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#### The 50 states and all relevant sub-federal territories should

#### substantially increase prohibitions on the anticompetitive business practice of domestic, private sector financial institutions amassing liabilities greater than five percent of the Federal Deposit Insurance Corporation’s Deposit Insurance Fund

#### Offer substantial personal financial rewards to prosecutors who win antitrust suits

#### Enact substantial personal financial punishment to prosecutors who fail to pursue antitrust litigation

#### Direct vastly supernormal resources to antitrust state prosecutors

#### Solves the entire aff—Congress has devolved antitrust authority to the states

Harvard Law, 20

(Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” JUN 10, 2020 133 Harv. L. Rev. 2557 NL)

Both the United States government and the governments of the fifty states use antitrust principles to regulate firms. A collection of federal statutes, first and foremost the Sherman Act,1 outlaws anticompetitive behavior under federal law. The federal executive branch, through the Federal Trade Commission (FTC) and the Department of Justice's Antitrust Division (DOJ), enforces the federal statutes.2 Meanwhile, each state has its own antitrust statutes outlawing anticompetitive behavior.3 The states' agencies enforce their own antitrust laws, and they can enforce federal antitrust law as parens patriae 4 for full treble damages thanks to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 5 (Hart-Scott-Rodino). However, when state legislation itself produces anticompetitive effects that seem to violate federal antitrust principles, the state gets a free pass: "[A]nticompetitive restraints are immune from antitrust scrutiny if they are attributable to an act of 'the State as sovereign.' 6 Wherever the federal and state governments share regulatory authority, federalism concerns naturally follow. Federalism refers to the division, overlap, and balance of power between the federal and state governments in our federal system.7 The emergence of a strong national government since the New Deal has turned federalism into a statecentric concept about protecting the states' role in that balance.8 This state-centric federalism is partially baked into the Constitution: for example, the Tenth Amendment confirms that the Constitution reserves powers not delegated to the United States for the fifty states, 9 and some scholars have attributed a state-centric view of federalism to the Guarantee Clause.10 However, when, as with antitrust, the federal and state governments share concurrent regulatory authority, the Constitution alone cannot resolve the federalism-nationalism balancing act. Even when it is not a constitutional hurdle, federalism is still a relevant constitutional value. The Framers embraced federalism for its policy virtues,11 and contemporary judges and scholars laud federalism for its modern-day policy perks. 1 2 The Supreme Court often invokes federalism in the form of a presumption that Congress does not lightly intrude on state sovereignty.13 One example is the Court's presumption against preemption: a party alleging federal preemption of state law faces a judicial presumption that Congress did not intend to make that choice.14 That presumption is validated by Congress's choice to refrain from preempting state law in the antitrust arena: state and federal antitrust laws have coexisted since the federal government's first steps into the arena in 1890.15 This congressional restraint is controversial, and likely to grow more so. Some scholars have argued powerfully that Congress should preempt state antitrust laws. 16 These arguments may gain renewed prominence, as antitrust as a whole has recently achieved greater political salience than it has enjoyed in a century.1 7 In the state context, attorneys general have increasingly taken antitrust action in high-profile matters the federal government has declined to pursue. In 2019, states opposed the merger between Sprint and T-Mobile,18 and many began to investigate potential antitrust violations in Big Tech. 19 While some recent, high profile state antitrust actions have been brought under federal antitrust laws, 20 others have been brought under state law.21 Moreover, a number of the current state antitrust actions are at the investigatory stage22 \_ states could potentially bring federal claims, state claims, or both. Newsworthy state involvement in antitrust policing is bringing attention to the states' antitrust role more generally, and that attention will likely bring scrutiny to the oddity of America's competing antitrust systems. This Note argues that, in considering its position within this debate, Congress should grapple with federal antitrust law's peculiar status as a largely judicially created regulatory regime. Congress should be wary of allowing federal judge-made law to preempt state legislative power. Even when the federal government preempts state legislation, the federalism balance is partially preserved by democratic checks on federal power. Yet, when a nondemocratic branch is making the law, those checks disappear. Moreover, the federal judiciary is a uniquely poor policymaking body; its lack of policymaking chops does not support overriding states' policy choices. These factors highlight the need for Congress to account for the degree to which current antitrust law is largely judge made. Part I outlines the general landscape of antitrust federalism. It first describes antitrust federalism's three components and then surveys arguments for and against maintaining one of those components: the coexistence of state and federal antitrust laws. Following this survey, Part II offers a new defense of the current system: federal antitrust law's judge-made status makes it particularly unsuitable to preemption. Finally, Part III compares antitrust's judge-made law to other preemptive federal common law, concluding that federal antitrust preemption would be uniquely susceptible to Part II's criticism. I. THE ANTITRUST FEDERALISM LANDSCAPE Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords"- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws - and one "shield" - immunity from federal antitrust law for state actions. 23 The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action. All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages - the first sword - was granted to the states by Congress in Hart-Scott-Rodino. 24 On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions - the shield - in Parker v. Brown,25 noting that the Sherman Act did not explicitly mention its application to state action. 26 Finally, when the Court confirmed that states' ability to make their own antitrust laws - the second sword and the one discussed in this Note - was not preempted in California v. ARC America Corp.,2 7 it considered the same Sherman Act silence. 28 This is all to say that antitrust's federalism tools are congressionally, not constitutionally, given rights and are therefore congressionally rescindable. Congress could amend Hart-Scott-Rodino or make explicit that the Sherman Act applies to state action. 29 And, crucially for this Note's discussion, although state antitrust law is not judicially preempted, Congress could choose to expressly preempt it in the future.30 There are strong policy arguments for express congressional preemption of state antitrust law. The remainder of this Part attempts to outline the general pros and cons of congressional antitrust preemption but is not meant to be exhaustive or to cover new ground. The intent is to situate Part II's argument about federalism and preemption by judgemade law within the broader policy landscape. A. The Patchwork Regime Problem First, critics of the status quo argue that a patchwork regime of state antitrust laws can make it expensive for companies that operate across state borders to comply. State and federal regimes share similar philosophies regarding most of antitrust law.31 But state antitrust laws do not perfectly mirror their federal counterparts - and the antitrust laws of the different states are heterogeneous themselves. 32 Disputes are concentrated in a few areas of the doctrine, like vertical restraints and mergers. 33 For example, states often focus on damage to intrabrand competition when enforcing limits on vertical restraints, whereas federal antitrust law focuses primarily on interbrand competition.34 Additionally, state merger guidelines often materially differ from federal guidelines, 35 and states are likelier to define markets "more narrowly," "refus[e] to consider efficiencies" favored by federal agencies, and show a concern for local jobs and competitors that does not "enter . . . the [federal] calculus."3 6 An inconsistent antitrust regime that may conflict between states could cause economic inefficiency, for example by discouraging companies from undertaking what might otherwise be an economically efficient merger.37 This critique relies in part on the federal government having a better approach to vertical restraints and mergers, and that is anything but clear. The classic federalism argument that states function as laboratories of democracy 38 applies here: antitrust law is far from settled, and having multiple regimes allows for testing different theories. For example, some scholars argue that the states are correct to consider intrabrand competition's effects on price, especially in certain markets.39 Similarly, in the merger context, there is support for both the states' refusal to consider only economic efficiency40 and their push for heightened antimerger enforcement. 41 Of course, the laboratories of democracy might not work so well in the antitrust context: because of the interwoven economic effects of federal and state antitrust laws and enforcement in an interconnected national economy, determining the effects of one state's slightly different antitrust regime would be difficult.4 2 But federalism can still offer benefits by breaking the antitrust orthodoxy: by putting different policies on the table, a multilevel regime reminds us both that there are different possible "best" antitrust policies and that antitrust law has a variety of potential goals.43 B. The One-State Dominator Problem Closely related to the patchwork regime problem is the one-state dominator problem: because national firms may not always be able to maintain different business practices in each state, firms could be forced to follow the law of whichever state has the strictest antitrust policy nationwide. For example, a single state could use its own antitrust laws to "challenge the largest nationwide transactions so long as it can show that the state itself, its citizens, or its economy is affected in a way that provides standing." 4 4 If a nationwide merger is illegal under one state's laws, it may not be worth it for the firm to restructure the transaction in order to merge in all but one jurisdiction. This reality could allow for the state with the strictest antitrust policy to dominate the policy decisions of every other state and of the federal government.45 The one-state dominator problem is exacerbated by unrecognized interstate externalities: in making its antitrust laws, a state is not forced to consider the harm or benefit to businesses based outside of its borders. 