# Navy Finals Disclosure

# 1NC

**1NC---T**

**“Expand the scope” means broadening the range of claims that can be brought legitimately---that’s distinct from changing what is prohibited**

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Lise A. Barrera, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Vol. 42, Summer 1996, LexisNexis

It is important to note the **distinction between** the **expansion of the scope** of section 43(a) and the **standard that courts apply** in **granting relief to claims** under this section. The scope of section 43(a) **allows plaintiffs to claim the** **section provides them with protection** and thus should grant them relief. The **expansion of the scope allows** a **much broader range of claims to be brought** legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts **apply a standard** to the claim in order to **determine whether a plaintiff should be granted relief**.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

**The only way to do that is by reducing or eliminating an antitrust immunity or exemption---the scope of antitrust laws is *only limited* by sectoral exemptions, state action immunity, and Noer-Pennington immunity**

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Bruce H. Kobayashi and Joshua D. Wright, "Antitrust Exemptions and Immunities in the Digital Economy," Global Antitrust Institute, 5-28-2020, https://gaidigitalreport.com/2020/10/04/exemptions-and-immunities/

Introduction

The antitrust laws were designed to regulate private conduct in order to promote competition and protect consumer welfare from exercises of monopoly power by firms. In other words, the antitrust laws, as “the magna carta of free enterprise,”[1] are designed primarily to regulate private conduct, not government conduct and public restraints of trade.[2] Private activity may still fall **outside the scope of the antitrust laws** when it is **exempted specifically** by Congress, heavily guided or **influenced by the governmen**t, or relates to **attempts to petition the government** to take action.

**Antitrust laws’ outer boundaries** fall into **three categories**: (1) **sectoral** or **industry-level exemptions**, which single out an industry or business line from antitrust scrutiny; (2) **state action immunity**, which provides immunity for anticompetitive behavior by state governments and municipalities under certain conditions; and (3) **Noerr-Pennington immunity**, which aims to protect speech in the form of petitioning activity from antitrust liability.[3] The digital economy interfaces with the government in many respects; therefore, the **antitrust laws’ reach**—shaped by these **exemptions** and **immunities**—plays a clear role in guarding consumer welfare.

**Vote neg---**

**[1]---Limits---any other interpretation allows the aff to change *any* determination the courts have made about the legality of private sector practices, which creates an untenable research burden**

**[2]---Grounds---provides a core mechanism that can predictably and reliably be the focus of neg contestation.**

#### Text: The United States federal government should allow relevant agencies to sue to enjoin [object of plan] and recover single damages.

### 1NC---CP

#### The United States federal government should:

* Substantially increase funding for space elevators
* Substantially increase funding for smart cities
* Align its align its AI regulation with the European Union

### 1NC---CP

#### The United States Federal Government should substantially increase prohibitions on extraterritorial anticompetitive business practices by the private sector without expanding the private right of action of its core antitrust laws.

#### Counterplan avoids private enforcement---private suits are an inextricable part of antitrust liability---public enforcement is sufficient

McCarthy et al., GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, ‘07

(Eric, Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado, “Litigation culture versus enforcement culture A comparison of US and EU plaintiff recovery actions in antitrust cases,” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>)

In comparison, in the European Union, private enforcement actions are rare and play less of a role than public enforcement in the fight against anti-competitive behaviour. Several obstacles hinder actions for damages in member state national courts, including a plaintiff’s limited access to evidence, the unavailability of class actions and the potential that the plaintiff may have to pay the defendants’ costs if the plaintiff loses the case. To address these obstacles and the great diversity of damages actions among the member states, the European Commission recently published a green paper on Damages Actions for Breach of the EC Antitrust Rules.3 The green paper examines those aspects of EU litigation practice that have led to a pronounced underdevelopment of private damages actions in the EU. Since its publication in December 2005, the green paper has sparked significant debate within the international antitrust community about the role of private enforcement of EC Treaty competition law and about damages actions in particular. The general expectation is that private damages actions will emerge (albeit slowly) in the European Union. This article compares the state of plaintiff recovery actions in antitrust cases in the US with that of the EU and explores why the United States is more litigious than the EU.

Private antitrust damages actions in the US

Rightly or wrongly, the United States has earned the reputation of having a ‘litigation culture’ that permeates its entire legal system.4 If that is true, it certainly earned its stripes this past year in the area of antitrust litigation. Although the number of civil cases filed in the United States dropped by 10 per cent from 2004 to 2005, the number of antitrust civil filings, almost all of which were initiated by private plaintiffs, rose by 8.8 per cent.5 In the first six months of 2006, the number of antitrust class actions doubled over the same period in 2005.6 Some experts speculate that “[h]ard-charging regulators, a more aggressive plaintiffs[’] bar, and the implementation of [CAFA]” may contribute to the increase in antitrust litigation.7 But in all likelihood, the explanation is far more elementary. As discussed in greater detail below, the pot of treble damages available to plaintiffs in the United States, as well as pro-plaintiff discovery and procedural rules, make private damages extremely easy and attractive to pursue.

The treble damages remedy

In 1914, the US Congress passed the Clayton Act, codified at 15 USC sections 12-27. Section 4 of the Act extends the Sherman Act’s prohibitions on anti-competitive behaviour and, most notably, allows “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws” to sue for and “recover threefold the damages by him sustained”.8 Treble damages were designed to deter illegal conduct, deprive antitrust violators of the “fruits of their illegal activities” and provide compensation to victims of wrongdoing.9

The Clayton Act’s treble damages provision is not without its critics.10 Many practitioners and policy makers contend that trebling damages creates too great an incentive for plaintiffs to sue. Additionally, they argue, treble damages actions can result in a windfall to plaintiffs. Furthermore, some believe that large fines and the potential for criminal penalties create just as much of a deterrent against violations, without the need for treble damages.11 Nonetheless, the ability of a US private plaintiff to recover treble damages is so sacred and well protected that earlier this year the First Circuit held in Kristian v Comcast Corp12 that, although Comcast could contract with its subscribers to arbitrate antitrust claims, the arbitration agreements could not bar treble damages because “the award of treble damages under the federal antitrust statutes cannot be waived”.13

Although exceptions to the treble damages provision remain few and far between, congress enacted the Criminal Penalty Enhancement and Reform Act (CPERA) in June 2004. CPERA eliminates the treble damages remedy for corporations that qualify for amnesty under the Department of Justice’s Amnesty Programme.14 Under CPERA, a corporation must report its own anti-competitive behaviour to the DoJ and enter into the Corporate Leniency Programme.15 If a private plaintiff sues the corporation for the same behaviour, the civil court may assess single damages against the participating corporation, but only if the judge in the civil action determines that the corporate defendant is cooperating with the civil claimant by providing a full account of the conduct, furnishing all potentially relevant documents, and securing testimony, depositions and interviews from employees.16

Discovery and evidence

Plaintiffs enjoy broad discovery rights in the United States under the Federal Rules of Civil Procedure. These rules provide significant incentives for plaintiffs to file damages suits, even if they have very little factual bases for the underlying claims. At the outset of a case, the parties are obliged to make certain disclosures to one another, including the name of each individual “likely to have discoverable information” and a description by category and location of all documents in the party’s possession or control that it may use to support its claims or defences.17 Thereafter, during the fact-finding or discovery period, plaintiffs may seek a defendant’s business documents through written requests18 as well as answers to questions through written interrogatories.19 Plaintiffs may also ask questions of a defendant’s employees (regardless of seniority), who must sit for depositions and testify under oath.20 Moreover, plaintiffs may seek documents and testimony from non-parties with relative ease.21

Armed with such easy access to a defendant’s or non-party’s documents and employees, plaintiffs with limited evidentiary bases for their lawsuits may be inclined to sue and go on ‘fishing expeditions’ to discover facts to support their case.

Contingent fees

Plaintiffs that file antitrust damages actions in the United States routinely do so on a contingent fee basis. Under such an arrangement with counsel, the plaintiff client does not pay any fees to his or her attorney unless and until the plaintiff collects damages either by settling with the defendant or prevailing at trial. Typically, plaintiffs’ attorneys demand 33 per cent of the recovery as the fee.22 The result is a win for both client and attorney. The fee arrangements allow plaintiffs with limited funds the freedom to pursue their lawsuits without having to fund the litigation along the way. The plaintiffs’ attorney, on the other hand, is attracted to the prospect of treble damages, and thus a larger fee, and therefore is willing to front the litigation costs in the hopes of earning a sizeable fee at the conclusion of the suit.

Class actions

Class actions are the procedural device that enable one or more plaintiff members of a proposed class to sue on behalf of all similarly situated members of the same proposed class.23 Courts in the US have recognised that class actions can be appropriate mechanisms for promoting private enforcement of the antitrust laws.24 In this way, large numbers of potential claimants can prosecute their claims in a cost-efficient manner.25 The objective of any class action lawyer is to get the class certified. To do so, the court must find that the proposed class is “so numerous that joinder of all members is impracticable”, that there are “questions of law or fact common to the class”, that the “claims or defenses of the representative parties are typical of the claims or defenses of the class” and that the proposed class representatives “will fairly and adequately protect the interests of the class”.26 In addition, in most antitrust cases, the court must determine that the “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”27 Under rule 23, proposed class members are afforded the opportunity to decline to join or to ‘opt out’ of the class. But if the class is certified, all class members who do not affirmatively opt out are bound by the decision in the case and cannot pursue their claims individually. Class actions remain a popular means among plaintiffs’ lawyers to litigate antitrust conspiracy claims because they are regularly certified.

State indirect purchaser actions

In Illinois Brick Co v Illinois,28 the US Supreme Court held that, in order to maintain a claim for damages under section 4 of the Clayton Act, a plaintiff must have purchased the product in question directly from the alleged defendant-antitrust violator. The landmark decision thus precludes plaintiffs in a federal court from seeking alleged damages that were ‘passed through’ from the defendant down the chain of distribution in the form of overcharges. In direct response to Illinois Brick, many US state legislatures passed antitrust statutes that permit indirect consumers (ie, below the direct purchaser in the distribution chain) to sue the alleged violator. Today, 29 states permit such suits, or, alternatively, allow the state attorney general to pursue antitrust claims on behalf of indirect consumers.29 In these ‘Illinois Brick repealer’ states, as they are known, defendants face the real prospect of defending against lawsuits that mirror direct purchaser lawsuits pending against them in a federal court.

Huge jury verdicts and settlements

One natural result of the ease with which plaintiffs can pursue treble damages actions in the United States is huge jury verdicts in private antitrust cases. In Conwood v US Tobacco, the plaintiff manufacturer of moist smokeless tobacco (snuff) sued a competitor, the manufacturer of Copenhagen and Skoal, for unlawful monopolisation in violation of section 2 of the Sherman Act, among other claims.30

The jury awarded plaintiffs approximately US$350 million in damages, which, when trebled, resulted in an award that exceeded US$1 billion. The award is thought to be the largest antitrust jury verdict ever recorded.31

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

The ultimate risk of large jury verdicts inspire settlements even if the defendants litigate the cases for years and at great expense. In 1998, in In re NASDAQ Market-Makers Antitrust Litigation, MDL Docket No. 1023, plaintiffs settled with 37 defendants for a total of US$1.027 billion.34 And in 2003, on the eve of trial, defendant Visa USA settled with plaintiffs in In re Visa Check/Mastermoney Antitrust Litigation, 297 F Supp 2d 503, 506-508 (EDNY 2003) for approximately US$2 billion. Two days later, defendant MasterCard settled for approximately US$1 billion. The combined US$3.05 billion settlement has been described as “the largest antitrust settlement ever”.35 Private damages actions in the EU

In stark contrast to the United States, private damages actions in the EU are few in number and have never played much of an antitrust enforcement role. Although the European Court of Justice (ECJ) in 2001 explicitly recognised a right to damages for breaches of EC competition law,36 plaintiffs have pursued very few damages claims for violations of competition rules. According to a 2004 study (the Ashurst Study), private damages actions based on the violation of either EU or national antitrust rules are in a state of “total underdevelopment” due to various obstacles in bringing such lawsuits.37

To address these obstacles, the EC recently published a green paper, in which the Commission has sparked significant discussion on the present and future role of private enforcement in the EU. This section explores that role.

EU antitrust laws and enforcement

In the EU, there are two levels of antitrust laws and enforcement. The Commission enforces EU antitrust rules at the EU level, which is limited to public enforcement. At the member state level, however, national antitrust authorities and national courts apply both EU and national antitrust laws. Member states permit private enforcement, including damages actions, through national courts.38 Within this two-tiered system, national antitrust authorities and national courts may apply both EU and national antitrust laws, though substantively there is often little difference between the two.

Articles 81 and 82 of the European Community Treaty govern antitrust enforcement. The ECJ long ago decided that these provisions create rights for private parties that national courts must safeguard.39 In Courage v Crehan, the ECJ held that these rights include the right to damages,40 and recently it clarified that such a right includes compensation not only for actual loss, but also for loss of profit plus interest.41 Moreover, with the adoption of Regulation 1/2003,42 the Council of the European Union ‘modernised’ antitrust enforcement by including new procedural rules for the application of articles 81 and 82. In particular, by devoting specific provisions to national courts, the EU legislative branch has recognised the fundamental role that national courts play in the private enforcement of EU antitrust law for the first time since the inception of EU antitrust enforcement in the early 1960s.

The green paper

These developments, however, have not been sufficient to ensure an effective system of private antitrust enforcement, particularly damages actions, throughout 25 jurisdictions with very different legal traditions and markedly diverse substantive and procedural rules. According to the Ashurst Study, to date there have been only 28 successful private actions for damages for violations of the antitrust laws in the EU.43 More often than not, only single large companies that allege anti-competitive behaviour by dominant competitors have pursued private damages actions. For these well-financed plaintiffs, the damages that they seek are large enough to offset the trouble and costs of private litigation before a national court.

In light of the obstacles to private enforcement in the EU, the Commission published its green paper in 2005 to facilitate damages actions, enhance the overall effectiveness of antitrust enforcement and, ultimately, increase compliance with antitrust laws. In response to criticism from those practitioners who fear the adoption of a USstyle system that could lead to ‘excessive litigation’, the Commission has stated that the objective is that of building “an enforcement culture, not a litigation culture”, in which private enforcement would complement public enforcement.44 For each obstacle to damages actions, the green paper proposes several solutions, although the Commission has not yet indicated how it intends to implement any of these solutions (eg, by means of an EU Directive harmonising certain aspects of national law, or thorough ‘soft law’ such as Commission guidelines).

Amount of damages

Treble damages are not available in the EU. It is also not likely that they will be any time soon; the Commission notes that the US treble damages system can lead to “unmeritorious or vexatious litigation”.45 Instead, compensation is limited to the harm suffered, without the possibility of obtaining punitive or exemplary damages. Plaintiffs may thus usually recover only the loss actually incurred, as well as, in some countries, the loss of profits.46 The Ashurst Study, however, revealed that this system of limited recovery provides disincentives to private litigation.47 To provide balance, the Commission proposes to maintain the rule of single damages, while contemplating the possibility of awarding double damages in cartel actions.48 On this issue, it recognises that the addition of double damages will require the implementation of appropriate measures to avoid jeopardising the effectiveness of leniency programmes (eg, successful immunity applicants would be exposed to single damage recovery only).49

#### Expanding liability to private plaintiffs is bad---turns case and undermines solvency

Nuechterlein, JD, partner and co-leader of Sidley's Telecom and Internet Competition practice, and Muris, George Mason University Foundation Professor of Law, served from 2000-2004 as Chairman of the Federal Trade Commission, ‘21

(Jon and Timothy J., “Private Antitrust Remedies: An Argument Against Further Stacking the Deck,” March, <https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf>)

Advocates of expanding private antitrust remedies begin with the premise that “private enforcement deters anticompetitive conduct” and conclude, in the words of the Report, that legal “obstacles” to recovery by “private antitrust plaintiffs” should be eliminated to maximize deterrence.24 But even if the premise is true,25 the conclusion would not follow. The Report appears to assume that the more deterrence the law provides, the better, and that any “obstacles” to private recovery should thus be removed.26 But that position ignores the consequences of overdeterrence, including the prospect that firms will respond to the threat of draconian penalties in ways that reduce the threat of liability but that ultimately harm consumers.

Overdeterrence is a particular concern in antitrust doctrine because the line separating lawful from unlawful conduct can be blurred and much of the conduct falling on the lawful side of the line is socially beneficial. As economists William Baumol and Alan Blinder explain: One problem that haunts most antitrust litigation is that vigorous competition may look very similar to acts that undermine competition …. The resulting danger is that courts will prohibit, or the antitrust authorities will prosecute, acts that appear to be anticompetitive but that really are the opposite. The difficulty occurs because effective competition by a firm is always tough on its rivals.27

For example, excessive antitrust remedies for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to keep prices well above their costs and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in less competition and higher prices for consumers—the very outcomes the antitrust laws are designed to prevent.

Proposals to slap another layer of deterrence on top of existing private remedies are particularly perverse because, as discussed above, the current U.S. regime is already overdeterrent, in that it subjects firms to unusually severe liability risks even for overt conduct subject to the rule of reason. If anything, Congress should consider aligning private antitrust remedies with remedies for analogous common law torts by, for example, limiting treble damages and one-way fee-shifting to cases involving hard-core violations that may elude detection, such as price-fixing cartels. In all events, Congress should not make a bad situation worse by ratcheting up the level of overdeterrence.

### 1NC---CP

Section 5 Counterplan---

#### The United States Federal Trade Commission should:

#### determine that, under Section 5 of the Federal Trade Commission Act, “unfair methods of competition” includes anticompetitive business practices by the private sector

#### Broad FTC authority means the counterplan solves

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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.

#### Allows the FTC to crack down on pay-for-delay.

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Royce, 2014, HEVRON DEFERENCE AND THE FTC: HOW AND WHY THE FTC SHOULD USE CHEVRON TO IMPROVE ANTITRUST ENFORCEMENT, Columbia Law Review.

As a final example, this Note examines pay-for-delay liability. 162 The history of this problem can be summarized briefly. For over a decade, the FTC has cracked down on pay-for-delay settlements. 163 During this time, appellate courts consistently rejected the FTC's theory of liability because of the statutory presumptions inherent to patent law and the Hatch-Waxman Act.164 Eventually, the FTC succeeded in creating a circuit split, giving rise to the Actavis decision, where the Court held that a settlement "can sometimes violate the antitrust laws."16 5 From the perspective of this Note, what makes pay-for-delay important is that it provides a retrospective lesson-the FTC could not have forced this change earlier by taking advantage of Chevron deference-as well as a prospective opportunity- the FTC has a unique occasion to promulgate notice-and-comment rules.

Turning first to the retrospective lesson, understanding the logic of these courts' holdings leads to the conclusion that the FTC could not have used notice-and-comment rulemaking or Chevron deference to hasten this change. The FTC's rulemaking grant does not permit direct regulation of patents, nor does it empower interpretations of the HatchWaxman Act. 167 Circuits that have ruled against pay-fordelay settlements would also find that the FTC lacked authority to promulgate such regulations. In a sense, there is an inverse Chenery principle at work. In Chenery, the Supreme Court explained that the SEC's mandate included the ability to proceed either through litigation or adjudication.168 In the pay-for-delay context, the FTC can proceed with neither rulemaking nor litigation. Once a court determines that a substantive legal issue falls outside of an agency's mandate through litigation, rulemaking is also likely to be found inappropriate. As a larger jurisprudential insight, this reveals a powerful method that courts can use to check the FTC. If a court can justify a presumption on broader regulatory grounds, and not merely antitrust law, then the FTC lacks authority to regulate this conduct.

Moving to the post-Actavis antitrust regime, the FTC is now in a different situation. In Actavis, the Court created a new sphere of antitrust liability and left "to the lower courts the structuring of the present rule-of-reason antitrust litigation. 1 69 Faced with this new precedent, the FTC has three reasons to begin exercising its rulemaking authority. First, the FTC correctly identified reverse settlements as potentially anti-competitive while lower courts remained skeptical. The FTC's characterization of this conduct will carry a certain rhetorical force that can be leveraged toward more assertive regulation. Second, and building on the first point, the FTC's institutional advantages and capabilities to form presumptions in this regulatory arena are at their height. Indeed, as Professor Hemphill argues, the FTC's ability to aggregate data gives it the unique ability to form the presumptions required for understanding the pay-fordelay regulatory structure. 170 Third, FTC regulation can provide crucial guidance to businesses. In creating, but not defining, the scope of liability, the Court has created considerable uncertainty around settlements. 171 Concededly, while FTC regulation cannot shield a corporation from liability under the Sherman Act, it can provide initial guidance for conduct likely to lead to liability in this unsettled area.

#### Generic competition is vital to biologics innovation

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Laurence J. Kotlikoff, “Stimulating Innovation in the Biologics Industry: A Balanced Approach to Marketing Exclusivity,” September 2008, http://people.bu.edu/kotlikof/New%20Kotlikoff%20Web%20Page/Kotlikoff\_Innovation\_in\_Biologics21.pdf

As policymakers in Congress debate legislation to create an approval pathway for affordable biologic medicines, a strong case has been made regarding the potential savings and increased access that will result. These savings could run in the tens of billions of dollars annually and have a significant impact on access for patients. They would also dramatically lower costs to health care purchases, be they payors from private industry or the government — the single largest purchaser of prescription medications. The key issue in providing affordable access to biologic wonder drugs is doing so without limiting their development. This paper focuses on how best to encourage continued innovation in this sector by providing the appropriate degree of monopoly protection. Four bills pending in Congress propose to do for biologic medications what the 1984 landmark Hatch-Waxman bill did for chemical medications, namely, promote a competitive marketplace that would dramatically lower prices while also ensuring strong incentives to innovate. Yet three of the four bills contain exclusivity provisions that run the danger of overextending monopoly protection. Doing so would, paradoxically, undermine innovation and the bills’ own objectives.

Bestowing lengthy monopolies by statute on brand biologic companies not only greatly delays entry by competitors with low-cost alternatives, but also excludes other innovators from building — in a timely manner — on the stock of prior knowledge — much of which was accumulated at public expense. New medications that alleviate or cure terrible disease are such remarkable gifts that we all want to do everything possible to continue their discovery. But the new drugs of today are not those of tomorrow. The reason is clear. Today’s inventors have strong incentives to protect their discoveries, not to make new ones whose arrival on the market would undermine their existing profits. Numerous papers in the economics literature on invention and monopoly protection stress that competition, not protection, is the true source of innovation and that overextending monopoly protection can be counterproductive. It may do little or nothing to incentivize new discovery, and may simply delay when the next discovery comes on board. Thus, rights to exclusive marketing periods can lead to less, not more, innovation over time. This is particularly true given the potential to use exclusivity periods to “evergreen” one’s products — to secure additional long periods of monopoly based on minor product modifications. Hatch-Waxman has proved remarkably successful in balancing incentives to innovate with the need for access to new medicines. Given this success and the absence of any material differences between the biologics and chemical medical industries arguing for longer monopoly protection, Congress should consider the Hatch-Waxman model for exclusivity rather than proposals that would distort the market and undercut innovation.

#### Biologics innovation is key to US lead in mRNA development

Biopharma-Reporter 8/03 - News & analysis on the clinical development and manufacture of large molecule drugs

“mRNA and beyond: Opportunities for US biologics,” 03-Aug-2021, https://www.biopharma-reporter.com/Article/2021/08/03/Opportunities-for-US-manufacturing-in-biologics

The success of mRNA vaccine technology could be one of the new opportunities for US pharmaceutical manufacturing looking forward, with pandemic investments helping turbocharge the sector. Production of a number of drugs are likely to remain in lower cost production hubs, such as China and India. But biologics may tell a different story: with different dynamics for small volume, high margin treatments. There’s an opportunity for the US to lead in advanced biologicals; as well as manufacturing in viral vectors and cell and gene therapies, according to CPhI’s insight’s report ‘US Pharma Market 2022 and Beyond’, prepared for this year’s CPhI’s event. But first, the country must overcome current capacity restraints through increased efficiencies and investments.

A chunky boost of capital from Operation Warp Speed was designated to increasing development and manufacturing capacity in the US. “We expect to see the approval of mRNA-based cancer therapies in the next few years," notes Peter Shapiro, Senior Director of Drugs and Business Fundamentals at GlobalData, in the report. "Furthermore, these mRNA therapies will be able to use the same manufacturing equipment as mRNA vaccines now that the industry has shelled out the high CapEx cost for this equipment, and trained more staff in sophisticated pharma manufacturing.” Moderna, for example, has wasted no time in setting out a host of mRNA opportunities for the coming years. A mRNA quadrivalent flu vaccine has already started a Phase 1/2 clinical trial – dosing its first participants last month; with an HIV vaccine set to follow into the clinic later this year. Other programs include mRNA vaccines for CMV and RSV. A key advantage of the platform is not only its speed and flexibility in capacity for COVID-19 vaccine production: but also that the same tech could be applied to mRNA therapeutics.

Viral vectors – already in short supply pre-pandemic for gene therapies and gene-modified therapies – are now also required for viral vector vaccines (namely AstraZeneca and J&J). As of May, there were 14 therapies/vaccines that use a viral vector marketed in the EU, Japan, US and UK, according to GlobalData – who predicts this number will soar over the next six years to more than 100 (and with more than 3,000 in the longer term development pipeline). Meanwhile, there are only 87 viral vector contract manufacturing facilities available worldwide. “Adding to the shortage of supply is the current inefficiency in manufacturing – including low titres and complexity – with both biopharma innovators and contract manufacturers working on both upstream and downstream process innovations," notes the CPhI report. "One suggestion from our experts is for [regulatory] agencies to approve standardized viral platforms that could be used interchangeably by therapy developers, potentially speeding up cell and gene therapies’ development, approval, and technology transfer to CMOs.” With pressure on viral vector manufacturing coming from both COVID-19 vaccines and the increased number of gene therapies, manufacturing in this sector will have to increase through scaling up facilities, developing more efficient processes both upstream and downstream, and more investment from contract manufacturing organisations.

Biologics and cell and gene manufacturing are ‘potentially entering a hugely profitable period’, notes the report. But for this to be realised, greater capacity is needed. "In fact, the pandemic has further aggravated capacity constraints as priority is given to COVID vaccines. Anyone with available capacity in the US is likely to be booked up well in advance and able to charge a premium. For the CDMO space, this presents huge opportunities with a large number of acquisitions in the last year as well as increased capital coming in from VCs," notes the CPhI report.

And technological advances will have a particularly important role to play. “Our experts predict that the US is going to play a key role in the development of advanced manufacturing technologies improving the technology base in general and potentially lowering costs. While the country cannot compete on labour costs, it has the scope to bring new efficiencies to advanced biologics manufacturing,” notes the report. Cell and gene therapy, API manufacturing and injectable dose manufacturing are the best immediate opportunities for reshoring in the US, notes the report. “There are opportunities for the US to lead in particular for advanced biologicals. But there are also medium and long-term opportunities for manufacturers capable of manufacturing mRNA-based vaccines and therapies and vector manufacturing for recombinant vector vaccines, gene therapy and gene modified cell therapy." Peter Shapiro, Senior Director of Drugs and Business Fundamentals at GlobalData.

Across the biologics space, the industry is continually looking for new innovations in upstream and downstream processing, with organisations like the National Institute for Innovation in Manufacturing Biopharmaceuticals (NIMBL) pushing continuous bioprocessing. This is potentially an even bigger breakthrough than in the small molecule space as production costs are significantly higher and any innovation that lowers this will potentially make US manufacturers more competitive domestically and internationally. “Innovation in manufacturing will be required for the production volumes necessary for the widespread use of advanced biologics, as well as the reduction in price of these therapies; just as innovation was previously involved in the popularization of monoclonal antibodies. There are already large market-based incentives for success in increasing the efficiency and volumes of advanced biologic production,” commented Shapiro.

