servants; social movements and labor unions; social security, socialized healthcare, and public-education systems; and undeserving classes, the poor, and racialized others. And all the while, financial and corporate elites got away with slaps on the wrist, if that, only to be compensated in due course with yet more deregulation and further rounds of tax cuts. This unapologetic mutation of late neoliberalism, back as it were from its own grave, may have been shorn of anything approaching credible claims to moral leadership and intellectual authority, but in this reconstituted form it would present a yet more brutal face in its dogged defenses of political power and institutional dominance, soon to be coupled with brazen reassertions of the manifestly dubious case for corporate liberty, financial freedom, and social-state retrenchment.

#### 9)- Rejection of capitalism causes massive transition wars

Harris 03. Lee, Analyst – Hoover Institution and Author of The Suicide of Reason, “The Intellectual Origins of America-Bashing”, Policy Review, January, http://www.hoover.org/publications/policyreview/3458371.html

This is the immiserization thesis of Marx. And it is central to revolutionary Marxism, since if capitalism produces no widespread misery, then it also produces no fatal internal contradiction: If everyone is getting better off through capitalism, who will dream of struggling to overthrow it? Only genuine misery on the part of the workers would be sufficient to overturn the whole apparatus of the capitalist state, simply because, as Marx insisted, the capitalist class could not be realistically expected to relinquish control of the state apparatus and, with it, the monopoly of force. In this, Marx was absolutely correct. No capitalist society has ever willingly liquidated itself, and it is utopian to think that any ever will. Therefore, in order to achieve the goal of socialism, nothing short of a complete revolution would do; and this means, in point of fact, a full-fledged civil war not just within one society, but across the globe. Without this catastrophic upheaval, capitalism would remain completely in control of the social order and all socialist schemes would be reduced to pipe dreams.

#### Extinction

Nyquist 5. J.R. renowned expert in geopolitics and international relations, WorldNetDaily contributing editor, “The Political Consequences of a Financial Crash,” February 4, www.financialsense.com/stormw...2005/0204.html

Should the United States experience a severe economic contraction during the second term of President Bush, the American people will likely support politicians who advocate further restrictions and controls on our market economy – guaranteeing its strangulation and the steady pauperization of the country. In Congress today, Sen. Edward Kennedy supports nearly all the economic dogmas listed above. It is easy to see, therefore, that the coming economic contraction, due in part to a policy of massive credit expansion, will have serious political consequences for the Republican Party (to the benefit of the Democrats). Furthermore, an economic contraction will encourage the formation of anti-capitalist majorities and a turning away from the free market system. The danger here is not merely economic. The political left openly favors the collapse of America’s strategic position abroad. The withdrawal of the **U**nited **S**tates from the Middle East, the Far East and Europe would catastrophically impact an international system that presently allows 6 billion people to live on the earth’s surface in relative peace. Should anti-capitalist dogmas overwhelm the global market and trading system that evolved under American leadership, the planet’s economy would contract and untold millions would die of starvation. Nationalistic totalitarianism, fueled by a politics of blame, would once again bring war to Asia and Europe. But this time the war would be waged with mass destruction weapons and the United States would be blamed because it is the center of global capitalism. Furthermore, if the anti-capitalist party gains power in Washington, we can expect to see policies of appeasement and unilateral disarmament enacted. American appeasement and disarmament, in this context, would be an admission of guilt before the court of world opinion. Russia and China, above all, would exploit this admission to justify aggressive wars, invasions and mass destruction attacks. A future financial crash, therefore, must be prevented at all costs.

#### 10) Turns their impact – the transition magnifies every flaw of capitalism

Gurbud 97. Mark Avrum, Graduate Research Assistant – Center for Superconductivity Research at the University of Maryland, “Nanotechnology and International Security”, http://www.foresight.org/Conferences/MNT05/Papers/Gubrud/)

With molecular manufacturing, international trade in both raw materials and finished goods can be replaced by decentralized production for local consumption, using locally available materials. The decline of international trade will undermine a powerful source of common interest. Further, artificial intelligence will displace skilled as well as unskilled labor. A world system based on wage labor, transnational capitalism and global markets will necessarily give way. We imagine that a golden age is possible, but we don’t know how to organize one. As global capitalism retreats, it will leave behind a world dominated by politics, and possibly feudal concentrations of wealth and power. Economic insecurity, and fears for the material and moral future of humankind may lead to the rise of demagogic and intemperate national leaders. With almost two hundred sovereign nations, each struggling to create a new economic and social order, perhaps the most predictable outcome is chaos: shifting alignments, displaced populations, power struggles, ethnic conflicts inflamed by demagogues, class conflicts, land disputes, etc. Small and underdeveloped nations will be more than ever dependent on the major powers for access to technology, and more than ever vulnerable to sophisticated forms of control or subversion, or to outright domination. Competition among the leading technological powers for the political loyalty of clients might imply reversion to some form of nationalistic imperialism.

### Solvency

#### 1)- Vote neg on presumption --- Antitrust is ineffective at challenging capitalism – pro-business ideologies are ingrained in courts and agencies

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Sandeep Vaheesan, “Accommodating Capital and Policing Labor: Antitrust in the Two Gilded Ages,” Maryland Law Review, 2019, https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3832&context=mlr

Breaking with the mid-twentieth century approach to antitrust, the federal courts and antitrust enforcers, since the late 1970s, have once again interpreted—indeed reinterpreted—antitrust law to expand the autonomy of big capital and restrict the freedom of workers. The executive branch and judiciary have minimized concerns about the power of corporations. They have replaced congressional (and once-judicially validated) economic and political objectives with an “efficiency” or “consumer welfare” goal. In the area of mergers, the Court has taken a generally hands-off approach, meaning that the federal antitrust agencies have become the principal policymakers and used their power to handicap their own ability to stop mergers. 21 Except for horizontal mergers in highly concentrated markets that threaten to leave a market with four or fewer players, the DOJ and the Federal Trade Commission (“FTC”) today generally do not stop or even remedy most horizontal mergers.22 This lax approach to mergers has yielded multiple waves of consolidation across the economy and contributed to a highly concentrated industrial structure. Along with the agencies’ permissive approach to mergers, the Supreme Court has narrowed the scope of anti-monopoly law and restricted the ability of plaintiffs to challenge predatory pricing and refusals to deal.24 The federal antitrust agencies have done little to resist this doctrinal retrenchment and have not brought a significant anti-monopoly case arguably since the lawsuit against Microsoft in 1998.25

This general deference toward large businesses has been paired with vigilance toward collective action by labor. The federal antitrust agencies, especially the FTC, repeatedly challenged union-like organization by workers and professionals. The FTC also consistently called on states to scale back occupational licensing rules that can help consumers and workers. With this pro-capital, anti-labor orientation, the antitrust laws in the new Gilded Age resemble antitrust in the original Gilded Age.26 Laws intended to challenge the privileges of monopoly and preserve space for workers to organize are once again being used to preserve the existing power structure and under- mine attempts by labor to strike a more equitable bargain with capital.27

Through congressional, executive, and judicial action, the antitrust laws can be reinterpreted to honor their original legislative intent and to create a more just and equitable society. This reinterpretation and revival of antitrust law would neither be easy nor be immediate. It would require new legislation and a radical change in personnel both at the federal antitrust agencies and on the federal bench and the erasure of decades of accumulated pro-monopoly and pro-oligopoly precedent. Yet, the conservative coup against the historical understanding of the antitrust laws beginning in the 1970s28 reveals the malleability of these statutes. At a minimum, the antitrust agencies and courts should reorient the antitrust laws to advance the congressional intent expressed in the Sherman, Clayton, and FTC Acts. The Congresses that passed these statutes sought to limit the power of large-scale capital over consumers and producers, competitors, and citizens and, at the same time, were near-unanimous in stating that these laws should not interfere with the joint action of workers. The federal antitrust agencies and the courts should rediscover these legislative histories. In this current era of deep economic and political inequality, the policy objectives expressed by Congress in 1890 and 1914 remain as important as ever to ordinary Americans. Persisting with the current antitrust paradigm would only uphold an unjust and increasingly unpopular status quo.

#### 2)- The antitrust paradigm is underpinned by assumptions imported from neoclassical economics that naturalize corporate domination – turns case

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Sandeep Vaheesan, “The Twilight of the Technocrats’ Monopoly on Antitrust?,” The Yale Law Journal Forum, 6/4/18, <https://www.yalelawjournal.org/pdf/Vaheesan_ir9dchg8.pdf>.

ii. antitrust law is not and cannot be “apolitical”

Antitrust law is unavoidably political. Of course, the enforcement of antitrust law should not be political in the popular sense: the President and the heads of the Department of Justice Antitrust Division and Federal Trade Commission should not employ the antitrust laws to reward their friends and punish their enemies.22 Rather, antitrust is political in its content. In designing a body of law, Congress, federal agencies, and the courts must answer the basic questions of whom the law benefits and to what end. Answering these questions inherently requires moral and political judgments. These fundamental questions do not have a single “correct” answer and cannot be resolved through “neutral” methods or decided with an “apolitical” answer.23

Antitrust regulates state-enabled markets, which cannot be separated from politics. The history of antitrust law shows competing visions of both the law’s aims and its methods, suggesting there is no “apolitical,” universal concept of antitrust. Rather than aspire for an impossible utopia of “apolitical” antitrust, we must decide who should determine the political content of the field—democratically-elected representatives or unelected executive branch officials and judges.

A. Markets Cannot Be Divorced from Politics

A market economy is the product of extensive state action and so is inevitably political. The conception of the market as a “spontaneous order” is a useful construct for defenders of the status quo because it lends legitimacy to the current order and suggests that intervention is futile.24 This model, however, is a myth and bears no correspondence to actual markets. Most fundamentally, state action supports a market economy through the creation and protection of property rights25 and the enforcement of contracts.26 As sociologist Greta Krippner writes, “there can be no such excavation of politics from the economy, as this is the sub- stratum on which all market activity—even ‘free’ markets—rests.”27 In addition to property and contract law, examples of state action necessary for the contemporary U.S. economy to function include corporate and tort law (typically established and enforced by state governments), intellectual property, protection of interstate commerce, banking regulation, and monetary policy (generally con- ducted at the federal level).

Antitrust law, therefore, is a governmental action that shapes the power of state-chartered corporations and the scope of their state-enforced property and contractual rights. This regulation of state-enabled markets makes antitrust inherently political. Moreover, in formulating antitrust rules, lawmakers must determine whom the law seeks to protect. Antitrust law could conceivably protect consumers, small businesses, retailers, producers, citizens, or large businesses. But even identifying the protected group or groups does not fully resolve the question. For instance, if consumers are antitrust law’s sole protected group, how should the law protect consumers? Antitrust could protect consumers’ short- term interest in low prices or their long-term interests in product innovation or product variety, just to name a few possibilities.28

Given the foundational role of state action—and therefore politics—in a market economy, the choice of objective in antitrust law is not between intervention and nonintervention. Rather, antitrust law must choose between different con- figurations of state action and different sets of beneficiaries.29 More concretely, we must decide, openly or otherwise, whose interests antitrust law should protect.

B. The History of Antitrust Law Reveals the Unavoidability of Politics

The history of antitrust law further demonstrates the political nature of the field. Although Congress has not modified the antitrust statutes significantly since 1950,30 the content of antitrust has changed dramatically since then. Even the consumer welfare model has not banished political values from the field. While the range of debate within the community of antitrust specialists is narrow, the continuing disagreement over the interpretation of consumer welfare reveals the inescapability of political judgment.