46 These uninternalized externalities make it more likely that a state will overregulate. The laboratory-of-democracy defenses to the patchwork regime problem, with their variety-is-the-spice-of-life flair, fail to explain why an individual state's antitrust regime should be allowed to dominate the policy of the entire nation. Consider a recently passed Maryland law regulating wholesale pharmaceutical prices. The law prohibited manufacturers or wholesalers from "price gouging," defined as "an unconscionable increase in the price of" certain drugs.47 Federal antitrust law does not prevent monopolists from receiving the reward of monopoly prices, under the theory that potential future monopoly profits encourage present investment.4 8 The Maryland law can be viewed as a limit on this monopolist tolerance in the pharmaceutical space, preventing pharmaceutical companies from taking advantage of their dominant market position in the treatment of certain diseases. Not all states had decided to regulate drug prices, with most hewing more closely to the general rule of monopoly tolerance.49 Based on its drafting, however, Maryland's law could have had significant implications nationwide: even assuming the law required some sort of connection to an eventual consumer sale in Maryland,5 0 the law regulated a wholesaler's initial sale, whether or not that sale occurred in Maryland, so long as the drug was eventually resold in Maryland.5 1 As such, any manufacturer who sold drugs to a Maryland retailer would have to set their initial prices in consideration of Maryland's law. Pricing is a core antitrust issue; why should Maryland be able to set the nation's pricing policy? Or consider the ability of indirect purchasers to sue under antitrust laws. In Illinois Brick Co. v. Illinois,52 the Supreme Court held that only direct purchasers of a price-fixed good or service, not subsequent indirect purchasers, could sue for treble damages under the Clayton Act.5 3 In response, twenty-six states passed "'Illinois Brick-repealer laws' authorizing indirect purchasers to bring damages suits under state antitrust law."5 4 But these twenty-six states have an impact even on the residents of nonrepealer states. In a class action currently on appeal in the Ninth Circuit, a district court applied California antitrust law – including California's repealer law - to a nationwide class that included class members from nonrepealer states.55 The defendant-appellant has argued that this application undermines the nonrepealer states' interest in choosing their own consumer-business balance.5 6 The Maryland and Ninth Circuit examples may be more bogeymen than real threats to federalism. First, alternate doctrines aside from antitrust preemption work to keep individual state interests in check. For example, the Fourth Circuit enjoined enforcement of the Maryland law on dormant commerce clause grounds.5 7 Where one state intrudes too much on other states' ability to regulate antitrust - where "[t]he potential for 'the kind of competing and interlocking local economic regulation that the Commerce Clause was meant to preclude' is ... both real and significant" 58 - the Constitution, rather than Congress, can prevent the onestate dominator problem's greatest harms. Dormant commerce clause challenges are not limited to the Maryland case's facts. In fact, the Fourth Circuit dissent complained that the majority's logic would invalidate other state antitrust laws, including Illinois Brick-repealer laws.5 9 Second, the trouncing of federalism in cases like these is often overstated. Take the defendant-appellant's depiction of the interests in the Ninth Circuit case as an example of exaggerated federalism costs. The district court found that the nonrepealer states had no interest in having their laws applied because the defendant-appellant was a California company; California's more consumer-friendly law would only help nonrepealer-state residents, not hurt nonrepealer-state businesses.6 0 If the nonrepealer states have an interest in denying their own consumers access to relief when there is no benefit to their own businesses, it seems tangential to an interest in striking their own consumer-business balances. Instead, a choice to prioritize foreign defendants over in-state consumers appears more like an attempt to govern the national consumer-business balance, a choice imbued with far less federalism oomph than the defendant-appellant portrayed. Whether exaggerated or not, a worry that antitrust federalism allows one state to dominate national antitrust policy weighs in favor of congressional antitrust preemption. This problem, however, is not unique to antitrust. Any area of law in which states fail to internalize the harms of overregulation, meaning any law that regulates businesses with a national footprint, could be dominated by one state. 61 If Congress were to take the one-state dominator problem too seriously, it would swallow up huge swaths of state regulation, excluding states from their traditional role in consumer protection, at least where the largest (and potentially most worrisome) industries are implicated. C. The Overdeterrence Problem Third, critics argue that a multilevel antitrust regime threatens to overdeter procompetitive conduct. The policy behind much of preemption is to prevent state law from interfering with detailed, well-balanced federal regulation: obstacle preemption exists to prevent states from "stand[ing] as ... obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress,"6 2 and field preemption exists to prevent state interference where Congress "left no room for lower-level regulation."6 3 Although it is not field or obstacle preempted, 64 antitrust law exhibits the type of detailed regulatory balance that the preemption doctrines attempt to prevent states from damaging. Much of antitrust law is built on finding the perfect balance of standards and remedies: the law must properly deter anticompetitive acts without deterring healthy competition. 65 A state law that shifts remedies or standards can upset this careful balancing, thus overdeterring desirable private action. Critics can point directly to ARC America as evidence of this overdeterrence threat. The Court's decision in Illinois Brick, which limited suits by indirect purchasers, relied in large part on a belief that concentrating suits in direct purchasers would avoid overdeterrence. 66 By allowing for additional suits, ARC America created extra deterrence not envisioned by the federal antitrust scheme. 67 Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues. 68 Moreover, many scholars argue that the U.S. antitrust balance is off and that more enforcement is needed.6 9 Even if U.S. antitrust policies are getting the balance generally right, it is unlikely that the federal regime is so finely tuned that any added deterrence will destroy the balance. D. The Misaligned Incentives Problem7 Fourth, in the misaligned incentives problem, critics argue that states do not have proper incentives when they enforce state antitrust laws. Although state antitrust laws are supposed to mainly target intrastate antitrust violations, courts have refused to police that limit too strictly. 7 1 In an interconnected economy where seemingly hyperlocal activity can have national implications, 72 courts have admitted that limiting state antitrust laws to cases that do not touch the national economy would "fence[] off" "a very large area .. . in which the States w[ould] be practically helpless to protect their citizens."7 But, even though suits under state laws may have nationwide consequences, state attorneys general lack nationwide incentives. Critics of the status quo worry that elected attorneys general are more susceptible to lobbying by state interests than are appointed federal enforcers and that a cost-benefit analysis is flawed where a state can attack a company headquartered out of state in order to protect one headquartered in state.74 These fears seem mostly imagined. The idea that elected attorneys general are bringing antitrust suits to hurt competitors of state businesses "appears to [have] little empirical support[,] ... and none has been provided by the advocates of this position."7 5 Past state antitrust enforcers have stated that, while they considered state-specific factors when deciding where to spend their limited resources, those factors would be used only to choose "from among those cases that also made sense on traditional economic grounds."7 6 And there is reason to believe that these enforcers are telling the truth. For one thing, states often make antitrust decisions that seem to go against the interests of major state employers. For example, New York antitrust enforcers have taken antitrust positions adverse to both Verizon and IBM, top New York employers.7 7 For another, a state that is only minutely affected by an antitrust action is unlikely to bring that action alone. If a state is only trivially affected by allegedly anticompetitive conduct, "that state is very unlikely as a practical and political matter to spend the enormous sums of money required to sustain a challenge." 78 If a state is majorly affected but is the only state affected, then the misaligned incentives critique does not apply because there is no competing set of national incentives. And in a case that actually has major impacts in multiple states, it is unlikely that one state could act without other states wanting to join in on the enforcement.79 When states work together on antitrust enforcement, they tend to cooperate closely with one another, especially through the National Association of Attorneys General's (NAAG) antitrust group.o Even if an individual state might be swayed by state-specific concerns, it is unlikely that it could convince a multistate coalition to act on those concerns - the group would be forced to evaluate the action on its more national merits.81 E. The Incompetent States Problem Finally, critics argue that state enforcers will make error-ridden antitrust choices due to a lack of resources, experience, and expertise. Whereas federal enforcers have significant budgets for antitrust enforcement, the percentage of funding set aside for antitrust enforcement by state attorneys general is minute. 2 Because of this lack of resources, state enforcers have been accused of staffing antitrust cases with senior attorneys who, while experienced in civil litigation generally, are antitrust novices.83 These factors have led critics to argue that state attorneys general handle antitrust suits poorly, clogging the judicial pipeline with questionable suits. 84 State attorneys general are accused of acting as free riders on federal actions and of making settlements more difficult rather than undertaking useful enforcement.1 5 But there is reason to dispute critics' claims. The critique of individual attorneys general ignores the states' ability to work in unison. Cooperating through NAAG, states are able to build on each other's experiences in antitrust enforcement.1 6 Thus, worries about inexperienced antitrust divisions working alone may be overstated. Although interstate coordination may weaken their point, critics can retort that most state actions are not coordinated: according to NAAG's State Antitrust Litigation Database, only nineteen of the fifty-six civil antitrust actions brought by states between 2014 and 2019 were brought by multiple states working together,8 7 although many of the noncooperative suits regarded intrastate anticompetitive conduct. 8 This same dataset, however, also undermines the critics' argument that states act only as free riders: only nineteen of the fiftysix suits included federal participation.8 9 Finally, much of the criticism leveled at state attorneys general occurred before a renaissance in state law enforcement. Since Judge Posner derided the skill of state attorneys general in 2001,90 lawyers and judges, including Chief Justice Roberts, have recognized a marked improvement in state attorney offices' advocacy.9 1 Whether or not Judge Posner's critiques were valid at the turn of the century, it is unclear that the landscape remains the same today. Finally, this critique undermines the arguments, noted earlier, that state law enforcement is overdeterring competition or creating a patchwork of antitrust law. If states are nothing but free riders, then we need not worry about overdeterrence.