#### Solves inevitable extinction—New scalable tech breakthroughs are key

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In the decades to come, advanced bioweapons could threaten human existence. Although the probability of human extinction from bioweapons may be low, the expected value of reducing the risk could still be large, since such risks jeopardize the existence of all future generations. We provide an overview of biotechnological extinction risk, make some rough initial estimates for how severe the risks might be, and compare the cost-effectiveness of reducing these extinction-level risks with existing biosecurity work. We find that reducing human extinction risk can be more cost-effective than reducing smaller-scale risks, even when using conservative estimates. This suggests that the risks are not low enough to ignore and that more ought to be done to prevent the worst-case scenarios. How worthwhile is it spending resources to study and mitigate the chance of human extinction from biological risks? The risks of such a catastrophe are presumably low, so a skeptic might argue that addressing such risks would be a waste of scarce resources. In this article, we investigate this position using a cost-effectiveness approach and ultimately conclude that the expected value of reducing these risks is large, especially since such risks jeopardize the existence of all future human lives. Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world’s population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization. A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity’s favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6 While these arguments point to a very small risk of human extinction, they do not rule the possibility out entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and the Western Abenaki (which suffered a staggering 98% loss of population).9 In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-21 Although these experiments had scientific merit and were not conducted with malicious intent, their implications are still worrying. This is especially true given that there is also a long historical track record of state-run bioweapon research applying cutting-edge science and technology to design agents not previously seen in nature. The Soviet bioweapons program developed agents with traits such as enhanced virulence, resistance to therapies, greater environmental resilience, increased difficulty to diagnose or treat, and which caused unexpected disease presentations and outcomes.22 Delivery capabilities have also been subject to the cutting edge of technical development, with Canadian, US, and UK bioweapon efforts playing a critical role in developing the discipline of aerobiology.23,24 While there is no evidence of staterun bioweapons programs directly attempting to develop or deploy bioweapons that would pose an existential risk, the logic of deterrence and mutually assured destruction could create such incentives in more unstable political environments or following a breakdown of the Biological Weapons Convention.25 The possibility of a war between great powers could also increase the pressure to use such weapons—during the World Wars, bioweapons were used across multiple continents, with Germany targeting animals in WWI,26 and Japan using plague to cause an epidemic in China during WWII.27 Non-state actors may also pose a risk, especially those with explicitly omnicidal aims. While rare, there are examples. The Aum Shinrikyo cult in Japan sought biological weapons for the express purpose of causing extinction.28 Environmental groups, such as the Gaia Liberation Front, have argued that ‘‘we can ensure Gaia’s survival only through the extinction of the Humans as a species . we now have the specific technology for doing the job . several different [genetically engineered] viruses could be released’’(quoted in ref. 29). Groups such as R.I.S.E. also sought to protect nature by destroying most of humanity with bioweapons.30 Fortunately, to date, non-state actors have lacked the capabilities needed to pose a catastrophic bioweapons threat, but this could change in future decades as biotechnology becomes more accessible and the pool of experienced users grows.31,32 What is the appropriate response to these speculative extinction threats? A balanced biosecurity portfolio might include investments that reduce a mix of proven and speculative risks, but striking this balance is still difficult given the massive uncertainties around the low-probability, high-consequence risks. In this article, we examine the traditional spectrum of biosecurity risks (ie, biocrimes, bioterrorism, and biowarfare) to categorize biothreats by likelihood and impact, expanding the historical analysis to consider even lower-probability, higherconsequence events (catastrophic risks and existential risks). In order to produce reasoned estimates of the likelihood of different categories of biothreats, we bring together relevant data and theory and produce some first-guess estimates of the likelihood of different categories of biothreat, and we use these initial estimates to compare the cost-effectiveness of reducing existential risks with more traditional biosecurity measures.We emphasize that these models are highly uncertain, and their utility lies more in enabling order-of-magnitude comparisons rather than as a precise measure of the true risk. However, even with the most conservative models, we find that reduction of low-probability, high-consequence risks can be more cost-effective, as measured by quality-adjusted life year per dollar, especially when we account for the lives of future generations. This suggests that despite the low probability of such events, society still ought to invest more in preventing the most extreme possible biosecurity catastrophes.

The Impact Spectrum of Various Biothreats Here, we use historical data to analyze the probability and severity of biothreats. We place biothreats in 6 loose categories: incidents, events, disasters, crises, global catastrophic risk, and existential risk. Together they form an overlapping spectrum of increasing impact and decreasing likelihood (Figure 1).\* The historical use of bioweapons provides useful examples of some categories of biothreats. Biocrimes and bioterrorism provide examples of incidents.{Biological warfare provides examples \*While noting that the use of bioweapons can have a wide range of other impacts, including sociopolitical and economic, here we consider their impact purely in terms of fatalities. { There is considerable uncertainty involved with the dataset on the historical use of biological weapons, including considerable variation in key terms and assumptions, likely knowledge gaps, and motivations for both claiming natural events as unnatural, and vice versa. The numbers used here are intended as indicative and are used to place boundaries on the likelihood and impact of different types of biothreat. As noted elsewhere in this article, the conclusions drawn are considered by orders of magnitude, which helps to address these uncertainties. RISKS AND COST-EFFECTIVENESS OF BIOSECURITY 374 Health Security of events and disasters. These historical examples provide indicative data on likelihood andimpact thatwe can thenfeedinto a cost-effectiveness analysis. We should note that these data are both sparse and sometimes controversial. Where possible, we usemultiple datasets to corroborate our numbers, but ultimately the ‘‘true rate’’ of bioweapon attacks is highly uncertain. Biocrimes and Bioterrorism Historically, risks of biocrime{ and bioterrorismx have been limited. A 2015 Risk and Benefit Analysis for Gain of Function Research detailed 24 biocrimes between 1990 and 2015 (0.96 per year) and an additional 42 bioterrorism incidents between 1972 and 2014 (1 per year).36 This is consistent with other estimates of biocrimes and bioterrorism frequency, which range from 0.35 to 3.5 per year (see supplementary material, part 1, at http://online.liebertpub. com/doi/suppl/10.1089/hs.2017.0028). Most attacks typically result in no more than a handful of casualties (and many of these events include hoaxes, threats, and attacks that had no casualties at all). For example, the anthrax letter attacks in the United States in 2001, perhaps the most high-profile case in recent years, resulted in only 17 infections with 5 fatalities.37 The 2015 Risk and Benefit Analysis for Gain of Function Research detailed only a single death from the recorded biocrimes.\*\* Only 1 of the bioterrorism incidents in the report had associated deaths (the 2001 anthrax letter attacks).36 Based on this data, for the purposes of this article, we assume that we could expect 1 incident per year resulting in up to tens of deaths. Biological Warfare Academic overviews of biological warfare{{ detail 7 programs prior to 1945.38 A further 9 programs are recorded between 1945 and 1994.39 For most of the last century, at least 1 program was active in any given year (Table 1). The actual use of bioweapons by states is less common: Over the 85 years covered by these histories (1915 to 2000), 18 cases of use (or possible use) were recorded, including outbreaks connected to biological warfare (see supplementary material, part 2, at http://online.liebertpub.com/ doi/suppl/10.1089/hs.2017.0028). Extrapolating this out (dividing 18 by 85), we would have about a 20% chance per year of biowarfare. It is worth noting the limitations of these data. Most of these events occurred before the introduction of the Biological Weapons Convention and were conducted by countries that no longer have biological weapons programs. Since many of these incidents occurred during infrequent great power wars, we revise our best guess to around 10% chance per year of biowarfare. We use 2 sets of data to estimate the magnitude of such events. The first dataset was Japanese biological warfare in China,40 where records indicate a series of attacks on towns resulted in a mean of 330 casualties per event and 1 case in which an attack resulted in a regional outbreak causing an estimated 30,000 deaths (see supplementary material, part 3, at http://online.liebertpub.com/doi/suppl/10.1089/hs.2017. 0028). The second data set came from disease events that were Figure 1. A spectrum of differing impacts and likelihoods from biothreats. Below each category of risk is the number of human fatalities. We loosely define global catastrophic risk as being 100 million fatalities, and existential risk as being the total extinction of humanity. Alternative definitions can be found in previous reports,33 as well as within this journal issue.34 { Biocrimes can be considered to be ‘‘the use of a biological agent to kill or make ill a single individual or small group of individuals, motivated by revenge or the desire for monetary gain by extortion, rather than by political, ideological, religious or other beliefs.’’35 x Bioterrorism can be considered to be ‘‘the deliberate release of viruses, bacteria or other agents used to cause illness or death in people, but also in animals or plants. It is aimed at creating casualties, terror, societal disruption, or economic loss, inspired by ideological, religious or political beliefs.’’35 \*\*A number of other biocrimes involved deliberately infecting another individual with HIV, the results of which were not evident and have not been included in this analysis. {{Biological warfare can be considered to be the ‘‘ability to use biological agents in warfare.’’35 MILLETT AND SNYDER-BEATTIE Volume 15, Number 4, 2017 375 alleged to have an unnatural origin.41 In one case study, a point source release of anthrax resulted in at least 66 deaths. In a second case study, a regional epidemic of the same disease resulted in more than 17,000 human cases. While these events were not confirmed as having been caused by biological warfare, contemporary or subsequent analysis has suggested that such an origin was at least feasible. Combined, these figures provide an estimated impact of between 66 to 330 and 17,000 to 30,000. For the purposes of this analysis, we are assuming the lower boundary figures from biological warfare are indicative of events, with a likelihood of 10% per year and an impact ranging between tens and thousands of fatalities. The upper boundary figures from biological warfare are indicative of disasters, with a likelihood of 1% per year and an impact range of thousands to tens of thousands of fatalities.{{ Global Catastrophic and Existential Risk Unlike standard biothreats, there is no historical record on which to draw when considering global catastrophic or existential risks. Alternative approaches are required to estimate the likelihood of such an event. Given the high degree of uncertainty, we adopt 3 different approaches to approximate the risk of extinction from bioweapons: utilizing surveys of experts, previous major risk assessments, and simple toy models. These should be taken as initial guesses or rough order-of-magnitude approximations, and not a reliable or precise measure. Model 1: Survey of 2008 Global Catastrophic Risk Conference An informal survey at the 2008 Oxford Global Catastrophic Risk Conference asked participants to estimate the chance that disasters of different types would occur before 2100. Participants had a median risk estimate of 0.05% that a natural pandemic would lead to human extinction by 2100, and a median risk estimate of 2% that an ‘‘engineered’’ pandemic would lead to extinction by 2100.42 The advantage of the survey is that it directly measures the quantity that we are interested in: probability of extinction from bioweapons. The disadvantage is that the estimates were likely highly subjective and unreliable, especially as the survey did not account for response bias, and the respondents were not calibrated beforehand. We therefore also turn to other models that, while indirect, provide more objective measures of risk.xx Table 1. The duration of state-run offensive biological weapons programs detailed in key historical reviews up to 1945 and from 1945 to 2000.5,6 State Duration (Review up to 1945) Duration (Review from 1945-2000) Canada 1925-1945 1945-1969 France 1921-1926 and 1935-1940 1947-1972 Germany 1915-1918 — Hungary — 1938-1944 Iraq — 1974-1990 Japan 1931-1945 — Poland — 1945-1960? South Africa — 1981-1994 Soviet Union 1920-1945 1945-1992 United Kingdom 1925-1945 1945-1957 United States 1942-1945 1945-1969 {{Whilst there are no documented examples, it is possible that if an attack similar to the one that caused the plague epidemic in China were to be carried out in a modern mega-city, even relatively low infectivity and case fatality rates could result in disasters or even crises. For example, the population of Dhaka, Bangladesh, is approaching 20 million. A disaster would require around 0.5% of its population to die, and a crisis would equate to 5% of the city’s population. xxA more rigorous survey examined the probability of a bioweapons attack in a 10-year timeframe with more than 100 illnesses43 and found that opinions varied widely between 1% and 100%, with a mean of 57.5%. While this survey had a superior methodology to the one we cite in model 1, it did not focus on attacks that could result in global catastrophic risk. RISKS AND COST-EFFECTIVENESS OF BIOSECURITY 376 Health Security Model 2: Potentially Pandemic Pathogens Recent controversial experiments on H5N1 influenza prompted discussions as to the risks of deliberately creating potentially pandemic pathogens. These agents are those that are highly transmissible, capable of uncontrollable spread in human populations, highly virulent, and also possibly able to overcome medical countermeasures.44 Previous work in a comprehensive report done by Gryphon Scientific, Risk and Benefit Analysis of Gain of Function Research,36 has laid out very detailed risk assessments of potentially pandemic pathogen research, suggesting that the annual probability of a global pandemic resulting from an accident with this type of research in the United States is 0.002% to 0.1%. The report also concluded that risks of deliberate misuse were about as serious as the risks of an accidental outbreak, suggesting a 2-fold increase in risk. Assuming that 25% of relevant research is done in the United States as opposed to elsewhere in the world, this gives us a further 4-fold increase in risk. In total, this 8-fold increase in risk gives us a 0.016% to 0.8% chance of a pandemic in the future each year (see supplementary material, part 4, at http://online.liebertpub .com/doi/suppl/10.1089/hs.2017.0028). The analysis in Risk and Benefit Analysis of Gain of Function Research suggested that lab outbreaks from wildtype influenza viruses could result in between 4 million and 80 million deaths,36 but others have suggested that if some of the modified pathogens were to escape from a laboratory, they could cause up to 1 billion fatalities.45 For the purposes of this model, we assume that for any global pandemic arising from this kind of research, each has only a 1 in 10,000\*\*\* chance of causing an existential risk. This figure is somewhat arbitrary but serves as an excessively conservative guess that would include worst-case situations in which scientists intentionally cause harm, where civilization permanently collapses following a particularly bad outbreak, or other worst-case scenarios that would result in existential risk. Multiplying the probability of an outbreak with the probability of an existential risk gives us an annual risk probability between 1.6 · 10–8 and 8 · 10–7. {{{ Model 3: Naive Power Law Extrapolation Previous literature has found that casualty numbers from terrorism and warfare follow a power law distribution, including terrorism from WMDs.46 Power laws have the property of being scale invariant, meaning that the ratio in likelihood between events that cause the deaths of 10 people and 10,000 people will be the same as that between 10,000 people and 10,000,000 people.{{{ This property results in a distribution with an exceptionally heavy tail, so that the vast majority of events will have very low casualty rates, with a couple of extreme outliers. Past studies have estimated this ratio for terrorism using biological and chemical weapons to be about 0.5 for 1 order of magnitude,47 meaning that an attack that kills 10x people is about 3 times less likely (100.5) than an attack that kills 10x–1 people (a concrete example is that attacks with more than 1,000 casualties, such as the Aum Shinrikyo attacks, will be about 30 times less probable than an attack that kills a single individual). Extrapolating the power law out, we find that the probability that an attack kills more than 5 billion will be (5 billion)–0.5 or 0.000014. Assuming 1 attack per year (extrapolated on the current rate of bioattacks) and assuming that only 10% of such attacks that kill more than 5 billion eventually lead to extinction (due to the breakdown of society, or other knock-on effects), we get an annual existential risk of 0.0000014 (or 1.4 · 10–6). We can also use similar reasoning for warfare, where we have more reliable data (97 wars between 1820 and 1997, although the data are less specific to biological warfare). The parameter for warfare is 0.41,47 suggesting that wars that result in more than 5 billion casualties will comprise (5 billion)–0.41 = 0.0001 of all wars. Our estimate assumes that wars will occur with the same frequency as in 1820 to 1997, with 1 new war arising roughly every 2 years. It also assumes that in these extreme outlier scenarios, nuclear or contagious biological weapons would be the cause of such high casualty numbers, and that bioweapons specifically would be responsible for these enormous casualties about 10% of the time (historically bioweapons were deployed in WWI, WWII, and developed but not deployed in the Cold War— constituting a bioweapons threat in every great power war since 1900). Assuming that 10% of biowarfare escalations resulting in more than 5 billion deaths eventually lead to extinction, we get an annual existential risk from biowarfare of 0.0000005 (or 5 · 10–7).

Perhaps the most interesting implication of the fatalities following a power law with a small exponent is that the majority of the expected casualties come from rare, catastrophic events. The data also bear this out for warfare and terrorism. The vast majority of US terrorism deaths occurred during 9/11, and the vast majority of terrorism injuries in Japan over the past decades came from a single Aum Shinrikyo attack. Warfare casualties are dominated by the great power wars. This suggests that a typical individual is far more likely to die from a rare, catastrophic attack as opposed to a smaller scale and more common one. If our goal is to reduce the greatest expected number of fatalities, we may be better off devoting resources to preventing the worst possible attacks. Why Uncertainty Is Not Cause for Reassurance Each of our estimates rely to some extent on guesswork and remain highly uncertain. Technological breakthroughs in areas such as diagnostics, vaccines, and therapeutics, as well as vastly improved surveillance, or even eventual space colonization, could reduce the chance of disease-related extinction by many orders of magnitude. Other breakthroughs such as highly distributed DNA synthesis or improved understanding of how to construct and modify diseases could increase or decrease the risks. Destabilizing political forces, the breakdown of the Biological Weapons Convention, or warfare between major world powers could vastly increase the amount of investment in bioweapons and create the incentives to actively use knowledge and biotechnology in destructive ways. Each of these factors suggests that our wide estimates could still be many orders of magnitude off from the true risk in this century. But uncertainty is not cause for reassurance. In instances where the probability of a catastrophe is thought to be extremely low (eg, human extinction from bioweapons), greater uncertainty around the estimates will typically imply greater risk of the catastrophe, as we have reduced confidence that the risk is actually at a low level.48 [Footnote] For example, let’s say our best guess for a risk is 0.01%, and that we are highly uncertain about this. Even just a 10% chance of underestimating the risk by an order of magnitude will double the risk—with a revised best guess of around 0.02%—while it would take a full 90% chance of overestimating the risk by an order of magnitude to cut the risk in half to around 0.005%. Model uncertainty with respect to low-probability, high-consequence risks is therefore typically additional cause for concern. See Ord et al48 for a more in-depth analysis of this problem. [End footnote] Given that our conservative models are based on historical data, they fail to account for the primary source of future risk: technological development that could radically democratize the ability to build advanced bioweapons. If the cost and required expertise of developing bioweapons falls far enough, the world might enter a phase where offensive capabilities dominate defensive ones. Some scholars, such as Martin Rees, think that humanity has about a 50% chance of going extinct due in large part to such technologies.49 However, incorporating these intuitions and technological conjectures would mean relying on qualitative arguments that would be far more contentious than our conservative estimates. We therefore proceed to assess the cost-effectiveness on the basis of our conservative models, until superior models of the risk emerge. How Bad Would Human Extinction Be? Human extinction would not only end the 7 billion lives in our current generation, but also cause the loss of all future generations to come. To calculate the humanitarian cost associated with such a catastrophe, one must therefore include the welfare of these future generations. While some have argued that future generations ought to be excluded or discounted when considering ethical actions,50 most of the in-depth philosophical work around the topic has concluded that future generations should not be given less inherent value.51-55 Therefore, for our calculations, we include future lives in our cost-effectiveness estimate.\*\*\*\* The large number of future generations at stake mean that reducing existential risk even by a small amount may have very large expected value. The Earth is thought to be habitable for roughly another billion years;56 our closest relative, homo erectus, lasted over 1.6 million years,57 and the typical mammalian species also lasts on the order of 1 to 2 million years.58 Following Matheny,29 if we were to assume that humanity would otherwise maintain a global population of 10 billion for the next 1.6 million years, human extinction would jeopardize on the order of 1.6 · 10^16 life years. Cost-Effective Biosecurity How should we balance speculative risks of human extinction in a biosecurity portfolio? Here we turn to costeffectiveness analysis, which is one method of prioritizing public projects.29 Cost-effectiveness analysis is helpful if our goal is to maximize the effect of our resources to achieve a measurable aim (such as life-years saved or cases of disease averted). Here we compare the cost-effectiveness of reducing risks in the categories of incidents, events, disasters, and existential risks. Calculating Costs The US federal government was projected to spend almost $13 billion on health security–related programs in 2017.59 To our knowledge, there has not been a quantitative assessment of how this spending has reduced the chances of bioterrorism, biowarfare, or even naturally occurring pandemics. However, the World Bank estimates that it would cost $1.9 billion to $3.4 billion per year over 5 years to bring all human and animal health systems up to minimal international standards, and it suggests that these measures would prevent at least 20% of pandemics.60{{{{ Many countries do not currently have healthcare systems that meet international standards—for example, in 2014 only 33% of countries reported their national arrangements met those required under the International Health Regulations.61 These mitigation measures would be adopted to be effective regardless of whether a disease outbreak originates naturally, accidentally, or deliberately.{{{{ The ability to rapidly detect and characterize the agent involved helps fast-track public health and R&D responses. Acting promptly enables basic public health measures that might decrease the likelihood of spread (such as social distancing) and track its emerging epidemiology (providing critical input for tailoring the responses). Even if we lack existing or candidate vaccines or therapeutics, having the capacity to treat symptoms can have a dramatic impact on case fatality rates.xxxx We therefore assume that strengthening healthcare systems to meet international standards would have an impact on mitigating all types of disease risk, ranging from incidents and events to existential risks.\*\*\*\*\* [Footnote] \*Given the zoonotic nature of many emerging diseases and the recognized importance of adopting a One Health approach when addressing epidemic and pandemic risk, it will be important that both public health and animal health systems are strengthened to meet international standards. [End footnote] We extend the World Bank’s assumptions to include bioterrorism and biowarfare—that is, we assume that the healthcare infrastructure would reduce bioterrorism and biowarfare fatalities by 20%. We conservatively assume that existential risks will be reduced by only 1%, since any potential existential risk would likely be deliberately designed to overcome medical countermeasures. We calculate that purchasing 1 century’s worth of global protection in this form would cost on the order of $250 billion, assuming that subsequent maintenance costs are lower but that the entire system needs intermittent upgrading.{{{{{ To calculate the cost per life-year saved, we use the equation C/(N · L · R), where C is the cost of reducing risk, N is the number of biothreats we expect to occur in 1 century, L is the number of life-years lost in such an event, and R is the reduction in risk achieved by spending a given amount (specified by C). For nonextinction risks, we increase L 50 times over to denote 50 lifeyears saved per life. The denominator N · L · R denotes the total number of life-years saved. [Footnote] We evaluate the first order effects of these interventions and ignore second order spillover effects (such as any economic benefits of innovation that could come with the biosecurity spending). This could be an important oversight, as even short-term and small-scale biosecurity spending could have ramifications for humanity’s long-term future (eg, preventing a moderate bioterrorist attack could in turn prevent large wars that escalate or the erosion of norms in civil society, which in turn could evolve into existential risks). [End footnote] In a subsequent model we also apply a discount rate to represent policymakers concerned only about lives in the short term. Results Including future generations into our cost-effectiveness calculations demonstrates that reducing existential risks, even if they are improbable, can be incredibly cost-effective in expectation (Table 2). Depending on the model used, we estimate that we can purchase 1 quality adjusted life-year in expectation for 10s of dollars (with outliers suggested around 12 cents to $1,600). Even with the most conservative estimates of existential risk, reducing the risk of human extinction is at least 100 times more cost-effective than standard biosecurity interventions, and possibly up to 1 million times more cost-effective. It is important to note that this result does not depend on the $250 billion figure—if we found a cheaper intervention that reduced all risks by a similar amount, cost-effectiveness of all the interventions would increase, but the relative merits of reducing existential risk would remain the same.xxxxx There are certainly cheaper ways to reduce the low-level risks of biocrime and bioterrorism, and so our estimates of cost-effectiveness could be far too pessimistic. Examples of cheaper interventions might include dramatically increasing resources for specialized law enforcement prevention and interdiction, or increased surveillance on potential perpetrators. However, there are likely also far cheaper ways of reducing the more extreme risks that threaten extinction, and there is no reason to think similar efficiency gains could not be made in this area as well. Despite the vast resources spent on counterterrorism, governments may have neglected low-probability, high-impact risks.65,66 This therefore constitutes a critically underdeveloped area of research, for which there is likely low-hanging fruit. Even if the humanitarian case for reducing existential risk is clear, most policymakers will be responsible primarily for the interests of a more limited constituency comprising only the current generation and near future.\*\*\*\*\*\* It is therefore instructive to evaluate how well these cost-effectiveness results hold up when we largely ignore the benefits to future generations. We therefore repeat the cost-effectiveness estimates with a discount rate imposed on the benefits and costs borne in future years, and we find that the merits of reducing existential risk still hold. If we ignore distant future generations by discounting, the benefits of reducing existential risk fall by between 3 and 5 orders of magnitude (with a 1% to 5% discount rate), which is still far more cost-effective than measures to reduce small-scale casualty events. Under our survey model (Model 1), the cost per life-year varies between $1,300 and $52,000 for a 5% discount rate and between $770 and $30,000 for a 1% discount rate. These costs are even competitive with first-world healthcare spending, where typically anything less than $100,000 per quality adjusted life-year is considered a reasonable purchase.29 This suggests that even if we are concerned about welfare only in the near term, reducing existential risks from biotechnology is still a cost-effective means of saving expected life if the future chance of an existential risk is anything above 0.0001 per year. Our conservative models (with much lower risk) suggest that existential risk prevention is not cost-effective when compared to basic healthcare spending: Model 2 results in a cost per life-year between $330,000 and $16 million for a 5% discount rate and $190,000 and $9.7 million for a 1% discount rate, while Model 3 results in a cost per life-year of between $190,000 and $500,000 for a 5% discount rate and between $110,000 and $310,000 for a 1% discount rate. These conservative numbers would suggest that healthcare spending is a better purchase than marginal biosecurity funding, but even these numbers still support the notion that we are better off focusing on low-probability, high-impact risks rather than low-casualty biosecurity risks. For a biosecurity portfolio, even policy with limited time horizons is likely better off investing in measures that prevent the worst-case scenarios. Conclusions Although the probability of human extinction from bioweapons may be extremely low, the expected value of reducing the risk (even by a small amount) is still very large, since such risks jeopardize the existence of all future human lives. An initial attempt to estimate the cost-effectiveness of reducing these risks finds that it takes likely between 10 cents and 10s of dollars to save 1 life-year, assuming we value future human lives. Although this result is striking, it is not unprecedented. Similar analysis done by Matheny found that spending $1 billion on an asteroid deflection system would have a similar cost-effectiveness, at about $2.50 per life-year.29 Although preventing existential risks might be a far more cost-effective way to save lives than many existing biosecurity measures, this does not imply that we ought to devote all of our resources to protecting against existential risks. Many actions that fall under the rubric of standard health spending also likely reduce existential risk, and many of the resources spent reducing existential risk would in turn help address less extreme risks. Moreover, occasionally there are other opportunities that might be particularly cost-effective—for example, smallpox eradication cost less than $300 million (roughly $1.5 billion in 2017 dollars) and likely saved millions of lives.68 The conclusion is thus not that we should abandon all other health interventions for the sake of saving future lives, but rather that on balance we should increase investments that reduce these lowprobability, high-stakes risks. We propose several steps forward. Given the high uncertainty around our estimates, we can expect a high value of information for additional research, implying that resources should be allocated to further assessment of these risks before large sums are directly allocated on the basis of unreliable evidence. Areas for basic research could include examining existential risk using the tools of technological horizon scanning, red-teaming, ecosystem and epidemic modeling, analyzing historical epidemic death tolls, and examining past species that have gone extinct due to disease, among others. And if existential risk could be as important as we claim, more work should be done to assess possible existential risks and countermeasures. Many actions that would reduce existential risk are already being pursued by those in biosecurity and public health. But there are also measures that would be particularly important in the context of existential risk—including measures that may be unduly neglected without a special focus on existential risk. One particularly inexpensive measure would be to invest in contingency plans for worst-case scenarios. Countering a pandemic does not typically require a large fraction of worldwide economic output, so there is not a clear path forward for rapidly pivoting to a total war footing in which a large percentage of worldwide GDP is spent on countermeasures. Running small experiments with easily scalable interventions could be a cheap way to explore avenues for rapidly turning resources into protection (examples of such experiments might include paying bounties to individuals or companies to avoid flu infection for a year while conducting essential services, such as power and sanitation).{{{{{{ Countering existential risks could also result in reprioritizing current approaches—for example, favoring broadspectrum diagnostics and countermeasures, as opposed to those tailored to a single pathogen. The worst possible attacks could come from built-up arsenals of multiple pathogens, possibly designed with long incubation periods and traits to overcome vaccination or medical treatment. Platform technologies that allow customizable countermeasures (eg, phages for bacteria, generalized vaccine templates) or pathogen-blind diagnostics (eg, distributed sequencing and improved software to interpret novel pathogens before symptoms occur) will stand a better chance against such threats. An existential risk focus also would place extraordinary weight on avoiding arms races or the widespread weaponization of biotechnology. The near collapse of the 8th Review Conference of the Biological Weapons Convention in December 2016 demonstrates how fragile this regime is and how far current instruments are from the ideal. Strengthening the global norm against biological weapons might go a long way toward reducing the risks associated with state actors. The current 3-person Implementation Support Unit costs less than $1 million per year to support.71 In comparison, the 2017 budget for the work of the Organization for the Prohibition of Chemical Weapons is around $77 million (and provides for more than 450 fixed-term posts).72 Increasing the human capacity currently focusing on biological weapons risks by several orders of magnitude would be notably cheaper than the costs associated with building core capacities in public and animal health. More generally, any action that reduces the chance of arms races or great power conflict could substantially reduce the probability of existential risk from biotechnology in the century to come.