Antitrust law today is qualitatively different from antitrust law fifty years ago. In the 1950s and 1960s, the courts and agencies interpreted antitrust law to advance a variety of objectives. The Supreme Court held that the antitrust laws promoted consumers’ interest in competitively-priced goods,31 freedom for small proprietors,32 and dispersal of private power.33 The Court held that business conduct injurious to competitors could give rise to antitrust violations, irrespective of the effects on consumers.34 It also interpreted congressional intent to be that a decentralized industrial structure should override possible economies of scale gained from greater consolidation of economic power.35 Recognizing this goal of decentralization, the federal judiciary adopted strict limits on business conduct with anticompetitive potential, including mergers36 and exclusionary practices.37

Since the late 1970s, however, the Supreme Court, along with the Department of Justice and Federal Trade Commission, has reduced the scope of the antitrust laws. With a rightward shift in the composition of the Supreme Court under the Nixon Administration and in the leadership at the federal antitrust agencies under the Reagan Administration,38 these institutions curtailed the reach of antitrust law, scaling back its objectives39 and rewriting legal doctrine to preserve the autonomy of powerful businesses—all in the name of protecting consumers.40

Even the adoption of the consumer welfare model has not somehow banished politics from antitrust. Instead, it has underscored the unavoidability of politics in the field. Despite being the prevailing goal of antitrust for nearly four decades now, the meaning of consumer welfare is still not settled. The two primary schools of thought on consumer welfare disagree on a fundamental question—who are the beneficiaries of antitrust law? One holds that actual consumers, as understood in the popular sense, should be the principal beneficiaries of antitrust law.41 The rival camp holds that both consumers and businesses should be the beneficiaries of antitrust law, and that whether a dollar of economic sur- plus goes to a consumer or a monopolistic business should be of no concern to the federal antitrust agencies and courts.42 C. Who Should Decide the Political Content of Antitrust?

Because the objective of antitrust law is thus bound up with political judgments and values, seeking an “apolitical” antitrust jurisprudence is futile at best and a cynical effort to conceal political choices at worst. The choice is not be- tween “apolitical” antitrust and “political” antitrust; rather, lawmakers must decide between different political objectives. Once the inevitably political valence of antitrust law has been acknowledged, we can turn to the key question of whether unelected officials at the antitrust agencies and federal judges (collectively “the technocrats”) or democratically-elected members of Congress should decide this political content.43

Over the past forty years, technocrats have dominated antitrust law.44 Leadership at the Department of Justice and Federal Trade Commission as well as Supreme Court Justices have rewritten much of antitrust law.45 They have ignored or distorted the legislative histories of the antitrust laws and have even overridden Congress’s legislative judgments.46 By restricting private antitrust enforcement, the Supreme Court has also limited the ability of ordinary Ameri- cans to influence the content of antitrust law.47

While the antitrust technocrats have been on the march, Congress has been dormant. Its antitrust activities have been confined to secondary issues.48 This combination of technocratic hyperactivism and legislative lethargy has created, in the words of Harry First and Spencer Waller, “an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability.”49 Although proponents of technocratic antitrust may characterize it as “pure” or “scientific,” the reality is quite different as big business interests and their representatives dominate debate within this cloistered enterprise.50

This congressional indifference to antitrust is not inevitable. Despite pro- longed quietude, Congress could become an active player in antitrust again. Some members of Congress are showing a renewed awareness of the field and an interest in reasserting control over the content of the antitrust statutes.51 The most democratically accountable branch of the federal government may be poised to take the lead on antitrust in the coming years, reclaiming authority over a technocracy that has not answered to the public in decades.

iii. the consumer welfare model is not anchored in congressional intent and reflects a narrow conception of monopoly and oligopoly

Given that consumer welfare antitrust is a political choice, this model can be evaluated against alternatives on a level playing field. Consumer welfare is not “above politics.” It is a political construct that features at least two serious deficiencies. First, the consumer welfare model contradicts the legislative histories of the principal antitrust statutes; the courts and federal antitrust agencies have instead substituted their own political judgments for those of Congress. Second, the consumer welfare model represents an impoverished understanding of corporate power. It focuses principally on one aspect of business power—power over consumers—and ignores other critical manifestations.

Congress’s original vision for the antitrust laws, one that recognizes both the economic and the political impacts of monopoly, is a superior alternative to the consumer welfare philosophy. As the enforcers and interpreters of statutory law in a democratic polity, federal antitrust officials and judges should follow the congressional intent underlying the antitrust laws. Furthermore, commentators, legislators, and policymakers should recognize that controlling the power of large businesses over not only consumers but also competitors, workers, producers, and citizens is essential for preserving at least a modicum of economic and political equality in a democratic society.

A. In Passing the Antitrust Laws, Congress Expressed Aims Much Broader than Consumer Welfare

The consumer welfare model of antitrust is not true to the intent of Congress. An extensive body of careful research has shown that Congress had several objectives when it passed the Sherman, Clayton, and Federal Trade Commission Acts.52 The Congresses that passed these landmark statutes recognized that eco- nomics and politics are inseparable. Congress originally sought to structure markets to advance the interests of ordinary Americans in multiple capacities, not just as consumers. Consumer welfare antitrust reflects, at best, a selective reading of this legislative history and, at worst, an intentional distortion of this historical record. Contrary to Robert Bork’s historical analysis, the legislative histories show no congressional awareness, let alone support, for interpreting consumer welfare as the economic efficiency model of antitrust, one nominally indifferent toward distributional effects.53

In passing the antitrust statutes, Congress aimed to protect consumers and sellers from monopolies, oligopolies, and cartels, as well as defend businesses against the exclusionary practices of powerful rivals.54 Key members of the House and Senate condemned the prices that powerful corporations charged consumers as “robbery”55 and “extortion.”56 The debates reveal similar solicitude for farmers and other producers who received lower prices for their products thanks to powerful corporate buyers.57 In addition to consumers and producers, Congress aimed to protect another important group of market participants: competitors. In enacting the antitrust statutes, Congress sought to restrain large businesses from using their power to exclude rivals.58 Congress recognized the political power of large corporations and aimed to curtail it through strong federal restraints. Indeed, the political power of these corporations represents a running theme in the legislative histories of the anti- trust laws. A number of speakers in the course of the debates pointed to the power wielded by these big businesses over government at all levels.59 In the debate over the Clayton Act, one Congressman declared that the trusts were commandeering ostensibly democratic political institutions.60 Senator John Sherman warned his colleagues that “[i]f we will not endure a king as a political power[,] we should not endure a king over the production, transportation, and sale of any of the necessaries of life.”61

B. The Consumer Welfare Model Reflects an Impoverished Understanding of Corporate Power

Focusing solely on harms to consumers and sellers, the consumer welfare model embodies an emaciated conception of corporate power. With its foundation in neoclassical economics, the consumer welfare model privileges short- term consumer interests. The neoclassical representation of the market—commonly known through supply-and-demand diagrams—presents a static picture of a market and does not account for long-term dynamics. As the default analytical guide for consumer welfare antitrust, the neoclassical model, with its focus on quantification, prizes short-term price harms to consumers and sellers and discounts longer-term injuries.62

Furthermore, the consumer welfare model legitimizes the existing distribution of resources by focusing on change to the status quo. Current antitrust law measures consumer welfare by changes in prices paid; what a person can pay, though, depends on both her willingness-to-pay for goods and services and her existing wealth. By this definition, a rich person who pays more for a luxury good due to a cartel suffers an antitrust harm, but a poor person who has no income and is unable to afford necessities cannot suffer antitrust harm from a monopoly. A wealthy consumer commands power in the market; a poor consumer, in comparison, has little or no clout in the market.63

The consumer welfare model, moreover, affords little or no importance to corporations’ ability to dictate the development of entire markets. Antitrust practitioners and scholars are wont to remind each other and critics that the antitrust laws “protect[] competition, not competitors.”64 Although the expression is arguably empty,65 it is taken to mean that harm to actual and prospective competitors alone is of no import to the antitrust laws. This doctrinal cornerstone is a political choice,66 which gives monopolists and oligopolists the power to dictate who participates in a market and on what terms.67 Under consumer welfare antitrust, businesses can use their muscle to exclude rivals and strangle economic opportunity so long as this exclusion is not likely to injure consumers. In practical terms, consumer welfare antitrust grants big businesses broad latitude to engage in private industrial planning. 68

For the consumer welfare school, the hegemonic power of large corporations is also of no consequence. Monopolistic and oligopolistic businesses across the economy use their power to seek and win favorable political and regulatory de- cisions.69 The ongoing—and frenzied—contest between states and cities to at- tract Amazon’s second headquarters is indicative of a giant business’s weight. In recent years, the concentrated financial sector has offered a vivid example of corporate political power in action.71 Leading banks helped trigger a worldwide economic crisis through their fraud and reckless speculation, and yet they defeated subsequent political efforts to control their size and structure and man- aged to preserve their institutional power.72 An influential analysis of congressional decision making suggests that the United States today is closer to an oligarchy than a democracy—the wealthy and large businesses wield tremendous political clout, whereas most ordinary people have little or no influence.73 Large businesses also set the parameters of political debate through control of the me- dia,74 sponsorship of supportive figures and organizations,75 and marginalization of critical voices.76 Consumer welfare antitrust itself is, at least in part, a product of big business’s reaction against the relatively vigorous antitrust pro- gram of the postwar decades.77

With its narrow analytical frame, the consumer welfare model of antitrust accepts and legitimizes many forms of state-supported corporate power. Under consumer welfare antitrust, large corporations have the freedom to enhance their power through mergers and monopolistic practices that hurt competitors and citizens. Viewed as part of the overall landscape of state-enabled markets, consumer welfare antitrust is not an apolitical choice, but a charter of liberty for dominant businesses.

# Block

## Section V

#### Modifications to the Sherman or Clayton act operate too slow and harm innovation---sole Section 5 use is the best way to minimize firm harm and maintain innovation.

Crane 13 – Professor of Law, University of Michigan.

Daniel Crane, 2013, “Section 5 and the Innovation Curve,” University of Michigan Law School, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1125&context=book_chapters>

There is a case to be made for using Section 5 to remove restraints on innovation that might not be reachable under the Sherman Act because the technological conditions they raise have not previously been considered. But that case should not amount to an undiff erentiated assumption that legal innovation by the FTC should be applied consistently to keep pace with technological innovation. To the contrary, legal innovation will oft en be grossly outpaced by technological innovation. No amount of effort or determination to enhance the alacrity of legal innovation will do the trick, as even commissions (as contrasted with courts, which are notably ponderous) are constitutionally incapable of keeping up with many fast-moving industries. Nor would it be wise to rush the rate of legal innovation with the hopes of staying within sight of the technological innovation—like the turtle taking steroids to keep within striking distance of the hare. A legal innovation that lags a generation behind the technological state of the art will often do far more damage than good.

It should be clear that there is a time for declining to apply even traditional antitrust rules when the pace of innovation is so fast that application of the rule might interfere with technological progress. In the specifi c context of Section 5, the question is whether the Commission should be entitled to go beyond traditional antitrust principles—to impose liability beyond that which would obtain under the Sherman Act. Where the rate of innovation is high, and particularly where the innovation curve is steep, it should not.

#### Doing both undermines the authority of the FTC as companies will win Section 2 litigations and use them to undermine Section 5 authority.

Rosch 11 – Commissioner, Federal Trade Commission.