#### The incentives planks checks solvency deficits

Rauch, 20

(Daniel E. Rauch, JD Yale School of Law, “Sherman's Missing Supplement: Prosecutorial Capacity, Agency Incentives, and the False Dawn of Antitrust Federalism,” 68 CLEV. St. L. REV. 172 (2020) NL)

(2020).State attorneys general are having a moment. In recent years, they have been main players in some of the country's most important legal and political dramas. They have checked the Trump Administration on abortion rights,3 air quality,4 and the United States Census.5 They have checked the Obama Administration on water rights, 6 immigration policies,7 and the Affordable Care Act.8 They have formed a (very public) front line on issues from the opioid epidemic9 to net neutrality.10 And in a time of federal-level gridlock, they are increasingly seen as critical sites of governance offices that can still "get things done."" As their profile grows, many suggest state attorneys general ought to take a more central role in antitrust enforcement. Sometimes, these calls are motivated by concerns that the federal government is not vigorously enforcing antitrust laws, leaving a "void" to be filled. 12 Sometimes, the calls are motivated by the suggestion that states enjoy institutional advantages in antitrust enforcement, such as superior knowledge of "market-specific information," that make them superior enforcers.13 And sometimes, the calls are motivated by doctrinal differences between state and federal antitrust statutes, differences that might afford states greater freedom of action.14 In any case, these calls point in the same direction: when it comes to American antitrust law, state attorneys general can, and should, be leaders. Rhetorically, the suggestion that states should "step up" as leading antitrust enforcers is a powerful one. It is not, however, new. When the Sherman Act was passed in 1890, the states (as opposed to the federal government) were widely expected to take the lead in antitrust enforcement. John Sherman himself asserted that his Act's "single object" was to "supplement the enforcement of the established rules of the common and statute law by the courts of the several States."1 5 Nor was he alone: at the time of the Act's passage, scholars, politicians, and shareholders all shared Senator Sherman's prediction that state enforcement agencies would be a central, if not decisive, force in American antitrust policy.16 What happened next defied this expectation. In the years following the Sherman Act's passage, from 1890 until the First World War, state antitrust enforcement had remarkably little impact or efficacy. Many scholars have noted this unexpected failure.1 7 None, however, have accurately or rigorously explained it.1 This Article does. Using novel historical and empirical research, I contend that the best explanation for the early failure of state antitrust enforcement was prosecutorial incapacity: state attorneys general and local prosecutors without the incentives or resources to handle antitrust cases. Along the way, I also provide a rigorous rejection of the leading alternative explanations for the states' early failure to act, including those based on doctrinal constraints, statutory text, and contemporary politics. Finally, I close by suggesting some implications that this first, failed era of antitrust federalism has for our own times, times where, once again, state enforcement agencies are held out as promising leaders in American antitrust enforcement. The remainder of this work proceeds as follows. Part II provides historical context for the passage of the Sherman Act and for early state antitrust statutes, the role state enforcement was expected to play, and its unexpected failure to do so. Part III then turns to the historical and empirical record to discern why state enforcement, widely expected to assume a central role, took almost no role at all. Analyzing a comprehensive and novel data set of state antitrust prosecutions, this Part quantitatively underscores the absence of state antitrust enforcement during this period. However, the data also reveals a critical nuance: a set of "high-enforcement states" in which state antitrust law was, in fact, enforced with at least some vigor. Armed with this insight, Part IV returns to the initial question: why, as a general matter, did early state antitrust enforcement fail to take root? This Part assesses four prominent explanations that have been suggested as answers to the question: (1) doctrinal arguments on the legality of state-level enforcement; (2) economic arguments based on the practical efficacy of state-level enforcement; (3) institutional arguments that the federal government's Sherman Act authority somehow "displaced" state activity; and (4) political arguments that public opinion or elected officials lost interest in antitrust enforcement after passing their initial state statutes. Ultimately, this Part rejects each of these explanations. Part V, however, considers and rigorously tests a different explanation: that the cost and complexity of antitrust litigation was simply beyond the capabilities of state prosecutors. On this account, the crucial factor was a lack of "prosecutorial capacity." To date, this explanation has never been systematically explored, examined or established. 19 This Part does so, analyzing the novel data set of state antitrust caselaw, the text of the states' early antitrust laws, the structure of each state's prosecutorial bureaucracy, and the workings of each state's budget processes. Through this empirical and documentary analysis, a striking pattern emerges. In overwhelming measure, the "high-enforcement" states, those where at least some antitrust enforcement took place: (1) offered substantial personal financial rewards to prosecutors who won antitrust suits; (2) offered substantial personal financial punishment to prosecutors who failed to pursue antitrust litigation; (3) directed vastly supernormal resources to antitrust state prosecutors; or (4) pursued some combination of these strategies. In short, these states offered incentives or capabilities that would make it personally easier (or more lucrative) for resource-limited prosecutors to act. By contrast, where such direct prosecutorial incentives and resources were absent, so was enforcement. Even in states that were politically progressive antitrust bastions. Even in states that imposed draconian statutory penalties for antitrust violations. Thus, the best explanation for the failure of early state antitrust enforcement was insufficient prosecutorial enforcement incentives and capacity

## 2

#### The International Competition Network should substantially increase prohibitions on the anticompetitive business practice of domestic, private sector financial institutions amassing liabilities greater than five percent of the Federal Deposit Insurance Corporation’s Deposit Insurance Fund as a best practice recommendation.

#### The CP revitalizes the ICN and establishes international antitrust regulations which solves the case and prevents international protectionism