### 1NC---CP

Next off---Conditions PIC

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by expanding the scope of its core antitrust laws pursuant to a prescriptive comity rule.

#### Uncertainty regarding extraterritorial application of the Sherman Act means foreign nations will enact blocking statutes in the status quo – that causes trade uncertainty and undermines the ability of businesses to effectively invest in R&D – amending the FTAIA to incorporate a robust international comity analysis solves.

Kava 19 – J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business

Samuel F. Kava, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity,” Journal of Business & Technology Law, Vol. 15, Issue 1, 2019, HeinOnline

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a "direct, substantial, and reasonably foreseeable effect"162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies-i.e. the U.S. Department of Justice and the Federal Trade Commission-have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice ("DOJ") and Federal Trade Commission ("FTC") published the International Guidelines-a publication "explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States."163 The International Guidelines have taken the broadest approach in determining if conduct is "direct"-finding if there is a "reasonably proximate causal nexus between the conduct and the effect" conduct is "direct"-and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation's law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations' laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer's ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

#### The aff’s standard spills over and wrecks cooperation in areas beyond cartels.

Connolly 15 – Partner in the Washington, D.C. office of GeyerGorey, LLP

Robert E. Connolly, “Why the Motorola Mobility Decision was Good for Cartel Enforcement and Deterrence,” CPI Antitrust Chronicle, January 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2559149

A. What’s Good for the Goose…

Another concern I have related to the reach of the FTAIA is “what’s good for the goose is good for the gander.” Many foreign companies do business in the United States, either directly or through subsidiaries. What would the reaction be of a U.S. company, for example, if it was hauled into court in China for sales made in the United States to a Chinese subsidiary because the subsidiary operating in the United States felt the laws (courts) in China would be more favorable? The quote below, while in relation to FCPA enforcement, expresses my concern better than I can:

It’s most certainly not good economics that one court jurisdiction gets to fine companies from all over the world on fairly tenuous grounds. Who would really like it if Russia’s legal system extended all the way around the world? Or North Korea’s? And I’m pretty sure that the non-reciprocity isn’t good public policy either. Eventually it’s going to start getting up peoples’ noses and they’ll be looking for ways to punish American companies in their own jurisdictions under their own laws. And there won’t be all that much that the U.S. can honestly do to complain about it, given their previous actions.17

B. Cooperation in Areas Beyond Cartels

Continued cooperation among enforcement agencies isn't just important in the areas of cartels, but also in mergers and other competition conduct cases. Thomas O. Barnett, recent head of the Division, stated that global antitrust enforcement could create “burdensome requirements” if “procedures and substantive antitrust analysis diverge across countries, which can lead to inconsistent or even incompatible results.”18 And, in Europe, Joaquín Almunia, the former European Commissioner for Competition, voiced a similar concern, “In this setting, our ability to protect competition on the merits, foster innovation, and keep markets open and fair will depend on how well we manage to establish a common set of principles and goals for our enforcement work.”19

If the United States is seen as a competition bully, the blowback in other areas besides cartels could be far reaching. Of course, core principles should not be abandoned. So, for example, the United States will likely continue to disagree with partners about the treatment of resale price maintenance. But the ability of a U.S. parent to stand in the shoes of its foreign subsidiary in order to press damages claims in the United States is not a core principle. In that area companies may have to simply “vote with their feet” and not set up foreign subsidiaries. An even more simple solution, and simple is usually better, would be for the U.S. parent to make purchases if it does not want to have to seek antitrust remedies under the laws of the country in which its subsidiary is are operating.

#### Flexible extraterritorial regulation solves existential risks.

**Kent 16**

Dr. Randolph Kent, Director of the Humanitarian Futures programme at King’s College London, Senior Research Associate of the International Policy Institute, Fellow at The Policy Lab, long-time senior UN official, Joanne Burke, and Amanda Taylor, King’s College London, EXPLORING ALTERNATIVE WAYS OF UNDERSTANDING HUMANITARIAN CRISES AND SOLUTIONS, http://www.humanitarianfutures.org/wp-content/uploads/2017/10/Alternative-Humanitarian-Paradigm-Final-4-July-2016s.pdf

Never before have we been able to **disrupt the fundamental processes of Earth’s ecology**, and never before have we created **social, economic and technological systems** – from **continent-wide industrial agriculture** to the **international financial system** – with today’s **enormous** complexity, **connectedness** and **speed of operation**. Whether the issue is **drug resistant diseases** or **shiploads of migrants** dumped on our shores, our problems **spill across geographical** and intellectual **boundaries**, their complexity often exceeds our wildest imaginations, and they **converge and intertwine** in totally unexpected ways. The **real danger of the 21st century** is ‘**synchronous failure**.’1

Introduction: The Copernican challenge Nicholas Copernicus at the beginning of the 16th Century announced his theory that the earth was not at the centre of the universe, but actually rotated around the sun. This proposition, though resisted initially by the establishment, ultimately formed an alternative basis of knowledge and understanding about our universe that continues today. 1 Presentation by Dr. Thomas Homer-Dixon, of the University of Toronto’s Center for the Study of Peace and Conflict, ‘Synchronous Failure: the Real Danger of the 21st Century’, for the US Congressional bi-partisan study group on ‘Security for a New Generation’, 5 December 2002, US Capital, Washington, DC. The underlying assumptions upon which knowledge and the search for knowledge are based are generally referred to as paradigms. The search for alternative paradigms is intended to improve both understanding and explanations by challenging the assumptions that underpin present conceptual constructs. It is not about improving understanding and explanation by building upon existing assumptions, but rather by proposing alternative assumptions that might provide different frameworks for ordering evidence that leads to knowledge.2 This note comes at a time when there is growing concern that the present humanitarian sector may not be adequate to meet the crises – the disasters and emergencies -- of the present, let alone the future. Directly and indirectly a series of global consultations and meetings, including the World Humanitarian Summit, have been seeking ways to make humanitarian action more relevant to ever growing types, dimensions and dynamics of humanitarian threats. And, while there has been a wide spectrum of suggestions aimed at improving the sector, this spectrum is nevertheless sustained by a traditional set of assumptions that might be described 2 Two key figures in the understanding of paradigms and the assumptions that sustain or challenge them are Thomas Kuhn, The Structure of Scientific Revolutions, University of Chicago Press, 1962 and Imre Lakatos, Proofs and Refutations: The Logic of Mathematical Discovery, Cambridge University Press, 1976. 2 as ‘the Western hegemonic’ paradigm.3 Is there an emerging alternative? This exploration of alternative ways of understanding the contexts and factors which underpin crisis threats and their solutions is closely tied to the Planning from the Future [PFF] project. The PFF is primarily concerned with the loosely defined ‘humanitarian sector’s capacities to deal with ever more complex and uncertain humanitarian crises, or, disasters and emergencies. Towards that end, the PFF partnership, consisting of King’s College London, the Overseas Development Institute and Tufts University, will in the first instance explore the present landscape of the humanitarian sector, how that sector responds to ‘game changers’ that confront it with unanticipated challenges and the extent to which that sector is fit for the future. 4 In that context, if the sector is not fit for the future, plausible solutions may emerge for improving it through institutional change and methodologies that reflect our present understanding of the nature of crisis threats and mitigation. Or, alternatively, the assumptions that are made about crisis threats and appropriate action may stem from a paradigm which by analogue might be Copernican in consequence, and may well lead not only to different understandings about the nature of crises, but also to different approach to solutions. This exploration began with extensive research about the nature of paradigms and the assumptions that underpin humanitarian action. The concepts incorporated in the paper were frequently the result of seven meetings with humanitarian experts, and at the end with a major consultation that brought together all of those who had helped in the past. 3 See, for example, the forthcoming Planning from the Future report (Chapter 1). www.planningfromthefuture.org The result is Exploring alternative ways of understanding humanitarian crises and solutions. The paper is divided into three man sections: Section 1 suggests five assumptions that might serve as guideposts on the journey for alternative perspectives. In Section 2, the three key elements of the emerging paradigm are considered, each with a set of reflections about what will be described as their ‘normal life’ implications. Finally, Section 3 draws specific conclusions about what might be considered as the humanitarian implications that can be drawn from this emerging paradigm. In its totality, the paper links directly into what is called the Synthesis Report, or, Planning from the Future: Humanitarian spectres, a PFF product intended to make futures real for humanitarian practitioners. Exploring alternative ways has been designed to suggest different approaches for understanding the nature and drivers of risk as well as new ways to understand alternative solutions. The Synthesis Report is intended to incorporate these new perspectives into broad but practical approaches to planning and decisionmaking. I Hypotheses guiding the paradigmatic exploration There are five hypotheses that guide this effort to identify the possibility of an emerging alternative humanitarian paradigm: [1] Humanitarian crises are reflections of the ways that societies structure themselves and allocate their resources. They are not aberrant phenomena, divorced from ‘normal life,’ but rather a reflection of it,5 everything 4 See the forthcoming Planning from the Future report (Chapter 2). www.planningfromthefuture.org 5 ‘Normal life’ in this context refers to the fact that disasters and emergencies are an integral 3 from governance and leadership to human security and socio-economic opportunities; 6 [2] Humanitarian crisis drivers, their dimensions and dynamics are directly linked to human progress and related change, including technological advance;7 [3] Except for existential crises, e.g., asteroid impact8 , the types of humanitarian crisis drivers, their dimensions and dynamics, have increased exponentially over the past 200 years, and continue to do so even more intensely. This latest phase of exponential increase is due to a rapidly changing, interconnected and globalised world, one in which technology will continue to act as a major driver of change and determinant of human progress; [4] Increasing extra-terrestrial, or, outer space involvement by humankind is but one dramatic example of highly plausible change in the nature of vulnerability and the perception of what and who is vulnerable. The prospect of existential risk that have potential global impacts are increasing, all in one way or another underscoring the part of environmental abuse and economic and social exploitation. Rather than the assumption that disasters and emergencies foster vulnerability, the ways in which human beings organise their social and economic lives do. Randolph C. Kent, Anatomy of Disaster Relief: The International Network in Action, Pinter Publishers Ltd, London, 1987, p.4ff 6 See the forthcoming Planning from the Future: Humanitarian spectres for specific discussions on governance and human security and human agency. 7 Linked to societal structure and resource allocation is the impact of technological advance, which over the past 200 years has bent the curve of human history – of populations and social development – by almost 90 degrees. See Eric Brynjolfsson and Andrew McAfee, The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies, W.W. Norton & Co., New York. 2014, p.6 8 The Cretaceous–Paleogene (K–Pg) extinction event was a mass extinction of some threequarters of plant and animal species on earth increasing speed of global vulnerability9 ; [5] As suggested in #1, above, humanitarian crises are reflections of the ways that societies structure themselves and allocate their resources. This is what was referred to above as the ‘normal life proposition’, and is based upon the dynamics of complex systems. Such systems are open, dynamic, non-linear and in a state of perpetual disequilibrium. This, therefore, suggests that ‘…in many of the pressing issues for our future welfare as well as for the management of our everyday life, [we] will need such a systemic complex system and multidisciplinary approach’10 to be adequately prepared to deal with ever more complex and uncertain threats. II An exploration of paradigmatic assumptions The search for the possibility of an emerging alternative paradigm might begin with the ‘normal life’ proposition that suggests that all societal phenomena, including disasters and emergencies, reflect highly complex that occurred over a geologically short period of time, 66 million years ago 9 The University of Cambridge’s Centre for Study of Existential Risk is but one of a growing number of interdisciplinary research centres focused on the study of human extinction-level risks that may emerge from amongst other things technological advances. Examples include M. Rees, Our Final Century: Will the human race survive the 21st century?; J.F.Richard, High Noon: 20 global problems, 20 years to solve them, New York – Basic Books, 2002, Nick Bostrom, “Existential Risks: Analysing human extinction scenarios and related hazards,” Journal of Evolution and Technology, Vol.9, No.1, 2002 10 D. Sornette, “Dragon-Kings, Black Swans and the Prediction of Crises,’ International Journal of Terraspace Science and Engineering, 2(1): 1-18, p.1, 2009 as quoted in Ben Ramalingam, Aid on the Edge of Chaos: Rethinking International Cooperation in a Complex World, Oxford University Press, 2013, p.138 4 messes, 11 and that such ‘messes’ are not restricted in either space or time. They perpetually evolve. This runs contrary to standard assumptions underlying the term, ‘humanitarian’. That term is principally concerned with systems failures, and reflects a belief that such failures have finite beginnings and ends. An emerging paradigm might be based upon the assumption that humanitarian crises from a whole of society perspective are not bound by clearly defined space and time dimensions. And, emerging from this perspective are three interconnected sets of propositions that form the basis of the proposed alternative humanitarian paradigm: [1] Reflections of normal life – The proposition that humanitarian crises are reflections of normal life is on the one hand generally accepted.12 Yet, on the other, ‘disasters are still predominantly seen as exogenous and unforeseen shocks that affect supposedly normally functioning economic systems and societies.’13 However, what all too often have not been appreciated are the full implications of ‘the normal life’ proposition. In this regard, a more comprehensive societal focus changes 11 In defining the use of the term, ‘messes’, Alpaslan and Mitroff state that problems ‘resist our attempt to confine them and rein them in by reducing them to a single discipline or point of view. For example, different stakeholders rarely have the same definition of the individual problems that constitute a mess and of the entire mess itself. Indeed the fact that different stakeholders have different perceptions of a mess is itself one of the keys defining attributes of messes! As a result “problem negotiation” is one of the most important aspects of managing messes. Before one can “solve” a problem one first has to agree on the nature of the problem. And if agreement is arrived at all, it should be reached only at the end of an intense debate about the “nature” of the problem instead of the all–too-common pressure to get a quick consensus.’ Can M. Alpaslan and Ian I. Mitroff, Swans, Swine and Swindlers: Coping with the growing threat of mega-crises and megamesses, Stanford University Press, Stanford, 2011, pp xx ff. 12 Op cit. #5 See, for example, Randolph C. Kent, Anatomy of Disaster Relief: The the ways that crisis threats are defined and solutions posited. This focus in turn suggests the following: n humanitarian crises consist of complex systems of changing problems that interact with each other. No crisis driver is in itself the sole explanatory factor for a crisis event or its consequences. People ‘are not confronted with problems that are independent of each other, but with dynamic situations that consist of complex systems of changing problems that interact with each other’.14 These are defined as ‘messes’, and this concept is an important starting point for understanding and explaining humanitarian crises. The need to understand and prepare for humanitarian threats and actions in terms of complex systems and interacting problems will become increasingly evident as such ‘messes’ reflect ever more fluid manifestations of vulnerability. Accepting the concept of ‘messes’ should narrow the perceived bifurcation between so-called natural disasters and man-made emergencies.15 And, International Network in Action, Pinter Publishers Ltd, London, 1987, p.4ff 13 Allan Lavell and Andrew Maskrey, The Future of Disaster Risk Management: An Ongoing Discussion 14 Russell L. Ackoff, Re-creating the Corporation, Oxford University Press, New York, 1999, p.324 15 The definition of ‘emergency’ within a humanitarian context has various interpretations. Quarantelli sees ‘emergency’ as one of a threshold of events, each depending upon resource requirements, from accidents to emergencies to disasters and finally to catastrophes. The OCHA orientation handbook sees emergencies as ‘a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency.’ The IFRC views a complex emergency ‘as a reflection of disasters [which] can result from several different hazards or, 5 yet, while there are perceptible moves towards recognising the interconnectedness between certain types of humanitarian crises (e.g., natural hazards and technological failures), there continues to be resistance in the humanitarian world to accepting the interdependent nature of most if not all crisis events, including natural events and conflict. In that sense, ‘some of the greatest mistakes are made when dealing with a complex mess, by not seeing its dimensions in their entirety, carving off a part, and dealing with this part as if it were a complicated problem, and then solving it as if it were a simple puzzle, all the while ignoring the linkages and other connections to other dimensions of the mess.’16 This tendency to accept if not reinforce the dichotomy and to ignore basic causation and solutions can also be perceived as a convenience. Not unlike the reactions of the establishment in the time of Copernicus, politicians, policymakers and planners resist alternative perspectives because it goes against the inherent ‘short-termism’ of most institutions and their incremental approach to problem solving.17 n humanitarian response is underpinned by contending and not universal principles, the former reflecting cultural, local more often, to a complex combination of both natural and man-made causes and different causes of vulnerability. Food insecurity, epidemics, conflicts and displaced populations are examples.’ 16 Ben Ramalingam and H. Jones with T. Reba and J. Young, ‘Exploring the Science of Complexity: Ideas and Implications for Development and Humanitarian Efforts’, Working Paper 285, ODI, London, 2008, p.11 17 As described by one analyst, in crises, ‘political stakes logically increase….Disasters overload political systems, catastrophes can bring down regimes.’ Richard Stuart Olson, ‘Towards a Politics of Disaster: Losses, Values, Agendas and Blame, International Journal of Mass Emergencies, August 2000, Volume 18 #2. and regional perspectives and values. One prevailing assumption underpinning the predominant humanitarian paradigm is that there is an inherent human motivation that explains why human beings respond to the plight of other human beings, namely, an overarching moral sense of responsibility, benevolence and empathy that is universal. This abiding motivation in turn justifies what are regarded as universal humanitarian principles. Morality as motivation and universal principles, however, ignore the relationship between crises and the ways that they test and reinforce basic values – religious, spiritual, philosophical. There are profound differences in the ways that societies explain and interpret their respective worlds.18 Increasingly, ‘we will have to deal with “contending” and not “universal principles,” suggests the renowned anthropologist, Arjun Appadurai. In a world in which different power structures will emerge, with their concomitant local and regional perspectives and values, the presumption of common principles will be less and less relevant. More and more, perceptions of self-interest and possible mutual self-interest will be at the heart of humanitarian action.19 18 ‘Thank you for explaining your principles,’ said a member of a Middle Eastern group that had come to hear an ICRC delegate’s explanation of the organisation’s humanitarian role. ‘However, we, too, have our own principles,’ he continued, ‘Ours begins with justice. To what extent do your principles incorporate the concept of justice?’ In so many ways, the avowedly universal principles presented by humanitarians reflect a Western hegemony that can be traced to the age of discovery in the 15th and 16th centuries, to the age of industrialisation, colonialism and economic dominance of the 18th and 19th centuries – past Solferino – and clearly into the 20th century in the post 1945 world. 19 Students of humanitarian affairs will have ‘to deal with “tactical humanism” – a humanism that is prepared to see universals as 6 n humanitarian crises always have transformative consequences that go well beyond the geopolitical and socio-economic boundaries of the event, itself. As in physics, so, too, in the nature of ‘normal life’, dynamics are not constrained by fixed time and space. Their effects continue in various forms over time and across spatial boundaries. While these dynamics are inherent in all matter, they are becoming increasingly evident in a world that is overtly more interconnected, through trade and through movements of capital, people and information. ‘What we call “flows”’.20

The ‘normal life’ dimension of humanitarian crises means that the drivers of such crises are part of systems that are in constant flux, driven by a ‘persistent need for energy’.21 They are in a state of ‘non-equilibrium’. In that sense, as suggested below in the technological paradox, humanitarian crises also reflect the ever-fluctuating boundaries of ‘normal life’, and those boundaries are moving in myriad directions, including beyond the earth’s atmosphere. Hence, another assumption underpinning the alternative paradigm is that a growing number of crisis drivers and ways to mitigate them will become extraterrestrial. **Extraterritoriality** will emerge as a **major factor** in what we continue to call ‘humanitarian response’, and will fundamentally change many aspects of what is a crisis driver and who and what is a ‘humanitarian actor’.22

[Footnote 22] An example is ‘asteroid impact avoidance’ where technology enables human intervention to divert asteroids. Hence, the ‘humanitarian actor’ might well be someone who has the capacity to **prepare for** and **prevent** potentially **existential threats**. This could well be the humanitarian actor of the future. [End Footnote 22]

### 1NC---DA

Exemption Spillover DA---

**The aff’s judicial expansion of antitrust creates a shift in philosophy toward limiting immunities**

**Pale 04** – R. Hewitt Pale, Former Assistant Attorney General, Antitrust Division @ US DOJ

(R. Hewitt Pale, “ANTITRUST LAW IN THE U.S. SUPREME COURT, Presented at British Institute of International and Comparative Law Conference, May 11, 2004, <https://www.justice.gov/atr/speech/antitrust-law-us-supreme-court>)

In considering my topic for a forum on comparative law, it occurred to me that it might be useful to focus on the special role of the United States Supreme Court in making American antitrust law. The topic is especially timely because our Supreme Court granted review in four antitrust cases this term, each of which is the object of intense study by U.S. antitrust practitioners. The Supreme Court, unlike the intermediate appellate courts of the federal system, has discretion to choose the cases it will hear, and its choices have a **profound effect** on **the development of antitrust law**.

Little has changed over the last century in terms of the wording of our antitrust statutes. The Sherman Act was enacted in 1890, and the Clayton Act in 1914, and the legislative amendments since that time have been minimal. Yet U.S. antitrust law has come a long way indeed in those years through judicial interpretations of the law. Congress chose not to enact detailed prescriptions for antitrust enforcement, relying instead on the courts to apply the broad statutory principles to particular fact situations. As former Assistant Attorney General William Baxter has observed, this "common law" approach may lack the certainty provided by a more detailed statute, but it "permits the law to adapt to new learning without the trauma of refashioning more general rules that afflict statutory law." (1) Our Supreme Court has described the antitrust laws as having "a generality and adaptability comparable to that found to be desirable in constitutional provisions."(2)

American antitrust law began to take shape only when the Supreme Court began to build the basic framework of antitrust analysis in its decisions. In 1911, it decided the landmark Standard Oil case, in which the United States sought to break up the famed oil conglomerate.(3) Observing that the standards of the antitrust law must be developed by the courts deciding each case "by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute,"(4) the Court announced the Rule of Reason, under which the Sherman Act is deemed to prohibit only "unreasonable" restraints of trade. In another decision that year, United States v. American Tobacco Co.,(5) involving a conglomerate in the tobacco industry, the Supreme Court emphasized the Rule of Reason's fundamental grounding in competition concerns. This standard proscribed "contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade . . . ."(6)

In 1918, Chicago Board of Trade v. United States(7) made clear that the Rule of Reason encompasses all the relevant circumstances. To determine whether a restraint is illegal, a court must "ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable" and the "history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained."(8)

Around the same time, the Court was also developing the doctrine of per se illegality, which provides bright-line guidance as to certain clearly anticompetitive practices. In United States v. Trenton Potteries Co., (9) the Court held that a price fixing agreement among competitors is an unreasonable restraint "without the necessity of minute inquiry whether a particular price is reasonable or unreasonable."(10) In 1940, in another landmark case brought by the United States in the oil industry, United States v. Socony-Vacuum Oil Co.,(11) the Supreme Court repeated that price-fixing agreements are illegal per se and that "no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense."(12) The per se rule underpins the Antitrust Division's criminal prosecution of collusion among competitors.

The Supreme Court's pre-1950 decisions set the stage for the late twentieth-century developments in antitrust law. They established the fundamental principle — consistent with the modern approach worldwide — that antitrust laws prohibit only conduct that unreasonably restricts competition, to the detriment of consumers. And the Court established that the type of inquiry required depended on the nature of the particular conduct at issue.

That auspicious beginning did not mean that the course of American antitrust analysis always ran smoothly through the last half of the century. A consequence of the common law approach is that when antitrust thinking veers from the path of promoting consumer welfare, the Supreme Court may follow. We experienced that effect in the 1960s and 1970s as our Supreme Court issued decisions emphasizing artificial presumptions not soundly grounded in economic reasoning. In Brown Shoe, Pabst, and Von's Grocery, the Court ruled that mergers could be found unlawful based on extremely small increases in market concentration.(13) In Schwinn,(14) it abandoned its formerly cautious approach to vertical practices,(15) holding exclusive dealer territories unlawful per se. Similarly, in Albrecht,(16) it held vertical maximum price fixing illegal per se.

As the sophistication of economic analysis increased, our Supreme Court began to reexamine some of these precedents and return to fundamental principles of competition and consumer welfare. In GTE Sylvania,(17) the Court overruled Schwinn, and in State Oil v. Khan,(18) it overruled Albrecht. The Court adopted a significantly different approach to mergers in General Dynamics,(19) refusing to find a violation, despite current high market shares, in a case where those market shares did not reflect a realistic threat to future competition. And in Matsushita,(20) the Court poured cold water on theories of liability that make little economic sense, and it expressed skepticism of liability theories based on price cutting, which is often "the very essence of competition."(21)

Of particular note is the Court's decision in Brunswick,(22) in which it rejected the theory that a private plaintiff could obtain treble damages as compensation for continued competition resulting from a merger that prevented a firm from leaving the market. This may be one of the Supreme Court's lesser-known decisions outside the United States, but it is of fundamental significance. Private treble damage litigation is an important tool in the U.S. antitrust enforcement scheme, and the Brunswick decision mandated that it, like government enforcement, be firmly anchored to pro-competition, pro-consumer principles. The Court emphasized that private damages must be based on conduct causing injury of the type that the antitrust laws were intended to prevent. Plaintiffs may not prevail unless they are harmed by anticompetitive consequences of a defendant's conduct, for the antitrust laws were enacted to protect competition, not competitors.

In the last quarter of the twentieth century, the Supreme Court began hearing fewer antitrust cases. In part this reflects a general trend in the Court's practices. In its 2002 term, it issued only 81 written opinions, having issued only 71 the year before.(23) In contrast, thirty years earlier, the Court issued 164 written opinions in its 1972 term and 151 in 1971, including full opinions in ten antitrust cases during those two terms.(24) A litigant's chance of obtaining review today is quite low. In the last complete term, 2002, the Supreme Court considered 8,340 petitions for review by writ of certiorari, but granted full review to only 91 cases, or 1.1%.(25) Even if the unpaid, in forma pauperis, petitions are left out of the calculation, the odds improve only to 4.5%.(26)

A change in the statute governing appeals in civil antitrust cases brought by the government has also had the effect of limiting the number of Supreme Court opinions in antitrust cases in recent years. Until 1974, appeals in these cases went directly to the Supreme Court under the Expediting Act. That statute was amended in 1974 to provide that these appeals go to the intermediate appellate courts unless the district court certifies that immediate Supreme Court review is of "general public importance in the administration of justice."(27) Even then, the Court retains discretion to remand the case to the court of appeals. District courts have certified only three such cases for direct appeal.(28) One of these was Microsoft, but the Supreme Court declined to hear the case and remanded it to the court of appeals.

**Because there are so few Supreme Court antitrust decisions each year —** and because **each one sets precedent that will govern the application of** the **antitrust laws in** thelower courts for decades to come — **each decision is an event of major significance for antitrust enforcers and the antitrust bar. Every phrase is studied with care, and every future case is evaluated in terms of the Court's reasoning process.**

**Specifically spills over to limit implied immunity---that disrupts the stability of IPO regulation and discourages going public**

**Denniston 7** – Independent contractor reporter covering the Supreme Court for fifty-eight years

Lyle Denniston, "Analysis: Antitrust "mistakes" and the IPO process," SCOTUSblog, 6-18-2007, https://www.scotusblog.com/2007/06/analysis-antitrust-mistakes-and-the-ipo-process/

Federal officials who regulate the stock markets do not have to fret that antitrust law will get in their way as they oversee the process of bringing new stocks to the public exchanges. The Supreme Court, worried that judges and juries sitting in antitrust cases lack the sophistication about the markets necessary to avoid making “unusually serious mistakes,” opted on Monday to exempt much — though perhaps not all — of the “initial public offering” (IPO) process from federal antitrust laws. The Court was even unwilling to accept a suggestion by U.S. Solicitor General Paul D. Clement that would have salvaged some role for antitrust.

Although Justice Stephen G. Breyer’s opinion for the majority in the 7-1 decision stressed that it was confined to “the conduct alleged in this case,” the language and rationale of the ruling was broad enough to immunize syndicates bringing new shares to market from many and probably most potential antitrust complaints by investors. It thus appears that the Securities and Exchange Commission will mainly have the duty of monitoring what is allowed or prohibited in IPOs.

Here is the specific assignment the Court said it was leaving to the SEC: the task, using its securities expertise, of drawing a “complex, sinuous line separating securities-permitted from securities-forbidden conduct” so as to assure that the process of bringing new stocks to market by underwriting syndicates continues to function quite freely. (A “sinuous line” would be one that is wavering.)