J. Thomas Rosch, January 27 2011, “The Great Doctrinal Debate: Under What Circumstances is Section 5 Superior to Section 2?” Federal Trade Commission, https://www.ftc.gov/sites/default/files/documents/public\_statements/great-doctrinal-debate-under-what-circumstances-section-5-superior-section-2/110127barspeech.pdf

Some may say that the Commission has a fourth option which is to sue in Part 3 under both Section 2 and Section 5, as the majority elected to do in Intel. To be honest, the trial lawyer in me hasn’t yet been persuaded that a tag-along Section 2 claim will ever make sense if the Commission’s goal is to actually win a Section 5 case. The minute we allege both claims, the respondent has the upper hand because it can go before the ALJ (and ultimately an appellate court, if necessary) and get a ruling on the Section 2 claim. Once a court finds that conduct is protected under Section 2, I think a federal court is going to be hard pressed to say the same conduct is nevertheless inappropriate under Section 5. The reason for this is that the core of any Section 5 argument must be that the Commission has special expertise to add and that, for whatever reason, the conduct should not be subject to damages. Once the Commission has proffered the Section 2 claim, it has severely undercut these arguments. It was for this reason, in addition to the others that I discussed above, that I dissented from the Commission’s decision to challenge Intel’s conduct under Section 2.19

#### Section 5 usage is key to allowing a predictable form of antitrust law to form---suits under Section 2 make it likely that judges create inconsistent doctrine which undermines business confidence.

Rosch 11 – Commissioner, Federal Trade Commission.

J. Thomas Rosch, January 27 2011, “The Great Doctrinal Debate: Under What Circumstances is Section 5 Superior to Section 2?” Federal Trade Commission, https://www.ftc.gov/sites/default/files/documents/public\_statements/great-doctrinal-debate-under-what-circumstances-section-5-superior-section-2/110127barspeech.pdf

Third, I’d like to explain why I believe the Commission’s expertise validates its use of Section 5 in certain unusual or anomalous cases that are not good candidates under Section 2. I’ve periodically heard people say that this argument is silly because the Commission is no more expert than the DOJ and that, in any event, my dumping on federal district court judges is without merit. For starters, I don’t think anyone at the FTC would ever suggest that our counterparts at the Antitrust Division are somehow less expert or less equipped to make decisions on hard questions of antitrust law. That would be ridiculous. The real problem is not that the lawyers, economists, and senior officials at the Antitrust Division aren’t first rate in their own right, but it is that the FTC is an independent regulatory commission and the Antitrust Division is not. The DOJ is solely a prosecutor that must prove its cases to a federal district court. There is an entire body of administrative law—and, indeed, a substantial piece of the U.S. Federal Government— that is based on the fundamental principle that administrative agencies are entitled to deference when they act within the scope of their expertise. To put a finer point on it, the issue in this context is not that the Antitrust Division is not smart enough to use Section 5; it’s that it doesn’t have the procedural mechanisms in the form of the ability to sue before an ALJ followed by an appeal to a full, five-member independent commission to use Section 5 as Congress intended.31 What the Antitrust Division does have is authority to sue in federal district courts. I’ve spent plenty of time ragging on generalist federal district courts in the past, but I’m not sure I’ve ever quite explained why I find them so problematic from a Section 5 perspective. The reason, again, is not that district court judges aren’t generally very smart and accomplished—many of them are among the brightest minds in the country. The problem is that they’re not required to be experts in antitrust law, and, when it comes to Section 5, Congress enacted Section 5 of the FTC Act at the same time it created the Federal Trade Commission because it anticipated that the FTC would serve as an expert appellate body in Section 5 cases. I understand that from time to time some may look at the FTC’s composition and say that any given Commission is less expert than other Commissions, but generally speaking, you will find more of a wealth of antitrust expertise at the FTC than in the federal district courts. Indeed, it’s safe to say that if a newly-appointed Commissioner shows up at the FTC without a deep background in antitrust law, they get a crash course in it. Moreover, any doubt in my mind as to whether the Commission’s administrative decision-making process adds real value to the development of antitrust law was erased by the appellate decisions in Three Tenors and North Texas Specialty Physicians. 32 In both cases, the FTC applied the truncated rule of reason analysis articulated in Indiana Federation of Dentists33 (another FTC case) to deem the practices at issue “inherently suspect.”34 In both cases, the D.C. Circuit and the Fifth Circuit, respectively, agreed and adopted the FTC’s analysis. Had these questions been presented to a federal district court in the first instance, it’s unlikely that the court would have been open (let alone equipped) to apply a more novel form of analysis in the first instance. Yet because the FTC supplied the courts with a well-crafted roadmap, the FTC was able to introduce a different form of doctrinal analysis—and one that, I might add, provides more predictability—into antitrust law. I believe that if and when the Commission has the opportunity to issue an opinion in a Section 5 case, it will at some point have the ability to similarly use the administrative litigation and decision-making process to influence the law in the manner that Congress intended.

#### The FTC has all the power it needs to regulate anticompetitive practices via Section 5.

Hubbard 20 – Sally Hubbard is Director of Enforcement Strategy at the Open Markets Institute.

Sally Hubbard, October 1 2020, “Proposals to Strengthen the Antitrust Laws and Restore Competition Online,” Testimony Before the House Judiciary Committee Subcommittee on Regulatory Reform, Commercial and Antitrust Law, https://docs.house.gov/meetings/JU/JU05/20201001/111072/HHRG-116-JU05-Wstate-HubbardS-20201001.pdf

The Open Markets Institute believes that current statutes are capable of addressing the full spectrum of anti-competitive conduct by digital platforms. We believe the main reason for the radical concentration of power in these corporations is not any shortcoming in law, but the lack of political will by antitrust enforcers. We believe this lack of political will is exacerbated by the adherence of law enforcement agencies to dangerously flawed economic philosophies that largely brought us America’s monopoly crisis in the first place. In short, we believe law enforcement agencies can and should aggressively enforce the antitrust laws against platform monopolists now, without waiting for Congress to strengthen or reform these laws. Indeed, the Open Markets Institute believes that enforcers could push the law in the right direction simply by bringing more aggressive cases under existing legal standards. A good example of how this could work is United States v. Microsoft Corp., 11 because today’s digital platforms are following Microsoft’s monopolistic playbook. Similarly, federal antitrust enforcers also are not fully using the tools available to combat anticompetitive conduct. The FTC has a powerful tool with Section 5 of the FTC Act,12 which is broader than the Sherman and Clayton Acts.13 Through Section 5, the FTC can establish rules of fair competition and overcome bad Section 2 caselaw.14 But the agency rarely uses this authority. The FTC also has investigative and rule-making authority that it could broadly deploy.

#### Section 5 allows the FTC to expand interpretations of anticompetitive practices without any congressional involvement.

First and Fox 21 – Harry First Charles L. Denison Professor of Law, New York University School of Law Eleanor M. Fox Walter J. Derenberg Professor of Trade Regulation, New York University School of Law.

Harry First and Eleanor Fox, February 2021, “BIDEN ANTITRUST: THE MIDDLE WAY,” Concurrences, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#first

22. If revolutionary antitrust legislation seems unlikely in the near future, how can a Biden administration meet the challenge of Big Tech platforms while there is still time to do so? Litigation is the route now being pursued, but litigation will be slow (pretrial motions in the DOJ’s Google case are now scheduled through August 2023) and conservative judicial precedent makes success difficult to achieve. [[123](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb123)]

23. The solution is for the FTC to engage in antitrust rulemaking, setting out rules that would proscribe specific anticompetitive conduct when engaged in by a set of leading platforms. [[124](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb124)] As we have written: “We now have lists of conduct that appear on its face to be offensive and inefficient. After appropriate hearings, rules can specify the targeted conduct and, where consumer benefits might possibly be claimed, shift the burden to the platforms to prove this case.” [[125](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb125)] This approach could draw on similar efforts being pursued in other jurisdictions such as the European Union, the UK, and China. [[126](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb126)] Indeed, as we noted above, this rule-making effort would be part of a more general policy to rejoin the world and approach global competition problems globally.

24. It is also time for the FTC to use the full authority that Congress gave it in 1914 under Section 5 of the FTC Act to reprehend “unfair methods of competition.” Every so often the Commission pokes its head up to assert a Section 5 argument that goes beyond the confines of the Sherman Act, but the Commission never seems to press the matter. A prime example is its decision not to pursue its Section 5 claim in the failed Qualcomm litigation. [[127](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb127)]

25. In view of the Supreme Court’s continual shrinking of the reach of Section 2 of the Sherman Act, policy-makers and interested stakeholders have called upon the FTC to restate the scope of a potentially much broader Section 5. The Commission last issued a statement of its Section 5 authority in 2015. That statement took a narrow view of the ways that Section 5 might be interpreted that would go beyond the limits of current Sherman Act interpretations. [[128](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb128)] The FTC should revise the statement and commit itself to a more robust view of what conduct is anticompetitive. It can use its Section 5 authority to pursue a much wider range of exclusionary and exploitative conduct, which could include an effort to deal with excessive pricing of pharmaceutical drugs. [[129](https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nb129)]

#### Section 5 use has a minimal effect on innovation---the perm combines Section 5 use with broad congressional action that stifles innovation.

Dagen 10 – Special Counsel to the Director, Bureau of Competition, Federal Trade Commission.

Richard Dagen, August 2010, “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT,” Boston University Law Review, http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

Section 5 can play and has played a central role in gap filling and upholding the spirit of the antitrust laws. This is particularly true where the conduct at issue does not involve transactional necessities or core competitive values and where the conduct is already condemned under external norms. Under these circumstances, the FTC can craft a clear standard, and there is little risk of chilling procompetitive conduct. The Section 5 cases discussed in this article also easily fit within the limiting principles suggested in recent speeches by FTC officials as well as recent cases.298 The scope for Section 5 discussed here is not meant to set an outer boundary or universal standard for Section 5. Rather, the discussion here centers around what one might call the low-hanging fruit that the Sherman Act does not grab. Notably, since 1992, the FTC has issued numerous complaints and consent agreements based on Section 5 as a gap-filling statute. During the period between Dell and N-Data, there has been little uproar in the antitrust or business community. Some will answer that those were only consent agreements. But antitrust counseling takes into account consent agreements. And of course, Dell and N-Data themselves were consent agreements. Indeed, many fear that antitrust and other substantive law is made primarily by consent. So to denigrate the pure Section 5 actions between Dell and N-Data as consent agreements would be disingenuous. The hostility toward Section 5 is often phrased in terms of the horrible effects on innovation from vague standards.299 But Section 2 is subject to this same criticism,300 as are equitable estoppel and other patent defenses. In short, that claim can be, and likely has been, made with respect to any private or public action that could potentially diminish the incentive to innovate. In the ranking of potential harms to innovation, Section 5 should likely be relatively low. The acceptance of the post-1980s FTC consent agreements is more likely due to the fact that the underlying conduct has not involved transactional necessities or core competition components. For this same reason, these consent agreements would have stood a far better chance in the courts of appeals than the litigated cases of the 1980s. The post-1980s consent agreements are based on sound economic principles and avoid the pitfalls of prior cases. The sky did not fall, and Section 2 and Section 5 have peacefully coexisted.