Budzinski, 12

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3.3. The Multilateral Strategy: International Antitrust Institutions in Trade Agreements The basic idea to fight international anticompetitive arrangements and conduct on an international level has been so straightforward to the political sphere that as far back as in 1927, the League of Nations’ World Economic Conference in Geneva put the problem of international cartels on its agenda, discussing options for a coordinated international anti-cartel policy effort (Wells 2002: 10-11). This early initiative did not have any chance of success, however, since in the 1920s a consensus that hardcore cartels are detrimental to welfare and should be combated by antitrust policy was just about to form.10 Still, less than two decades later, the next attempt to establish multilateral antitrust institutions appeared on the agenda. This time, it was driven by the desire to create a coherent and comprehensive post-war world economic order, consisting of international institutions and organizations for the governance of (i) the monetary system and international currency relations (International Monetary Fund; The World Bank Group), (ii) public cross-border restrictions to competition, i.e. trade barriers (Havana Charter and International Trade Organization; in advance established in 1947 as the General Agreement on Tariffs and Trade, GATT), and (iii) private cross-border restraints of competition (the 1948 Havana Charter; International Trade Organization). While the first two institutions were set into force while the window of opportunity due to the global catastrophe of World War II was open, the international antitrust institution-part missed out and was subsequently abandoned in 1953 due to a lack of ratification by leading members states (Wells 2002: 116-125). However, the idea of international antitrust institutions being a complement to trade liberalization rules remained virulent. The benefits of trade liberalization can only be reaped in a sustainable way if the competition-intensifying effects of opening up national markets for international competition (Budzinski 2008a: 27-32) are not counteracted by the emergence of cross-border anticompetitive arrangements and conduct, re-establishing the pre-liberalization non-competitive equilibrium. Therefore, effective means against international cartels and against international market dominance need to accompany trade liberalization. This is in line with theoretical economic thinking (inter alia, Ross 1988; Feinberg 1991; Jacquemin 1995; Cadot et al. 2000; Hamilton & Stiegert 2000; Gaudet & Kanouni 2004; Mehra 2011; rather contrasting: Hauser & Schoene 1994). Consequently, competition provisions somewhat survived on the agenda of the World Trading System and in some instances found their way into regional trade agreements, albeit predominantly in rather rudimental shape (Alvarez et al. 2005; Cernat 2005; Evenett 2005). After the establishment of the World Trade Organization (1995, comprising GATT, the General Agreement on Trade in Services GATS and the agreement on Trade-Related Intellectual Property Rights, TRIPS), international competition resurfaced on the agenda, leading to the adoption of WTO antitrust institutions in the Doha Declaration (2001). However, in the aftermath of the Cancún conflicts, centering predominantly on agricultural markets issues, the antitrust provisions were provisionally abandoned in 2004 – and since then a reappearance does not look likely. While the recurring attempts to establish multilateral competition rules can easily be motivated both by the shortcomings and limits of unilateral and bilateral approaches (see sections 4.1. and 4.2.) as well as by the complementary nature of trade liberalization and protection of competition on international markets, the likewise recurring failures to actually establish international antitrust institutions have motivated additional economic research. From a game-theoretic perspective, negotiations on international antitrust institutions among sovereign nations resemble the characteristics of a prisoners’ dilemma game. Even if adopting international antitrust institutions would represent the world welfare optimum, the players may end up in an inferior equilibrium because it is individually rational to choose strategic competition policies (beggar-my-neighbor policies) in the absence of an effective institution. Due to the incentive structure, such an institution is notoriously difficult to establish outside specific ‘windows of opportunity’ – at least in rather simplistic game-theoretical models (à la Budzinski 2003). More advanced models (building upon so-called supergames) allow for much more differentiated analyses that also display self-enforcing cooperation patterns (Cabral 2003, 2005). However, also dynamic prisoners’ dilemma games show that cooperation is possible but not necessary and may take long to be successfully established. 3.4. The Network Strategy: The ICN after 10 Years During the years where the hitherto last attempt to establish WTO competition rules failed, a new avenue towards international antitrust institutions surfaced. On its route a multilateral perspective was combined with a focus on voluntary cooperation among competition agencies and within one decade the resulting network developed to become the most important international antitrust player in the world. There have been attempts to establish voluntary multilateral cooperation before. In 1967, the Organization for Economic Cooperation and Development (OECD) created a forum for their members in order to debate international competition issues and issue consensus-based recommendations on competition policy – with the latter goal being abandoned in the 1990s (Zanettin 2002: 53-57). Furthermore, in 1980, the United Nations Conference on Trade and Development (UNCTAD) adopted a so-called Restrictive Business Practices Code with the particular aim of protecting developing countries against inbound anticompetitive arrangements and conduct by powerful multinational enterprises. It attempted to ban, inter alia, pricefixing arrangements and other hardcore cartels as well as boycotts. However, the comparatively ambitious code lacked enforceability (First 2003). At the end of the day, both initiatives failed to produce considerable effects regarding a satisfying level of protection of international competition (Wells 2002; First 2003). Based on the concept of a Global Competition Initiative developed by the International Competition Policy Advisory Committee to the U.S. Department of Justice (ICPAC 2000), 15 national competition agencies (including the European Commission) established the International Competition Network (ICN) in October 2001 (Finckenstein 2003; Janow & Rill 2011). Until today, membership of the ICN has risen to 121 competition agencies from more than 100 jurisdictions all around the world.11 Being a network of competition agencies and calling itself a virtual organization, the ICN neither is based on an international contract, nor has its own administrative staff or budget. The ICN is led by a steering group consisting of leading officials from member agencies with the board positions rotating among the members.12 Annual conferences of all member agencies with participation of different stakeholder groups represent the major ‘decision body’. The actual work is done in so-called working groups (WGs), which typically start out by reviewing and comparatively evaluating the current practices of the member agencies. They constitute themselves project-oriented and expire if the respective agenda has been finished. The general goal of the WGs is to develop best practice recommendations that are subsequently consensually adopted by the annual conference. In addition to the substantive WGs, administrative working groups address problems of internal governance. Currently, the ICN consists of five substantive and two administrative WGs, which are overviewed in figures 1-6. The voluntariness of cooperation and the non-binding character of all best practice recommendations represent a fundamental principle and an important characteristic of the ICN. Still, the eventual goal of the ICN is about improving international competition governance. By promoting multilateral cooperation among competition agencies and by creating a common competition culture, convergence of national and regional competition policies, starting with procedural issues but aiming at substantive issues as well, is on the long-run agenda (ICN 2011; Mitchell 2011: 5).13 During its first decade, the ICN has produced an impressive output of more than 10,000 pages of ‘virtual’ paper. While the dozens of comparative analyses of worldwide existing practices and institutions regarding specific competition policy fields represent a valuable stock of knowledge, inter alia, also for competition economics, law and policy researchers, the main institutional contribution of the ICN is represented by the consensually adopted best practice recommendations as well as by enforcement manuals on various topics (ICN 2011). They include, for instance, the Recommended Practices for Merger Notification and Review Procedures, the Anti-Cartel Enforcement Manual or the Market Studies Good Practices Handbook (see also fig. 1-5). The question whether purely voluntary cooperation, resting on the publication of consensual best practice recommendations, can actually be successful triggered theoretical and empirical economic research. Budzinski (2004a, 2004b) analyzed the economics of combing consensual best practice recommendations with peer pressure. Even though it remains completely voluntary whether individual competition policy regimes bring their practices and institutions in line with the published ICN best practice recommendations or not, the consensual character of the recommendations and their public availability creates peer pressure. Agencies that have agreed that a certain practice is the best one will face a loss of reputation if they stick to an inferior practice – even according to their own evaluation expressed in the consensually adopted ICN recommendation. Thus, the combination of published best practice recommendations and peer pressure sets strong incentives to actually comply with the ICN recommendations on the regime level. Furthermore, it is in line with behavioral economic thinking that a systematic and cooperative discussion of competition policy matters among the competition agencies has the potential to harmonize views on competition and antitrust issues, thus, promoting the targeted common competition culture (Budzinski 2004a). Once this ‘cognitive’ harmonization process has taken off, it can develop strong force. However, particularly in the early period considerable obstacles may impede this process altogether. Nonetheless, peer pressure through publication and transparency of superior antitrust practices, which have been consensually acknowledged as superior, should promote a widespread adoption of the ICN best practice recommendations by the member authorities. This economic theory reasoning is supported by early empirical analyses, suggesting that ICN best practice recommendations actually influence competition regime reforms and implementation processes in member jurisdictions (Rowley & Campbell 2005; Evenett & Hijzen 2006). 