The decision was a very broad victory for 16 of the nation’s largest underwriters of stock — the major investment banking houses that were challenging a Second Circuit Court decision that had cleared the way for a trial of the antitrust claims of 60 investors joined in two class-action lawsuits. The investors had sued under the Sherman Act, Clayton Act and state antitrust laws, claiming that the investment banking houses had joined in syndicates to control the initial issuance and post-IPO trading in the stocks of several hundred high-tech companies.

The lawsuits complained of a pact among the underwriters not to sell shares of popular tech stocks unless a buyer agreed to buy added shares of that securities in the after-market at higher prices — so-called “laddering”; to pay very high commissions on later stock purchases from the underwriters, or to buy from those underwriters other, less desirable stocks (so-called “tying.”

The targeted activity of joint underwriters’ promotion and sale of new securities, Justice Breyer wrote on Monday, “is central to the proper functioning of well-regulated capital markets.” The antitrust complaints, he went on, “concern practices that lie at the very heart of the securities marketing enterprise.”

In the end, the Court reversed the Second Circuit, concluding that “the securities laws are clearly incompatible with the application of the antitrust laws in this context.” Justice John Paul Stevens joined in the result only, concluding that the challenged conduct did not violate the antitrust laws; he did not join, he said, in a “holding that Congress has implicitly granted [the underwriters] immunity from those laws.” Justice Clarence Thomas dissented alone, relying on “savings clauses” in federal securities laws “that preserve rights and remedies existing outside of the securities laws.”

The Court’s main opinion did not specifically declare that each of the challenged practices was, in fact, legal under securities laws. “In the present context,” Breyer wrote, there is “only a fine, complex, detailed line” that separates activity that the SEC permits or encourages from activity that the SEC “must (and inevitably will) forbid” — the latter being the very kind of activity that the investors here were trying to attack under antitrust laws.

Exploring further the perceived difficulty in such line-drawing, Breyer said that “evidence tending to show unlawful antitrust activity and evidence tending to show unlawful securities marketing activity may overlap, or prove identical.”

But, in sentiment as well as in logic, much of the reasoning of the Court in reaching its conclusions against a joint securities-antitrust regulatory regime could be attributed to its perceptions about the inability of antitrust lawsuits to avoid serious disruption of the securities markets. “The factors we have mentioned make mistakes unusually likely” in the antitrust regime, Breyer said. “Antitrust plaintiffs may bring lawsuits throughout the Nation in dozens of different courts with different nonexpert judges and different nonexpert juries…[T]here is no practical way to confine antitrust suits so that they challenge only activity of the kind the investors seek to target, activity that is presently unlawful and will likely remain unlawful under the securities law. Rather, these factors suggest that antitrust courts are likely to make unusually serious mistakes in this respect.”

**A robust and secure IPO process for young companies is critical to productivity growth**

**Wu 11** – Stern School of Business, New York University

Geraldine A. Wu, "The Effect of Going Public on Innovative Productivity and Exploratory Search," Organization Science, Vol. 23, No. 4, pp. 928-950, 7-27-2011, https://www.jstor.org/stable/23252442?seq=1#metadata\_info\_tab\_contents

Introduction

The rapid pace of innovation in high-technology firms has been an important determinant of economic growth and productivity. Good ideas by themselves, however, cannot ensure continued success at innovation. A critical component of corporate research and development (R&D) efforts is access to funding, particularly for the resource-constrained entrepreneurial ventures that have proved to be vital sources of innovation in technology based industries. Yet the financing events that are crucial to continued innovation may subsequently shape the very innovative activities they are funding. These transactions are not merely short-term events that infuse capital into firms with promising innovations; rather, they delineate distinct stages in the evolution of high tech ventures. Funding events like venture capital (VC) investments, minority equity investments, and initial public offerings (IPOs) are often imbued with broader meanings that affect subsequent access to resources and involve significant governance changes—being a VC backed company, having an affiliation with an established firm in the industry, and being a publicly traded entity imply certain levels of success. Therefore, they can have long-term effects, not only on organizational structures, but also on organizational processes, most notably the search processes that drive technological innovation. This paper focuses on the IPO context to explore the inherent tension between financing and innovation: flows of funds to firms that are intended to support R&D shape subsequent innovation efforts.

An IPO is a milestone event in the life cycle of a business organization. The impetus for going public is typically a desire to build a platform for continued growth. By going public, firms can improve their access to financial capital and their ability to attract other resources that contribute to growth, such as high-quality employees and alliance partners. In addition, the concomitant increase in the liquidity of firm equity enhances the ability to pursue acquisitions, mergers, and licensing agreements (Brau and Fawcett 2006). Alongside these benefits, however, come potential drawbacks and substantial organizational change; in particular, the transition to public ownership subjects firms to a multitude of new requirements that leads to decreased management flexibility and an increased need to manage shareholders' earnings expectations. The short-term bias of public markets and its implications for firm innovation were highlighted in Google's well-publicized IPO prospectus from August 2004, in which the founders wrote, "As a private company, we have concentrated on the long term, and this has served us well. As a public company, we will do the same. In our opinion, outside pressures too often tempt companies to sacrifice long-term opportunities to meet quarterly market expectations We will not shy away from high-risk, high-reward projects because of short-term earnings pressure" (Google Inc. 2004, pp. 27-28). Although there has been substantial anecdotal evidence of entrepreneurs being considered about how taking their companies public might affect long-term innovation, this paper is, to my knowledge, the first to empirically investigate the impact of going public on firm innovation. The importance of understanding these potential consequences is underscored by the critical role that IPOs have played in the growth of young ventures in high-tech industries and by the fact that these firms' innovative capabilities are their most valuable assets and key sources of competitive advantage.

**Floundering productivity causes great power conflict**

**Baru 9**

(Sanjaya, Visiting Professor at the Lee Kuan Yew School of Public Policy in Singapore Geopolitical Implications of the Current Global Financial Crisis, Strategic Analysis, Volume 33, Issue 2 March 2009 , pages 163 – 168)

The management of the economy, and of the treasury, has been a vital aspect of statecraft from time immemorial. Kautilya’s Arthashastra says, ‘From the strength of the treasury the army is born. …men without wealth do not attain their objectives even after hundreds of trials… Only through wealth can material gains be acquired, as elephants (wild) can be captured only by elephants (tamed)… A state with depleted resources, even if acquired, becomes only a liability.’4 Hence, economic policies and performance do have strategic consequences.5 In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. ‘Victory (in war),’ Kennedy claimed, ‘has repeatedly gone to the side with more flourishing productive base.’6 **Drawing attention to the interrelationships between economic wealth, technological innovation**, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others. ‘The fact remains,’ Kennedy argued, ‘that all of the **major shifts in the world’s military-power balance have followed alterations in the productive balances**; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the major **Great Power wars**, where victory has always gone to the side with the greatest material resources

### 1NC---DA

#### Unilateral imposition of extraterritorial antitrust liability escalates to war!—And collapses cooperation on other issues, and trade flows

Salbu 99 – Professor of law and ethics, Georgia Tech

Steven R. Salbu, The Foreign Corrupt Practices Act as a Threat to Global Harmony, 20 MICH. J. INT'L L. 419 (1999), Available at: <https://repository.law.umich.edu/mjil/vol20/iss3/1>

The world is too culturally diverse to accept the external imposition of laws without resentment. 154 [ FN 154] 154. For comparison, consider treaties through which signatories all agree to mutually accepted conditions and terms that apply only to the signatories themselves. Within these bounds, no laws are being applied extraterritorially without the consent of the local sovereignty. In contrast, FCPA-style legislation, now to be adopted in dozens of countries, restricts behavior even in non-signatory nations that have not consented to the intrusion. [End FN] Under these conditions, extraterritorial legal fiat is at the very least insulting and distasteful.'55 Transnational relations likely will be strained by the overreaching of any one nation into the affairs conducted within the borders of another.'56 As one commentator suggests, other nations "may perceive the FCPA as a culturally arrogant encroachment on their ability to govern activities exclusively within their own borders, in accordance with international law principles on territorial sovereignty."''57

While the risk of being perceived as obnoxious and intrusive is hardly insignificant, it pales when compared with a more serious risk--the increased likelihood that transnational relations will become strained,'58 and that nationalistic sentiments will flourish in response to the perceived invasiveness of the extraterritorially applied laws. 5 9 The results of this scenario can range from mounting hostilities over other issues to the severance of trade,' 6 0 and potentially even to military confrontation.161 [Footnote 161] 161. The potential for hostilities over extraterritorial legislation to escalate to the point of military confrontation is a logical possibility, rather than a trend in recent history. Indeed, even U.S. antitrust law, the extraterritorial application of which has evoked substantial retaliatory reaction, has not led to this extreme. See William S. Dodge, Extraterritoriality and Conflict-ofLaws Theory: An Argument For Judicial Unilateralism, 39 HARV. INT'L L.J. 101, 165 (1998) (noting that while extraterritoriality of U.S. antitrust law has evoked blocking statutes and claw-back statutes, it has not caused the cessation of international cooperation). While we have yet to see hostilities over U.S. extraterritorial legislation escalate to the point of war, the potential for such a scenario can never be ruled out. [End FN] Thus, van den Berg observes that extraterritorial application of the Helms-Burton Act in Canada has fueled an "international perception of the United States not only as a cultural imperialist but as a growing legal imperialist."' 62 Perhaps more threatening to the delicate global diplomatic balance, the reach of the Helms-Burton Act has sparked an unforeseen and undesirable alliance between Canada and Cuba, 163 in effect undermining U.S. efforts to apply economic sanction pressures in the latter. Simply stated, laws resented for their overreaching nature can be counterproductive.

Van Wezel Stone identifies similar risks in another area where extraterritorial law has been posited as a possible global solutioninternational labor regulation.'" She notes that because extraterritorial jurisdiction does not aspire to be integrative, it fails to contribute to a common international system of norms and standards.' 65 Instead, extra-territorial jurisdiction tends to undermine international peace and cooperation by creating tension and destabilizing international relations.'" Sovereign nations "react with intense hostility when... activities within their own borders are made the subject of investigation by a foreign nation applying foreign rules and procedures.' 6

The world is not sufficiently homogenized to embrace one conceptualization of morality in gray areas, '6 8 and attempts to force a unified fit via extraterritorial legislation are likely to spark ill will and retaliation.'69 Such hostilities can result, of course, whenever one country imposes its rule upon transactions that occur in another country. The potential is increased when vague laws are applied to the ambiguous conditions of markets in transition, such as communist economies that are in the process of converting to capitalist ones. 70 This suggests a danger in externally-based efforts to unify legal structures addressing such moral issues. Must we therefore throw up our hands in despair, and abandon all exertions to extirpate bribery and corruption? The answer is decidedly no. Abdication of responsibility to improve global markets would be as irresponsible as overweening intrusion into the affairs of other nations. The appropriate middle ground between complacency and invasiveness is persuasion.

**Protectionism causes global wars**

**Palen 17** – historian at the University of Exeter

Marc-William Palen, "Protectionism 100 years ago helped ignite a world war. Could it happen again?," The Washington Post, 6-30-2017, https://www.washingtonpost.com/news/made-by-history/wp/2017/06/30/protectionism-100-years-ago-helped-ignite-a-world-war-could-it-happen-again/

The liberal economic order that defined the post-1945 era is disintegrating.

Globalization’s foremost champions have become the first to signal the retreat in the wake of the Great Recession. Economic nationalism, historically popular in times of economic crisis, is once again on the rise in Britain, France and the United States. We are witnessing a return to the antagonistic protectionist politics that defined a bygone era that ended with World War I — suggesting that today’s protectionist revival threatens not just the global economy, but world stability and peace.

Leading liberal democracies have turned their back on free trade. Britain, through Brexit, announced its retreat from European market integration. Before the parliamentary elections, British Prime Minister Theresa May announced a new Industrial Strategy, which includes state subsidization of select industries and stringent immigration restrictions on foreign workers at “every sector and every skill level.” Despite her post-election collapse in support, May continues to move forward with leaving the European Union single market thanks to an unholy alliance with the Democratic Unionist Party, Northern Ireland’s far-right supporters of Brexit.

Likewise, in the recent French presidential elections the vast majority of candidates ran on a platform of “patriotisme économique.” Marine Le Pen, leader of the French far-right National Front party, made a strong bid for the French presidency through a campaign that combined a condemnation of globalization alongside the promise of extreme economic nationalist legislation and an end to immigration into France. President-elect Emmanuel Macron is now pushing hard for a “Buy European Act” to placate French anti-globalization forces.

But nowhere has the anti-trade turn been more marked than in the United States, where “globalism” has become a dirty word. “Free trade’s no good” for the United States, as Donald Trump put it in 2015. President Trump has threatened to shred the North American Free Trade Agreement and to impose protective tariffs on imports from Mexico and China, two of America’s largest trading partners.

In January, a paranoid Trump pulled the United States out of the Trans-Pacific Partnership negotiations — a massive free-trade deal that included a dozen countries in the Asia Pacific — because he believed that the Chinese were secretly plotting to use it to take advantage of the U.S. market.

And in April, Trump signed a “Buy American, Hire American” executive order that forces U.S. government agencies to purchase domestically made products and limits the immigration of foreign skilled workers.

This widespread fear of the global marketplace and the looming threat of tit-for-tat trade wars herald a return to late 19th-century geopolitics. Then, too, many of the leading economies of the day took shelter behind high tariff walls to halt the forces of globalization. Following the onset of an economic depression in the early 1870s, one industrializing country after another turned against trade liberalization. Trade wars, colonialism and closed markets became the name of the geopolitical game.

In stark contrast to today, back then only Britain stuck to free trade with “all the world.” Yet even free-trade bastion Britain was not without its domestic economic nationalist enemies.

In response to the late 19th-century turn to protectionism among Britain’s competitors, formidable right-wing British organizations like the Fair Trade League and the Tariff Reform League emerged to champion retaliatory tariffs and an imperial trade preference system. And the political leader of the turn-of-the-century British imperial protectionist movement was none other than Joseph Chamberlain, Theresa May’s “political hero.”

“Fortress France” turned away from free trade in 1892, the culmination of a decade-long “protectionist backlash” to the ongoing economic depression. The protectionist measure exacerbated the Franco-Italian trade war, which Italy had started with its turn to protectionism in the mid-1880s. Trade between these countries fell considerably, pushing Italy ever closer to Austria-Hungary and Germany — the Triple Alliance — in the years before the First World War.

The United States, however, topped the list of protectionist states. The political and ideological power of protectionism in late 19th-century America — the Gilded Age — was palpable. The Republican Party, formed as the party of antislavery in the 1850s, fast remade itself as the party of protectionism following the Civil War.

Hoping to protect U.S. industries from the unpredictable gales of unfettered global market competition, the ultranationalist party tacked its sails to the “American System” of high tariffs and government subsidization of domestic industries.

More than a century before Trump’s “America first” policy, slogans like “America for Americans — No Free Trade” filled Republican Party convention halls.

For paranoid Gilded Age Republican protectionists, free trade became tantamount to conspiracy.

The GOP’s lead spokesman on the tariff at that time was a short, cigar-smoking politician from Ohio named William McKinley. “The Napoleon of Protection,” as he was dubbed, had well earned the moniker by the time he entered the White House in 1897.

Like the Trump administration today, McKinley viewed free trade with suspicion, although the target of McKinley’s free-trade conspiracy theories was the industrial powerhouse of Britain instead of Trump’s China. McKinley, throughout his long Republican career, charged his pro-free-trade political opponents with being part of a vast British conspiracy that sought to sap America’s high tariff walls and undermine infant American industries. The conspiracy, he argued, included “free trade leaders in the United States and the statesmen and ruling classes of Great Britain”; American free traders were pawns, agents of “the manufacturers and the traders of England, who want the American market.”

Countering Republican conspiracy theorists, late 19th-century U.S. free traders argued that trade liberalization fostered international stability and peace, and that, by contrast, the era’s global uptick in imperialism and war only illustrated how protectionism fomented geopolitical rivalry and conflict.

Trump, tapping into long-standing Republican fears of free trade, is knowingly returning the GOP to its paranoid protectionist roots — a move against globalization that is also building up populist momentum in Britain and France.

The protectionist resurgence among the leaders of post-1945 globalization — be it Brexit, patriotisme économique, or “America first” — holds dire consequences for the liberal economic order by pitting nations against one another and breeding suspicion, distrust and conspiratorial thinking. The ultranationalism, militarism and tariff wars of the late 19th century spilled over into the 20th century, and ended in world war — suggesting a return to the protectionism of old could damage far more than national economies.

#### Antitrust key—Reverse-causal

--We control uniqueness: *protectionism* is inevitable, but strong trade barriers + the political lawmaking constituencies around them make doing things like tariffs broadly infeasible, so it’s try or die for global trade to prevent antitrust law becoming inflected with a protectionist and arbitrary bent that gets modeled!

Murray 19 – Chief Growth Officer, CheckAlt; Judicial Law Clerk, US Bankruptcy Courts

Allison Murray, JD, Loyola Law School, Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?, 42 Loy. L.A. Int'l & Comp. L. Rev. 117 (2019), Available at: <https://digitalcommons.lmu.edu/ilr/vol42/iss1/3>

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents.1 They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The “our country first, world trade after” mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized.2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

This paper explores how the near-term enforcement of antitrust and competition laws may be either the last hope for preserving aims toward a free global economy or the final nail in free trade’s coffin. We will begin by examining the background of antitrust and competition laws, explaining the goals and economic theories at the heart of the laws, including the myriad of criticisms. Next, we will take a general view of the prevalence of competition laws in the world market, revealing the differences in underlying theory and enforcement by the top three players on the international trade stage. This paper will finish with the subject most at the center of the recent rise of protectionist rhetoric: the perception of unfair enforcement of antitrust laws among the United States, the European Union, and China.

### Adv 1

**Cartels are deterred – most recent evidence prices in aff arguments and concludes that cartels are on the decline.**

**Verbeke & Buts 08-17** – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are **doubtful**, however, even when accepting B&C’s broad definition of this governance mode, that **international cartels** will **gain ground** more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

A key element, and perhaps a surprising one, explaining our **doubt** about the **bright future of cartels** is **four clear trends** in cartel regulation that are now **creating significant political risk for international cartel members** (admittedly not covering B&C’s benevolent cartels). First, **competition policy** is now a **priority** for policy makers around the world, as reflected in the **progress made** in **detecting**, **investigating**, and **prosecuting cartels** (OECD, 2020; OECD, 2021b). Recently published data indicate that **68% of global cartels** (with members from at least two different continents) have been **prosecuted by multiple jurisdictions**, with **average cartel fines** being **very high** at €19.3 million (OECD, 2020).

Second, the **consequences** of **being caught** as a cartel member have **gradually become more severe and far-reaching**, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a **wide array of sanctions** is **now being deployed**, including **personal fines**, **trade prohibitions**, and **prison sentences** (these have **increased sevenfold** over a **recent five-year period**, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, **cartel investigations** have also **become more sophisticated**. **Leniency policies** – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This **powerful tool** serves both **detection** and **deterrence purposes** in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It **incentivizes cartel members to become whistle blowers**. Companies will be **less likely to join a cartel** if they know that its members may be **enticed to disclose cartel operations**, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

A larger number of agencies than before now also have the mandate to conduct ‘**dawn raids**’, in order to **collect evidence of cartel behavior** and they can even enter private premises of employees during their search for incriminating material. In addition, **sophisticated econometric analyses** have become **standard practice** to **provide evidence of coordinated conduct** in industry and to calculate cartel overcharges (Parcu, Monti, & Botta, 2021).

Fourth, competition authorities have invested more in **outreach**, **communicating competition rules** through dedicated events, online campaigns, and competition networks. **Compliance programs** have also been on the rise with an **increasing number** of mainly **large companies investing in compliance training** to abide by competition rules (De Stefano, 2018).

The **increased efforts** to **fight anticompetitive agreements** in industry are now **deterring** and **destabilizing cartels**. Following a **substantial increase** in the **number of cartels** that have been ‘**caught**’, the **average life span** of these cartels is now **going down rapidly** (OECD, 2020). The fight against illegal, anticompetitive behavior will **intensify further in the near future**, rather than governments shifting their focus to contemplate potential benefits. At the same time, the beneficial effects have been widely acknowledged of international collaboration forms that are legally allowed by various competition policy regimes (and are therefore not considered cartels), see for instance Martínez-Noya and Narula (2018) on international R&D cooperation.

**AND, the aff can’t solve – simply increasing the likelihood of penalization cannot establish deterrence – every empiric goes neg.**

**Violante 17** – Bachelor of Criminology (Florida State University), Juris Doctor (American University, Washington College of Law) Attorney at Nelson, Bryan, and Jones

Keith Violante, “Making Deal with the Devil: Are Current Antitrust Sanctions Deterring Cartel Behaviour,” International Trade and Business Law Review, Vol. 20, 2017, HeinOnline

There is **no indication** that the **drastic increase** in criminal and civil **penalties** under the ACPERA has caused a **significant decline** in **antitrust violations**.92 Civil fines are **unlikely to effectively deter antitrust violations** committed by an individual when the corporation is able to **completely internalise** the entire fine imposed against the business.93

According to a recent study, average antitrust conspiracies **last six years**.94 This study suggests that these conspiracies persist for so long because **price-fixing is more profitable than was previously thought**,95 which in turn suggests the need for **greater sanctions**. Put simply, this study argues that the decision to commit antitrust violations is driven by a **rational cost/benefit analysis**. Under this theory, a business will **continue to commit antitrust violations so long as it remains profitable**.

Critics of this argument suggest that sanctions exist that can prevent antitrust violations.96 Judge Richard Posner proposed that price-fixing is ultimately punished exclusively through corporate fines, and 'only when a company is unable to pay an optimal fine should imprisonment be imposed as a last resort and only if the individuals are unable to pay the fine'. Other practitioners argue that criminalisation of price-fixing offences would be a better deterrence. One argument suggests the 'publicity about severe sentences for price fixing may help educate other corporate executives about the true individual and corporate legal risks of being caught while also contributing to the effectiveness and cost of corporate antitrust compliance programs'.98

However, **civil fines**, or at least the **implementation** of them, **do not seem to adequately deter antitrust violations**. The fluctuation of a corporation's stock price after a firm is indicted for committing an antitrust violation also suggests civil fines **provide an inadequate deterrence**.99 A **well documented empirical regularity** is that share values in indicted firms initially fall significantly but the **stock price** of an overwhelming majority of indicted firms **returns to preindictment levels within one year**.100 These results are **consistent** with firms indicted between 1962 and 2000.101 Given the **substantially greater corporate fines** that were imposed during the latter half of that period, the **consistency of the stock price recovery** across that time suggests incr**eased sanctions do not significantly deter antitrust violations**.102

**New political risks won’t revitalize the prominence of cartels – higher political risk has the opposite effect – it reinforces legal cooperative behaviors.**

**Verbeke & Buts 08-17** – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

Given the above trends, the question arises whether **new political risks** related to de-globalization, techno-nationalism, and institutional fracturing could still **give renewed prominence to cartels**. Discriminating against outsiders makes for a compelling argument in favor of cartels, in the sense that important societal interests such as domestic employment, domestic value added, national security, national technological superiority, etc., are supposedly promoted. And at the industry level, decision-making power and capabilities for long-term survival, profitability, and growth are kept at home.

Domestic, cartel-like behavior among digital companies such as internet platforms can further contribute to monitoring and muzzling citizens, and can be part of powerful collusive action between technology firms and the political establishment, as well as other non-market stakeholders (Verbeke & Hutzschenreuter, 2020). But **cartel-like behavior**, for instance by US-based internet companies, is **unlikely to contribute much** to their **competitive position outside of North America**, and there is **little incentive for large rivals** from other regions to make any agreements with these US companies to form a global cartel.

However, B&C propose that higher political risks associated with foreign activities will make international cartels more attractive than other forms of governance in international business, especially foreign direct investment. B&C also predict that cartel-joining multinational enterprises will rely less on foreign subsidiaries than firms operating outside of cartels. We respectfully suggest that these two predictions are **unlikely to materialize in practice**. We make very different predictions. First, we propose the **absence** of a **positive relationship between political risk** and **international cartel formation**. In fact, we predict the **opposite**: **higher political risk abroad** will **reinforce** the **role of the lead-multinational enterprise in GVCs**. At the same time, we also do predict that higher political risk **abroad** might strengthen cartels and other types of **cooperative behavior at home**, whether in the home nation or at the home-regional level, as a logical outcome of global institutional fractures. As one recent example of such institutional fractures to benefit home-region companies, the European Commission adopted a proposal for a regulation on May 5, 2021 to address distortions caused by foreign subsidies, if those could support non-EU firms to acquire EU companies. It is difficult to imagine how international cartels could help to counter such policy, in contrast to agile GVC-management by lead-multinational enterprises.

**They’re wrong about standing – *Motorola Mobility* doesn’t make it untenably narrow.**

**Wick 14** – Attorney, Covington & Burling LLP

Robert D. Wick, Brief of Defendants-Appellees, Motorola Mobility LLC v. AU Optronics Corporation, et al., US Court of Appeals for the Seventh Circuit, October 2014, LexisNexis

E. Affirming the district court judgment poses no threat to government enforcement actions or U.S. purchaser claims.

Contrary to Motorola’s assertion, affirming the district court’s gives-rise-to holding would **pose no threat to the government’s law enforcement authority**. Assuming arguendo that direct effects on U.S. commerce exist, those effects would “give rise to” claims by the U.S. government or U.S. purchasers, but not by foreign purchasers like Motorola. See Empagran, 542 U.S. at 159, 170-71. The government makes this point throughout its brief. See U.S. Br. 5, 6, 10, 18, 20.

Nor is Motorola correct that because of the **combined effect** of the **FTAIA** and the indirect purchaser rule of **Illinois Brick** Co. v. Illinois, 431 U.S. 720 (1977), “no one” will have a private money damages action unless Motorola has one.

First, private claims may be **brought under foreign law**—and in fact such cases have been brought against LCD defendants. Second, private claims also have been **brought under state antitrust laws** by some of the very customers to whom Motorola sold its phones. See, e.g., AT&T Mobility LLC v. AU Optronics Corp., No. 09-cv-4997 (N.D. Cal.). Third, if the government is correct that an Illinois Brick exception should be created for the first U.S. purchaser of goods affected by price-fixing, see U.S. Br. 22, then even Clayton Act treble damages suits may be brought, assuming other requirements are satisfied. Defendants note, however, that this appeal does not actually present the question of an Illinois Brick exception because Motorola is not the first U.S. purchaser of allegedly affected goods; its U.S. customers are.11 In addition, there are serious questions about whether the proposed exception is warranted.12

#### No political will for space elevator development, even if graphene exists.

#### Space colonization isn't feasible and intervening actors solve

Weinberg 13

Steven Weinberg is a theoretical physicist at the University of Texas at Austin, Nobel Prize in Physics, 1979, Space Policy, November 16, 2013, 29, "Response: Against manned space flight programs", Science Direct

6. Human survival

It is argued that “The most pertinent long-term reason for human spaceflight is survival as a species”. I don’t disagree with this, but it is a task for the distant future. In order to give humanity a chance to survive a global catastrophe such as a large meteor strike or an all-out nuclear war, an extraterrestrial colony would have to be permanently self-supporting. The colony would have to possess the industrial capacity to replace its equipment -- solar panels, air synthesizers, water mining machinery, hydroponics, etc. -- when it wears out. We do not now have the capability to establish such a permanently self-supporting colony on Antarctica, a far more benign environment than Mars or an asteroid. This is the real challenge: not to get people to Mars, but to free them from the need of support from Earth. Perhaps we should start with Antarctica.

#### No impact – warming doesn’t cause extinction and various factors check.

Farquhar et al. 17 (Sebastian Farquhar; John Halstead; Owen Cotton-Barratt; Stefan Schubert; Haydn Belfield; Andrew Snyder-Beattie, Doctoral Student @ Oxford University; climate activist; Research Scholars Programme Director @ Oxford University; Post-doc @ Oxford University’s Department of Experimental Psychology; Academic Project Manager @ the Centre for the Study of Existential Risk; Director of Research @ Oxford University’s Future of Humanity Institute, "Existential Risk Diplomacy and Governance," GLOBAL PRIORITIES PROJECT 2017, 2017, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf, Date Accessed: 7-10-2019, SB).