## DA

#### Turn—prefer our tailored defense of competition policy—it is compatible with broader anti-neoliberalism—their k conflates sources of structural equality and devolves into totalitarianism

Coniglio, antitrust attorney in the Washington, DC office of Sidley Austin LLP, ‘20

(Joseph V., “Economizing the Totalitarian Temptation: A Risk-Averse Liberal

Realism for Political Economy and Competition Policy in a Post-Neoliberal Society,” 59

Santa Clara L. Rev. 703)

The implication of the foregoing is that the most pressing task for competition policymakers may not involve a rethinking of first principles. The principles of neoliberal competition policy may have ultimately been proven justified by an unprecedented period of economic growth, technological progress and reductions in poverty, and should presumably remain operative as long as they remain the best framework for bringing about these ends. Neither, as we have suggested, must the capitalist entrepreneur be lost in the process. The totalitarian temptation to submit to general state control of the economy-whether it be in the form of communism from below or fascism from above should be resisted so as to preserve and build upon the great prosperity Western Civilization has managed to achieve.

This statement will no doubt be highly unsatisfactory to many critics of neoliberalism who seek more fundamental and revolutionary changes. Surely, they suggest, there must be some principled basis for critiquing the neoliberal status quo with which so many are frustrated. Indeed, there very well may be, and none of the arguments in this article should be understood to the contrary. The goal of this article has been limited to a tailored defense of neoliberal principles only as they relate to competition policy, broadly understood. It does not suggest that neoliberal monetary, trade, and fiscal policies are also sound-let alone a neoliberal social order, where all the core institutions within society are organized according to the neoliberal principles of wealthmaximization, empiricism, and the rest.129 This is to say that even if neoliberalism is a sound theory as applied to the area of competition policy, neoliberal monetary policy, for example, may be problematic and a just target for contemporary critics. Similarly, claiming that competition policy should be enforced using a consumer welfare standard does not mean that all the organs of law and civil society should be oriented to maximize wealth or consumer welfare, even if this economic inquiry is nonetheless informative. 30 It is well known that several prominent neoliberals have expanded the neoliberal policy apparatus beyond the regulation of market capitalism with which antitrust is concerned to domains typically understood to be beyond a purely utilitarian purview.' 3 ' However, whatever the merits of these broader neoliberal policy programs, the competition policy baby, so to speak, should not be thrown out with the bathwater.

Consider the charge that neoliberal policies have increased wealth inequality in the United States. Some commentators attempt to link this increased inequality with a decline in competition'3 2 and, by implication, consumer welfare competition policy. Notwithstanding the interest such theories appeared to have garnered from highly distinguished economists and policymakers, such as Nobel Laureate Joe Stiglitz,133 one might alternatively consider whether increasing wealth inequality and the resultant social strife are far more a result of policies in other areas, such as monetary policy. 134 At the same time as Chicago School antitrust policy took root, the American economy began to undergo sustained expansions in the money supply and reductions in interest rates that, at least in theory, disproportionately reward the owners of financial assets, who are more likely to be wealthy. 135

Indeed, after the financial crisis, monetary policy engaged in a truly unprecedented expansion, with the Federal Reserve lowering interest rates to zero and increasing its balance sheet from approximately $900 billion before the crisis to $4.5 trillion after, most of which constituted either troublesome mortgage-backed securities or treasury bonds. 36 The share of wealth of the world's richest people roughly doubled. 37 At the same time, however, one would seem to look in vain for any shift toward an increased laissez faire competition policy during the Obama administration. Indeed, antitrust enforcement under the Obama administration arguably increased relative to the George W. Bush administration, even if only at the margins and not in the area of monopolization. 3

#### The threshold is small – lowered plaintiff burdens means tech companies like are subject to more treble damages – treble damages force companies to significantly limit investment in tech to avoid liability

Delrahim, JD, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice, ‘20

(Makan, “Assistant Attorney General Makan Delrahim Delivers Remarks at IAM’s Patent Licensing Conference in San Francisco,” September 18, <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-iam-s-patent-licensing>)

It can be a serious mistake for a court to allow either type of claim to proceed under the Sherman Act. To understand why that is the case, one should consider the policies underlying Section 2 of the Sherman Act.

One crucial element in establishing any claim of unlawful monopolization under Section 2 is a showing that a defendant acquired, enhanced, or maintained monopoly power in the relevant market through anticompetitive conduct that is “exclusionary” or “predatory” in nature. I will focus on so-called “exclusionary” conduct—the umbrella concept often invoked by licensees bringing Section 2 claims premised on FRAND violations.

The term exclusionary conduct in antitrust law is potentially misleading because there is a difference under the Sherman Act between “lawful” and “unlawful” conduct that results in exclusion of a competitive alternative. In market economies, every rational business wants to exclude and defeat its competitors, and indeed antitrust law encourages fierce competition among companies aiming for as high a market share as they can achieve. That is why courts applying Section 2 are careful not to condemn “exclusionary” conduct that is driven by competition on the merits such as innovation. Most obviously, legitimate competition on the merits can be “exclusionary” in the sense that consumers choose a superior product or service. That conduct does not violate Section 2. By comparison, conduct that “excludes” a competitor by hindering its ability to offer a superior product or service, without offering any benefit to competition, likely would constitute a Section 2 violation.

When courts police the line between lawful and unlawful “exclusionary” conduct, a few themes emerge.

First, courts have recognized that not every type of conduct that may enhance a business’s market power is actionable, such as when the application of Section 2 would impose a duty that contravenes the policies of the antitrust laws themselves. For example, in Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, the plaintiff alleged that Verizon refused to deal with a rival in order to limit competitive entry, thereby enhancing its monopoly position. The Supreme Court held that the claim did not satisfy Section 2 as a matter of law. That is because the claim would condemn a monopolist’s refusal to share its resources and effectively would create an antitrust duty to help a competitor. Such a duty, the Court explained, is in “tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities.” The Court applied a legal rule, rather than a fact-specific rule, to protect conduct that may have an exclusionary, monopoly-enhancing effect.

Second, the Supreme Court has cautioned against antitrust standards that would create an unacceptable risk of “false positives” or condemnations of lawful pro-competitive conduct. As the Court has explained, “Mistaken inferences and the resulting false condemnations ‘are especially costly, because they chill the very conduct the antitrust laws are designed to protect.’” Judge Robert Bork, in his famous Antitrust Paradox, highlighted the same risk in the application of Section 2 theories, explaining with respect to exclusive dealing that “[t]he real danger for the law is less that predation will be missed than that normal competitive behavior will be wrongly classified as predatory and suppressed.”

This backdrop helps frame the question whether a unilateral refusal to license a lawful patent on “FRAND” terms after committing to do so constitutes a form of unlawful exclusionary conduct. A unilateral violation of a FRAND commitment should not give rise to a cause of action under Section 2 of the Sherman Act, even if a patent holder is alleged to have misled or deceived a standard-setting organization with respect to its licensing intentions. Applying Section 2 to this sort of unilateral conduct would contravene the underlying policies of the antitrust laws. This conduct may warrant remedies under contract law, but the important difference is that contract remedies do not involve the threat of treble damages that can deter lawful, pro-competitive conduct.

In the context of legitimate standard setting, the collective decision to incorporate a patented technology into a standard necessarily involves the “exclusion” of rival technologies. Moreover, as a result of having its technology incorporated into a standard, a patent holder may gain incremental market power beyond any power that holding a patent would already convey. By voluntarily participating in the standard setting process, however, owners of rival technologies and prospective licensees assume the risk that the outcome of that process may have an exclusionary effect where there are patents covering the “winning” technology. Simply winning selection by a standard setting process does not constitute unlawful exclusionary conduct under the antitrust laws. This is because that selection, regardless the reason for it, contributes to unification around a single standard, which creates interoperability benefits for consumers that could not be achieved without unification.

This form of lawful and pro-competitive exclusionary conduct should not be condemned as unlawful under the Sherman Act when a licensee believes that a patent-holder opportunistically has reneged on its commitment to license on “FRAND” terms and engaged in so-called “hold-up.” That is also true even where a patent holder never allegedly intended to license on the terms that a court ultimately determines are “FRAND.” I will explain why.

There is no duty under the antitrust laws for a patent holder to license on FRAND terms, even after having committed to do so. A FRAND commitment is a contractual representation that a patent holder will license on “fair,” “reasonable,” and “non-discriminatory” terms. It is not the same as a promise to pay a specific price in a final contract. Indeed, commentators have noted that by failing to specify a specific price, a FRAND commitment is an incomplete contract term.

To be clear, a FRAND commitment may create a duty under contract law to fulfill that obligation, and courts may be tasked with determining the relevant FRAND rate where parties disagree over this contract term. Section 2, however, is agnostic to the price that a patent-holder seeks to charge after committing to such a term. Breaking down “FRAND” by its component terms makes clear why this is so.

First, the Sherman Act does not police “fair” prices or competition; it protects the competitive process. Judge Easterbrook once asked, “Who says that competition is supposed to be fair, that we judge the behavior of the marketplace by the ethics of the courtroom? . . . When economic pressure must give way to fair conduct . . . rivals will trim their sails”; introducing conceptions of “fairness” into the Sherman Act “is to turn antitrust law on its head.”

Second, having undertaken a contractual duty to charge “nondiscriminatory” rates, the Sherman Act does not compel a patent-holder to abide by this promise. The Sherman Act is indifferent to price discrimination; indeed, in some circumstances price discrimination may be pro-competitive.

Third, the Sherman Act does not authorize courts to determine “reasonable” licensing rates. The Supreme Court has emphasized repeatedly that antitrust law does not recognize a cause of action that would “require[] antitrust courts to act as central planners, identifying the proper price, quantity, and other terms of dealing—a role for which they are ill-suited.”

It, therefore, would be a mistake to infer that a contractual FRAND commitment somehow establishes a duty under the antitrust laws to license on terms demanded by a licensee or that violations of an ambiguous FRAND term become an antitrust violation. Transforming such a contract obligation into an antitrust duty would undermine the purpose of the antitrust laws and the patent laws themselves, both of which serve the same goal of increasing dynamic competition by fostering greater investment in research and development, and ultimately in innovation.

Making the duty to license on FRAND terms enforceable under the antitrust laws would contravene the policies of the Sherman Act. As the Supreme Court recognized in Trinko, a business has no antitrust duty to deal with another company, and only in limited circumstances will a refusal to deal give rise to a potential antitrust claim. As then-Tenth Circuit Judge Neil Gorsuch explained in Novell v. Microsoft, following Trinko, a monopolist’s refusal to license its intellectual property is actionable under the antitrust laws only if it terminates a “presumably profitable course of dealing between the monopolist and the rival” and that termination is “irrational but for its anticompetitive effect.”

I would note that then-Judge Gorsuch’s standard echoes what the United States and FTC advocated to the Supreme Court in its amicus brief in the Trinko case. The brief stated:

Where, as here, the plaintiff asserts that the defendant was under a duty to assist a rival, the inquiry into whether conduct is “exclusionary” or “predatory” requires a sharper focus. In that context, conduct is not exclusionary or predatory unless it would make no economic sense for the defendant but for its tendency to eliminate or lessen competition.

That narrow window for a refusal to deal claim is irreconcilable with the broader contention that Section 2 obligates an SEP-holder subject to a contractual FRAND commitment to license its technology to any comer—much less on FRAND terms. An antitrust duty to license on FRAND terms would also contravene the patent laws’ policy of promoting innovation by offering incentives for holders of valid patents to seek the greatest rewards possible for their inventions.

To be clear, contract law may very well require an SEP-holder to deal with any willing licensee, but the Sherman Act does not convert FRAND commitments into a compulsory licensing scheme. It logically follows that there is no antitrust liability for proposing to deal at terms that are above FRAND rates.

Nor should an antitrust duty spring into being if a patent holder allegedly “deceives” an SSO when it commits to license on FRAND terms and its participants rely on that representation in deciding to adopt the technology. That is because Section 2 should not condemn a patent holder’s profit-maximizing intentions or aspirations at the time it makes a FRAND commitment, particularly where remedies are already available to an unhappy licensee or SSO participant.