4. Challenges and Unsolved Problems: The Way Forward 4.1. The Success Story ICN Without any doubt, the ICN has managed many impressive achievements in its first decade – and more so than many experts were expecting. First of all, the combination of consensual best practice recommendations and peer pressure through the publication of the recommendations has been effective in the sense that many countries cited the ICN recommendations as motivation and guideline for domestic reforms of antitrust institutions. Moreover, both scientific analysis (Rowley & Campbell 2005; Evenett & Hijzen 2006) and internal assessment (ICN 2011) confirm that many member jurisdictions indeed reformed their competition rules to be more in line with the ICN recommendations. Thus, there is a harmonization effect on national competition policy regimes through the ICN membership that has potentials to reduce jurisdictional conflicts over antitrust issues as well as to decrease the volume and severity of negative externalities, albeit not to zero. Secondly, the ICN has been very successful in promoting the implementation of competition regimes in developing and transitory countries. The impressive rise in membership is partly due to the establishment of new competition policy regimes in previously antitrust-free jurisdictions and the ICN played a considerable role in this process. Furthermore, the ICN comprehensively engaged in capacity building for agencies in newly-established and also in previously defunct or ineffective competition policy regimes. This has contributed to reduce loopholes in the worldwide protection of competition, which were due to a lack of effective competition policy regimes in particular in many developing and transitory countries (Sokol 2009). And the newly-established regimes have to a large extent particularly used the ICN best practice recommendations as a role-model for their antitrust institutions. Thirdly, the ICN has published compilations of current practices in member jurisdictions (inter alia, merger review including substantive assessment and prohibition standards, anti-cartel enforcement techniques, unilateral conduct, competition advocacy, etc.). In many cases, for instance in the case of the unilateral conduct compilation, the main function of the compilations is to highlight the differences among member jurisdictions. While not directly promoting harmonization, the resulting transparency serves to improve the mutual understanding of differing and potentially incompatible case decisions and, thus, may contribute to reducing conflicts over such decisions (‘informed divergence’; Mitchell 2011: 6). Fourthly, the ICN has produced handbooks, manuals and toolkits on many downto-earth competition policy practices. They represent an important practical help for competition agency officials regarding the everyday handling of cases. Together with the curriculum project (see figure 1), they serve as materials for the training of agency staff and proved particularly useful to young agencies that lack longstanding experiences how to deal with antitrust cases. Fifthly, it is certainly a success story that the ICN managed to actually issue an impressive number of consensually adopted best practice recommendations (see figures 1-5). This achievement alone exceeds the output of former multilateral cooperation attempts. It proved to be considerably supportive for the success of cooperation that competition agencies have been driving the process and negotiated the agreements – instead of governments and government officials. Even across jurisdictions, the interests of competition agencies are significantly more homogenous and consensus-suited than the interests of governments. Eventually, a rather informal effect is often cited by participants as representing the main benefit from the ICN: mutual experience-sharing and getting-to-know each other (ICN 2011; Mitchell 2011: 3). The strong working relationship developed through the face-to-face contact on ICN seminars, workshops and conferences facilitates informal cooperation also outside the direct ICN scope. 4.2. Limits of the ICN Approach? Notwithstanding the achievements, the fifth aspect, however, already hints at some inherent limits of the ICN approach to international antitrust institutions from an economic perspective. A closer look on the best practice recommendations reveals that there are barely any recommendations on substantive issues. The recommendations that were possible in consensus among all the members are predominantly referring to procedural issues like transparency of notification requirements, fees, timetables, etc. One must not underestimate that this type of best practice recommendations represents an important progress in international antitrust both for interacting agencies and norm addressees (the companies). However, along with the lack of substantial convergence (substantive rules and standards, delineation between pro- and anticompetitive effects, theories of harm, assessment practices and policies, etc.), the potential of the ICN to internalize negative externalities from diverging and incompatible case decisions appear to be rather limited and this limited scope has effectively been reaped in the first decade. Without consensus on more ambitious best practice recommendations, diminishing returns on further ‘low controversial’ recommendations must be expected for the second decade. With respect to the problem of negative externalities, the economic analysis identifies the inbound focus of competition policy, i.e. the absence of an international welfare goal for national competition policy regimes, as a sufficient condition to create negative cross-border externalities (see section 2.1). This problem is not addressed by the ICN so far. Furthermore, it appears to be rather unlikely that an institutional arrangement like the ICN can be capable of introducing a world welfare goal for national competition policy regimes. Since it is the very nature of the ICN to rely on consensus and voluntary participation and implementation, it cannot provide any binding, contractual agreement which in case of defection may be enforced in member jurisdictions. Thus, the only way would be to issue a best practice recommendation on antitrust goals (world welfare) and hope for (i) a consensual adoption on an annual conference and (ii) voluntary compliance to the recommendation by the member jurisdictions. Since this typically refers to ‘hard’ law, the members of the ICN – competition agencies – would not be able to implement that recommendation without support from the legislative chambers (e.g. parliaments) and executive institutions (e.g. government) in their jurisdictions. This might well represent a limit to the ‘soft’ law approach of the ICN. Another problem of international competition governance – the deficiencies of multiple procedures (see section 2.2) – has been alleviated by the ICN only to a negligible extent. Due to the imperfect convergence of procedures through the adopted best practice recommendations, the costs of multijurisdictional antitrust case handling have been decreased marginally. However, since there has been no reduction of the number of antitrust procedures in conjunction with, for instance, a multijurisdictional merger, the vast majority of transaction and administration cost burdens remain unchanged. In the end, there is still nothing remotely close to a one-stop shop. Ironically, the impressive increase in active competition policy regimes around the world has actually increased the number of jurisdiction that declares themselves competent for international and particularly intercontinental competition cases. This in turn increases the deficiencies of multiple procedures and most probably more than compensates for the cost improvement due to soft and imperfect procedural harmonization. With the ICN as it is now, it is difficult to see how the second decade can bring significant improvements. The ICN does not entail direct case-related cooperation but exactly this would be necessary if considerable efficiency gains from international antitrust institutions are to be realized. Even though the ICN indirectly facilitates case-related cooperation because the member agencies and their staff know each other and know whom to call for informal exchange and cooperation over a given case (ICN 2011; Mitchell 2011), this grassroots effect – which without any doubt is highly important and helpful for everyday work – remains rather limited in the absence of an institutionalized caserelated cooperation. The loopholes in the worldwide landscape of competition regimes (see section 2.3) have been substantially reduced by the ICN’s activities. Next to the impressive increase in newly-established competition regimes, the ICN has also been very active in arming previously rather ineffective competition regimes. However, there has been virtually no change in a particularly problematic area, which is the power asymmetry when it comes to enforcing domestic competition rules against multinational companies by means of the effects doctrine (see section 3.1). If domestic markets are not sufficiently important for the business of the multinational, then the multinational remains in a position to avoid compliance by boycotting the respective country. The threat of this alone influences the decisions of smaller and less powerful regimes. Again, the regime of the uncoordinated effects doctrine can only be overcome by (i) replacing