1.1.2 Extreme climate change and geoengineering The most likely levels of global warming are very unlikely to cause human extinction.15 The existential risks of climate change instead stem from tail risk climate change – the low probability of extreme levels of warming – and interaction with other sources of risk. It is impossible to say with confidence at what point global warming would become severe enough to pose an existential threat. Research has suggested that warming of 11-12°C would render most of the planet uninhabitable,16 and would completely devastate agriculture.17 This would pose an extreme threat to human civilisation as we know it.18 Warming of around 7°C or more could potentially produce conflict and instability on such a scale that the indirect effects could be an existential risk, although it is extremely uncertain how likely such scenarios are.19 Moreover, the timescales over which such changes might happen could mean that humanity is able to adapt enough to avoid extinction in even very extreme scenarios. The probability of these levels of warming depends on eventual greenhouse gas concentrations. According to some experts, unless strong action is taken soon by major emitters, it is likely that we will pursue a medium-high emissions pathway.20 If we do, the chance of extreme warming is highly uncertain but appears non-negligible. Current concentrations of greenhouse gases are higher than they have been for hundreds of thousands of years,21 which means that there are significant unknown unknowns about how the climate system will respond. Particularly concerning is the risk of positive feedback loops, such as the release of vast amounts of methane from melting of the arctic permafrost, which would cause rapid and disastrous warming.22 The economists Gernot Wagner and Martin Weitzman have used IPCC figures (which do not include modelling of feedback loops such as those from melting permafrost) to estimate that if we continue to pursue a medium-high emissions pathway, the probability of eventual warming of 6°C is around 10%,23 and of 10°C is around 3%.24 These estimates are of course highly uncertain. It is likely that the world will take action against climate change once it begins to impose large costs on human society, long before there is warming of 10°C. Unfortunately, there is significant inertia in the climate system: there is a 25 to 50 year lag between CO2 emissions and eventual warming,25 and it is expected that 40% of the peak concentration of CO2 will remain in the atmosphere 1,000 years after the peak is reached.26 Consequently, it is impossible to reduce temperatures quickly by reducing CO2 emissions. If the world does start to face costly warming, the international community will therefore face strong incentives to find other ways to reduce global temperatures. The only known way to reduce global temperatures quickly and cheaply is a form of climate engineering called Solar Radiation Management (SRM), which involves cooling the Earth by reflecting sunlight back into space.27 The most researched form of SRM involves injecting aerosols into the stratosphere.28 Most of the evidence so far suggests that ideal SRM deployment programmes would reduce overall damages relative to an un-engineered greenhouse world.29

**Tons of hurdles to smart cities---you should assume their internal link is science fiction**

**Zeine 17** - Founder and CTO of Ossia. Wireless Power Pioneer. Physicist. Inventor.

Hatem, 6-19, The Problems With Smart Cities, Forbes, https://www.forbes.com/sites/forbestechcouncil/2017/06/19/the-problems-with-smart-cities/3/#268c6d041ffd

The "smart city" sounds like a digital utopia, a place where data eliminates first-world hassles, dangers and injustices. But there are some problems with smart cities, and no one, to my knowledge at least, has pointed them out. Press coverage from Forbes, The Wall Street Journal, The Guardian and dozens of other publications are gleefully optimistic about smart cities. No more traffic! Renewable energy for all! Fewer fires and disease outbreaks! Billions in savings! Automated vegetable gardens on roofs! These are all real possibilities. Before we get too excited, however, let’s examine the ingredients of a smart city and what they indicate about those problems. **Sensory Overload** Smart cities are based on data. If you want data, you need sensors. It’s not like roads, buildings and street lights will wake up magically and start chatting about the weather. We need sensors to see, hear, smell, taste and feel on their behalf. A platform can then aggregate all their data and use it to make (or propose) decisions at speeds exceeding human capacity. Sensors will measure temperature, traffic patterns, foot traffic, air quality and infrastructure integrity (e.g., is the bridge safe?), among many other things. Lux Research, an innovation research and advisory firm, has a report that suggests the world will deploy 1 trillion sensors by 2020. Let's put that in perspective: If you have 1 million people deploying sensors, each person needs to deploy a million of them within three years. The De-Energizer Bunny The U.S. alone buys over 3 billion batteries a year. **We have not built 1 trillion batteries in the history of humankind, yet we’re supposed to make enough batteries to power 1 trillion sensors within three years?** I doubt it. **Even if we could manufacture batteries at that scale, the resulting pollution and energy consumption would offset many of the benefits**. And tell me, who would monitor and replace the batteries in, say, 1 million public sensors scattered throughout New York City? Even the Energizer Bunny wouldn't get on board with that. Let’s say we ditch the batteries and connect sensors to wires instead. Installing 1 trillion wires is prohibitively expensive. Whether you power those sensors with solar, nuclear or fossil fuel energy, transmitting power from its source to a device is impractical. Problem No. 1 The first problem with a smart city is power. We want to install millions of sensors that can retrieve useful, potentially life-saving data. Yet with our current energy paradigms, we can’t power 1 trillion devices, let alone a million in a single city. Thus, **the smart city is a sci-fi fantasy without wireless power** (i.e., power at a distance). Is our utopia dead in the water, then? No. There are companies (including ours) developing wireless power that resembles the functionality of Wi-Fi but for power. We can solve the problem as quickly as societies unwire power distribution. Once sensors receive power wirelessly, we’ve cleared the main obstacle to a smart city. We can then ask practical questions: How do we mitigate rush-hour traffic based on the data? How do we reduce particulate matter in our indoor and outdoor air? Where are pollutants coming from and how might we stop them? How do we prevent meat contamination at a nearby food processing plant from becoming a city-wide health crisis? Initially, we’ll retrofit cities with sensors. Eventually, we’ll construct smart cities from scratch because our existing road systems, zoning patterns and power grids aren’t made for automated, data-driven lifestyles. Autonomous cars, for instance, have different needs than the manual gas guzzlers around which we have designed our infrastructure. Problem No. 2 As we design smart cities around the data we want instead of the wiring we have, the dialogue gets more complex. Mass data aggregation will establish some truths (the source of certain problems) about how our cities run. It will lead us to score cities on different quality-of-life metrics. And that brings us to the toughest question of all: What do we value in a human habitat? That raises the second problem with a smart city: **We could create a dystopia just as easily as we could create a utopia**. The dividing line is deceivingly thin. We assume that by tapping into the collective intelligence of both devices and people we can create better living environments. I believe we can. But data is not a magical cure to all our woes. To quote author and entrepreneur Derek Sivers, “If [more] information was the answer, then we’d all be billionaires with perfect abs.” Likewise, if urban data was the answer, then collecting it would eliminate traffic, poverty, crime, etc. That’s dangerously optimistic. **We’ll need leaders to interpret and use the data wisely**. Too often, our officials pass along data like hors d'oeuvres, expecting people to take only what nourishes their worldview. That’s not good enough. Smart cities will need leaders who have the courage to defend their data, say what it means and establish it as a truth upon which cities make decisions. If officials don't stand behind their data, neither will the public.

#### No cyber retal OR attribution.

Dr. Brandon Valeriano 14, Senior Lecturer (Politics), Univ of Glasgow, and Ryan C. Maness, visiting fellow of security and resilience studies in the Department of Political Science at Northeastern University, “The dynamics of cyber conflict between rival antagonists, 2001–11,” Journal of Peace Research May 2014 vol. 51 no. 3 347-360, http://jpr.sagepub.com/content/51/3/347.short

Even considering our past investigators and theory, we were surprised to find little actual evidence of cyber conflict in the modern era. Why then are there so few rivals engaging in cyber warfare? Furthermore, why are the incidents and disputes limited to mostly defacements or denial of service when it seems that cyber capabilities could inflict more damage to their adversaries?¶ Based on our analysis, we find our notion of restraint is a better explanation of cyber interactions than any conception of continuous or escalating cyber conflict. States will not risk war with their cyber capabilities because there are clear consequences to any use of these technologies. States are not reckless, but terrorists and other cyber activists might not be so restrained. The interesting result of the process is that while cyber terrorists will likely proliferate, their ability to do damage will be limited due to the massive resources and conventional intelligence methods needed to make an operation like Stuxnet successful.14 Stuxnet and Flame could be the harbingers of the future, but in reality it was a collusion of discrete events that worked out for the attacker (Lindsay, 2013). With a will to attack, there must also come a way to attack. With such a high burden on luck and ability, it will be rare to see such important disputes continue in the future.¶ The recently discovered cyber incidents of Red October and Flame represent the typical outcome of cyber conflict.15 They are massive cyber operations, but have to date been used for information extraction and espionage purposes. Cyber conflict is in our future, but these events will only be as devastating as the target allows them to be as long as the attacker is restrained by logic, norms, and fear of retaliation. Restraint is clearly in operation for cyber conflict. Constraints can change the behavior of an actor into not doing something it would usually do if left to its own devices. A rival will not blatantly attack its adversary’s infrastructure or secret government databases because that state may perceive the attack as it would a physical attack and respond with an equally devastating cyber incident or even with conventional military forces. There is also the fear of collateral damage which remains high for many actors, and this simple limitation may prevent persistent cyber conflict from becoming a reality. Another fear is cyber blowback, as noted by Farwell & Rohozinski (2011), in that tactics could be replicated and targeted back towards the attacker.¶ The range of relations in the realm of cyberspace has yet to be determined, but it does seem clear that rivals operate as rivals should. They are able to manage their tensions in such a way as to forestall violence yet prolong tensions for long periods of time. Therefore, states have yet to employ widespread damage via cyberspace out of fear of the unknown. They fear the escalation of the rivalry in the absence of a critical event like a territorial invasion. Malicious and damaging cyber tactics seem not to be the norm. The best hope for reducing the possibility of cyber conflict in the future comes from strong institutions capable of managing and restricting cyber-based disputes.

### Adv 2

**Supply chain relocation is inevitable – COVID and U.S.-China strategic rivalry ensure it.**

**Suzuki 21** – Visiting fellow with the Japan Chair at the Center for Strategic and International Studies

Hiroyuki Suzuki, “Building Resilient Global Supply Chains: The Geopolitics of the Indo-Pacific Region,” CSIS, February 2021, https://www.csis.org/analysis/building-resilient-global-supply-chains-geopolitics-indo-pacific-region

Covid-19 Has Accelerated Supply Chain Restructuring

During the era of globalization over the last two decades, companies of all sizes have been building domestic and international supply chains that prioritize efficiency. However, **rising labor costs** in emerging economies, including China, and **growing geopolitical uncertainty due to U.S.-China strategic rivalry**, including the **strengthening of protectionist policies** in the United States, **forced** a **reassessment** of **global business models**—such as multinational corporations announcing plans to **relocate** their **manufacturing operations** to Vietnam and Mexico in 2018–19. The Covid-19 pandemic has **greatly accelerated this trend** and reaffirmed the importance of protecting citizens’ livelihoods by strengthening supply chains. In particular, the impact on essential commodities such as food and medicines and on social infrastructure, coupled with political tensions, provided an **opportunity** to **promote policies of homeland security** in many countries.

In response to an **increasingly complex global economic environment**, global corporations are taking the following measures to **reduce supply chain risk**:

▪ **Reshoring**

In short, this is a strategy to **redirect manufacturing operations back to the home market**. This **trend has been evident since 2019**, **particularly in the United States** due to **tariff increases** in the wake of the U.S.-China trade conflict that have caused the U.S. manufacturing import ratio (imports as a percentage of total domestic manufacturing output) to fall for the first time in almost a decade. In addition, the Covid-19 pandemic has **increased awareness** in the United States of the **vulnerability of supply chains** for critical items such as health care products and food, **further encouraging policies** that allow companies to **repatriate** their **supply chains** back to their home countries. However, in the case of developed countries, reshoring entire supply chains is not practical due to additional labor and overhead costs, so it is important to focus on strategic sectors for reshoring from a national security and industrial policy viewpoint.

**BUT large scale restructuring is impossible.**

**Brown 20** – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

Companies are unlikely to completely abandon China

The new coronavirus has put a spotlight on the world’s reliance on Chinese manufacturing, and prompted speculation that supply chain restructuring might start with pulling out of China.

But “this is really not happening,” said Sheffi, the director of the MIT Center for Transportation and Logistics, at the EmTech Next conference last month. While some companies have been leaving China over the last decade as costs go up, Sheffi said **most can’t**, **and won’t**, move their supply chains out of the country completely.

China is a **sophisticated supplier** of many parts, he said, pointing out that clothing manufacturers who have left China for other countries are **still buying Chinese textiles**. Proof in point: While China’s share of clothing manufacturing has fallen over the last five years, its export of raw textiles, which are made with sophisticated large machinery, has gone up.

Even if sewing and parts of some other industries leave, “**big industries invested decades** in building up a whole ecosystem in China,” Sheffi said. “It will take **decades** and **untold money** to move out of China, so I don’t see it happening very quickly.”

Sheffi said none of the executives he’s interviewed for an upcoming book expressed plans to move out of the country entirely.

“**They just can’t**,” he said. Even if costs are high, China offers **capability**, **speed**, and **sophistication** — an **entire ecosystem** that can’t **easily be replicated or replaced**.

### Adv 3

#### EU-US cooperation fails.

Hamilton 16

Daniel S. Hamilton, Austrian Marshall Plan Foundation Professor and Executive Director Center for Transatlantic Relations Johns Hopkins University School of Advanced International Studies, Atlantic Future Policy Paper No. 1, January 19, 2016 “A Pan-Atlantic Agenda for EU-US Relations”, http://www.atlanticfuture.eu/contents/view/a-pan-atlantic-agenda-for-eu-us-relations

This pan-Atlantic agenda for EU-US relations is ambitious. It is not likely to be easy. It is unclear whether Europeans or Americans understand their growing stake in the connections that are increasingly binding the peoples of the Atlantic Hemisphere, much less whether they are prepared to muster both the resources and political will required to incorporate a pan-Atlantic agenda into traditional EU-US mechanisms of cooperation. Other EU-US efforts to extend their partnership beyond their traditional focus on Europe and the Atlantic North have had mixed results. In many areas, relative convergence of views on overall goals often contrasts with differences over tactics; asymmetrical institutional frameworks; strategic-action capacity and inadequate tools.

# 2NC

## Exemption Spillover DA

**The plan’s limitation of an exemption is a dramatic shift that alters the current judicial trend of believing broad limits on antitrust are preferable**

Edward **Wasmuth**, Jr., Partner, Smith, Gambrell & Russell, 20**07**, Supreme Court Antitrust Rulings, <https://www.sgrlaw.com/ttl-articles/1068/>

Trends Reflected in These Decisions

**These decisions reflect a faith in markets**. Leegin and Ross-Simmons show that **the** Supreme **Court believes** that market participants ought to enjoy **greater flexibility** in choosing how to do business, unencumbered by the threat of antitrust lawsuits.

**All of the decisions** reflect **a perspective highly suspect** of the benefits of antitrust litigation. Leegin reflects a view that the threat of litigation under a per se rule keeps businesses from engaging in pro-competitive behavior. In Ross-Simmons, the Court declared claims of predatory bidding to be inherently suspect. In Credit Suisse, the Court was concerned that antitrust lawsuits would have a chilling impact on the IPO market. In Twombly, the Court expressed concern that businesses would need to endure the burden of expensive litigation while a court or jury attempted to distinguish between illegal conspiracies and innocent, legal parallel conduct. **In each case, the Court raised standards for liability to lessen the chilling effect that antitrust litigation might have on markets.** If conduct could be construed as either innocent or illegal, the Court was willing to presume the conduct innocent.

**That new calculus specifically impacts implied immunity---it’s judicially constructed, ambiguous, and is open to change**

**Lacour 8** – J.D. Candidate, June 2009, St. John's University School of Law

Justin Lacour, "Unclear Repugnancy: Antitrust Immunity in Securities Markets After Credit Suisse Securities (USA) LLC v. Billing," St. John's Law Review, Vol. 82, No. 3, Summer 2008, https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1084&context=lawreview

Introduction

For over a century, American antitrust laws have sought to promote competitive conduct in the market place and to protect consumers from price discrimination, price fixing, and other ill effects of monopolistic behavior.1 The application of antitrust laws to industries subject to federal regulation presents a **difficult issue**, since an activity otherwise prohibited by the antitrust laws may be permitted or even required when Congress has spoken by passing a regulatory statute. 2 A **court** must determine whether a regulatory statute-either **expressly** or **by implication**-repeals the antitrust laws, and whether jurisdiction over the particular conduct lies with the **regulatory agency**, **rather than the court**.3 When Congress has **remained silent**, a court **may determine** that implied immunity exists if maintaining an antitrust action would "**thwart the regulatory scheme** created by Congress." 4 Although both securities regulation and antitrust laws seek to promote efficient markets,5 the SEC, in regulating securities markets, must consider additional issues, such as "the economic health of the investors, the exchanges, and the securities industry," unlike antitrust law, which is concerned solely with competition. 6 The parallel application of antitrust laws and securities regulation could therefore **potentially interfere** with regulatory controls and "could undercut the very objectives the antitrust laws are designed to serve. ' 7 The Securities Act, the Securities Exchange Act, and the Investment Company Act,8 like **most** regulatory statutes, are **silent on the issue** of antitrust jurisdiction, 9 **leaving courts to determine whether implied immunity exists.**'0

While the Supreme Court has stated that the general principles applicable to antitrust immunity are "well established,"11 commentators have opined that "'[tjhe case law of implied immunity is... a **quagmire**.'"12 Courts have **differed greatly** on when implied immunity is necessary. 13 Despite this confusion, courts have developed two distinct approaches, treating implied immunity largely as a question of authority. Most courts have looked at whether the challenged conduct fell under the jurisdiction of the regulatory agency.14 If the challenged practice fell under the agency's jurisdiction, and the agency has exercised its authority over the practice, then a finding of implied immunity may be appropriate. Courts have **differed**, though, as to the **extent** to which the agency must **exercise its authority** over the practice in question before finding implied immunity.1 5 A second approach is to base a finding of implied immunity solely on the presence of a pervasive regulatory scheme. Courts have found implied immunity appropriate when the agency controls every aspect of the industry's conduct, 16 or when "'Congress must be assumed to have foresworn the paradigm of competition'" in creating the regulatory scheme. 17 Implied immunity, however, has rarely been established solely on the presence of pervasive regulation. 18

Steady throughout these differing approaches to implied immunity in the case law is the long-held standard that, for implied immunity to apply, there must be "'a convincing showing of clear repugnancy between the anti-trust laws and the regulatory system.' "19 Most courts have held that a repugnancy exists when the application of both antitrust laws and the regulatory scheme would produce conflicting standards for the regulated industry.20 Gordon v. New York Stock Exchange, Inc.21 provides a clear example of this traditional implied immunity analysis. In Gordon, the SEC had approved a system of fixed commission rates, a practice that would be a per se violation of antitrust laws. Since the practice fell under the SEC's authority and there was a direct conflict between the two laws, the Supreme Court found implied immunity. 22 Other courts have also viewed repugnancy, not in terms of a conflict between two laws, but as a conflict of authority: Application of antitrust laws would conflict with the authority Congress has granted to regulatory agencies. 23

Still, courts have applied even this **seemingly simple rule** in **different ways**. Courts have **differed** as to the effect agency approval or disapproval of the activity has on the question of implied immunity. **Some courts** have been willing to find implied immunity even when the challenged conduct has been disapproved of by **both** antitrust laws and the regulatory agency. 24 **Many courts, however**, have chosen to treat agency disapproval of the challenged practice as **refuting any claim** of implied immunity since, in such cases, there would be no conflict between antitrust laws and the regulatory scheme. 25 In short, the "clear repugnancy" standard appears as muddled as the other areas of implied immunity case law.

**Independently, the aff causes regulators to perceive that antitrust exemptions will be limited in the future, limiting SEC regulatory flexibility**

**Kling 11** – Yale Law School, J.D. 2010, Brown University, A.B. 2007

Jacob A. Kling, "Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine," The Yale Law Journal, Vol. 120, No. 4, pp. 910-953, January 2011, https://www.jstor.org/stable/41060155?seq=1#metadata\_info\_tab\_contents

This Part argues that a broad implied immunity standard predicated on the SEC's jurisdiction over, and active review of, a particular activity is efficient. But whereas in Billing the Court justified its implied immunity analysis by reference to the chilling effects of erroneous antitrust judgments ex post, this Part shifts the focus to ex ante regulatory action by the SEC. It argues that, from an ex ante perspective, the **principal concern** with a **narrower implied immunity doctrine** is that it might **distort** the SEC's **regulatory decisions.** In particular, if the SEC has three regulatory choices- **prohibit** a class of conduct **entirely**, **permit it entirely**, or **adopt a nuanced rule** that permits some forms of the conduct but prohibits others - and if a nuanced approach is optimal but a blanket authorization is preferable to a complete prohibition, then under either a some regulation standard or an affirmative approval standard the SEC **might opt** to permit the conduct **in its entirety** simply in order to **preempt antitrust suits**.167

[[Begin Footnote 167]]

167. Because the SEC did in fact adopt a fairly nuanced approach to the laddering and tying arrangements at issue in Billing, the arguments presented below might seem inapplicable to the facts of the case. But the SEC **presumably expected** that antitrust actions **would be preempted** **given** the **precedents** discussed in Part I. Thus, it might in fact be **precisely** **because** of the Court's **broad implied immunity** doctrine that the SEC was able to **issue finely drawn guidance** with respect to the conduct challenged in Billing.

[[End Footnote 167]]

The SEC can be expected to choose such a **second-best solution** in two situations. First, the SEC might opt for such a rule if it believes that it will **not have time** to study the activity at issue **before** an **antitrust suit is resolved** and that an antitrust court, if left to its own devices, might prohibit too much conduct or impose excessive liability for antitrust violations. Second, the SEC might choose to permit the entire class of conduct if it believes that, even if it were able to adopt a nuanced rule in time, a **court might misapply that rule** and **prohibit conduct** that the SEC would permit or **award excessive damages** for activities that the SEC prohibits. In combination, these two scenarios, which are modeled in the following Sections, suggest that an active review standard is optimal because it enables the SEC to regulate without solicitude for the possibility of erroneous decisions in antitrust cases.168

[[Begin Footnote 168]]

168. In practice, the SEC would not justify its regulatory choices by reference to the possibility of erroneous antitrust decisions. Nevertheless, such concerns might have a **subtle** and even **unacknowledged influence** on the **form of regulation ultimately adopted**.

[[End Footnote 168]]

**That disrupts financial stability---effective and unilateral SEC regulation is critical**

**Allen**, Associate Professor, Suffolk University Law School, **‘18**

(Hillary, “The SEC as Financial Stability Regulator,” 43 J. Corp. L. 715)

After the financial crisis of 2007-2008 (the “Crisis”), regulators around the world adopted the pursuit of “financial stability” as one of the foremost goals of financial regulation.2 However, the ubiquity of the goal belied a lack of consensus about how regulators should approach financial stability, and that lack of consensus persists today. This Article takes an expansive view of financial stability regulation, arguing that such regulation should seek to prevent disruptions to both financial institutions and markets, if such disruptions would have negative consequences for the broader economy. Because the Securities and Exchange Commission (the “SEC”) has much more experience with the securities markets than other US financial regulators, the SEC is the agency best positioned to **ensure the robustness of those markets**. The SEC can therefore make a significant contribution **as a market-oriented financial stability regulator** – even if other forms of financial stability regulation might be best left to prudential regulators, like the Federal Reserve.

Private participants in the securities markets have neither the **incentives** nor the **ability** to promote **financial stability** (a collective good),3 and so **only a government body** can work to ensure that the securities markets are **robust to shocks**, and minimize the likelihood of shocks occurring in the first place. **If the SEC fails** to take on this role, we **cannot expect any other government agency to fill the lacuna**. While the Financial Stability Oversight Council (“FSOC”) was created to address threats to the stability of the financial system, it is, at its core, a committee that is designed to leverage the expertise of its member agencies rather than performing extensive regulatory functions itself. Other than the SEC, there is no regulatory agency represented on the FSOC that has extensive experience with the securities markets.4 And there are certainly developments in the securities markets that raise financial stability **concerns** – this Article will focus in **particular** on the increasing prevalence of **high frequency trading** (“HFT”) in the equity markets.

HFT is an umbrella term for a variety of different automated trading strategies; their common characteristic is that the computer algorithms that make the trading decisions are designed to hold assets for only a very short period of time. HFT now accounts for **more than half of all trading** in the US equity markets,5 and while the practice certainly affords benefits in terms of reducing the time and cost of executing trades, it also increases the **complexity**, **interconnectedness** and **opacity** of the equities markets.6 Events such as the **“Flash Crash”** in May 2010 have alerted regulators to HFT’s potential to both generate and transmit shocks through the financial system: the potential **threats** that HFT **poses to financial stability** (as well as to **investors** and **capital formation**) will be explored in detail in this Article. Of course, high frequency traders do not trade exclusively in the equity markets (i.e. the secondary trading market for listed stocks): 7 there is an almost limitless list of assets that HFT firms will trade, including a multitude of derivatives instruments. However, this Article will focus on the equity markets.

The SEC is **currently considering** how to **reform its regulation of the equity markets** in light of HFT and other developments, a project that began in earnest with the issuance of a “Concept Release on Equity Market Structure” on January 14, 2010 (the “Concept Release”).8 Although some reforms have been implemented since that time, the project of market structure reform is nowhere near complete. To the extent that the SEC is planning to promulgate further rules addressing HFT and the equity market structure more generally, **such rules can be said to be in the “preproposal period”** (i.e. the time prior to the proposal of any rule in the Federal Register). As Krawiec notes, the preproposal period is “a time period about which little is known, despite its importance to policy outcomes. . . the need to produce a proposed rule that is ready for comment pushes much regulatory work to this early stage of the rule development process.”9 This Article seeks to provide some insight into the preproposal stage of the market structure reform project by considering the testimony, public statements, speeches and press releases that have been disseminated on the subject of HFT by the SEC, its Commissioners, and its staff.10

**Sparks global war---intervening action fails to stop financial collapse**

**Sundaram and Popov 19** – former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007; former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin

Jomo Kwame Sundaram and Vladimir Popov, "Economic Crisis Can Trigger World War," Inter Press Service, 2-12-2019, http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/

KUALA LUMPUR and BERLIN, Feb 12 2019 (IPS) - Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another **international financial crisis**, there are **growing concerns** about the increased possibility of **large-scale military conflict.**

More worryingly, in the current political landscape, **prolonged economic crisis**, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could **easily spin out of control** and ‘morph’ into **military conflict**, and worse, **world war**.

Crisis responses limited

The 2008-2009 global financial crisis almost ‘**bankrupted’ governments** and caused **systemic collapse**. Policymakers managed to pull the world economy **from the brink**, but soon switched from counter-cyclical fiscal efforts to **unconventional monetary measures**, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address **underlying economic weaknesses**, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This **lack of structural reform** has meant that the **unprecedented liquidity** central banks **injected into economies** has not been well allocated to **stimulate resurgence of the real economy**.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, **another economic crisis** — possibly **more severe** than the last, as the economy has become **less responsive** to such blunt **monetary interventions** — is **considered likely**. A decade of such unconventional monetary policies, with very low interest rates, has **greatly depleted their ability to revive the economy**.

**The courts are standing strong in the face of increased enforcement---substantive antitrust expansions are key**

Jennifer **Saba and** Gina **Chon**, Reuters, Breakdown: U.S. antitrust frenzy stops with judges, 7/21/**21**, <https://www.nasdaq.com/articles/breakdown%3A-u.s.-antitrust-frenzy-stops-with-judges-2021-07-21>

Companies Win Cat-And-Mouse Game In Courts

**If a firm wants to fight**, it can **turn to federal courts**, where judges have often taken a narrow view of rules in a way that favors companies. For example, the burden of proof is on the government to show an acquisition target is a significant rival or that a deal will substantially reduce competition. This has **tripped up many high-profile cases**, including some recently. In 2019, the Justice Department lost an appeal to block the $85 billion tie-up between AT&T and Time Warner. A judge recently dismissed the FTC’s suit against Facebook saying the agency failed to prove its case.

To avoid wasted time and resources, and **potential embarrassment**, the two federal agencies **take on a small sliver of transactions**. For the year ending Sept. 30, 2019, the FTC and DOJ challenged **just 38 mergers** of the more than 2,000 transactions that were reported. And a more aggressive approach by watchdogs **hasn’t changed judges’ minds**.

There is precedent, too, of companies winning when states get in the way. That was the case with Sprint’s deal with T-Mobile US, which received court approval after years of slogging through both federal regulators and state pushback.

Deals do have a shelf life, and some firms, like LSC Communications and Quad/Graphics, throw in the towel. **But for those that are patient**, the court system **allows a path to beat an aggressive antitrust environment**.