Suppose that, hypothetically, the holder of a standard-essential patent knew upfront precisely what price would satisfy the vague definition of “FRAND” and planned to demand a much higher price after the SSO incorporated its technology into a standard. By making a legally binding commitment, a patent-holder acknowledges that it will be required under contract law to license at a rate determined by a court if a disagreement over that rate arises later. A licensee, for its part, understands that it can bring suit if a price does not fit its own subjective understanding of “FRAND.” Because both patent-holders and licensees participating in a standard-setting process recognize that the proper “FRAND” rate will be determined after the fact—in court, if necessary—there is therefore no meaningful ex ante “deception” that should give rise to an antitrust claim.

To be sure, having one’s technology incorporated into a standard, in some circumstances, may increase a patent-holder’s market power. The same could be said, of course, about a monopolist’s refusal to deal with a rival who might gain market share if it had access to the monopolist’s inputs. Even if this occurs as a result of a patent holder’s so-called “deception” about its licensing obligations, this is not the sort of market-power-enhancing conduct that Section 2 should reach because a cause of action for treble damages would impede the policies underlying the Sherman Act. Even worse, such a cause of action would “require[] the court to assume the day-to-day controls characteristic of a regulatory agency.”

More fundamentally, recognizing a Section 2 cause of action for violations of a FRAND commitment would create an unacceptable risk of “false positive” condemnations of pro-competitive conduct by licensees. The prospect of antitrust liability and treble damages for breaching a potentially vague FRAND term—or allegedly “misrepresenting” one’s intentions to offer some FRAND rate—threatens to chill incentives for innovators to develop new technologies that fuel dynamic competition.

Where contract law remedies exist to remedy and deter breaches of a FRAND commitment, the additional deterrence that Sherman Act remedies offer could deter lawful, pro-competitive conduct—that is, research and development by innovators who make careful cost-benefit calculations as to how much to invest in technologies that may not pay off. Demanding a high price for one’s patented technology is permissible, and expected, conduct in a free market negotiation. A Section 2 cause of action would skew the patent licensing bargain away from the bargaining outcome that a free market dictates.

In particular, where the parties have a subjective disagreement over the meaning of an incomplete contract term, a Section 2 remedy threatens the patent holder with the risk of enormously costly litigation and a possible treble damages award. Bargaining in the shadow of litigation, a patent holder would be wary that a high license demand could be penalized by a significant damages award, whereas a prospective licensee’s low-ball offer would do no such thing. Such a remedy would bestow any putative licensee with disproportionate negotiating power. In turn, the cost-benefit calculation for innovators would change and the prospect of additional dynamic competition likely would decline.

#### a. Perception—companies do not expect immediate statutory/legal changes—enforcement only affects a small slice of deals

Zero 21 – Senior Reporter for Mergers & Acquisitions

Brandon Zero, "Antitrust Deal Scrutiny More Storm Than Fury," Mergers & Acquisitions, 8-4-2021, <https://www.themiddlemarket.com/news-analysis/threat-of-antitrust-deal-scrutiny-seen-more-storm-than-fury>

What’s the forecast for regulatory scrutiny of deals so far this year? There may be more cloud cover than storms on the M&A horizon. New antitrust scrutiny and a longer review time are potential looming threats, but they lack the lightning needed to actually block deals.

Let’s look at these twin threats and the risks they pose to dealmaking. President Biden’s executive order has spurred the Department of Justice and Federal Trade Commission to increase scrutiny of deals in a move that, “if implemented by regulators and upheld by the courts…could lead to the most robust antitrust enforcement in decades,” writes Debevoise & Plimpton lawyers in a recent note. But that’s a big ‘if.’ The attorneys write that actually intensifying competition review standards would require acts of Congress and/or litigation. Both regulatory agencies have mixed records in courts. And it’s unclear if Democrats will defy the political gravity that has historically weighed down incumbent presidents’ party performance in midterm elections to win a mandate to rewrite antitrust laws.

What about the other lingering storm cloud on the periphery? A frenetic M&A pace has overwhelmed oversight body the Federal Trade Commission to the extent that it’s warned companies the expiration of the standard 30-day waiting period is no longer an implicit approval of a deal, Bloomberg reports. That creates a threat of enforcement even after deals have closed.

Amidst the merger deluge, a few high-profile deals have been challenged, but context is king: the handful of challenged deals represent a small slice of the year’s record value of announced transactions.

For starters, some of the highest profile deals challenged by the new administration’s antitrust regime represent merger dynamics that have always drawn intense scrutiny. Aon Plc’s proposed $30 billion takeover of Willis Towers Watson (Nasdaq: WLTW), announced only five years after Willis Group’s $18 billion merger with Towers Watson, was challenged by the DOJ as taking the industry from three competitors to two. So called “3 to 2” mergers have always been a bright line for regulators. And the insurance investment bankers I’ve spoken to for a decade about industry consolidation have long steered clear of attempts to marry those players or Marsh & McLennan (NYSE: MMC) out of fear of this precise outcome.

There are wild cards that could skew my forecast. It’s true that zealous enforcement of vertical merger review guidelines has created unexpected scrutiny of some sectors, and that agencies’ evolving theories of harm could disproportionately put tech deals at risk. But on the whole, the latest policy announcements may well be more thunder than lightning**.**

#### b. No lasting change even if administrative stuff implemented

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(Joshua D., “Lina Khan Is Icarus at the FTC,” July 13, WSJ)

All that has been overshadowed by an executive order aimed at competition and loaded with goodies, good intentions, new regulatory regimes and a blissful ignorance of unintended consequences (“Joe Biden, 20th Century Trustbuster,” Review & Outlook, July 10). Some of its pronouncements, like occupational-licensing reform, are to the good. But the FTC’s competition authority is about to become a free-for-all for the Biden administration to reshape the economy. One wonders how the Republicans going along with all this to “get Big Tech” are feeling right now; I’m guessing “played.” If not, they’ll catch up soon enough.

Imagining the FTC as Icarus flying without the constraints of history, economics or law is a fun thought experiment, but we’ve been here before. Ms. Khan’s initial steps are indicative of a regulatory overreach that will end with the FTC’s wings melting in the courts. This path does not lead to incremental, much less radical, change. I predict early headlines that appease a rabid base, frustration for FTC staff and a new, volatile partisanship at the agency, but actual results that leave unsatisfied the progressives aching for radical change.

#### Tech edge key to manage China competition—losing it cases escalation

Heath and Thompson, 18

Timothy R. Heath is a RAND Senior Defense and International Analyst, William R. Thompson is a Political Science Professor Emeritus at Indiana University, “Avoiding U.S.-China Competition is Futile: Why the Best Option is to manage Strategic Rivalry,” Asia Policy; Vol 13 No 2; pg 91-120; April 2018.