inbound competition policy goals with international welfare standards and (ii) a case-related cooperation approach. As has been argued in the preceding paragraphs, both seem to be difficult to achieve with an ICN of the current nature and structure. The fourth criterion to assess international antitrust institutions from an economic perspective (as derived in section 2) is the diversity of regimes reflecting the diversity and the provisional nature of economic thinking on competition. It refers to the dynamic and evolutionary efficiency of international antitrust institutions. The ICN highlights this by systematically reviewing the different practices in the member jurisdictions and its compilations of the differences create transparency that serves to speed up mutual learning processes. Actually, the ICN best practice recommendations represent the result of such a learning process. However, this is exactly where problems kick in: with a best practice result that leads to all member jurisdiction harmonizing their regimes according to this result the dynamic learning process comes to an end. This implies no more future learning due to a lack of experiments with new insights and new methods, theories, etc. Thus, the provisional economic knowledge of the time of the best practice recommendation becomes a persistent standard and scientific progress of the future will find it much more difficult to enter the stage.14 If learning from diversity is useful for finding today’s best practices, then learning from diversity will also be useful to detect future’s best practices. Consequently, three hazards are incorporated to the ICN’s harmonization approach. Firstly, the identification of best practices to some extent relies on and promotes academically controversial practices (like the case-by-case effects approach in merger control). Secondly, the injection of new scientific knowledge is deterred. Both hazards together may lead to a deficient harmonization. Thirdly, the ICN best practice approach implicitly assumes that there actually are one-size-fits-all benchmarks. However, best practices for old-industrialized countries’ competition regimes may differ from such for newly-industrialized or developing or transitory countries’ ones. Of course, the reasoning in this paragraph must be qualified to the extent that it becomes only relevant when the ICN is unexpectedly successful in achieving also substantive harmonization. In summary, the first decade of the ICN must be hailed for bringing the most significant progress to global competition governance of all times so far. However, from the viewpoint of global economic welfare, there are still a lot of challenges and unsolved problems, covering all the four criteria (international externalities, deficiencies from multiple procedures, loopholes, and regime diversity) that can be formulated from an economic perspective. Moreover, and even more seriously, it appears to be rather doubtful whether in its current form (purely voluntary cooperation, reliance on consensus and peer pressure), the ICN is well-suited and well-equipped to address the remaining issues. Ironically, the (unexpected) success of the ICN’s first decade may imply bad news for its second decade since the potentials have already been exploited so that from now on diminishing returns of the network strategy must be expected. 15 4.3. A Way Forward? Towards a Multilevel Lead Jurisdiction Model So, how can international antitrust institutions be designed to embrace all four criteria with their conflicting incentives toward more centralization (internalizing externalities and reducing multiple procedures; stationary efficiency) o the one hand and preservation of regime diversity (dynamic and evolutionary efficiency through decentralization) on the other hand? The economic literature offers two interesting concepts to approach this balancing act. The first concept is the idea of a lead jurisdiction model (Campbell & Trebilcock 1993, 1997; Trebilcock & Iacobucci 2004). It extends the positive comity concept (see section 3.2) by allocating competence and responsibility for multijurisdictional competition cases to one of the affected regimes that subsequently handles and decides the case with a view to avoiding anticompetitive effects in the overall geographic market (i.e. in all affected jurisdictions) and by relying on the assistance of the other involved regimes.16 The second concept is the idea of multilevel governance (Kerber 2003) in which regimes on different vertical levels (regional, national, supranational) are interconnected with each other. In such a complex multilevel system of institutions, the design of competence allocation rules, managing the interfaces of the participating regimes, becomes particularly important. Economic analysis reveals that different competence allocation rules (such as the effects doctrine, interjurisdictional commerce clauses, turnover thresholds, nondiscrimination, principle of origin doctrine, relevant markets rule or x-pus rule) are more or less appropriate when it comes to specified horizontal or vertical regime interfaces (Budzinski 2008a: 151-217). With a view to the four economic problems of international antitrust (as derived in section 2), it represents an interesting step to combine these two concepts towards a multilevel lead jurisdiction model (Budzinski 2009, 2011). The advantage of adding the vertical multilevel dimension to the lead jurisdiction concept lies in the option to introduce a referee authority, monitoring and supervising the impartiality of the assigned lead jurisdictions and providing conflict resolution if necessary. Thus, the antitrust institutions on the global level are not about materially deciding cases. Instead, they allocate lead jurisdiction according to agreed-upon criteria on a case basis17, monitor and supervise the lead jurisdiction in respect of its impartial treatment of anticompetitive effects in the overall relevant international market (irrespective where – in which jurisdiction – the effects display) and settle conflicts in case of affected jurisdictions allege that their domestic effects were disregarded by the lead jurisdiction. Consequently, ‘only’ procedural competences are assigned to the global level and all material and substantive decision competences remain on the level of the existing national and regional-supranational regimes. From an economic perspective, the charm of this concept is that it (i) replaces the inbound focus of existing competition policy regimes by a focus embracing all effects in the relevant geographic (international) market, (ii) provides a one-stop shop for the norm addressees (thus avoiding deficient transaction and administration costs of multiple procedures), (iii) closes many loopholes due to the lead jurisdiction being powerful and also providing protection of competition abroad, and (iv) maintains diversity of competition regimes because each assigned lead jurisdiction handles and decides the case according to this regime’s antitrust rules and procedures, just with the explicit inclusion of cross-border effects. On the downside, it requires an international agreement on procedural rules (in particular criteria for allocating case-specific lead jurisdiction as well as for monitoring and conflict resolution mechanisms) and willingness to accept (i) procedural decisions by the international level and (ii) material decisions by the lead jurisdiction as long as all effects are treated impartially irrespective of their jurisdictional location. This certainly represents a higher hurdle for consensus than the ICN-style network cooperation, but certainly a lower hurdle than consensus on binding global competition rules within the WTO framework. And from an economic perspective, such a multilevel lead jurisdiction model appears to be welfare-superior to these alternatives. However, the concept of a multilevel lead jurisdiction model is far from being comprehensively researched. Furthermore, an interesting exploration would be whether such a model could develop from the contemporary ICN when it seriously strives to solve the economic problems of international antitrust in its second or third decade. 5. Conclusion The global governance of competition represents an important economic problem. Economic theory clearly shows that non-coordinated competition policies of regimes that are territorially smaller than the international markets on which business companies compete violate cross-border allocative efficiency and are deficient with respect to global welfare. At the same time, some diversity of antitrust institutions and policies promotes dynamic and evolutionary efficiency so that globally binding, worldwide homogenous competition rules do not represent a first-best solution – even when neglecting obvious agreement and implementation difficulties. Since 2001, the world of international antitrust institutions has been significantly influenced by the then-established International Competition Network. This multilateral forum for voluntary cooperation among competition agencies has been a success story in its first decade – by far exceeding most experts’ expectation. The ICN has considerably contributed to alleviate the negative economic effects from the previous, virtually non-coordinated world of international antitrust. However and notwithstanding, from an economic welfare point of view, considerable challenges and problems remain on the agenda. Whether the ICN in its current structure and nature has the potential to solve the remaining problems represents a decisive question for the future of international antitrust institutions. Despite the success story of its first decade, however, economic analysis justifies skepticism whether the contemporary ICN is up to the remaining challenges. In particular, a change from inbound-, national-welfarefocused competition policies to such pursuing supranational and suprajurisdictional welfare goals as well as cooperation on concrete, specified cases are necessary from an economic perspective. However, both topics are hardly compatible with the contemporary governance principles of the ICN. A way forward can be expected from the economic concept of a multilevel lead jurisdiction model that possesses the potential to balance allocative and dynamic efficiency. It remains an open question, though, whether such a model could evolve out of the ICN during the next decade(s).