**Uncertainty as to court decision making causes regulatory limitations because the SEC fears the courts will make bad decisions**

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Jacob A. Kling, "Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine," The Yale Law Journal, Vol. 120, No. 4, pp. 910-953, January 2011, https://www.jstor.org/stable/41060155?seq=1#metadata\_info\_tab\_contents

If the SEC promulgates Regulation A, then an antitrust suit will be precluded. In addition, for now assume that if the SEC succeeds in promulgating Regulation B, then the court will interpret the regulation correctly and thus will not reach the merits in any case challenging an activity that the SEC permits. However, if the SEC attempts to develop Regulation B but fails to promulgate it by T19 then antitrust suits will not be precluded. In particular, assume that if the SEC attempts to promulgate Regulation B but is unable to do so, it will not have time to promulgate Regulation A before an antitrust suit is brought. Because courts are assumed to lack the **institutional capacity** to sua sponte draw the **fine distinctions** that the **SEC**, because of its expertise, might be able to **build into** **Regulation** B, in the event that a court is **forced to decide** an **antitrust case** on a clean slate its only two options will be to **prohibit** **or** **permit** the activity **entirely**. Assume that the probability that courts will prohibit the activity (thereby generating a net benefit of zero) is P.173 P reflects not only the possibility that the defendant will lose on the merits but also the possibility that a court will rule in a manner adverse to the defendant on a motion to dismiss or a motion for summary judgment and the defendant then settles. Such unfavorable pretrial rulings are assumed to lead other similarly situated firms to refrain from the conduct at issue for fear of sanction.174

The question is under what conditions the SEC will opt at To for Regulation A, the second-best solution, in order to preempt an antitrust suit, instead of trying to enact Regulation J3 and running the risk that a court may decide the case unconstrained by any SEC rules. The answer is that the SEC will compare the expected benefits from Regulation A with the expected benefits from pursuing Regulation B. The benefits from Regulation A are simply A, because Regulation A can be promulgated with certainty. The benefits from pursuing Regulation B are a function of the probability that the Commission successfully implements it on time (Q) and the probability that, in the event that it fails to do so, a court will prohibit the conduct at issue (P). These expected benefits can be expressed as follows:

Expected Benefits (Regulation B) = Qj< B + (1 - Q) x (P x o + (i - P) x A)

Thus, the SEC will opt for Regulation A whenever A > Qj« B + (1 - Q} x ((1 - P) x A). The effect of changes in these variables on the SEC's regulatory choice is intuitive. As Q¿ the probability that the SEC will be able to promulgate Regulation B in time, increases, the SEC becomes less likely to opt for Regulation A, which is essentially a form of insurance against the possibility that it will fail to promulgate Regulation B and that an antitrust court will prohibit the conduct. For the same reason, if P- the probability that an antitrust court will erroneously prohibit the activity in the event that the SEC does not promulgate a regulation- is low, then the SEC is more likely to attempt to promulgate Regulation B, since this implies that the downside to failure to preclude an antitrust suit is lower. And as the differential between the net benefits from Regulation A (A) and those from Regulation B (B) narrows, the SEC is more likely to opt for Regulation A than to run the risk of failing to enact Regulation B by the time an antitrust suit is brought at Tl and thereby to leave open the possibility that a court may prohibit the activity, which is by assumption the worst outcome.

Under a **broad** active review **implied immunity** standard, the SEC's **decision calculus is different**. An antitrust suit will be **impliedly precluded** regardless of whether the SEC opts for Regulation A or instead **studies the activity** at issue in the hope of coming up with an **optimal regulation** between To and Tx. Thus, even if the SEC fails to promulgate Regulation B by Tu the result will be that it does not bring any enforcement actions and the net benefits will be A, just as if it had chosen to permit the activity by enacting Regulation A in the first place. As a result, under an active review standard the SEC would always opt to pursue Regulation B over Regulation A. Mathematically, the expected benefits from attempting to promulgate Regulation B are strictly greater than those associated with Regulation A:

Expected Benefits (Regulation B) = Qj<JB + (i-Q}xA>Qj<A + (i-Q}xA=A = Benefits (Regulation A)

Therefore, by **introducing the possibility** that a **court may erroneously prohibit the conduct** at issue if the SEC fails to enact a regulation preempting an antitrust suit, a **narrow implied immunity** doctrine might have the **effect of inefficiently distorting** the **SEC's regulatory decision** ex ante, leading it to **forgo the possibility** of pursuing an **optimal regulatory standard**.

**The SEC will create unqualified authorizations if it fears that antitrust is broadly applicable**

**Kling 11** – Yale Law School, J.D. 2010, Brown University, A.B. 2007

Jacob A. Kling, "Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine," The Yale Law Journal, Vol. 120, No. 4, pp. 910-953, January 2011, https://www.jstor.org/stable/41060155?seq=1#metadata\_info\_tab\_contents

B. The Ability of Courts To Interpret SEC Regulations Correctly

Even if time constraints had no effect on the SEC's regulatory options, an implied immunity standard predicated on the SEC's active review of the challenged conduct would still be optimal. In the absence of time constraints, the some regulation standard and the active review standard are essentially interchangeable because the SEC can, by assumption, promulgate any rule it chooses at any time. And an active review standard is strictly preferable to an affirmative approval standard because the latter may cause the **SEC's regulatory choice** to be **influenced** by its belief that, were it to adopt a **complex and nuanced regulation** distinguishing permissible from impermissible activities in a certain area, an **antitrust court** might **have difficulty applying it correctly**, or that, even if a court did apply it correctly, it might **impose excessive liability** for conduct that the SEC prohibits.

The first of these two possible concerns - that antitrust courts might misinterpret SEC regulations- played a fundamental role in Billing's incompatibility analysis.179 As discussed in Part I, the Court's fear derived from the fact that a **fine line** often separates conduct that the SEC prohibits from conduct that it permits and that the same piece of evidence might be consistent with a determination that particular conduct falls on either side of the line.l8° The second concern- that an antitrust court might **award excessive damages** for conduct that violates SEC regulations - did not feature in the Court's reasoning but is **justifiable** based on the analysis presented in Section II.B. This Section shows that, to the extent that the SEC shares either of these concerns, it may decide to **adopt a second-best solution** by giving the activity at issue its **unqualified approval** in order to **immunize it** from an antitrust challenge.

**Sustained productivity growth is the key determinant of great power conflict—power cycle theory confirms demonstrates relative decline is the critical point**

Jacob L. **Heim**, Senior Policy Researcher, RAND, **and** Benjamin M. **Miller**, PhD, Economist; Professor, Pardee RAND Graduate School, 20**20**, Measuring Power, Power Cycles, and the Risk of Great-Power War in the 21st Century, https://www.rand.org/pubs/research\_reports/RR2989.html

Global Power Dynamics and Global Conflict

There are many models that link the distribution of global power to the prospects for major interstate war, according to different theories of why wars occur.27 Put broadly, when assessing whether one scenario is more stable than another, analysts apply a model (ranging from a heuristic to a formal model) to assess the **prospects for crisis or war** under **different distributions of global power.** One such approach would be to use a quantitative metric (such as the GPI) within a theoretical model that evaluates the **likelihood of a war erupting** under **different distributions of global power**.

There are many theoretical models that an analyst could use for this purpose.28 Among these models, power cycle theory represents an intriguing option due to its quantitative nature and its ability to operate on aggregated metrics, such as the GPI.

***Power cycle theory*** relates the **relative distribution of power** in the international system **to the likelihood of major wars**—that is, large **wars that will reorder the international system.**29 For this reason, it focuses on ***latent* indicators of military power**. The theory concerns **long-term shifts in power** that take place over decades, rather than the year-to-year fluctuations in military capabilities that arise as states actualize their latent power by fielding new weapon systems, testing new technologies, or training their militaries in new concepts of operation. Power cycle theory posits that **the largest wars—**measured by duration and number of casualties—tend to occur when multiple great powers simultaneously **experience *critical points*** at which their **relative rates of growth fundamentally shift.** These major wars are also sometimes called extensive wars because they involve **multiple major powers t**hat **fully mobilize**, leading to a large number of casualties and **restructuring of the international system**. Scholars have found confirming evidence for the theory when testing it against the historical record as a whole and when examining case studies in specific major wars (such as WWI).30 By focusing on fundamental elements of national power and the risk of wars that could reorder the international system, these sorts of frameworks can help strategists **step back** and look for **structural shifts in power** that can destabilize the international system. Of course, destabilizing shifts represent only one concern out of many that national security strategists confront on a daily basis—from terrorism and power vacuums to nuclear proliferation and transnational crime—but they are a necessary concern that requires attention and foresight. Power cycle theory, like all models, is a simplification of reality, but we judge that it has value in helping analysts understand the balance of power and prospects for major wars **in a systematic and quantifiable way**. We do not view it as a replacement for critical thinking, the study of history, regional expertise, or other methods. We consider it to be a valuable tool to add to the larger toolbox used by national security analysts and those concerned about how future trends could affect great-power competition and war.

There are many theories of warfare involving cycles.31 While each differs in particulars, they share some broad characteristics because they emphasize long-term causes of war. In these theories, uneven rates of growth among states play an important role in creating systemic disequilibria. Theories differ on which rates of growth matter most; some focus exclusively on economic growth, while others focus on broader indexes that include population. Theories also differ on what configurations of powers are the most dangerous; for example, transition theories focus on when a rising power’s capabilities approach those of the leading power in absolute terms, while power cycle theory focuses on when the trend in a nation’s growth changes (peaks, bottoms out, or reaches an inflection point). All theories generally accept the argument that a discrepancy between a state’s perceived status and its desired status influences its behavior. We use power cycle theory in this report because of its unambiguous and quantifiable character (the theory leads to specific predictions tied to quantitative conditions). Although we apply power cycle theory, we do so mainly as an illustration of how one can combine international relations theory with future balance-of-power scenarios to consider which ones may be more unstable than others; we encourage strategists to consider many lenses when evaluating scenarios.

Power Cycle Theory

To answer questions about whether a balance of power **in a given scenario** makes a major war more or less likely, one needs to apply a theory that relates certain configurations of power to predictions about stability. Power transition theory, for example, might focus on the period around 2023, when China’s modified GPI score surpasses that of the United States. **Power cycle theory**, however, suggests that the risk of war is higher when several major powers go through critical points at similar times—not when their shares of global power cross each other. As mentioned earlier, critical points occur when the direction **or acceleration of a state’s relative growth** trend changes, such as when a state’s power falls after reaching its zenith or rises after reaching its nadir. **Critical points** may also occur **when the *rate* of growth** or decline **accelerates** or decelerates. For example, in our baseline scenario, Chinese relative growth experiences an **inflection point around 2011**.

Before 2011, Chinese relative growth was accelerating, in line with the economic trends that we discussed in the opening. After 2011, however, Chinese **relative growth decelerates**. While it is still growing in absolute and relative terms, its rate of relative growth slowed. Figure 10 highlights that, between 1990 and 2010, China’s relative power growth rate accelerated. After 2010, its relative power growth rate began decelerating. In the baseline scenario, its relative rate of growth continues to slow, but it does not peak. The point where China’s relative power growth rate stops accelerating and begins to decelerate (marked with the black dot in Figure 10) is a particular type of critical point called an inflection point, **and it has special significance for a rising power**.

## Adv CP

#### NEW PLANK

#### The United States federal government should eliminate Chinese components from US military technologies and work with allies to develop reliable supply chains

**Solves**

**1AC Helberg 20** [Jacob Helberg, senior advisor at the Stanford University program on geopolitics and technology, an adjunct fellow at the Center for Strategic and International Studies, “In the New Cold War, Deindustrialization Means Disarmament,” 08/12/20, *Foreign Policy*, https://foreignpolicy.com/2020/08/12/china-industry-manufacturing-cold-war/, EA]

In 2011, then-President Barack Obama attended an intimate dinner in Silicon Valley. At one point, he turned to the man on his left. What would it take, Obama asked Steve Jobs, for Apple to manufacture its iPhones in the United States instead of China? Jobs was unequivocal: “Those jobs aren’t coming back.” Jobs’s prognostication has become almost an article of faith among policymakers and corporate leaders throughout the United States. Yet China’s recent weaponization of supply chains and information networks **exposes the grave dangers of** the **American deindustrialization** that Jobs accepted as inevitable.

Since March alone, China has threatened to **withhold medical equipment** from the United States and Europe during the coronavirus pandemic; launched the biggest cyberattack against Australia in the country’s history; hacked U.S. firms to acquire secrets related to the coronavirus vaccine; and engaged in massive disinformation campaigns on a global scale. China even hacked the Vatican. These incidents reflect the power China wields through its **control of supply chains** and **information** **hardware**. They show the peril of **ceding** control of **vast swaths of** the world’s **manufacturing** to a regime that builds at home, and exports abroad, a model of governance that is **fundamentally in conflict with** American values and **democracies** everywhere. And they pale in comparison to what China will have the capacity to do as its confrontation with the United States sharpens.

In this new cold war, a deindustrialized United States is a **disarmed** **United** **States**—a country that is precariously vulnerable to **coercion**, **espionage**, and **foreign** **interference**. Preserving American preeminence will require reconstituting a national manufacturing arrangement that is both safe and **reliable**—particularly in critical high-tech sectors. If the United States is to secure its supply chains and information networks against Chinese attacks, it needs to **reindustrialize**. The question today is not whether America’s manufacturing jobs can return, but whether America can afford not to bring them back.

America’s superpower might was **made on the factory floor.** The nation’s vast industrial capacity carried it to victory in World War II and gave it a commanding advantage over the Soviet Union. As recently as the early 2000s, iMacs—a symbol of American high-tech dominance—were still made in Elk Grove, California. But since the 1970s, more than 7 million American manufacturing jobs have evaporated—over a third of the country’s entire manufacturing workforce. In the first decade of the 21st century, more than 66,000 manufacturing facilities closed down or moved overseas. America’s share of the world’s printed circuit board production has dropped 70 percent since 2000; China accounts for around half of global production today. The high-tech industry is hardly exempt: As of 2015, Chinese factories produced 28 percent of the world’s cars, 41 percent of ships, more than 60 percent of TVs, and a staggering 90 percent of the world’s mobile phones. Indeed, Apple’s Elk Grove plant is now an AppleCare call center.

At the same time, a new Silicon Curtain has begun to descend. As FBI Director Christopher Wray recently pointed out, China does not seek a world where its companies lead alongside other global companies but one where its **companies exploit a domestic monopoly at home** to drive other companies out of business **everywhere** **else**. In the energy sector, China’s vast web of state subsidies supporting its domestic solar-electric industry dropped world prices of solar panels by 80 percent between 2008 and 2013. A report by the U.S. Senate Foreign Relations Committee echoed this trend in more cutting-edge technologies: “Foreign technology platforms are restricted from operating in China, allowing Chinese platforms that offer similar services to thrive and expand into new markets.” The report also highlighted examples of Chinese “national champions” expanding internationally thanks to unfair government support and subsidies, noting, “Huawei’s price was **so** **low** that, absent the subsidies the company had been provided, Huawei would have been unable to even produce the necessary network parts.” Beijing’s “Made in China 2025” initiative outlines in blunt terms China’s ambitions for dominance in artificial intelligence, robotics, aerospace equipment, and biopharmaceuticals—high-tech industries that represent the future of the global economy.

The United States’ industrial overdependence on China poses two **profound national security threats**. The first is about access to the supply of critical goods. As I warned in June, U.S.-China relations are now more volatile than at any time since Tiananmen, and it is an open question whether decoupling will be slow and soft or hard and fast. As the bilateral relationship further deteriorates, American companies face a growing risk of experiencing **sudden** delays or **disruptions** to their **supply** **chains**, either as an overt retaliation by the Chinese Communist Party (CCP) to U.S. policies or in the form of gray-zone tactics to kneecap U.S. companies and promote Chinese alternatives to fill the void in the global supply for key goods.

This risk, once deemed far-fetched, recently came to life when Arm, a U.K.-based chip designer, recently appeared to have **suddenly lost control** of its China-based joint-venture subsidiary, Arm China. As Business Insider reported, “Arm fired Allen Wu, the head of Arm China, but Wu **refused to acknowledge the decision** and has **continued overseeing operations** of the business unit, according to Bloomberg. Arm China also reportedly **won’t let members of the UK parent entity onto its premise**s.” It has been seven years since the Alliance for American Manufacturing released a list of **critical military hardware**, with both offensive and defensive applications, that are **susceptible** to supply chain interference. **American** **missiles** depend on **Chinese** **propellan**t; American night-vision goggles depend on Chinese metal.

During the pandemic, the Chinese government is also believed to have given preferential treatment to its domestic semiconductor companies, allowing Yangtze Memory Technologies to continue operating, all the while **requiring** all **foreign-based chip makers**, such as Samsung, to **completely halt their operations.** This is what political scientists have dubbed “weaponized interdependence”—exploiting control of critical nodes in the global economy to exert geopolitical leverage over one’s competitors.

The second risk of U.S. industrial dependence on China is about the **integrity of powerful dual-use commercial technology products**: civilian goods such as **information** **platforms**, **social network technology, facial recognition** systems, **cellphones**, and **computers** that also have **powerful military** or intelligence **implications**. These products are increasingly becoming a **“perfect weapon”** for U.S. adversaries such as Russia and China that continuously seek **asymmetric** **ways** to weaken the United States. The Senate Foreign Relations Committee report noted, “the suites of new and emergent digital technologies … —including 5G infrastructure, social media, block-chain, digital surveillance, and genomics and biotechnology—are all widely acknowledged as being on the cutting edge of this new competition.” China’s command over critical nodes of the world’s supply chains provides it with vast **strategic leverage** over the integrity of critical hardware products.

A 2018 Bloomberg investigation reported that Chinese operatives had inserted a miniscule microchip into the servers of Supermicro, a company whose systems are used by institutions ranging from major banks to the Pentagon. Though all parties involved denied that such a breach occurred, even the possibility of such a hardware hack sent shudders through Silicon Valley and the U.S. national security apparatus. Even if disputed, the report laid bare the dangers of outsourcing American manufacturing to an American adversary.

Public concerns over the integrity of Chinese-built technology systems recently reached a boiling point in the software world, with the U.S. government calling on ByteDance, a Beijing-based global technology company, to divest from TikTok, its U.S. subsidiary. In some cases, senior government officials, ranging from President Donald Trump to Senate Democratic Leader Chuck Schumer, went as far as floating the possibility of a complete suspension of the app.

The public’s justified concerns trace back to China’s civil-military fusion doctrine, which blurs the line between the CCP and China’s private sector. Under China’s 2017 National Intelligence Law, the CCP could compel an individual engineering employee at TikTok based in China to provide the party with intelligence assistance and keep that assistance entirely confidential, without any of TikTok’s U.S.-based executives even being aware.

In effect, this means companies based in China could be subject to a dual reporting and corporate governance structure—their company’s executives on the one hand, and, on the other, a shadow governance structure reporting to officials from the Chinese Communist Party. China-based companies must effectively answer to two masters. Arm’s U.K.-based executives learned this the hard way. But the principles were spelled out in broad daylight by Chinese President Xi Jinping himself when he compared the relationship between Chinese citizens and the CPP to “stars revolving around the revered moon.” “Listen to what they say,” the Taiwan-based analyst Ben Thompson cautioned.

The United States’ slow drift toward deindustrialization is **not a threat to Democrats or** a threat to **Republicans**—it’s a threat to the **United** **States**. Addressing it will require an American solution that **transcends** **party** **lines**. It will require an extensive collaborative effort between the government and private sector to take inventory of the products salient to national security—determining which high-tech and vital goods must be produced domestically, which can safely be sourced from allies and friendly democracies, and which can still be imported from the global market, including from authoritarian states like China. Carrying out this strategy and operationalizing it will take time and substantial resources. Still, a few elements for such a strategy are worth highlighting.

Before the creation of the Strategic Petroleum Reserve in the 1970s, the United States was vulnerable to geopolitical blackmail by OPEC nations. Eventually, public investments in expanding the country’s domestic alternative sources of energy helped move the country toward energy independence. Similarly, the United States must define and **reconstitute** a “**minimum** viable **industrial capacity**,” based on the production capacity it needs not simply to meet a national emergency but to wage a long-term competition. A potential initial area of focus for such an effort could be the production of semiconductors and microchips, given that high-performing chips are indispensable to make headway on nearly every other front—AI development, robotics, computers, cellphones, and more. Currently, Taiwan—which China dubs a renegade province—is home to Taiwan Semiconductor Manufacturing Company, which accounts for half the global supply of computer chips used in everything from F-35 fighter jets to Apple devices. The United States cannot afford to ignore China’s plans to eventually seize control of Taiwan and the consequences this would entail for the entire U.S. technology industry.

Reconstituting America’s domestic production capacity will be contingent on **procuring** a reliable, abundant supply of key natural **resources at a low cost**, building up a large talent pool of skilled industrial workers, and making substantial investments in fostering hotbeds of innovation.

For starters, the goal of reopening factories won’t be economically sustainable if the United States **can’t** **ensure cost-effective access to** natural **resources and** raw **materials** those factories need to produce finished, manufactured products. China has made acquiring premium access to resources such as zinc, cobalt, and titanium a national priority. By making investments and loans worth hundreds of billions of dollars across the developing world—particularly in Africa—it has established a model of trading technology and infrastructure for resources. In one such case, China struck a deal with a Congolese mining consortium, Sicomines, to secure access to critical minerals for electronics like copper and cobalt in exchange for investing in essential infrastructure projects like hospitals and highways.

**Moar**

**Beckley 20** [Michael Beckley and Hal Brands, \* Associate Professor of Political Science at Tufts University, \*\* Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies, “Competition With China Could Be Short and Sharp,” 12/17/20, *Foreign Affairs*, https://www.foreignaffairs.com/articles/united-states/2020-12-17/competition-china-could-be-short-and-sharp, EA]

In foreign policy circles, it has become conventional wisdom that the United States and China are running a **“superpower marathon”** that may last a century. But the sharpest phase of that competition will be a **decadelong sprint.** The Sino-American contest for supremacy **won’t be settled anytime soon.** Yet history and China’s recent trajectory suggest that the moment of **maximum danger is just a few years away.**

China has entered a **particularly perilous period** as a rising power: it has gained the capability to **disrupt the existing order**, but **its window to act may be narrowing**. The balance of power has been **shifting in Beijing’s favor** in important areas of U.S.-Chinese competition, such as the Taiwan Strait and the struggle over global telecommunications networks. Yet China is also facing a pronounced **economic slowdown** and a **growing international backlash.**

The good news for the United States is that over the long term, competition with China **may prove more manageable than** many **pessimists believe.** Americans may one day look back on China the way they now view the Soviet Union—as a dangerous rival whose evident strengths concealed stagnation and vulnerability. The bad news is that over the next **five** to **ten** **years**, the pace of Sino-American rivalry will be **torrid**, and the prospect of war **frighteningly** **real**, as Beijing becomes tempted to **lunge for geopolitical gain.** The United States still needs a long-term strategy for protracted competition. But first it needs a **near-term strategy** for **navigating the danger zone.**

RED FLAGS

Much debate on Washington’s China policy focuses on the dangers China will pose as a peer competitor later this century. Yet the United States actually faces a **more pressing** and volatile **threat**: an **already** **powerful but insecure China** beset by **slowing** **growth** and **intensifying** **hostility** abroad.

China has the money and muscle to challenge the United States in **key** **areas**. Thanks to decades of rapid growth, China boasts the world’s largest economy (measured by purchasing power parity), trade surplus, financial reserves, navy by number of ships, and conventional missile force. Chinese investments span the globe, and Beijing is **pushing** **for** **primacy** in such **strategic technologies** as 5G telecommunications and artificial intelligence (AI). Add in four years of disarray in the U.S.-led world order under President Donald Trump, and it is hardly surprising that Beijing is testing the status quo from the South China Sea to the border with India.

Yet China’s **window of opportunity may be closing fast**. Since 2007, China’s annual economic **growth** rate has **dropped** by **more than half**, and **productivity** has **declined** by **ten percent.** Meanwhile, **debt** has **ballooned** eightfold and is on pace to total **335 percent of GDP** by the end of 2020. China has little hope of reversing these trends, because it will **lose** **200** **million working-age adults** and **gain 300 million senior citizens** over the next 30 years. And as economic growth falls, the dangers of **social** and **political** **unrest** **rise**. Chinese leaders know this: President Xi Jinping has given multiple speeches warning about the possibility of a Soviet-style collapse, and **Chinese** **elites** are moving their money and children abroad.

Meanwhile, global anti-China sentiment has soared to levels not seen since the 1989 Tiananmen Square massacre. Nearly a dozen countries have suspended or canceled participation in Belt and Road Initiative (BRI) projects. Another 16 countries, including eight of the world’s ten largest economies, have banned or severely restricted use of Huawei products in their 5G networks. India has been turning hard against China since a clash on their shared border killed 20 soldiers in June. Japan has ramped up military spending, turned amphibious ships into aircraft carriers, and strung missile launchers along the Ryukyu Islands near Taiwan. The European Union has labeled China a “systemic rival”; and the United Kingdom, France, and Germany are sending naval patrols to counter Beijing’s expansion in the South China Sea and Indian Ocean. On multiple fronts, China is facing the blowback created by its own behavior.

HISTORY RHYMES

Many people assume that rising revisionists pose the greatest danger to international security. But historically, the most desperate dashes have come from powers that had been on the ascent but grew **worried** that their **time was running short.**

**World War I** is a classic example. Germany’s rising power formed the strategic backdrop to that conflict, but German **fears of decline triggered** the ultimate decision for **war.** Russia’s growing military power and mobility menaced Germany’s eastern flank; new French conscription laws were changing the balance in the West; and a tightening Franco-Russian-British entente was leaving Germany surrounded. German leaders ran such catastrophic risks in the July crisis for fear that **geopolitical greatness would elude them if they did not act quickly.**

The same logic **explains** **imperial Japan’s fatal gamble** in 1941, after the U.S. oil embargo and naval rearmament presented Tokyo with a **closing window of opportunity to dominate the Asia-Pacific**. In the 1970s, **Soviet** global **expansion peaked** as Moscow’s military buildup matured and the slowing of the Soviet economy created an **impetus** to **lock in geopolitical gains.**

Given that China is currently facing both a **grim** **economic** **forecast** and a **tightening strategic encirclement**, the next few years may prove **particularly** **turbulent**. The United States obviously needs a long-term strategy to compete with China. But it also needs to blunt a potential surge of Chinese aggression and expansion this decade.

The early **Cold** **War** offers a useful parallel. At that time, American leaders understood that **winning the long-term struggle** against the Soviet Union required **not losing crucial battles in the short term.** The Marshall Plan, unveiled in 1947, was meant to prevent economic collapse in Western Europe, because such a breakdown might allow Moscow to extend its political hegemony over the entire continent. The creation of NATO and rearmament during the Korean War forged a **military** **shield** that allowed the West to thrive. **Strategic** **urgency** was the **prelude** to **strategic** **patience**: the United States could exploit its lasting economic and political advantages **only if it closed off** more **immediate vulnerabilities.**

Today, the United States again needs a danger-zone strategy, which should be based on three principles. First, focus on denying China near-term successes that would radically alter the long-term balance of power. The most pressing dangers are a Chinese conquest of Taiwan and Chinese preeminence in 5G telecommunications networks. Second, rely on tools and partnerships available now or in the near future rather than assets that require years to develop. Third, focus on selectively degrading Chinese power rather than changing Chinese behavior. Seduction and coercion are out; targeted attrition is in. Such an approach entails greater risk. But the United States must **act** assertively **now** to prevent more **destabilizing spirals of hostility later.**

TAIWAN AND TECH

Washington’s first priority must be shoring up Taiwan. If China absorbed Taiwan, it would gain access to the island’s world-class technology, acquire an “unsinkable aircraft carrier” to project military power into the western Pacific, and gain the ability to blockade Japan and the Philippines. China also would fracture U.S. alliances in East Asia and eliminate the world’s only ethnically Chinese democracy. Taiwan is the fulcrum of power in East Asia: controlled by Taipei, the island is a fortification against Chinese aggression; controlled by Beijing, Taiwan could become a base for continued Chinese territorial expansion.

China has spent decades trying to buy reunification by forging economic links with Taiwan. But Taiwan’s people have become more determined than ever to maintain their de facto independence. Consequently, China is brandishing its military option. Over the past three months, its air and naval patrols have presented a show of force in the Taiwan Strait more provocative than any in the last twenty-five years. An invasion or coercive campaign may not be imminent, but its likelihood is rising.