This article argues that the structural drivers of U.S.-China competition are too deep to resolve through cooperative engagement and that policymakers must instead accept the reality of strategic rivalry and aim to manage it at a lower level of intensity. main argument Rising tensions between China and the U.S. have spurred fears that the two countries could end up in conflict or recreate the Cold War. To avoid these outcomes, analysts have proposed ways to defuse competition and promote cooperation. However, because these arguments do not address the structural drivers underpinning U.S.-China competition, such proposals are unlikely to end the rivalry. Conflict is not inevitable, however, and aggressive strategies that unnecessarily aggravate the sources of rivalry are likely to prove dangerously counterproductive. The best option at this point is, paradoxically, for the U.S. to accept the reality of the growing strategic rivalry and manage it at a lower level of intensity. policy implications • Maintaining a technological edge is critical for the U.S. to successfully manage the rivalry with China. Policies should be pursued to ensure that the U.S. continues to attract and nurture the best science and technology talent and retains its status as the global leader in technology. • To compete with China’s narrative about leading regional integration, the U.S. should both put forth a compelling vision for the region that encompasses widely held economic, security, and political values and continue to bolster its diplomatic and military positions in Asia. • To maintain the U.S.-China rivalry at a stable level, policymakers in both countries should prioritize measures that discourage the mobilization of popular sentiment against the other country and encourage cultural exchanges. • U.S.-China competition will likely become increasingly entwined with rivalries between China and U.S. allies and partners such as Japan and India. U.S. policymakers will need to take into account the independent dynamics of those separate rivalries when managing relations with China. The United States and China find themselves increasingly enmeshed in a strategic rivalry, the basic nature of which remains poorly understood in the United States. To be sure, disagreements between the two countries have gained widespread attention. Disputes involving Chinese confrontations with U.S. allies and partners such as Japan, the Philippines, and Taiwan have frequently grabbed the headlines. At other times, disagreements over Chinese trade practices and U.S. military activities in the South China Sea have occasioned discord. All these sources of conflict are genuine, but they mask the main drivers of rivalry, which are twofold. First, the United States and China are locked in a contest for primacy—most clearly in Asia and probably globally as well. The United States has been the dominant power, and China seeks to eventually supplant it. By definition, two different states cannot simultaneously share primacy at either the regional or global level. Second, economic, demographic, and military trajectories suggest that China has the potential to contend in a significant way for leadership at the global systemic level. At this level, the most decisive competition will be for technological leadership. Should China supplant the United States as the world’s premier country in terms of technology, its claim to regional and global supremacy will be difficult to deny. And once it has gained that supremacy, China will be well positioned to restructure institutional arrangements to privilege itself and disadvantage the United States. Although this competition is occurring simultaneously at both levels, observers have focused primarily on the struggle for primacy at the regional level and overlooked or downplayed the competition at the global systemic level.1 To counter China’s pursuit of regional primacy, the United States has bolstered its alliances in Asia (albeit inconsistently), expanded diplomatic outreach to China and rising powers in Southeast Asia, and revised its military posture—efforts captured by President Barack Obama’s “rebalance to Asia.” President Donald Trump may have abandoned the rebalance, but many of the related initiatives remain more or less in place.2 China’s challenge at the global systemic level, especially in the field of technology, has received less attention. Confidence in the proven U.S. ability to produce new technologies and facile assumptions about the difficulties China will face in promoting innovation in new industries have led many to dismiss the challenge posed by China. But the contest for technological leadership is actually even more consequential than that for regional primacy. Should China succeed in surpassing the United States as the world’s technological leader, U.S. diplomacy and military power will not suffice to hold the line either in Asia or around the globe. Under those conditions, countries throughout the world, including U.S. allies in Asia, will be forced to come to terms with the new leading economy. Military power projection could be far less relevant as China moves to consolidate its leading status at both the regional and global levels in such a scenario. Accordingly, although the United States cannot abandon its efforts to bolster its diplomatic and military position in Asia, the country must step up its efforts to strengthen its faltering lead in new technology development. While China clearly grasps the stakes, it is not clear that the United States does. For example, China’s government has promoted R&D into quantum computing. The investment appears to be paying off, as the country has leaped ahead of the United States in developing quantum communications.3 Similarly, the U.S. Congress has proposed to dispense with subsidies for the purchase of electric vehicles, even as China pushes ahead in its plan to become the lead producer of this technology.4 And while the U.S. government seeks to restrict immigration and discourage foreign students from attending U.S. universities (and staying after they receive their advanced training), China has revised its policies to welcome foreigners, prioritizing those with science and technology expertise. Moreover, Chinese investment in basic R&D is rapidly catching up to that of the United States.5 Studies have also noted a shrinking U.S. lead in science and technology as such investment is beginning to bear fruit.6 Similarly, the United States has lost its once-undisputed lead in the per capita number of engineers and scientists.7 Understanding the nature of the U.S.-China rivalry at the regional and global systemic levels, as well as how these two levels interact with one another, is essential if the United States is to successfully manage the challenge posed by China in a manner that avoids war. This study aims to contribute to that understanding. The article is organized into the following sections: u pp. 95–102 provide an overview of the growing rivalry between China and the United States, including a discussion of the meaning and role of strategic rivalry in interstate conflict and a comparison with the U.S.-China rivalry during the Cold War. u pp. 102–4 review the dynamics of the rivalry at the regional systemic level. u pp. 104–10 analyze the dynamics of the rivalry at the global systemic level. u pp. 110–15 examine why proposals to avoid rivalry through cooperation or aggressive competition are unlikely to succeed. u pp. 115–19 discuss the idea of strategic rivalry management and offer recommendations on ways to sustain the rivalry at a lower level of intensity the growing rivalry between the united states and china Strains between China and the United States have deepened in the past few years over a proliferating array of issues. President Trump has stepped up accusations against China of unfair trade practices and inadequate pressure on North Korea. He also provoked controversy early in his term when he floated the idea of increasing official contacts with Taiwan, which Beijing considers a renegade province.8 These disputes add to tensions that had expanded under President Obama, who moved to strengthen U.S. alliances in Asia, promote a regional trade pact, criticize Chinese behavior in the cyber and maritime domains, and shift more military assets to the Asia-Pacific as part of the rebalance to Asia strategy.9 China has in turn dismissed U.S. concerns about the construction of artificial islands in the South China Sea, intensified its criticism of U.S. security leadership in Asia, and tightened its grip on disputed maritime territories.10 The baleful state of bilateral relations has spurred plenty of finger-pointing. On the Chinese side, officials denounce the United States’ “Cold War mindset” and warn of conflict if Washington does not adjust its policies.11 A 2015 defense white paper described an “intensifying competition” between the great powers.12 Military officials and many Chinese analysts regard increasing tension between the two countries as unavoidable, although they do not regard war as likely. People’s Liberation Army (PLA) deputy chief of staff Qi Jianguo commented that “no conflict and no confrontation does not mean no struggle” between China and the United States.13 According to Chinese official media, polls in China suggest a large majority believes that the United States intends to pursue a containment policy.14 Reflecting this point of view, Niu Xinchun, a scholar at the China Institutes of Contemporary International Relations, argued that the “greatest obstacle to the further integration of emerging countries such as China into the international system comes from the United States.”15 Western officials and commentators tend to blame China for current strains. Senior U.S. leaders have criticized “assertive” Chinese behavior, while some analysts blame Xi Jinping for pushing a more confrontational set of policies.16 Other Western observers worry that a further souring of relations could lead to conflict.17 But even if war remains unlikely, the deepening tensions increase the risks of miscalculation, crises, and potential military clashes involving the world’s two largest powers. Echoing a view widely held among U.S. foreign policy experts and officials, former CIA director General Michael Hayden has warned that mishandling the U.S.-China relationship could be “catastrophic.”18 Rivalry at the Heart of the U.S.-China Relationship This widespread concern reflects a realistic appraisal of the dangers inherent in the U.S.-China relationship. But developing successful policies to manage an increasingly sensitive and complex situation requires an accurate assessment of the phenomenon of interstate rivalry that lies at the heart of that relationship. Rivalry is a concept that, while widely acknowledged, remains poorly understood. To be sure, most experts take for granted the idea that powerful nations compete for status and influence, and they acknowledge the danger posed by a rising power’s challenge to a status quo power. Yet investigation into the phenomenon of rivalry too often stops at these well-trodden findings. Less often discussed are the conclusions regarding the dynamics of rivalry that experts on conflict studies have arrived at within the past few years. Much of this scholarship draws from improvements to the analyses and data regarding interstate crisis and conflict.19 This research has generated useful and interesting insights regarding the start and conclusion of rivalries, crises, and war, although these remain largely unexplored outside academic circles. Analysts have established, for example, that rivalry is perhaps the most important driver of interstate conflict. As defined by political scientists, “rivals” are states that regard each other as “enemies,” sources of real or potential threat, and as competitors. At the root of rivalries thus lie disputes over incompatible goals and perceptions that countries possess both the ability (real or potential) and the intention to harm each other. Wars have historically tended to be fought by pairings of these states and their allies. Rivals have opposed each other in 77% of wars since 1816 and in over 90% of wars since 1945.20 Not only are rivals more likely to fight than non-rivals, but rivals also have a tendency to be recidivists because they are unable to resolve their political differences on the battlefield. Yet that does not always discourage them from trying to do so repeatedly. Rivals that cannot prevail due to parity frequently compete for advantage by building internal strength through arms racing or by leveraging external power through the strengthening of alliances and partnerships. Rivals are also prone to serial militarized crises. Mutual perceptions of each other as hostile enemies and the inconclusive outcome of previous militarized disputes typically fuel a pattern of recurrent crises characterized by deepening resentment, distrust, and growing willingness to risk escalation. Studies have also established that the risk of conflict increases sharply after three episodes of militarized crises.21 Rivalries do not progress in a linear direction, however. Their intensity can wax and wane in response to shocks and other important developments. Periods of relative stability can alternate with turbulent periods of tension and conflict. Similarly, cooperative activities can be interspersed with periods of acute tension and hostility. Nevertheless, the link between rivalry, crises, and interstate conflict is pervasive. Drawing from these sources, one can describe the Sino-U.S. relationship as a rivalry characterized as a competition between two major powers over incompatible goals regarding their status, leadership, and influence over a particular region—in this case principally the Asia-Pacific. The dynamics of this type of strategic rivalry differ in significant ways from the far more numerous rivalries over territory that have characterized conflict between so many countries, especially weaker and poorer ones. In contrast with rivalries over territories, strategic rivals do not necessarily share borders, although allies of one power may be engaged in a territorial dispute with the other major power. Strategic rivalries among major powers tend to be especially long-lived, with the average enduring for about 55 years.22 Strategic rivalries are incredibly complex phenomena that include overlapping and often reinforcing layers of disputes over leadership, status, and territory between the principal rivals and their allies. Such rivalries are almost always multilateral affairs that also involve allies and partners, some of which have their own rivalries with the other side. Competition in the economic, political, and military domains can serve as expressions as well as drivers of rivalry, as can sports and cultural competition. Strategic rivalries can be confined to one region, with the basic conflict reducible in some respects to which rival will occupy the top rung of the regional hierarchy. In other cases, however, a rivalry can span regional and global domains either sequentially or simultaneously. The U.S.-China rivalry, for instance, is already both a regional and, to a lesser extent, a global rivalry, but there is still considerable room for competition to expand. The complex and overlapping nature of the disputes makes strategic rivalries extremely crisis- and conflict-prone. Strategic rivalries come in a grim package deal that includes strained and hostile relations, serial crises, and in some cases wars. The comprehensive and multifaceted nature of the disputes also explains why such rivalries have proved so durable and why their wars have been so devastating. Conflict between strategic rivals has historically occasioned the most destructive wars, of which World Wars I and II are the most recent examples. The fact that experts at the time of each historic episode of systemic conflict consistently underestimated the duration or extent of war offers cold comfort to analysts today who seek to predict the trajectory of any conflict that might involve China and the United States. Comparisons of the Current Environment with the U.S.-China Rivalry during the Cold War How did the two countries arrive at this position? The most widely accepted narrative argues that China’s rapid economic growth has provided the resources with which it can press demands on long unresolved issues such as unification with Taiwan. China and the United States may have enjoyed stable relations in the 1980s when they cooperated on a limited basis against the Soviet Union, but that foundation of cooperation eroded considerably once the Soviet bloc dissolved in the early 1990s. Moreover, China’s rapid growth in economic power has given the country fresh resources to press its own demands on the United States and U.S. allies. By 2010, China’s economy had outpaced that of Japan to become the second-largest in the world.23 The persistence of long-standing sources of antagonism, such as the U.S. security partnership with Taiwan, has both reflected and aggravated a broader competition for leadership. For its own reasons, Washington has resisted Beijing’s demands, and the result has been growing fear and distrust.24 The intensifying rivalry between the rising power and the status quo leader is as old as antiquity itself. Indeed, Graham Allison coined the term “Thucydides trap” to describe such a situation, a term that he subsequently applied to the current U.S.-China situation.25 The popular narrative is not entirely incorrect, yet in some ways it remains incomplete. A closer look at history reminds us that antagonism between China and the United States is not unprecedented. In the 1950s and 1960s, the two countries engaged in an intense strategic competition for status and influence in Asia, one that occasionally burned hot, as it did when they clashed on the Korean Peninsula or more indirectly in Vietnam. This Cold War–era rivalry saw a complex network of competing alliances and partnerships, principally in Asia. The United States supported Taiwan and South Korea in bitter disputes with China and its allies, North Korea and the Soviet Union. This rivalry terminated in the 1970s primarily due to Beijing’s decision to counter a growing Soviet menace and the United States’ decision to pursue China as a potential partner for its own rivalry with the Soviet Union. But the existence of a period of intense U.S.-Chinese tension and competition provides a helpful baseline of comparison. What requires explanation is not the fact that the United States and China are engaged in a rivalry but the difference between today’s rivalry and that of the Cold War. What distinguishes the rivalry today from that of the earlier period is both the closer parity in relative power—albeit still more potential than real—between the two countries and the comprehensiveness, complexity, and systemic nature of the disputes between them. Paradoxically, these features make the current rivalry potentially far more threatening to the United States, despite the fact that so far U.S.-China relations have remained peaceful, and even though the U.S. and Chinese militaries fought each other in the Korean War. The dangerous potential of the current rivalry ultimately owes to the risk that China could rise to the position of global system leader and subordinate the United States accordingly. As has happened in previous power transitions, China as a system leader could exploit existing arrangements to its benefit and to the detriment of the outgoing leader, the United States. Due to the enormous rewards that accrue to a systemic leader and the high costs for the state that loses this position, struggles for global leadership have historically proved to be especially destructive. The possibility that China and the United States could find themselves in a similar struggle, while unlikely at this point, cannot be ruled out given the reality of the relative decline in U.S. power and the concomitant increase in Chinese comprehensive national power. At the most basic level, this fact may be measured superficially by the U.S. share of world GDP, which eroded from 40% in 1950 to 16% in 2014, adjusted for purchasing power parity. Over the same period, China’s share expanded from around 5% to 17%.26 An important consequence of the narrowing of the gap in comprehensive power has been an intensifying competition for leadership in the international economic and political order. In this way, the popular discussion of the Thucydides trap correctly recognizes the dangers of the U.S.-China competition. This feature contrasts sharply with the previous episode of rivalry. In the 1950s and 1960s, the asymmetry in power meant that the United States and China competed for influence and even clashed militarily in countries along China’s borders, but rarely elsewhere. As a largely rural, impoverished country, China had little stake in the system of global trade promoted by the industrialized West. Excluded from the United Nations, Maoist China also lacked the institutional ability to influence geopolitics and project power much beyond its immediate environs—and even that capability was sorely handicapped. Outside Asia, the United States faced minimal competition from China and generally regarded the Soviet Union as a more pressing threat. By contrast, the current competition features a China fully enmeshed in a political and economic order led by the United States. While generally supportive of this order, China is also seeking to revise aspects of the regional and international order that it regards as obstacles to the country’s revitalization as a great power. The main theater of this competition for influence and leadership is the Asia-Pacific, as it was in the Cold War, but U.S.-China rivalry increasingly is expanding globally. Moreover, unlike the largely military, regional, and ideological Cold War competition, the current contest is far more multifaceted and comprehensive in nature; it includes military, economic, technological, and political dimensions. The following two sections review the state of the competition at both the regional and the global systemic levels. the u.s.-china rivalry at the regional level At the regional level, U.S.-China competition spans the political, economic, and military realms. Politically, the two countries have feuded over the role of liberal values and ideals, a dispute that widened after the 1989 Tiananmen Square massacre. However, the 1996 Taiwan Strait crisis elevated the potential threat of conflict between the two countries and may therefore be regarded as the starting point of the current rivalry. Coinciding with impressive gains in China’s economic and military power following two decades of market reforms, the standoff saw Washington and Beijing deploy military assets to back up their respective positions regarding Taiwan’s right to hold a presidential election, elevating the risk of a clash. Since then, the competition for political influence and leadership has intensified. In 2011, the United States announced its rebalance to Asia, which was aimed in part at shoring up U.S. alliances, partnerships, and influence.27 Although on the surface Washington has abandoned the effort, the Trump administration has reintroduced a vision for Asia’s economic and security order premised on values favorable to U.S. interests.28 The 2017 National Security Strategy stated, for example, that the United States upholds a “free and open Indo-Pacific.”29 Beijing, by contrast, has increased its efforts to advance a vision for a regional order premised on Chinese leadership. In recent years, China has promoted major economic and geostrategic initiatives to deepen Asia’s economic integration through the Belt and Road Initiative, Asian Infrastructure Investment Bank (AIIB), and other initiatives.30 In 2017, China for the first time issued a white paper that outlined the government’s vision for Asia-Pacific security. The paper stated that China takes the advancement of regional prosperity and stability “as its own responsibility.”31 These policies build on directives issued by Xi Jinping in 2013, when he called for policies to bolster China’s attractiveness as a regional leader.32 Economically, the two countries are competing over the evolution of Asia’s economic future—a region anticipated to drive global growth in coming decades. Both countries are also competing to shape the terms of trade. President Trump may have abandoned the Trans-Pacific Partnership (TPP), but his advisers have advocated other measures to shape favorable trade terms.33 Meanwhile, China has stepped up advocacy of the Regional Comprehensive Economic Partnership, a proposed free trade agreement for the region that excludes the United States.34 China also has promoted the AIIB, while the United States and Japan continue to instead support the Asian Development Bank.35 Militarily, the growing arms race and the establishment of rival security institutions stand among the most obvious manifestations of an increasing competition in this domain. China and the United States have designed an array of military capabilities and doctrines partly aimed at each other. The PLA has developed weapons systems to counter potential U.S. intervention in any contingency along China’s periphery, which the United States has in turn sought to counter with its own innovations, such as the Joint Operational Access Concept.36 U.S. secretaries of defense Chuck Hagel and Ashton Carter outlined a “third offset” strategy to compete with China and Russia in military technology.37 To promote regional security, the United States has strengthened its military alliances and partnerships, while China has strengthened ties with Russia and argued that regional security is best protected through the Shanghai Cooperation Organisation, the Conference on Interaction and Confidence Building Measures in Asia, and other Chinese-led institutions. In 2014, Xi indirectly rebuked the United States for seeking to bolster its security leadership in the region, stating that “it is for the people of Asia to uphold the security of Asia.”38