#### Trade solves all conflicts

Lee, 09

(Jong-Wha, Corresponding author: Office of Regional Economic Integration, Asian Development Bank, Ju Hyun, Department of Economics at the University of California Davis, “Does Trade Integration Contribute to Peace?” WORKING PAPER SERIES ON REGIONAL ECONOMIC INTEGRATION NO. 24 Asian Development Bank, <https://aric.adb.org/pdf/workingpaper/WP24_Does_Trade_Integration.pdf> RMW)

Table 4 presents estimation results for the logit model for the probability of conflict. Consider first the results in columns (1)–(3). Column (1) includes bilateral trade interdependence variable. Column (2) substitutes the global trade openness for the bilateral trade interdependence. Column (3) includes both of these trade integration variables. Column (1) of Table 4 shows that the model fits the data well, explaining a substantial part of the variation in the occurrence of military conflict. Bilateral distance, contiguity, joint-democracy, relative military capabilities, and major-power variables are individually significant at the 1% critical level. The significantly negative estimated coefficient for the bilateral distance and the significantly positive one for contiguity explain that geographically proximate countries are more likely to engage in military conflict. The positive estimate for log difference of GDP supports the contention that states unequally balanced in military capability are less likely to engage in military conflict. On the other hand, the positive estimated coefficient on major-power variable explains that these countries tend to fight more. The negative estimate for joint democracy confirms that the probability of military conflicts is significantly lower for dyads composed of states that are more democratic. In column (1), the estimated coefficients on formal security-alliance, religious similarity and oil exporters dummy variables show the signs supporting the theoretical predictions, but turn out to be statistically insignificant. Finally, the estimated coefficient on bilateral trade interdependence is negative and statistically significant at the 5% level, indicating that bilateral trade dependence significantly decreases the probability of military conflicts. Most importantly, this estimation result holds true with all other important variables being controlled. For instance, distance affects both bilateral trade and conflict probability negatively.13 In column (2) of Table 4, the estimated coefficient on global trade openness is negative and statistically significant. Dyads of states more dependent on the world economy tend to have fewer conflicts than those less dependent. This result contrasts that of Martin et al. (2008) and holds quite robust as discussed later. As our specification includes a time dummy variable separately, this significant coefficient may not be caused by global factors such as the end of Cold War or peace-promotion efforts of international organizations that are common to all countries. In this specification, the estimated coefficients on formal security-alliance and oil exporters dummy variables turn out to be marginally significant at the 10% and 5% critical levels respectively. Oil exporters are involved with military conflicts more frequently. Alliance commitments tend to reduce the probability that dyads engage in conflict. In column (3) of Table 4, in which both global trade openness and bilateral trade interdependence are included, global trade openness has individually significantly negative effects at the 1% critical level. The estimated coefficient on bilateral trade interdependence is also significant at the 5% critical level. Broadly speaking, both bilateral and global trade dependence promote peace between bilateral trade partners. Hence, this result refutes Martin et al. (2008)’s argument that countries more open to global trade have a higher probability of war by increasing the probability of escalation for proximate countries. In the logit model, the dependent variable is defined as the log-odds ratio and the parameters do not correspond to the marginal effects of independent variables. The marginal effects can be calculated at the means of regressors by using the estimate.14 Then, we can compute the response of the probability of military conflict to a one-standard-deviation change of each explanatory variable, gauging the relative importance of each explanatory variable in influencing the probability of military conflict. For example, based on column (3) of Table 4, an increase in the log of bilateral trade dependence by one standard deviation of 0.008 (starting from the sample mean) decreases the probability of military conflict by 0.019 percentage point, with other variables held constant. On the other hand, an increase in the log of global trade openness (by one standard deviation, or 0.380) decreases the probability of military conflict by 0.109 percentage point. Hence, global trade openness, compared with bilateral trade dependence, has a relatively large impact on the probability of conflict with the bilateral trade partner. Geographic proximity also has a large impact on the probability of military conflict. An increase in the log of bilateral distance by 0.824 (its standard deviation) is associated with a decrease of the likelihood that a pair of countries is engaged in a conflict by 0.069 percentage point. Since the contiguity variable is an indicator variable, its marginal impact is calculated for its change from 0 (no common land or distant by sea above 150 miles) to 1 (common border or distant by sea up to 150 miles). The corresponding response to this change is an increase in the probability of military conflict by 0.421 percentage point. Hence, the probability of a military conflict is substantially higher for contiguous countries. An increase in the log difference of GDP (by one standard deviation or 1.844) generates an increase in the probability of conflict by 0.034 percentage point. The corresponding response to an increase in the joint-democracy index (by one standard deviation or 0.331) is by 0.057 percentage point. The marginal impacts of the major-power and oil-exporter variables correspond to the change of these dummy variables from 0 to 1. The probability of military conflict increases by 0.29 percentage point responding to the change in the major-power variable and by 0.064 percentage point when at least one of dyads is an oil exporter. Hence, the probability of military conflict is substantially higher between dyads that involve a major power. The marginal impact of religious similarity (by one standard deviation or 0.566) decreases the probability of conflict by 0.016 percentage point. The empirical technique used assumes that there is no unobserved country-fixed factor. Column (4) of Table 4 presents the result from the “conditional” fixed-effects logit estimation technique which controls for unobservable country-pair fixed effects. The result with country-pair fixed effects show that while most of estimated coefficients show the same signs as those in the pooled logit regressions, they are not statistically significant. On the contrary, the estimated coefficient on religious similarity becomes larger and statistically significant at the 1% level. Although fixed-effects estimation is often preferred by many researchers, the fixed-effects technique also has drawbacks. Because the fixed-effect estimator exploits only the variation over time, the estimates for time-invariant factors such as distance, contiguity, oil-exporters and major powers dummy cannot be obtained. By eliminating entire information from cross-section variations, the estimation relies on a smaller information set. In column (4), the sample shrinks to only 15,589. In addition, it may exacerbate the bias due to measurement errors in variables. A number of previous studies also include the number of peace years (since the last MID) variable to the regression to control ‘”temporal dependence” between conflict events.(Beck et al, 1998) It is suggested that the temporal dependence problem which means an auto-correlated binary dependent variable can mislead the result of logit analysis. For instance, military conflicts, which can be durable more than a year, can occur with different probability if they are subsequent. Column (5) presents the estimation result. Now, the religious similarity variable becomes significant at the 5% critical level. Countries whose major religions are similar are less involved in conflicts. The estimated coefficients also show that global trade openness has a significantly negative effect at the 1% critical level, while bilateral trade interdependence variable becomes only marginally significant at the 10% critical level. Our specification assumes that the impact of bilateral or global trade openness on the probability of military conflict is the same for all country pairs independent of other country-pair characteristics. But trade patterns (bilateral and global trade openness) may affect the probability of military conflict differently for different subsets of countries, depending in particular on the geographical distance between them. For example, the peace-promotion effect of bilateral trade interdependence may occur more heavily for geographically closer countries that are more likely to be engaged in conflicts. Greater bilateral trade dependence can help prevent proximate countries from being escalated into military conflicts. In contrast, it is less clear if greater global trade openness reduces the probability of escalation. In order to investigate this possibility, a test is conducted on whether the impact of bilateral or global trade openness on the probability of military conflict depends on bilateral distance or contiguity between dyads. First, two interaction terms of bilateral distance with the bilateral and global trade integration variables are introduced to the regression. The estimated result in column (6) confirms that the impact of bilateral trade openness varies depending on the distance between countries. While the estimated coefficient on bilateral trade dependence, (-122.48 s.e.= 25.77) is negative and statistically significant, the estimated coefficient on the interactive term between bilateral trade interdependence and distance (16.95, s.e.= 3.37) is positive and statistically significant. These two estimates combined suggest that the closer two countries are, the greater is the peacepromotion effect from an increase in bilateral trade. In fact, the overall marginal effect of bilateral trade interdependence on the probability of military conflict is negative between proximate countries and then positive between distant ones. The two estimated coefficients imply that the switch occurs at log of bilateral distance of 7.22 which is below the sample median of 8.88. The strong negative relation between bilateral trade interdependence and the probability of military conflict in dyads with smaller bilateral distance seems to support the argument that greater bilateral trade interdependence can be helpful to prevent disputes—especially between geographically closer states—from being escalated into military conflicts. However, the positive relation between bilateral trade interdependence and the probability of military conflict in the upper range of bilateral distance is puzzling. This may reflect that the strong bilateral trade between distant states often comes from more asymmetric trade links, which is often related to exploitation and economic conflicts, leading to more military conflicts between them. The estimation result in column (6) also confirms that the impact of global trade openness varies depending on the distance between countries. The estimated coefficient on the interactive term between global trade openness and distance (-0.602, s.e.= 0.21) is significantly negative, while 12 the estimated coefficient on global trade openness, (2.44, s.e.= 1.57), is positive but statistically insignificant.15 The strong peace-promotion effect of global trade openness for all country pairs regardless of their geographical distance contrasts the negative relation between bilateral trade dependence and peace for the group of geographically distant country pairs. The significantly negative interactive term between global trade openness and distance indicates that the peace-promotion impact of global trade openness is higher for geographically distant countries. An increase in global trade openness likely decreases the probability of conflict less for proximate countries than for distant countries. This may reflect that greater global trade integration can be more helpful to promote peace for dyads of distant countries which likely participate in global conflict, rather than cross-border conflict. Column (7) of Table 4 introduces the interaction terms of the bilateral and global trade integration variables with contiguity by substituting for their interaction terms with bilateral distance. The estimated coefficient on bilateral trade interdependence, (29.34, s.e.= 6.05) is significantly positive and the estimated coefficient on the interactive term between bilateral trade dependence and contiguity (-47.65, s.e.= 7.85) is significantly negative. Hence, the overall effect of bilateral trade dependence on the probability of military conflict hinges on contiguity. The peace-promotion effect of bilateral trade dependence appears to be significantly higher for contiguous countries. But, the estimates indicate that the relation between bilateral trade dependence and the probability of military conflict can be positive in non-contiguous countries, which is consistent with the result in column (6). On the other hand, the estimated coefficient on the interaction term between contiguity and global trade openness (1.69, s.e.= 0.64) is positive and significant. The estimated coefficient on global trade openness (-2.78, s.e.= 0.52), is significantly negative. Hence, the two estimated coefficients imply that the overall marginal effect of global trade openness on the probability of military conflict is always negative for countries regardless of contiguity between them. Greater global trade integration can help to promote peace for all dyads, which is also consistent with the result in column (6). Column (8) presents the estimation result of the specification in which all four interactive terms are included. In this specification, the estimated coefficients on bilateral trade interdependence, (-29.05, s.e.= 36.61) and global trade openness (0.51, s.e.= 2.21) become statistically insignificant. For the two interactive terms with bilateral trade dependence, only the interactive term between bilateral trade dependence and contiguity (-34.37, s.e.= 10.01) is negative and highly significant. Hence, the estimated result confirms that the overall impact of bilateral and global trade openness vary depending on the distance between countries. 4.2 Robustness of the Results The robustness of the basic results of Table 4—about the effect of bilateral and global trade dependence on conflict—is checked. Table 5 considers other possible determinants of military interstate conflict, many of which have been proposed in previous studies. These additional variables are added to the basic specification for the MID in column (5) of Table 4. First, we control the possible spillover effects of military conflicts. The existence of other conflicts at the same time can influence both an occurrence of a bilateral military conflict and bilateral trade flows between a dyad of states. Column (1) of Table 4 includes as an additional explanatory variable the total number of MID that the countries of the dyad are involved in. It shows that the estimated coefficients on all trade variables remain significant. Column (2) includes a dummy for all country pairs for which there was no trade between them to control whether or not the two countries have an economic relationship. The zero-trade dummy variable becomes significantly negative, but does not have any significant impact on other estimated coefficients. Column (3) adds an index for common language and column (4) adds a dummy variable for country pairs with a history of colonialization to control for cultural and/or historical factors that might affect the occurrence of conflicts. It is found that these additional variables tend to make the bilateral trade interdependence variable statistically insignificant. This may be due partly from the significant correlation between these additional variables and bilateral trade. Column (5) adds the measure of political proximity between two countries as a possible determinant of military conflicts. It is the “affinity of nations’” index (Gartzke, 2000), which is constructed by using UN voting data.16 It is assumed that when the UN voting patterns of two nations are more alike, their political interests would be more similar. The index ranges from -1 (most dissimilar) to 1 (most similar). The variable appears significantly negative, indicating that countries that share similar political interests are less likely to engage in military conflicts. Column (6) includes cubic splines of the number of peace years to further control for the potential “temporal dependence” problem. An occurrence of a military conflict not only can have an immediate impact on bilateral trade, but also can influence on the probability of military conflicts at any future moment. Beck et al.(1998) suggest to add cubic splines of the number of peace years, as well as the number of peace years variable, to correct for a temporal dependence bias.17 The estimation result shows that the inclusion of the cubic splines does not cause any significant change in the estimated coefficients. The next three columns present the results with the interaction terms with bilateral distance (column 6) and with contiguity (column 7). The estimated coefficients on the interactive terms are statistically significant and the main results in the basic specifications in Table 4 still hold. For our purposes, an important finding is that the role of bilateral and global trade integration on military conflict—often after interacting with geographical proximity between countries—is robust to the introduction of these additional variables. In order to minimize the simultaneous correlation problem between trade variables and military disputes, columns (1)–(4) of Table 6 present estimation results with 3-year lagged trade integration variables. The main results are similar to those in Table 4. But, the 3-year lagged bilateral trade interdependence variable becomes insignificant in column (1) of Table 6.

## 3

#### Infrastructure will pass but it’s razor thin—Biden’s PC is key

Carney, 9/13

(Jordain, reporter for the Hill, 'Democrats brace for battle on Biden's $3.5 trillion spending plan," 9/13/21 <https://thehill.com/homenews/senate/571905-democrats-brace-for-battle-on-bidens-35-spending-plan> NL)