Taiwan is a natural fortress, but Taiwanese and U.S. forces currently are ill equipped to defend it, because they rely on limited quantities of advanced aircraft and ships tethered to large bases—forces China can neutralize with a surprise air and missile attack. Some American policymakers and pundits are calling on Washington to formally guarantee Taiwan’s security, but such a pledge would amount to cheap talk if not backed by a stronger defense.

Washington should instead deploy hordes of missile launchers and armed drones near, and possibly on, Taiwan. These forces would function as high-tech minefields, capable of inflicting severe attrition on a Chinese invasion or blockade force. China needs to control the seas and skies around Taiwan to achieve its objective, while the United States just needs to deny China that control. If necessary, the United States should cut funding for costly power-projection platforms, such as aircraft carriers, to fund the rapid deployment of loitering cruise missiles and smart mines near Taiwan.

The United States also needs to help Taiwan retool its military to fight asymmetrically. Taiwan plans to acquire enormous arsenals of missile launchers and drones; prepare its army to deploy tens of thousands of troops to any beach at a moment’s notice; and reconstitute a million-strong reserve force trained for guerrilla warfare. The Pentagon can hasten this transition by subsidizing Taiwanese investments in asymmetric capabilities, donating ammunition, and expanding joint training on air and coastal defense and antisubmarine and mine warfare.

Finally, the United States should enlist other countries in Taiwan’s defense. Japan might be willing to block China’s northern approaches to Taiwan in a war; India might allow the U.S. Navy to use the Andaman and Nicobar Islands to choke off Beijing’s energy imports; European allies could impose severe economic and financial sanctions on China in case of an attack on Taiwan. The United States should try to convince partners to commit publicly to taking these types of actions. Even if such measures are not decisive militarily, they could deter China by raising the possibility that China might have to fight a multifront war to **conquer** **Taiwan**.

The United States must simultaneously work to prevent China from creating an extensive technological sphere of influence. China stands to reap enormous intelligence benefits, economic gains, and strategic leverage if Chinese companies install 5G telecommunications networks around the world. Similarly, the diffusion of Chinese-made surveillance technology could entrench autocrats and cause lasting harm to global prospects for democracy. Over the past two years, a number of advanced democracies have spurned Huawei, China’s main national champion. But Beijing’s Digital Silk Road remains popular where democracy is less established and China’s low-cost products are especially attractive. To check China’s technological expansion, Washington should restrict the export of technologies made in the United States and other democracies on which Chinese technology still depends. These include semiconductors, AI chips, and computer numerical control (CNC) machines. By withholding such products, the United States and its democratic allies can retard Beijing’s technological progress and buy time to offer developing countries alternatives to Chinese networks.

Additionally, the United States should **limit** its **vulnerability** by **selectively** **decoupling** from **China’s** **economy**. When Chinese state media threatened, in March 2020, to plunge the United States into “a mighty sea of coronavirus” by denying it pharmaceuticals, it underscored the coercive leverage that Beijing’s influence over supply chains brings. To preserve freedom of action in future crises, the United States should **eliminate Chinese components from U.S. military platforms and munitions** and secure alternative sources of critical medical supplies and rare earths. Over time, the United States could cooperate with friendly democracies to **develop** **reliable** **supply chains**, a move that would protect U.S. allies and partners from Chinese coercion as well.

URGENT, NOT STUPID

Incoming U.S. administrations typically take months to review policies and plan initiatives that may not produce results for years. Given the country’s deep wounds, the new policy team might be tempted to turn down the temperature with China for now, so the United States can fortify its democracy, economy, and public health for a long competition ahead. But as important as those tasks are, Washington does not have the luxury of geopolitical delay. As U.S.-Chinese relations enter the danger zone, Washington must shore up defenses against pressing perils.

The United States should, however, **combine strength and caution**, lest it **provoke** the **conflict** it seeks to avoid. Washington **should** **not** **undertake** far more **drastic measures**, such as a **full technological embargo, across-the-board trade sanctions,** or a **major covert action program** to foment violence within China. Nor should it **dramatically ratchet up pressure on China** everywhere at once. If Beijing wants to spend lavishly on white elephant projects in Pakistan or other detours along the **BRI**, or to invest in power-projection capabilities that will not have a strategic impact for decades, so much the better. And while it would be a mistake to allow China to link joint action on COVID-19 or climate change to U.S. restraint in geopolitical competition, the administration of President-elect Joe Biden **might explore cooperation in these areas**, if only as a counterpoise to sharpening rivalry in others.

Successfully navigating the danger zone will not end U.S.-Chinese competition, any more than surviving the early Cold War brought that rivalry to a close. Today, the reward for skillful statecraft will simply be a somewhat less volatile Sino-American rivalry. That rivalry may still be global in scope and extended in duration. But the possibility of war might fade as the United States **shows** that **Beijing cannot overturn the existing order by force** and Washington **gradually grows more confident** in its ability to **outperform** a **slowing** **China**. Now as before, the United States can **win a long rivalry**, so long as it weathers the coming crisis.

**Rehighlight**

**1AC Garcia 21** [Denise Garcia, professor at Northeastern University; vice-chair of the International Committee for Robot Arms Control, “Stop the emerging AI cold war,” 05/11/21, *Nature*, Vol. 593, https://www.nature.com/articles/d41586-021-01244-z, EA]

A race to militarize artificial intelligence is gearing up. Two years ago, the US Congress created the National Security Commission on Artificial Intelligence (NSCAI). This March, it recommended that the United States must accelerate artificial-intelligence (AI) technologies to preserve national security and remain competitive with China and Russia.

This will **undermine** the United States’ ability to **lead emerging global norms** on AI. In April, the European Commission published the first international legal framework for making AI secure and ethical; in January, the European Parliament issued guidelines stating that military AI should not replace human decisions and oversight. By contrast, the NSCAI recommendations advocate “the **i**ntegration of AI-enabled technologies into every facet of war-fighting”.

Enhancing AI war-fighting capacity will **decrease** **security** in a world where the biggest threats are **instability** — political, social, economic and planetary. The NSCAI should heed the research community. Some 4,500 AI and robotics researchers have declared that AI should not make the decision to take a human life — **aligning with** the European Parliament guidelines and the **European Union regulation.**

The NSCAI resurrected disastrous ideas from the cold war and framed its report in terms of winning a competition for AI-enabled warfare. During the cold war, the drive to stay ahead in the technological race led to the accumulation of 70,000 nuclear weapons and today’s global arsenal of 13,100 warheads. This brought extortionate costs: US$70 billion is spent annually to maintain nuclear weapons globally. Other threats demand similar investments: in 2019, climate-induced natural disasters displaced 25 million people, and decentralized conflicts forced 8.6 million to move. Still more threats affect infrastructure, such as the ransomware attack on 8 May that shut down a 8,850-kilometre US fuel pipeline.

The NSCAI does not prioritize international cooperation to create new regulations. Indeed, it speaks against a global ban on autonomous weapons, saying that other countries cannot be trusted to comply. But an AI-militarization race would be profoundly destabilizing. Unlike nuclear arms, AI is already ubiquitous in civilian spheres, so the dual-use risks of, say, flying drones or computer night vision are much higher.

Since 2014, I have been an observer and adviser at United Nations meetings, and I testified in 2017 as part of the International Panel on the Regulation of Autonomous Weapons. In my view, rather than focusing on counting weapons or on particular weapons systems, policies should specify human intention and human–machine interaction, obligating countries to maintain human control over military force. Other agreements could mitigate malicious uses of AI, such as using facial recognition to oppress citizens or biased data to guide decisions about employment or incarceration. The world’s people need protection from **cyberattacks** to **infrastructure** — such as those on US hospitals in 2020 or those that hit national electrical grids.

The NSCAI report calls for international standards for AI-enabled and autonomous weapons systems, arguing that if these systems are properly tested and designed, humans can use them to make the decision to kill, consistent with international humanitarian law. This is misleading: it’s difficult to make machine learning’s ‘black box’ nature fully interpretable, or to ensure that AI systems perform as expected after deployment. These systems learn from their environment, and the real world is never as simple as the laboratory.

The NSCAI argues that the United States should seek commitments from Russia and China against autonomous nuclear weapons, even as it argues against treaties regulating other autonomous and AI weapons. Instead, the United States should negotiate decreases in nuclear arsenals and establish standards to keep humans in meaningful control.

The NSCAI is too dismissive by discounting cooperation. The Chemical Weapons Convention, the Biological Weapons Convention, the UN Sustainable Development Goals and the 1987 Montreal Protocol are examples of accountability on which all the major powers worked together. The United States and Russia established the International Space Station by cooperating closely.

Most nations want governance that controls the use of AI in war. In June 2020, the Global Partnership on Artificial Intelligence was created by the Group of Seven industrialized countries (G7) and called for human-centric development and use of AI. The partnership brings scientific and research communities together with industry and government to facilitate international cooperation. This is the path that the United States should take — with scientists, researchers and industry alike.

The relentless pursuit of militarization does not protect us. It **diverts resources** and **attention** from nearer **existential threats**, such as **extreme** **weather** events. With the world reeling from **COVID-19** — the shock of the century — now is not the moment to hasten towards worldwide confrontation. In 2019 alone, **climate disasters** displaced almost one million people in the United States. China, too, is extremely vulnerable to global warming. This common ground could pave the way to cooperation, including **stopping the emerging AI cold war.** This is no time to embark on an exorbitant and ineffective race.

## Adv 1

**Studies prove – even assuming companies are caught, fines are insufficient to deter price-fixing.**

**Violante 17** – Bachelor of Criminology (Florida State University), Juris Doctor (American University, Washington College of Law) Attorney at Nelson, Bryan, and Jones

Keith Violante, “Making Deal with the Devil: Are Current Antitrust Sanctions Deterring Cartel Behaviour,” International Trade and Business Law Review, Vol. 20, 2017, HeinOnline

**Regardless of the amount of the fine**, it seems **civil sanctions do not have more than a transitory impact upon the profitability of a business**. Another **recent study** also suggests that civil sanctions have **little to no deterrent value**. The study identified several companies that average one or more antitrust civil judgements annually between 1990-2015.103

1 The world's leading recidivist for corporations that commit antitrust violations.104

[table omitted]

Evaluating this data, the study concludes:

Monetary sanctions imposed [upon companies who commit antitrust violations] have been the highest in antitrust history. ... **extensive recidivism implies** that present ... sanctions are **inadequate to deter** [**antitrust violations**].105

The study further found that:

**Even under the most optimistic assumptions** about **discovery**, **leniency** and **prosecution rates**, corporations have found price fixing schemes to be **profitable**... [T]o ensure optimal deterrence, total financial sanctions should be greater than four times the expected profit one would expect from a price fixing scheme to optimally deter antitrust violations. 106

Put simply, for a civil fine to adequately deter antitrust violations, the fine must **certainly take the profit out of committing antitrust violations**.

## Adv 2

**Supply chain restructuring is inevitable because of COVID.**

**Brown 20** – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

The **COVID-19 pandemic** has been **deeply disruptive for supply chains** as businesses **grapple with fluctuations in supply and demand**, **intermittent outbreaks** in different parts of the world, and **speculation about reshoring** and **reducing reliance on China**. **Many companies** are **looking at restructuring their supply chains**, trying to balance resilience with efficiency and reduced costs — a process either **started or accelerated** because of the pandemic.

Even so, some predictions about how supply chains are changing are overblown, according to two supply chain experts. In separate web presentations recently, MIT professors Yossi Sheffi and David Simchi-Levi offered their thoughts about reliance on China, the possibility of reshoring, and how supply chains will — and won’t — change in the era of COVID-19.

Supply chain restructuring isn’t pandemic-specific

Supply chain restructuring was **underway before the pandemic**, Simchi-Levi said in a June webinar hosted by the MIT Industrial Liaisons Program. This includes companies **reconsidering** their **relationship with China** because of the trade war between the U.S. and China.

According to a survey of more than 3,000 companies released in February by Bank of America, companies in 10 of 12 global sectors said they **intended to shift** at least a portion of their **supply chains from current locations**. Companies cited **tariffs**, **automation**, and **national security** among the reason for the changes.

Some companies are thinking about **bringing manufacturing closer to demand**, said Simchi-Levi, an engineering professor, while others are **looking toward fully reshoring**.

Restructuring plans vary by industry, Simchi-Levi said. Some apparel manufacturing companies are moving out of China to Southeast Asia. High-tech industries are maintaining some manufacturing in China, but also bringing capacity closer to market demand by moving to Brazil, Mexico, and Eastern Europe. Simchi-Levi said these **restructuring trends** will **likely continue** and **accelerate in light of the coronavirus pandemic**.

## Adv 3

# 1NR

**Conditions CP**

(kicked)

1. **No impact to totalitarianism.**

**Gartzke 13**

Erik Gartzke is Professor of Government at the University of Essex and Associate Professor of Political Science at the University of California, Alex Weisiger is Assistant Professor of Political Science at the University of Pennsylvania, International Studies Quarterly, 2013, "Permanent Friends? Dynamic Difference and the Democratic Peace", http://dss.ucsd.edu/~egartzke/publications/gartzke\_weisiger\_isq\_2013.pdf

The “autocratic peace” involves a class of arguments about the conflictual consequences of regime similarity and difference. Theories disagree over whether democratic and autocratic relations are distinct or equivalent. Early studies of the autocratic peace typically focused on certain geographic regions. Despite having little democracy, low levels of economic development, arbitrary national borders, and widespread civil conflict, **Africa experiences surprisingly little interstate war**. Several studies attribute the “African peace” to historical norms and to the strategic behavior of insecure leaders who recognize that challenging existing borders invites continental war while encouraging secessionist movements risks reciprocal meddling in the country’s own domestic affairs (Jackson and Rosberg 1982; Herbst 1989, 1990).6 However, these arguments fail to address tensions between individual (state, leader) interests and social goods. The security dilemma implies precisely that leaders act aggressively despite lacking revisionist objectives (Jervis 1978). Initial **statistical evidence of an autocratic peace emerged** in a negative form with the observation that mixed democratic–autocratic dyads are more conflict prone than either jointly democratic or jointly autocratic dyads (Gleditsch and Hegre 1997; Raknerud and Hegre 1997**). Studies have sought systematic evidence for** or against an **autocratic peace**. Oren and Hays (1997) evaluate several data sets, finding that **autocracies are less war prone** than democracy–autocracy pairs. Indeed, **they find that socialist countries** with advanced industrialized economies **are more peaceful than democracies**. Werner (2000) finds an effect of political similarity that coexists with the widely recognized effect of joint democracy. She attributes the result to shared preferences arising from a reduced likelihood of disputes over domestic politics. Peceny, Beer and Sanchez-Terry (2002) break down the broad category of autocracy into multiple subgroups and find evidence that **shared autocratic type** (personalistic dictatorships, single-party regimes, or military juntas) **reduces conflict**, although the observed effects are less pronounced than for joint democracy. **Henderson** (2002) **goes further by arguing** that **there is no empirically verifiable democratic peace**. Instead, political dissimilarity causes conflict. Souva (2004) argues and finds that similarity of both political and economic institutions encourages peace. **In the most sophisticated analysis to date, Bennett** (2006) **finds a robust autocratic peace**, though the effect is smaller than for joint democracy and limited to coherent autocratic regimes. Petersen (2004), in contrast, uses an alternate categorization of autocracy and finds no support for the claim that similarity prevents or limits conflict. Still, the bulk of evidence suggests that similar polities are associated with relative peace, **even among nondemocracies.** **The autocratic peace poses unique challenges for democratic peace theories**. Given that the democratic peace highlights apparently unique characteristics of joint democracy, many explanations are predicated on attributes found only in democratic regimes. An autocratic peace implies that scholars should focus on corollaries or consequences of shared regime type, in addition to, or perhaps even instead of democracy. In this context, arguments about democratic norms (Maoz and Russett 1993; Dixon 1994), improved democratic signaling ability (Fearon 1994; Schultz 1998, 1999, 2001), the peculiar incentives imposed on leaders by democratic institutions (Bueno de Mesquita et al. 1999, 2003), and democratic learning (Cederman 2001a) all **invite additional scrutiny**. While it is theoretically possible that a democratic peace and an autocratic peace could arise from independent causal processes, logical elegance and the empirical similarities inherent in shared regime type provide cause to explore theoretical arguments that spring from regime similarity in general.

**Trade DA**

**Trade turns and solves the case---foreign competition is better than antitrust**

Anu **Bradford 19**, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, and Dr. Adam S. Chilton, University of Chicago, Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School, MA in Political Science from Yale University, JD and PhD in Political Science from Harvard University, “Trade Openness and Antitrust Law”, Journal of Law & Economics, Volume 62, Number 1, 62 J. Law & Econ. 29, February 2019, Lexis

2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime **unnecessary** (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an **effective way** to ensure that markets **remain competitive** because facilitating entry **checks market power** (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, **monopolists refrain** from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, **trade liberalization renders an anti trust intervention into monopolistic practices superfluous**. Exports fueled by trade liberalization should **also** enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have **several advantages**. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an **even more effective discipline** on the market than **domestic** firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on **government bureaucracies**. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the **complexities** associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although **trade openness may "act as an effective antitrust policy"** (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate market entry in the presence of highly protectionist trade policy.

**Trump was a brink---the world was on the cusp of protectionist wars, but backed off AND it’s now recovering**

Andrew **Rosenbaum 21**, Business Editor at Cyprus Mail, Journalist, Editor, Copywriter and Content Strategist, Focusing on Finance, Former Correspondent for Business Week, “International Trade Forgets Trump, Grows Stronger in 2021”, Cyprus Mail, 8/22/2021, https://cyprus-mail.com/2021/08/22/international-trade-trump-grows-stronger-in-2021/?fr=operanews

Amid economic disruptions from **Covid**-19, global trade on the whole **held up relatively well** in 2020 and moved on to **greater strength** in 20**21**, according to a report by United Nations Conference on Trade and Development (UNCTAD).

The **W**orld **T**rade **O**rganisation’s Goods Trade Barometer has hit a **record high** in its latest reading issued on 18 August.

The Goods Trade Barometer is a composite leading indicator providing real-time information on the trajectory of merchandise trade relative to recent trends ahead of conventional trade volume statistics. The latest barometer reading of 110.4 is the highest on record since the indicator was first released in July 2016, and up more than 20 points year-on-year.

“ Much of the trade resilience was due to East Asian economies, whose early success in pandemic mitigation allowed them to rebound faster and to capitalise on booming global demand for COVID-19 related products. The **positive trends** from the last few months of 2020 **grew stronger** in early 20**21**. In the first quarter of 2021, the value of global trade in goods and services grew by about 4 per cent quarter-over-quarter and by about 10 per cent year-over-year. Importantly, global trade in Q1 2021 was higher than pre-crisis levels, with an increase of about 3 per cent relative to Q1 2019.”

Trade in services has not rebounded as strongly, and this hits Cyprus for which the export of services is much more important than the trade in goods.

But we are **see**ing a **welcome rebound** from the period in which former US president Donald Trump maintained policies that caused a steep decline in global trade.

The United States, the world’s largest importer, started a bitter tariff war with China and with its European allies in 2018. Then US President Donald Trump upended longstanding trade relationships with many of Washington’s top trading partners.

The fallout: Global growth in 2019 fell to 3.0 per cent, the slowest pace in a decade, before the pandemic started, the International Monetary Fund said.

Trump caused further disruption by attempting to undermine the World Trade Organization. He refused to name new judges to its hearings, and this effectively made it impossible for the organisation to operate.

“The world came **perilously close** to a return to what we saw in the 19**30s**. In response to the outbreak of the Great Depression, countries imposed trade barriers, blocking imports from other state, and a general escalation of tit-for-tat protectionism which hurt economic growth for many years,” according to analysts at Chatham House.

**All this has changed today**.

**China conflicts are being resolved**

Ruidong **Gao 9-2**, Chief Macroeconomist at Everbright Securities Co. Ltd., “Opinion: Why the U.S.-China Trade War Will Ease in the Fourth Quarter”, Caixin Global, 9/2/2021, https://www.caixinglobal.com/2021-09-02/opinion-why-the-us-china-trade-war-will-ease-in-the-fourth-quarter-101767913.html

Political maneuvering between Beijing and Washington has become the norm these days, with the U.S. sure to continue to pressure China regarding the international order and tracing the source of the coronavirus among other things. However, in terms of the economy and trade, we believe the last quarter of 2021 will likely see an **easing** of tensions.

Both China and the U.S. have **incentives** to **reduce** tariffs or make **exempt**ions. Since the second quarter of 2021, China and the U.S. have **restarted discussions** on the economy and trade, signaling tensions are **already** easing.

**Trade is stable and growing---governments are avoiding protectionism, the key threat**

Dr. Daniel **Gros 21**, Director of the Centre for European Policy Studies, Ph.D. in Economics from the University of Chicago, Fulbright Scholar, Former Visiting Professor at the University of California at Berkeley, BA in Economics from the University of Rome, Former Economic Advisor to the Directorate General II of the European Commission, “The Great Lockdown and Global Trade”, Project Syndicate, 6/8/2021, https://www.project-syndicate.org/commentary/how-globalization-and-trade-survived-the-pandemic-by-daniel-gros-2021-06?barrier=accesspay

Global supply chains have **weathered** the pandemic **intact**, and the deep recession has **not** unleashed a wave of protectionism. That is **good for global trade**, and probably for foreign direct investment, too, and suggests that **predictions** of globalization’s **demise** were **premature**.

Trade is **recovering robustly** alongside the upticks in growth in major economies. This good news deserves more attention. Less than 12 months ago, many observers were **predict**ing an **end to globalization**. The pandemic disrupted supply chains, and governments, suddenly confronted with the resulting vulnerabilities and dependencies, encouraged “reshoring” production of critical goods.

Today, the outlook is **much brighter**. There is **little indication** of a **sustained** movement away from global supply chains. And many governments have realized that trade is **more** of an **opportunity** than a **threat** to national sovereignty. As a result, the **W**orld **T**rade **O**rganization expects the volume of global trade to **increase** by 8% in 2021, **more than offsetting** last year’s 5.3% decline.

True, foreign direct investment (FDI) still lags, having plummeted 42% in 2020. Europe actually recorded a negative flow. But the pandemic’s differential impact on trade and investment is not surprising. Transporting goods around the world requires little physical human interaction. Giant cranes, often remotely operated, load and unload containers, and supertankers pump oil ashore.

In contrast, acquiring a firm or establishing a new production facility in another country requires travel to meet potential partners, and in many cases close contact with foreign governments to obtain permits. Pandemic-induced border closures and travel restrictions obviously made this much more difficult.

But FDI is notoriously volatile, often plunging one year and recovering the next, so it could still bounce back strongly in 2021. In fact, the OECD has already detected signs of a recovery.

Moreover, global supply chains have proved to be less vulnerable than many had feared. The notion of a “supply chain” conjures up an image of a fragile arrangement, with each enterprise depending on inputs from the adjacent link. And a chain is only as strong as its weakest link.

The global trading system’s vulnerability to choke points seemed to be driven home in March, when a single large freighter blocked the Suez Canal, after sandstorms restricted visibility and transformed the huge stack of containers on board into sails. But this incident, which was resolved relatively quickly, is not representative of how global trade works.

It is more accurate to talk of interrelated networks of suppliers than supply chains. Most enterprises have more than one supplier of key components, and multinational companies with operations in many countries source supplies from many other countries. The pandemic has reinforced multi-sourcing, rather than triggering a retrenchment from the division of labor.

Yes, governments almost everywhere have interfered with trade during the pandemic to address acute shortages of key products, such as personal protective equipment in 2020 and COVID-19 vaccines during the first few months of 2021. But both of these products, while vital in the context of the pandemic, play only a marginal role in the wider economy. The rich countries could vaccinate the entire world for less than a dollar a week from each citizen.

The **main danger** is that governments, fearing similar dependence on foreign suppliers for many other key products, introduce **protectionist measures**. Prompted by the EU’s concern that such dependence could leave the bloc **vulnerable** to **political pressures** from hostile governments, the European Commission has recently completed a fascinating study of strategic dependencies and capacities.

The Commission examined more than 5,000 products and found only 137 in the most sensitive sectors, accounting for about 6% of all EU imports by value, for which the EU is highly dependent on imports from outside the bloc. For 34 of these products, constituting only 0.6% of all imports, the EU could be more vulnerable, owing to the low potential for further import diversification or substitution through EU production.

In other words, for the overwhelming majority of products, large economies like the EU have a sufficiently diversified supply base to make them independent of any single supplier. And broad protectionist measures like tariffs or quotas would have little impact on the few goods for which only a single source may exist.

Moreover, most of the 137 sensitive products that the Commission identified are raw materials and related commodities that are easy to store. It would thus be relatively straightforward for the EU to build up strategic stockpiles of those goods.

In the end, governments do **not** appear to have resorted to protectionism in response to the COVID-19 crisis. Although precise data on new trade barriers erected last year are not yet available, the strong expansion of trade in 2021 implies that the use of such measures must have been **limited**.

**Trade’s rebounding**

Laura **Wood 9-16**, Senior Press Manager at Research and Markets, “Global Terminal Tractor Market (2021 to 2026) - Advancements in Terminal Tractors Presents Opportunities”, Research and Markets, 9/16/2021, https://www.globenewswire.com/en/news-release/2021/09/16/2298189/28124/en/Global-Terminal-Tractor-Market-2021-to-2026-Advancements-in-Terminal-Tractors-Presents-Opportunities.html

However, a **strong rebound** in global trade with the recovery of major industries across the globe since the middle of last year has helped soften the impact of the pandemic for trade. The global economic recovery is also expected to be **fueled** by the higher production of **vaccines** and vaccination rates, allowing businesses to reopen **more quickly**. According to World Trade Organization (WTO), the volume of world merchandise trade is expected to **increase** by **8.0%** in 2021 after having fallen 5.3% in 2020, continuing its **rebound** from the pandemic-induced collapse that bottomed out in the second quarter of 2020.

**1---Global protectionism is on the rise, but will remain largely confined to rhetoric because the international agreements barring trade barriers. Aggressive use of antitrust to achieve political objectives provides a unique means to circumvent that—Would put the nail in the coffin of the international free trade framework for years!**

**Murray 19** – Chief Growth Officer, CheckAlt; Judicial Law Clerk, US Bankruptcy Courts

Allison Murray, JD, Loyola Law School, Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?, 42 Loy. L.A. Int'l & Comp. L. Rev. 117 (2019), Available at: <https://digitalcommons.lmu.edu/ilr/vol42/iss1/3>

The WTO’s warning was intended to raise awareness that the **creeping protectionism of the 1930s** **may** be rearing its ugly head yet again, with the intention of **preparing** world leaders to **avoid the pitfalls** of such an approach.195 With **so many agreements in place** **that** are designed to **prevent countries from raising tariff levels** and engaging in the policies which plagued the world economy during the Great Depression, it **makes sense** that **individual countries** **may** **fall back to antitrust law** **as a lever to promote protectionist policies**.

VI. CONCLUSION

There is a clear “conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . .”196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the “rational” assumptions necessary to preserve free market efficiency.

**Some** amount of protectionism is inevitable. Although “inefficient” in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, **but** rather a demonstration and prediction that **antitrust law**, a tool of political and economic power, **can and will be wielded by individual countries** to **promote protectionist policies** that will **affect the international trade landscape** **in the near term**.

While attempting to **act on this protectionism** is **difficult** because of the **web of international trade agreements currently in existence**, individual countries may still **use domestic antitrust law** to meet protectionist aims, especially given that an **international** authoritative body governing the use of antitrust **does not exist**. **Countries serious about preserving free trade** may **cooperate with one** **another** to adopt realistic economic policies that serve to **dull the blade of antitrust law through** regional **agreements**, **but** **ought not** to attempt to **eliminate** it altogether.

**Antitrust law, like medicine**, **must be used appropriately** to be effective. While antitrust laws **generally** should **encourage free trade**, as promoting **competition is the aim** of their enforcement, they are **also** **at risk** of being used to **thwart** free trade. That risk is further **exacerbated by perceptions of unfair enforcement** and the divisive rhetoric of world leaders. **In this way**, **antitrust law** has the **potential** to **weaken the already delicate international cooperative framework** **that exists to foster free trade**. Absent a **change in perceptions** and the protectionist rhetoric fueling the current political landscape, **antitrust law** is **likely** to be manipulated to serve protectionist viewpoints, making it increasingly **likely to become a nail in free trade’s coffin**, **instead of** the **key to its preservation**. It may be a nail that nations are able to ignore for the sake of its benefit, or **it may be the** **one that finally puts an end to the pursuit of** truly **international free trade**. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly **for years to come**.