## Case

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#### Physical limits to growth are irrelevant – we can inevitably combine resources in new ways to check all impacts

Pooley 12/4/18 – associate professor of economics at Brigham Young University, Hawaii

Gale. Marian L. Tupy is a senior policy analyst at the Cato Institute’s Center for Global Liberty and Prosperity. “The Simon Abundance Index” CATO Policy Analysis No 857, <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa_857.pdf>

While few people would go as far as to compare population growth and the concomitant increase in consumption to “the creed of a cancer cell,” as Ehrlich did, many people continue to feel uneasy about overpopulation and overconsumption. These concerns have deep historical roots and may have been justified at a time when human and animal worlds were more similar than they are today. Back then, a sudden increase in population really could lead to overconsumption of resources, starvation, and death.79

Today’s world, however, is very different from that analyzed by Aristotle or Malthus. As American writer Jonah Goldberg put it in a recent book chronicling human progress, “Almost everything about modernity, progress, and enlightened society emerged in the last 300 years. If the last 200,000 years of humanity were one year, nearly all material progress came in the last 14 hours.”80

It is, in fact, much more difficult to compile a list of measures by which the world is worse off today than it was before science, reason, and humanism made us all healthier, better fed, safer, richer, and even happier.81 We are also much better educated, though old habits, such as our propensity toward pessimism, refuse to go away. Hence Simon’s Rule, which states that “As population increases, the timeprice of most commodities will get cheaper for most people, most of the time. Unfortunately, most people will assume the opposite.”

Simon’s revolutionary insights with regard to the mutually beneficial interaction between population growth and availability of natural resources are counterintuitive, but they are real. The world is a closed system in the way that a piano is a closed system. The instrument has only 88 notes, but those notes can be played in a nearly infinite variety of ways. The same applies to our planet. The Earth’s atoms may be fixed, but the possible combinations of those atoms are infinite. What matters, then, is not the physical limits of our planet, but human freedom to experiment and reimagine the use of resources that we have.

#### Tech solves every physical limit argument

Martin Weiss, European Commission – Joint Research Centre, Directorate C – Energy, Transport and Climate, Sustainable Transport Unit, and Claudio Cattaneo, Autonomous University of Barcelona, Barcelona Institute of Regional and Metropolitan Studies, 3/15/17, Degrowth – Taking Stock and Reviewing an Emerging Academic Paradigm, Journal of Ecological Economics

With the methodological limitations sketched in Section 2, the outcome of our review suggests that the history, concept, and rationale for degrowth are well explained. Yet, the largely descriptive academic discourse lacks rigid hypotheses testing through modelling and empirical assessments. By addressing the research questions and hypotheses identified in Section 5, the academic degrowth discourse could make an important contribution to the debate around a sustainable post-growth development (see also Escobar, 2015).

We expect that degrowth may only receive broader public support if the marginal benefits of the status quo become smaller than those of the next best degrowth scenario for large parts of the population. The degrowth discourse has qualitatively discussed the deficiencies of the status quo but spent little effort to quantify the costs of continued economic growth as well as the well-being benefits of degrowth.

Moreover, growth policies may not necessarily be abandoned on a finite planet earth. Instead, such policies may allow making maximum use of available resources (be it through expanded resource extraction, technological innovation, or increased commodification of society) in the short term, while in parallel enabling the development of means to cope with environmental limits in the long term. Drought in California arguably forced residential water consumption to decrease in 2014 by some 30% (Reese, 2015) without causing major social disruptions. Such a decrease may not have been achievable by appealing to voluntary frugality nor may have water-saving policies obtained sufficient public support by pointing out unsustainable water consumption. The observed water savings might be temporary but show the capacity of humans to adapt in face of acute resource shortage. The case also points to the importance of technology as a catalyst for factor substitution in production and consumption in response to environmental constraints.

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#### Trust in capital is higher than ever and the system is increasingly resilient

Cerrato and Ferrando 20– Faculty of Law, University of Antwerp.

\*\*ESG=environmental, social and governance impact of investments

(Davide Cerrato and Tomaso Ferrando, 3-14-20, “The Financialization of Civil Society Activism: Sustainable Finance, Non-Financial Disclosure and the Shrinking Space for Engagement,” Accounting, Economics, and Law: A Convivium, https://doi.org/10.1515/ael-2019-0006)

4 It’s finance, stupid! Ten years after finance dragged the world into a new Great Recession, the level of trust in financial capital as a pillar of a sustainable transition has never been higher. In the words of the EU High-Level Expert Group on Sustainable Finance, established by the European Commission: “Sustainability is the theme of our time – and the financial system has a key role to play in delivering the set of ambitions” (HLEG, 2018). The 2014 Directive, the assessment of non-financial information, the disclosure of ESG, the construction of a taxonomy to facilitate the identification of sustainable investments and the consolidation of a market for green bonds are just few of the steps taken in the direction of a stronger synergy between the financial world and the areas of environmental and social sustainability there were traditionally organized by states and civil society. As an example, when asked if their work made them activists, a representative of a company providing analysis of ESG fund proxy voting trends replied “The word I prefer is ‘investor advocate’ – You’re advocating for your own investments” (Velasquez-Manoff, 2016).

If the pathways of governments and financiers are converging, some representatives of international and regional civil society have jumped on the bandwagon of ESG trying to directly engage with sustainable finance through one (or more) of the three opportunities that we discussed in the previous section (i. e. translating and promoting ESG; shareholder activism; leveraging the national legal framework). Talks around the financial materiality of the environment, society and governance are becoming more common among the third sector, as if engaging with finance was another arrow in the quiver. Despite the diffused ESG-excitement and the new spaces of contestation, we believe that there are several reasons why the financialization of civil society should not be perceived as a neutral operation that strengthen the actors who engage with it, but rather a game changer in the way people and planet are conceived and their needs manifested. As a matter of fact, endorsing ESG as the integration of the world into the financial mechanisms means at least three things: (a) the legitimation and reproduction of the idea that it is possible to draw a line between financial capitalism on the one hand and people and planet on the other hand; (b) the exclusion of all those conditions that cannot be expressed in financial terms; (c) the over-simplification of complex instances in order to represent them in financially acceptable terms.

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#### Emissions leveled off in 2019 despite growth in the global economy AND the most developed economies all made significant reductions in emissions

**Dellinger 20** – Tech reporter @ Mic; former Forbes contributor

(AJ Dellinger, 2-14-2020, "Global emissions didn't increase in 2019. That's progress, but it's not enough," Mic, https://www.mic.com/p/global-greenhouse-gas-emissions-leveled-off-in-2019-but-we-still-need-more-progress-21801502)

With the amount of new and dire information about the state of the climate and the future of the planet, sometimes no news feels just as good as good news — or in this case, no change is good change. According to the International Energy Agency, human-made greenhouse gas emissions reached 33 gigatons in 2019. That's almost identical to the amount of emissions humans were responsible for in 2018.

While the actual amount of emissions didn't start to come down last year, there is at least one indicator to suggest our emissions problem might be taking a small step in the right direction: emissions leveled off despite growth in the global economy of 2.9 percent, which would usually equate to more new emissions. That is in part because while developing countries largely rely on cheap fossil fuels like coal and natural gas, advanced economies have successfully started to lower their carbon emissions. The United States, despite having a climate change denier holding the highest office in the land, managed to record the largest drop in total carbon emissions, cutting back on 4.8 gigatons between 2018 and 2019. The European Union saw the largest change by percentage, cutting out five percent of all emissions — 2.9 gigatons in total — during the same time period. Japan also saw significant change, dropping 4.3 percent.

The fact that some of the largest advanced economies of the world are managing to make progress should be taken as a positive sign, even if emissions haven't started to teeter off globally. This bright spot is driven primarily by one thing: ditching coal. According to an analysis provided by the International Energy Agency, global carbon emissions from coal use dropped by nearly 200 million tons — about a 1.3 percent decline from 2018 levels. In advanced economies, reliance on coal saw a noteworthy decline of nearly 15 percent. That includes a 15 percent drop in coal usage in the United States, where President Trump has done everything in his power to prop up the dying industry — including pushing the nonsensical concept of "clean coal," rolling back environmental protections for coal plants that limit pollution, opening up federal lands for coal mining projects and straight up ignoring the health risks associated with working in coal mines. The country has largely moved away from coal anyway — in part because it simply has become too expensive to justify using and in part because, despite the federal government's promotion of the fossil fuel, many major cities across the country have simply banned or phased out the carbon-emitting substance.