**Specifically, the plan links—Would get latched onto by U.S. companies and the federal govt.— Constitutes a “hydrogen bomb in global trade wars”**

--Note: it’s unique, this ruling didn’t go into effect, which is the aff’s entire premise!

**Gibeaut 97** – reporter for the ABA Journal

John Gibeaut, "Sherman Goes Abroad: Landmark decision OKs international antitrust prosecution," American Bar Association Journal, Vol. 83, No. 7, pp. 42-43, July 1997, <https://www.jstor.org/stable/27839916>

A 1st U.S. Circuit Court of Appeals panel may have **cut that leash entirely**. An **unprecedented** decision now **allows the federal government to criminally prosecute international anti-trust cases**, **even though** all the criminal acts charged were **committed by foreign nationals outside U.S. territory.**

The Boston-based court’s unanimous March 17 decision in United States v. Nippon Paper Industries Co. Ltd., 109 F.3d 1, could become the **equivalent of a hydrogen bomb in global trade wars where U.S. companies feel threatened by unfair foreign competition**.

Nippon Paper has said it will pursue the case to the Supreme Court. If the decision stands, the feds can prosecute the **Tokyo-based company** on charges it **conspired with other Japanese manufacturers to fix the price** of fax paper **imported into the United States.**

**2---Plan’s overextension sparks massive backlash against U.S. economic imperialist imposition—Turns the case, but also wrecks relations, causes kickout of the U.S. military, sparks terror attacks, and escalates to war**

**Salbu 99** – Professor of law and ethics, Georgia Tech

Steven R. Salbu, The Foreign Corrupt Practices Act as a Threat to Global Harmony, 20 MICH. J. INT'L L. 419 (1999), Available at: <https://repository.law.umich.edu/mjil/vol20/iss3/1>

The **overreaching** of extraterritorial legislation can **affect world relations**. The 1990s critique of relativism. 4 has the potential to empower a resurgence of moral imperialism. Peter Drucker identifies this trend as a new ethics that "denies to business the adaptation to cultural mores which has always been considered a moral duty in the traditional approach to ethics."" 5 **History tells us** that nations around the world **highly value control over their own political processes**." 6 At **best**, they will **resist** extraterritorially imposed legislation that is perceived as imperialistic."7 At worst, the encroachments such legislation represents can **engender the same kinds of international hostility and conflicts caused by physical invasion.**

Pfaff accurately casts some United States efforts toward global economic transformation as **imperialistic**." 8 He asserts, "[t]he United States, ambivalently backed by Europe and Canada, is attempting to force the replacement of crucial economic and social institutions in the nonWestern world with institutions drawn from its own experience and that of Western Europe.""' 9 While critiques that cast modern U.S. economic policy as the colonialism of the 1990s"2° may be dramatic, they also contain a prudent warning, reminding nations with expansionist histories that the world **resents** and **fights** their **encroachment**. While "[tihe new Western offensive means no damage . .. it is a war of society and culture, and causes damage ... [that] has political consequences."''

The vernacular of Senator Jesse Helms in regard to the Convention on Combating Bribery captures an attitude U.S. interests adopt all too often in the debate over corruption. In Helms' own words, there is "a need to push-and I use that word advisedly-to **push** our European allies and other countries to enact laws that criminalize bribery of foreign officials b , their citizens overseas."' 22 The comment is telling in two ways-it **evokes a tradition** of **aggressive, forceful U.S. demands** that **the world resolve problems in the U.S-endorsed manner**, and it **reinforces the idea** that "[t]he **only right way is our way**-the way we do it in the United States."'2 In view of Helms' comments and similar statements, it is little wonder that both the FCPA and aggressive U.S. measures to bring other countries in line with the statute's philosophy have met with resistance and resentment.

Few would challenge the idea that physical aggression and expansionism endanger global harmony. A greater number of observers would question the idea that forcefulness in promoting public policies bears **similar** kinds of **risks**. Yet Alterman accurately observes that **global hostilities** toward U.S. imperialism are **not limited to military** foreign relations **issues**, but **encompass economic encroachments as well**.'25 "Growing **resentment of U.S. heavy-handedness** is **hardly limited** to **Europe**, the **Gulf**, or even military matters," he notes, adding that, "[i]n **Asia**, resentment is growing at **U.S.-directed demands** that nations like Indonesia and South Korea open up their societies to U.S.-style capitalism. ' ' 116 He concludes that many Asians see "a U.S. attempt to use their temporary weakness to impart a new form of what Thai newspapers are calling 'U.S. financial imperialism' and 'economic colonialism' in the region."'27

Thus, while much of the world resented perceived U.S. political imperialism during the Cold War, nations are now likely to resent U.S. economic imperialism.' The resentment will be exacerbated when nations fear that their culture is at risk of being supplanted by U.S. culture.' 9 Moreover, other nations' **sensitivity** regarding U.S. economic intrusiveness has become **aggravated** over the past few years. Europe is increasingly uneasy with U.S. world influence,'30 and Canada has instituted "blocking measures" that "insulate Canadian nationals and companies from foreign attempts to enforce their extraterritorial requirements or penalize their violation."'' Meanwhile, turmoil in Asia's economy has triggered a backlash there against U.S. influence in global economic affairs.12 According to Kawachi,

Those who feel victimized by post-cold war trends regard economic globalization as a campaign to impose Western values, under which a country's development strategy and reform efforts are judged by how close they approach the AngloAmerican model. Among these people there are rising concerns that, unless something is done, their own cultures and even value systems will be swallowed up by foreign norms."'

To what degree such resentments are justified is an interesting question. In itself, however, its answer cannot resolve the policy issues surrounding extraterritorial statutes. Justified or not, **resentment over legislative overreaching** has **historically** engendered **hostility**,3' 4 potentially **threatening diplomatic relations between nations**."' This hostility **in turn** has created a **hazard to international relations**, and may even **pose a** **threat to global peace**. **In a world where** **U.S. flags are burned in demonstrations against alleged U.S. arrogance and hegemony**, ' **any perception** **of an overweening megalith** has the potential to **fuel backlash** " ' 37 and create an **atmosphere of conflict**, acts of **retributive terrorism**, and **even war**.

Of course, **the degree of harm engendered by invasive laws will vary** and will be difficult to predict under a range of circumstances. Goldsmith and Rinne attribute "withdrawal of foreign investment, blocking of corporate acquisitions and mergers, and damage to foreign relations" to extraterritorial application of laws.'38 Zimmerman accurately notes, "[**t]he more intrusive the application** [of an extraterritorial statute], **the more the United States exposes itself** to international criticism and **retaliation**."'139

**Specifically—*China* latches on to the plan’s precedent—Weaponizes it against U.S. and European firms!**

**Briggs 15** – Co-chair of the Antitrust & Competition practice at Axinn; Professor of International Competition Law, GWU; former Chair of the Section of Antitrust Law of the ABA

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**Few if any other legal systems in the world** involve circumstances where **powerful courts are called upon by private parties** to **exercise extraterritorial jurisdiction** over **foreign companies**, individuals, and conduct. For many people, including even relatively sophisticated judges, lawyers, and academics, this proposition is seen as unremarkable. The bench and the bar in this country seem to accept the fact of this extraordinary power as if it were an obvious adjunct to “American Exceptionalism.”16 But in nearly all other countries, the exercise of extraterritorial jurisdiction is more **rare**, and nearly **always** at the **behest of a government** acting through its executive branch or its legislature. **Foreign courts** seem to **show more restraint** in the exercise of their power, which is in any case more limited than that enjoyed by American courts. This might be changing. **As the** People’s Republic of China (**PRC**), along with **other powerful countries**, **observe the American legal system, “learn” from it**, **and mimic it to their advantage**, **American or other firms** **whose conduct outside China** can be **claimed to have some perceptible effect on Chinese commerce** will **come to be treated in** much **the same way that our system treats Asian and European companies.** Indeed this is already happening.17

**That’s a disaster—Becomes their means of going after the old economic superpowers!**

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John DeQ Briggs, Axinn Veltrop & Harkrider LLP, & Daniel S. Bitton, partner in the Antitrust & Competition practice at Axinn, focused on counseling and representing clients in high-stakes international antitrust matters, including global merger clearance, former legal advisor to the Netherlands Competition and Post and Telecommunications Authorities , Heisenberg’s Uncertainty Principle, Extraterritoriality and Comity, 16 Sedona Conf. J. 327 (2015), https://thesedonaconference.org/sites/default/files/publications/Heisenberg%27s%20Uncertainty%20Principle\_Extraterritorialty%20and%20Comity.16TSCJ327.pdf

The **aggressive extraterritorial application of American law** has **consequences** and will have **more** consequences **as time goes on**. Some **four decades ago we saw** the adoption by some of our **closest allies** of “**claw back” and “blocking” statutes**, designed to **avoid U.S. discovery**, **block enforcement** of U.S. punitive damages awards, and allow claims in their home countries to claw back U.S. punitive damages awards. Now, as detailed above, we are seeing a substantial number of amicus filings by foreign governments in U.S. courts complaining about extraterritorial assertion of U.S. law and jurisdiction.

But **more worryingly**, we are **also seeing other countries follow U.S. practice** and **increasingly assert their own law extraterritorially**, **regularly against American and European multinational** concerns. Most notably, the **PRC** has been **flexing its muscle overseas**, especially in the antitrust arena, **when it deems that** foreign conduct or **transactions by foreign companies** **threaten its domestic, often state-owned industries.** For example, in 2014, MOFCOM, responsible for antitrust reviews of mergers, blocked an international joint venture by three foreign shipping companies (Danish, Swiss, and French shipping companies) based on what many have perceived to be protectionism rather than antitrust merits;110 both the U.S. and European antitrust authorities had cleared the joint venture reportedly due to significant associated procompetitive efficiencies.111 Earlier this year, despite pleas from President Obama not to devalue intellectual property of American companies to the benefit of Chinese firms using U.S. technology,112 China’s National Development and Reform Commission imposed a fine of nearly $1 billion and several licensing restrictions, including a royalty base cap, on Qualcomm for alleged abuse of dominance with respect to standard essential patents and baseband chips.113

But it is not just the PRC. Other countries are also increasingly bold about asserting their laws extraterritorially, sometimes in questionable ways. **France**, for example, has **pushed** for **European Union privacy laws** to **create global obligations for U.S. tech companies** to remove information from websites, rather than obligations confined to the relevant EU member state territories.114 A Canadian court recently made a similar, dubious reach across the globe with little consideration for comity, but in a trade secrets case rather than privacy case.115 These cases touch upon a fundamental constitutional right—freedom of speech—which is treated very differently in different countries. **One can and** probably **should seriously question** **whether** **one country** should be **able censor what information is available to the citizens of another** country.

**There is no reason to believe that other countries will not follow suit**, and this could **devolve into a** sort of “**race to the bottom**,” especially **between the new and old economic superpowers**. **Right now**, the **major difference** between the U.S. and other countries asserting their laws extraterritorially is still that most other countries do so primarily through civil or administrative government actions, while the U.S. also does so in **criminal** actions as well as **at the behest of private parties** in civil punitive damages suits. **But that**, too, **could change**. For example, certain countries are **adopting** criminal **antitrust enforcement regimes** as well as systems facilitating civil antitrust damages claims, **similar to the U.S. system.** Perhaps, **therefore, it is not** too **farfetched** to believe that the **extraditions, jail sentences, and punitive damages awards** **at some point** **will start running the other way**, and the **U.S. might not like it**. This may become **particularly worrisome** when **U.S. companies** and their executives engage in **global conduct** that is considered lawful (and perhaps even **beneficial**) **in the U.S.**, yet unlawful and perhaps **criminal** in other countries.

**Nuclear war.**

Stein **Tønnesson 15**, Research Professor, Peace Research Institute Oslo; Leader of East Asia Peace program, Uppsala University, 2015, “Deterrence, interdependence and Sino–US peace,” International Area Studies Review, Vol. 18, No. 3, p. 297-311.

Several recent works on China and Sino–US relations have made substantial contributions to the current understanding of how and under what circumstances a combination of nuclear deterrence and economic interdependence may reduce the risk of war between major powers. At least four conclusions can be drawn from the review above: first, those who say that interdependence may **both inhibit and drive conflict** are right. Interdependence raises the cost of conflict for all sides but asymmetrical or unbalanced dependencies and **negative trade expectations** may generate tensions leading to trade wars among inter-dependent states that in turn increase the risk of military conflict (Copeland, 2015: 1, 14, 437; Roach, 2014). The risk may increase if one of the interdependent countries is governed by an inward-looking socio-economic coalition (Solingen, 2015); second, the risk of war between China and the US should not just be analysed bilaterally but include their allies and partners. Third party countries could drag China or the US into confrontation; third, in this context it is of some comfort that the three main economic powers in Northeast Asia (China, Japan and South Korea) are all deeply integrated economically through production networks within a global system of trade and finance (Ravenhill, 2014; Yoshimatsu, 2014: 576); and fourth, decisions for war and peace are taken by very few people, who act on the basis of their future expectations. International relations theory must be supplemented by foreign policy analysis in order to assess the value attributed by national decision-makers to economic development and their assessments of risks and opportunities. If leaders on either side of the Atlantic begin to seriously **fear or anticipate their own nation’s decline** then they may blame this on external dependence, appeal to anti-foreign sentiments, contemplate the use of force to gain respect or credibility, adopt protectionist policies, and ultimately **refuse to be deterred by** either **nuclear arms** or prospects of socioeconomic calamities. Such a dangerous shift could happen **abruptly**, i.e. under the instigation of actions by a third party – or against a third party. Yet as long as there is both nuclear deterrence and interdependence, the tensions in East Asia are unlikely to escalate to war. As Chan (2013) says, all states in the region are aware that they cannot count on support from either China or the US if they make provocative moves. The greatest risk is **not** that **a territorial dispute** leads to war under present circumstances but that **changes in the world economy** alter those circumstances in ways that render inter-state peace more precarious. If China and the US fail to rebalance their financial and trading relations (Roach, 2014) then a trade war could result, interrupting transnational production networks, provoking social distress, and exacerbating nationalist emotions. This could have unforeseen consequences in the field of security, with nuclear deterrence remaining the only factor to **protect the world from Armageddon**, and **unreliably so**. Deterrence could **lose its credibility**: one of the two great powers might gamble that the other yield in a cyber-war or conventional limited war, or third party countries might engage in conflict with each other, with a view to obliging Washington or Beijing to intervene.

**3---Overzealous extraterritorial application of antitrust laws risks undercutting the sovereign authority of foreign nations to implement their own antitrust laws.**

**Hogue 16** – Senior associate in White & Case’s Global Competition Group

J. Franck Hogue, “Recalling First Principles: The Importance of Comity in Avoiding Antitrust Imperialism,” Washington and Lee Law Review, Vol. 73, Issue 1, January 2016, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4493&context=wlulr

I would add a somewhat less apocalyptic source of conflict that may **hamper the operation of global commerce**: the **overzealous extraterritorial application of antitrust laws**. Each of the countries that supplied a part of Mr. Friedman’s computer have their **own laws and regulations** that **govern** the **conduct** of companies doing business within their borders, among them competition laws that delineate what is and what is not permissible.11 These regulations reflect the legal and commercial traditions unique to particular jurisdictions, and embody the differing choices made by these states. And, of course, the United States has its own innumerable laws that govern the conduct of commerce within its own borders.12 These are the product of the U.S. and Western commercial heritage. As to all of the countries, it has long been established in international law that **principles of sovereignty permit** these nations to **apply their laws** to **conduct occurring within their territory**.13 But **conflict** and **friction** in the **international commercial system** can occur when **one nation seeks to apply its own laws** to **conduct** that **takes place within the borders of another nation**.14 The **extraterritorial application of antitrust regulations** is a **potent example**. Conflict is **particularly possible** when it is **American antitrust law** that is urged to reach foreign commerce and conduct.15 While such an application can be permissible in certain circumstances, there are **constraints** on the **extraterritorial application** of American antitrust laws to **alleviate such friction**.16 One such constraint, but certainly not the only one, is the Foreign Trade Antitrust Improvements Act (**FTAIA**).17

While the FTAIA initially enjoyed little celebrity, it has taken on an **increased importance** in debates over how far and to what conduct American courts should extend the reach of American antitrust law.18 Increasingly, American courts have taken up the proper application of FTAIA to cases involving foreign conduct, foreign commerce, and domestic claims.19 So too has academia, producing a remarkable volume of scholarly research and shining much-needed light on a once-obscure statute.20

It is into this already-crowded field that Ms. Leonard bravely enters with her timely Note, In Need of Direction: An Evaluation of the “Direct Effect” Requirement Under the Foreign Trade Antitrust Improvements Act.21 In her Note, Ms. Leonard seeks to identify the appropriate test to allow the FTAIA to play its proper role in the modern global economy.22 Ms. Leonard focuses her analysis on a single aspect of the analysis with which courts engage when applying the FTAIA, namely the direct effect prong.23 She skillfully dissects and analyzes two differing tests that courts have used in evaluating whether there is a sufficient link between foreign conduct and an alleged harm to domestic American commerce.24 And while Ms. Leonard’s analysis is sound and her ultimate conclusion well-supported, fundamental principles of comity—a first principle when discussing foreign application of a nation’s law—plays only a supporting role in her Note.25

But **notions of international comity must not be relegated** to such a **secondary position**. Courts, including the **U.S. Supreme Court**, have recognized that comity concerns play a **prime role** as a **first principle** in determining whether to extend the antitrust laws to foreign conduct.26 Because, as the Court observed, “Why should American law supplant, for example, Canada’s or Great Britain’s or Japan’s own determination about how best to protect Canadian or British or Japanese customers from anticompetitive conduct engaged in significant part by Canadian or British or Japanese or other foreign companies?”27

As other countries have urged, “**Greater comity is required** in our modern era when international transactions involve a constant flow of products, wealth and people across the globe.”28 Greater comity **leaves other countries free** to **organize their economies** and develop their own domestic industries in accordance with the wishes of their own people.29 As the government of Japan has put it, Japan “has significant economic, political, and legal interests in ensuring that companies based in Japan shall comply with the Japanese legal system, and that Japanese companies running businesses elsewhere shall comply with ‘reasonable’ jurisdictional requirements of other nations.”30 The United Kingdom, Ireland, and the Netherlands cited the U.S. Supreme Court to renowned scholar Vaughan Lowe in making the point that a faithful adherence to notions of international comity preserve to each country the ability to conduct its domestic affairs in accordance with that nation’s own norms and priorities.31 An **overzealous extraterritorial application** of U.S. antitrust laws, and **failure to heed comity concerns**, **risks** “fail[ing] to give proper consideration to the legitimate choices those nations have made concerning the regulation of their own commerce and competition in their own industries.”32

Returning to Mr. Friedman’s computer, each of the fifteen countries at issue in the supply chain has elected to regulate its company’s activities in accordance with the social and political considerations unique to its respective nation.33 A review of the list of countries reveals a number of societies that are climbing the ladder from second-world status to become important exporters and links in the global supply chain.34 Courts in the United States should **recognize** and **take heed** of the **different commercial decisions** these foreign countries and their citizens have made and keep in mind comity considerations when interpreting the FTAIA when judging claimed violations of the antitrust laws.

**2--- It will be manipulated AND perceived as protectionist.**

Allison **Murray 19**, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, Lexis

VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing **compartmentalization** of the world political system composed of sovereign states . . . ." 196 This conflict can breed **protectionist political views**. **Unless** and until **there is a** complete **paradigm shift** away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

**Some amount** of protectionism is **inevitable**. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, **can** and **will** be **wielded** by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to **meet protectionist aims**, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to **thwart free trade**. That risk is further **exacerbated** by **perceptions** of **unfair enforcement** and the **divisive rhetoric** of world leaders. In this way, antitrust law has the potential to **weaken the already delicate international cooperative framework** that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be **manipulated** to **serve protectionist viewpoints**, making it increasingly likely to **become a nail in free trade's coffin**, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

**BUT, even if they’re right, a protectionist reaction is especially likely now, post-COVID, Brexit, and in the wake of China disputes**

Dr. Brian **Ikejiaku 21**, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, Gale Academic Complete

**Today**, there is a **growing fear** of **resurfacing protectionism**, from **U**nited **S**tates’ trade-war with **China**, to UK’s **Brexit**, to the less known trade-restricting measures adopted by countries globally. The General Agreement on Trade & Tariff (GATT), superseded by the World Trade Organisation (WTO) since 1995, rendered the classic forms of protectionism such as tariffs obsolete. However, it did not defeat protectionism; instead, protectionism has evolved through its protean capacity to adapt into new and often undetectable forms, now labelled as **‘murky’** protectionism (e.g. **competition law enforcement** and the recent bailout packages). It is argued that there are two ways in which States can **utilise competition** law to **impair free-trade** and **restrict foreign firms’ access** to domestic markets: the exemption of certain anticompetitive conduct under national competition law and the strategic application of domestic competition law. This article considers competition law as an instrument of protectionist policy with comparative analysis of the US and the European Union. Using an international political economy (IPE) perspective underpinned by overlapping theories of (legal/political) realism, this article establishes that, while no direct robust empirical evidence of protectionist motivations on competition law enforcement exists, particularly on ‘merger regulation and export cartel exemptions’, the presence of **political elements** on the decision-making, the **wide discretion** granted to competition authorities and the **‘sponge’ nature** of competition law **present an opportunity** for the use of competition law for protectionist tendencies.

**Business lobbies will push for and receive protection to balance increased antitrust enforcement**

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The Day After COVID-19

Some countries are beginning to **ease** their lockdowns. The fear of a deeper recession put pressure on governments to reduce shutdowns in order to **revive the economy**. Unemployment is particularly **worrisome** in many countries, even in the United States, where unemployment claims have reached 22 million.4 Latin American countries with already relatively high unemployment rates – on average 8.1 percent in 20195 – are particularly vulnerable in this respect.

Such a disturbing outlook brings me to some competition concerns for three reasons.

Firstly, competition authorities have begun to **relax** the **enforcement** of some competition rules. For example, on March 19, the UK Competition and Markets Authority (“CMA”) stated that it had no intention of taking competition enforcement action against cooperation between businesses to the extent necessary to protect consumers or ensure supplies.6 The Mexican Competition Authority (“COFECE”) recently took a similar approach.7 Nevertheless, the urgency of acting now might pave the way for setting aside future competition policies necessary for healthy markets. Therefore, in my view, it should be clear that the current approach of dealing with the emergency must be temporary.

Secondly, after the spread of **COVID**-19 slows, governments will prioritize the **recovery** of local markets **even if** that implies embracing **extreme protectionism**, which in turn will reduce foreign competition. This is important because this trend would be a force in the same direction as relaxing the enforcement of some competition rules. Competition authorities must bear this in mind for post-COVID-19 times.

Thirdly, and closely related to the two previous concerns, **domestic corporations will** have strong incentives to **lobby for softer enforcement** of competition law and might **request** additional **protectionist measures as compensation** for corporate generosity and flexibility during the pandemic. If some protectionist measures are arguably acceptable for some time, they should not be at the **expense** of **strict enforcement** of competition law in **domestic** markets.

In such a context, my concern is that competition policy might become excessively lenient. This would be a questionable policy choice. If protectionism was winning supporters before the pandemic, a post-COVID-19 world will **tolerate more protectionism** in order **to back domestic industries** and businesses.

1. **Recent, robust studies**

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Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that **“if goods don’t cross borders, soldiers will.”**

Bastiat argued that free trade between countries could reduce international conflict because trade forges **connections** between nations and gives each country an **incentive** to avoid war with its trading partners. If every nation were an **economic island**, the lack of **positive interaction** created by trade could leave more room for **conflict**. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as **recent research** shows, the historical evidence **confirms** Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, **empirically** tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 19**60** until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a **negative correlation** between free trade and conflict: The more freely a country trades, the **fewer wars** it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for **causation**. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald **controls for these variables**. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The **takeaway** from McDonald’s analysis is that **protectionism can actually lead to conflict**. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



b) Empirics

Cary **Huang 18**, Senior Writer and Veteran Columnist at the South China Morning Post, Former China Editor for The Standard, “Trade Wars Cause World Wars, History Shows. Will This Time Be Different?”, South China Morning Post, 7/17/2018, https://www.scmp.com/comment/insight-opinion/united-states/article/2155565/trade-wars-cause-world-wars-history-shows-will

**History** provides **ample ev**idence that trade problems have **heighten**ed tensions among nations. Such fights lead to **economic crises**, and trigger **political and social crises** and, finally, trigger **wars**.

A full-blown trade war often features the combination of a tariff war and currency war. In practice, exporting countries will, in response to imposed tariffs, resort to currency manipulation, moving to cheapen their money to offset the impact of the tariffs.

But a competitive devaluation among trade partners makes a currency war meaningless. Once countries realise that currency wars do not work, they resort to all the tools available to set up barriers to block trade. This seems evident amid the escalating US-China trade feud. The slump in the renminbi in past few months is stoking fears in markets that China’s policymakers are deliberately pushing the currency’s depreciation in an effort to offset the US tariff hikes.

Trump staring down barrel of yuan devaluation in trade war

Before the first world war, most countries accepted the classical gold standard of pegging their currencies to gold as an effort to anchor smooth trade. However, from 1913, countries began to suspend or abandon the system as they devalued their currencies to compete for export markets in the ongoing tariff war.

The end of the first world war sparked the first worldwide currency war, **start**ing in **Weimar Germany** in 1921, followed by France in 1925. In the end, all the major economies scrambled to devalue their currencies – sterling, the franc and the US dollar – throughout the 1930s.

In 1930, US president Herbert Hoover signed into law the **Smoot-Hawley** Tariff Act, which intensified the currency war and deepened the Great Depression. The protectionist law raised tariffs on more than 20,000 imported products and triggered **retal**iation from many US trade partners.

Trade wars stoke **nationalism** and **hatred** among people and finally trigger **wars**, as evidenced by the breakout of the second **world war**: the Japanese invaded Manchuria in 1931, and the whole of China in 1937; the Germans invaded Poland in 1939, then the rest of Europe; and the Japanese attacked Pearl Harbour in 1941.

Could Trump’s trade war turn into a third world war?

A quote often attributed to the 19th-century French economist, Frédéric Bastiat, goes: **“When goods do not cross frontiers, armies will.”** It is obvious that the current US-China trade war is stoking geopolitical tensions between the world’s two largest economies and chief political adversaries, as they become more confrontational over their discord on maritime issues in the South and East China seas and over Taiwan.

History often **repeats itself** if we do not learn from it. The two full-blown trade wars some 80 and 100 years ago helped to ignite the two **world wars**. Could such a catastrophe **happen again**?

**c) Forecasting---the current environment is uniquely primed for global escalation---trade’s key**

Dr. Christopher M. **Dent 20**, Professor in Economics and International Business at Edge Hill University, PhD in International Political Economy, University of Hull, MA in Economics from the University of Leeds, “Brexit, Trump and Trade: Back to a Late 19th Century Future?”, Competition & Change, Volume 24, Issue 3-4, p. 338-339

Introduction

The global economy and system are entering a **critical phase**. **Populist nationalism** is on the rise, fuelled largely by discontent over globalization’s distributional impacts and failure of conventional politics and markets to deliver on their promises (Kyle and Gultchin, 2018). An emerging economic super**power** is **disrupting the global order** and its long incumbent power structures. **Multilateralism is under threat**, trade protectionism and tariff wars are escalating, many economies are struggling in the lingering aftermath of a severe global recession and the global system is under pressure generally from short- and longer-term crises (Guillen, 2015). World GDP and trade growth are slowing and there are predictions of greater political economic turbulence to come (World Bank, 2019; World Trade Organisation, 2019a). Worst still, the world may be **on the brink** of a **major great power conflict**. This scenario not only applies today but also to the late 19th century world. The eventual outcome of events in this period was escalating conflict that **culminated** in the outbreak of **World War 1** (WW1). Whilst such an outcome was not necessarily inevitable by the 1890s it was a retrospectively proven possibility. Hence, avoiding a late 19th century world scenario is, at the very least, **desirable**.

Trade is **central** to understanding the political economies of the early 21st and late 19th centuries, making it a suitable empirical prism to make a comparative historical analysis (CHA) of the two periods. What follows is a trade political economy study that will examine various connections between the domestic and the international, focusing also on two significant cases that provide important comparative analytical insights. The result of Britain’s 2016 Brexit referendum and election of Donald Trump as US President in the same year have become emblematic of contemporary populism, economic nationalism and associated resistance against forms of internationalism and globalization.1