#### Decoupling possible – robust models in developed countries prove

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“Decoupling analysis of world economic growth and CO2emissions: Astudy comparing developed and developing countries” Journal of Cleaner Production Vol 190, Page 94-103.

By using the TEA method, the decoupling indices in typical developed and developing countries between 1965 and 2015 are calculated (Table 3). The decoupling process of CO2emissions and economic growth in developed countries significantly changed from weak to strong and the decoupling index constantly, and stably, decreased, that is, CO2emissions per unit GDP continuously decreased. This indicates that economic growth in developed countries has less and less influence on environmental damage.

In developed countries, the United Kingdom was in a strongly decoupled state over the whole research period, while variations inCO2emission and the decoupling index were negative since 1976 in Germany, thus seeing that country enter a strongly decoupled state. During 2006 to 2015, variations in CO2emission were negative, while that of gross national product (GNP) was positive in the four developed countries. Moreover, the decoupling index was less than zero, showing a strongly decoupled state. Other published work (Schaltegger and Csutora, 2012) demonstrates that the reason for the sharp decline in carbon emissions in developed countries is mainly governed by the transfer of export industrial production to Asia. This implies that the transformation of industrial structure and the decline of CO2emissions in developed countries are actually paid for by developing countries.

**1. alters incentives—prefer robust statistical analysis**

**Reghr 13**

Ernie Reghr, Senior Fellow in Arctic Security at The Simons Foundation, 2-4-13, “Intrastate Conflict: Data, Trends and Drivers” <http://www.isn.ethz.ch/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=158597&tabid=1453496807&contextid774=158597&contextid775=158627>

“The **most robustly significant predictor** of [armed] conflict risk and its duration is some indicator of economic prosperity. At a higher income people have more to lose from the destructiveness of conflict; and higher per-capita income implies a better functioning social contract, institutions and state capacity.”[3] This correlation between underdevelopment and armed conflict is confirmed in a 2008 paper by Thania Paffenholz[4] which notes that “since 1990, more than 50% of all conflict-prone countries have been low income states…. Two thirds of all armed conflicts take place in African countries with the highest poverty rates. Econometric research found a correlation between the poverty rate and likelihood of armed violence….[T]he lower the GDP per capita in a country, the higher the likelihood of armed conflict.” Of course, it is important to point out that this is not a claim that there is a direct causal connection between poverty and armed conflict. To repeat, the causes of conflict are complex and context specific, nevertheless, says Paffenholz, there is a clear correlation between a low and declining per capita income and a country’s vulnerability to conflict. It is also true, on the other hand, that there are low income countries that experience precipitous economic decline, like Zambia in the 1980s and 1990s, without suffering the kind of turmoil that has visited economically more successful countries like Kenya and Cote d’Ivoire. Referring to both Zambia and Nigeria, Pafenholz says these are cases in which “the social compact” has proven to be resilient. Both have formal and informal mechanisms that are able to address grievances in ways that allowed them to be aired and resolved or managed without recourse to violence. A brief review of literature on economics and armed conflict, published in the Journal of the Royal Society of Medicine, indicates the complexity and imprecision behind the question, “does poverty cause conflict?” While many of the “world’s poorest countries are riven by armed conflict,” and while poverty, conflict and under-development set up a cycle of dysfunction in which each element of the cycle is exacerbated by the other, it is also the case that “conflict obviously does not just afflict the poorest countries” – as Northern Ireland and the former Yugoslavia demonstrate. “Many poor countries are not at war; shared poverty may not be a destabilizing influence. Indeed, economic growth can destabilize, as the wars in countries afflicted by an abundance of particular natural resources appear to show.”[5] Another review of the literature makes the general point that “the escalation of conflict during economic downturns is more likely in countries recovering from conflict, or fragile states.” That makes Africa especially vulnerable on two counts: economic deprivation and recent armed conflict are present in a relatively high number of states, making the continent especially vulnerable to economic shocks. As a general rule, “weak economies often translate into weak and fragile states and the presence of violent conflict, which in turn prevents economic growth.” One study argues that “the risk of war in any given country is determined by the initial level of income, the rate of economic growth and the level of dependency on primary commodity exports.” Changes in rates of economic growth thus lead to changes in threats of conflict. As unemployment rises in fragile states this can “exacerbate conflict due to comparatively better income opportunities for young men in rebel groups as opposed to labour markets.”[6] The concentration of armed conflict in lower income countries is also reflected in the conflict tabulation by Project Ploughshares over the past quarter century. The 2009 Human Development Index ranks 182 countries in four categories of Human Development – Very High, High, Medium, Low. Of the 98 countries in the Medium and Low categories of human development in 2009, 55 per cent experienced war on their territories in the previous 24 years. In the same period, only 24 per cent of countries in the High human development category saw war within their borders, while just two (5 per cent) countries in the Very High human development ranking had war on their territory (the UK re Northern Ireland and Israel). The wars of the recent past were overwhelmingly fought on the territories of states at the low end of the human development scale. A country’s income level is thus a strong indicator of its risk of being involved in sustained armed conflict. Low income countries lack the capacity to create conditions conducive to serving the social, political, and economic welfare of their people. And when economic inequality is linked to differences between identity groups, the correlation to armed conflict is even stronger. In other words, group based inequalities are especially destabilizing.[7] These failures in human security are of course heavily shaped by external factors, notably international economic and security conditions and the **interests of the major powers** (in short, globalization),[8] and these factors frequently combine with internal political/religious/ethnic circumstances that create conditions especially conducive to conflict and armed conflict.

2.

#### Nuke war causes extinction AND outweighs other existential risks

PND 16. internally citing Zbigniew Brzezinski, Council of Foreign Relations and former national security adviser to President Carter, Toon and Robock’s 2012 study on nuclear winter in the Bulletin of Atomic Scientists, Gareth Evans’ International Commission on Nuclear Non-proliferation and Disarmament Report, Congressional EMP studies, studies on nuclear winter by Seth Baum of the Global Catastrophic Risk Institute and Martin Hellman of Stanford University, and U.S. and Russian former Defense Secretaries and former heads of nuclear missile forces, brief submitted to the United Nations General Assembly, Open-Ended Working Group on nuclear risks. A/AC.286/NGO/13. 05-03-2016. http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/NGO13.pdf

Consequences human survival 12. Even if the 'other' side does NOT launch in response the smoke from 'their' burning cities (incinerated by 'us') will still make 'our' country (and the rest of the world) uninhabitable, potentially inducing global famine lasting up to decades. Toon and Robock note in ‘Self Assured Destruction’, in the Bulletin of Atomic Scientists 68/5, 2012, that: 13. “A nuclear war between Russia and the United States, even after the arsenal reductions planned under New START, could produce a nuclear winter. Hence, an attack by either side could be suicidal, resulting in self assured destruction. Even a 'small' nuclear war between India and Pakistan, with each country detonating 50 Hiroshima-size atom bombs--only about 0.03 percent of the global nuclear arsenal's explosive power--as air bursts in urban areas, could produce so much smoke that temperatures would fall below those of the Little Ice Age of the fourteenth to nineteenth centuries, shortening the growing season around the world and threatening the global food supply. Furthermore, there would be massive ozone depletion, allowing more ultraviolet radiation to reach Earth's surface. Recent studies predict that agricultural production in parts of the United States and China would decline by about 20 percent for four years, and by 10 percent for a decade.” 14. A conflagration involving USA/NATO forces and those of Russian federation would most likely cause the deaths of most/nearly all/all humans (and severely impact/extinguish other species) as well as destroying the delicate interwoven techno-structure on which latter-day 'civilization' has come to depend. Temperatures would drop to below those of the last ice-age for up to 30 years as a result of the lofting of up to 180 million tonnes of very black soot into the stratosphere where it would remain for decades. 15. Though human ingenuity and resilience shouldn't be underestimated, human survival itself is arguably problematic, to put it mildly, under a 2000+ warhead USA/Russian federation scenario. 16. The Joint Statement on Catastrophic Humanitarian Consequences signed October 2013 by 146 governments mentioned 'Human Survival' no less than 5 times. The most recent (December 2014) one gives it a highly prominent place. Gareth Evans’ ICNND (International Commission on Nuclear Non-proliferation and Disarmament) Report made it clear that it saw the threat posed by nuclear weapons use as one that at least threatens what we now call 'civilization' and that potentially threatens human survival with an immediacy that even climate change does not, though we can see the results of climate change here and now and of course the immediate post-nuclear results for Hiroshima and Nagasaki as well.

#### Rejection of capitalism causes massive transition wars --- (plan) more likely makes it happen

Harris 03. Lee, Analyst – Hoover Institution and Author of The Suicide of Reason, “The Intellectual Origins of America-Bashing”, Policy Review, January, http://www.hoover.org/publications/policyreview/3458371.html

This is the immiserization thesis of Marx. And it is central to revolutionary Marxism, since if capitalism produces no widespread misery, then it also produces no fatal internal contradiction: If everyone is getting better off through capitalism, who will dream of struggling to overthrow it? Only genuine misery on the part of the workers would be sufficient to overturn the whole apparatus of the capitalist state, simply because, as Marx insisted, the capitalist class could not be realistically expected to relinquish control of the state apparatus and, with it, the monopoly of force. In this, Marx was absolutely correct. No capitalist society has ever willingly liquidated itself, and it is utopian to think that any ever will. Therefore, in order to achieve the goal of socialism, nothing short of a complete revolution would do; and this means, in point of fact, a full-fledged civil war not just within one society, but across the globe. Without this catastrophic upheaval, capitalism would remain completely in control of the social order and all socialist schemes would be reduced to pipe dreams.

#### Extinction

Nyquist 5. J.R. renowned expert in geopolitics and international relations, WorldNetDaily contributing editor, “The Political Consequences of a Financial Crash,” February 4, www.financialsense.com/stormw...2005/0204.html

Should the United States experience a severe economic contraction during the second term of President Bush, the American people will likely support politicians who advocate further restrictions and controls on our market economy – guaranteeing its strangulation and the steady pauperization of the country. In Congress today, Sen. Edward Kennedy supports nearly all the economic dogmas listed above. It is easy to see, therefore, that the coming economic contraction, due in part to a policy of massive credit expansion, will have serious political consequences for the Republican Party (to the benefit of the Democrats). Furthermore, an economic contraction will encourage the formation of anti-capitalist majorities and a turning away from the free market system. The danger here is not merely economic. The political left openly favors the collapse of America’s strategic position abroad. The withdrawal of the **U**nited **S**tates from the Middle East, the Far East and Europe would catastrophically impact an international system that presently allows 6 billion people to live on the earth’s surface in relative peace. Should anti-capitalist dogmas overwhelm the global market and trading system that evolved under American leadership, the planet’s economy would contract and untold millions would die of starvation. Nationalistic totalitarianism, fueled by a politics of blame, would once again bring war to Asia and Europe. But this time the war would be waged with mass destruction weapons and the United States would be blamed because it is the center of global capitalism. Furthermore, if the anti-capitalist party gains power in Washington, we can expect to see policies of appeasement and unilateral disarmament enacted. American appeasement and disarmament, in this context, would be an admission of guilt before the court of world opinion. Russia and China, above all, would exploit this admission to justify aggressive wars, invasions and mass destruction attacks. A future financial crash, therefore, must be prevented at all costs.