Democrats are bracing for battle as they try to unify their slim majorities behind a sweeping social spending package at the heart of [President Biden](https://thehill.com/people/joe-biden)’s economic and political agenda. Democratic leaders are vowing to plow forward: They have a soft deadline on Wednesday for roughly a dozen Senate committees to finish drafting parts of the bill and want to pass the $3.5 trillion spending plan in the House by the end of the month. But they face a number of sticking points, including over the total cost of the package and how to pay for it. “At the end of the day there will be 50 votes, but I think we’re going to go through a very healthy, loud family discussion at times,” said Sen. [Tammy Duckworth](https://thehill.com/people/tammy-duckworth) (D-Ill.), who described Democrats as “marking out their territory right now.” Lawmakers have a full plate even without the massive package, including funding the government, as they return to Washington. And they have little time: While the Senate returns Monday, the House doesn’t come back until next week. Senate Democrats have been holding weekly committee talks, with Senate Majority Leader [Charles Schumer](https://thehill.com/people/charles-schumer) (D-N.Y.) calling up individual members and holding calls with committee chairs during the August break. They hope to get a deal between the House and all 50 Senate Democrats that allows them to avoid a lengthy conference between the two sides. “Our goal is to have a joint proposal that the president, that the House Dems and the Senate Dems can all pass and support,” Schumer told reporters, while acknowledging that “there are some disagreements.” Complicating their task are the razor thin majorities. House Speaker [Nancy Pelosi](https://thehill.com/people/nancy-pelosi) (D-Calif.) can lose no more than three members of her caucus, and Schumer can't lose a single Democratic vote. Tensions have been building between moderates and progressives, putting pressure on party leaders and Biden. As part of a deal worked out last month with centrists, Pelosi agreed to bring the roughly $1 trillion Senate-passed infrastructure bill to the floor for a vote by or on Sept. 27. That’s putting pressure on Democrats to have the $3.5 trillion spending bill, a priority of progressives that is to include top party goals such as expanding Medicare, combating climate change and long-sought immigration reform, ready to go in the same timeline. But there’s skepticism from lawmakers and aides that they’ll be able to hit an end-of-the-month mark. And Rep. [Stephanie Murphy](https://thehill.com/people/stephanie-murphy) (D-Fla.) knocked Democratic leadership during a House Ways and Means Committee hearing, calling the Wednesday deadline “artificial.” “I don't think it is asking too much to want to see this bill in its entirety before voting on any part of it,” Murphy said of the $3.5 trillion package, adding that lawmakers “need more time.” Any move to delay the Senate-passed bill would risk angering the moderates Pelosi cut the agreement with. But progressives are warning that they will sink it if it comes to the floor without the $3.5 trillion plan. Chris Evans, a spokesman for Rep. [Pramila Jayapal](https://thehill.com/people/pramila-jayapal) (D-Wash.), the chairwoman of the Congressional Progressive Caucus, told The Hill that the Senate bill and the $3.5 trillion spending plan are “integrally tied together” and that House progressives “will only vote for the infrastructure bill after passing the reconciliation bill.” Rep. [Alexandria Ocasio-Cortez](https://thehill.com/people/alexandria-ocasio-cortez) (D-N.Y.) predicted during an interview with CNN that she and “many, many members of the progressive caucus simply will not vote for Sen. Manchin’s infrastructure bill unless it is tied together with the Build Back Better Act.” Sen. [Joe Manchin](https://thehill.com/people/joe-manchin) (D-W.Va.) backs the infrastructure bill but has called for a pause to work on the $3.5 trillion package amid reports he only supports a much smaller bill. Both the House and Senate passed a budget resolution last month that greenlights a spending package of up to $3.5 trillion by a simple majority in both chambers. The budget rules prevent the GOP from filibustering the measure in the Senate, though those rules could also limit what Democrats put in it. Manchin and other moderates have warned privately and publicly for weeks that they are uneasy about the price tag, which Democrats are pitching to pay for, in part, by raising taxes on corporations and some high-income earners. Manchin and Sen. [Kyrsten Sinema](https://thehill.com/people/kyrsten-sinema) (D-Ariz.) have both said they can’t back the $3.5 trillion figure. Manchin reiterated during an interview on Sunday with CNN’s Dana Bush that Schumer “will not have my vote” for $3.5 trillion “and Chuck knows that." Democratic leaders are vowing to move forward, but some aren’t ruling out that the top-line figure could get lowered. Asked about going below $3.5 trillion, Schumer acknowledged that there was a split within the caucus about if it was too much or too little. While he predicted Democrats would unify, he didn’t specify a number. House Majority Whip James Clyburn (D-S.C.) opened the door during an interview with CNN’s [Jim Acosta](https://thehill.com/people/james-jim-acosta) to going lower, describing $3.5 trillion as a “ceiling” and saying there was “a lot of room for people to sit down and negotiate.” Rep. [Rashida Tlaib](https://thehill.com/people/rashida-tlaib) (D-Mich.), a member of the House “squad” of progressive lawmakers, disagreed: “3.5T is the floor.” Progressive have warned for weeks that trying to scale back the plan would backfire because it would shed votes from the left. But Democrats still need to iron out many of those details amid a push and pull between not only moderates and progressives, but also House and Senate Democrats.

#### The plan drains PC

Carstensen, 21

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

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Infrastructure reduces emissions and sends a global signal which solves warming

Davenport, 21

(Coral, Lisa Friedman, Reporters at the New York Times, and Emily Cochrane, Correspondent at the New York Times, "Collapse of Infrastructure Talks Puts Climate Action at Risk", New York Times, 6-9-2021, https://www.nytimes.com/2021/06/09/climate/climate-congress-infrastructure.html)\\JM

WASHINGTON — The collapse of negotiations between President Biden and Senate Republicans for an infrastructure bill has complicated the prospects for another priority of the administration: fighting climate change. Embedded in the president’s infrastructure proposal were billions of dollars to help pivot the country away from the fossil fuels that are generating the pollution that is heating the planet. Mr. Biden and his Democratic allies want a national network of charging stations for electric vehicles, tax incentives to propel solar, wind and other clean energy, money to retrofit homes to cut energy use, and transmission lines for renewable energy, among other things. But their highest priority is a clean electricity standard, which would require power companies to increase the amount of clean electricity they generate over time until they eventually stop burning fossil fuels. The chances of pushing climate legislation through Congress, a tall order from the beginning, now appear even more uncertain. That is starting to worry Democrats. “The planet cannot survive another successful Republican obstructionist strategy,” said Senator Edward Markey, a Massachusetts Democrat who wrote climate legislation that died in Congress in 2010. “We have to have climate at the center of any infrastructure package in order to have my vote. No climate, no deal.” The United States must take significant action now, just months before nations gather at a climate summit in Scotland, where the Biden administration wants to sway other countries to take similar steps, said Senator Martin Heinrich, a New Mexico Democrat. “If President Biden wants to establish credibility before he goes to Glasgow later this year, we need to do this and we need to do it big and meaningful,” Mr. Heinrich said. On Wednesday, White House officials said they had not wavered in their commitment to making climate a core part of any infrastructure package. The administration has encouraged a bipartisan group of senators to continue to try to hammer out an agreement.“ The president has underscored that climate change is one of the defining crises we face as a nation, and in the negotiations he has continuously fought for leading on the clean energy economy and on clean energy jobs — which is critical for our economic growth, competitiveness, and middle class,” said Andrew J. Bates, a White House spokesman, in a statement. Several Democratic senators as well as many climate activists say they nonetheless fear that the prospects for climate legislation could evaporate, as they did in the first term of the Obama administration. After former President Barack Obama vowed to tackle global warming, the White House repeatedly delayed its push for legislation, focusing first on passing health care and Wall Street overhauls. By the time Senate Democrats took up a major climate bill, well into Mr. Obama’s first term, momentum had waned and the measure failed to muster enough support to merit a vote on the Senate floor. Six months later, Republicans swept into the House majority in the midterm elections and prospects for climate legislation died for the next decade. “I’ve seen this movie before,” said Mr. Heinrich, a veteran of the failed 2009 effort. The impact of climate change is already being felt around the world in the form of drought, wildfire, floods, economic disruption and environmentalists say action cannot be postponed. “We are all nervous,” said Tiernan Sittenfeld, senior vice president of government affairs at the League of Conservation Voters, referring to the environmental community. “We are truly out of time at this point.” A recent report from the International Energy Agency concluded that if the world is to stave off the most devastating consequences of global warming, major economies must end new oil investments by 2035. Public concern about climate change has been rising, according to recent surveys. A March poll by the Yale Program on Climate Change Communication found 52 percent of registered voters say global warming should be a high or very high priority for the president and the Congress. Support for a clean electricity standard is higher, with 61 percent of registered voters saying utilities should be required to produce all of their electricity from renewable energy sources by the year 2035. Carol Browner, who served as Mr. Obama’s senior climate change adviser, said that while memories of the 2009 failures linger, the politics have shifted significantly. “Having gone through the climate wars of the early Obama years, this moment feels very different to me,” she said. “There is more cohesion, more ardor among Democrats 16, 17 years later. That, to me, is very encouraging.” Mr. Biden has pledged to cut greenhouse pollution generated by the United States by 50 percent from 2005 levels by 2030. It is unlikely he can reach that target without passage this summer of climate legislation that includes a clean electricity standard. Even before Mr. Biden ended negotiations on Tuesday with Senator Shelley Moore Capito, Republican of West Virginia, progressive Democrats had warned that Republicans were unlikely to embrace the scale of spending needed to address climate change. Mr. Biden has now shifted his engagement to a bipartisan group of senators working on their own framework. While that group has not yet disclosed details, one of those senators, Lisa Murkowski, Republican of Alaska, said in an interview Wednesday that she was open to including some climate provisions. “I think when you’re talking about infrastructure, it’s really easy — it’s important, actually — to talk about some of the things that allow for reduced emissions,” said Ms. Murkowski, who has helped to write climate legislation in the past. “When you’ve got upgraded pipeline, that’s a good thing. When you have efficiency with the new transportation system, that’s a good thing. Charging stations, E.V., is good.”

#### Warming causes extinction

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7 A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including: • the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming; • the drying of forests from warming increases forest fires and the release of more carbon; and • higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming. Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’. The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low. While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

#### Infrastructure solves extinction – grid, climate, and econ all independently escalate

Humpton, 21

(Barbara, president and CEO of Siemens USA, and Mark A. Weinberger, former global chairman and CEO of EY, “The infrastructure bill is vital to America’s economic future”, Fortune, 08-25-2021, https://fortune.com/2021/08/25/infrastructure-bill-us-economy-jobs-inclusion-green-energy/)\\JM

On July 7, 1930, at the start of the Great Depression, workers laid down the first of 5 million barrels of concrete and 45 million pounds of steel to build the Hoover Dam. Today, 1.3 million Americans still access water and power thanks to a project completed nearly 90 years ago. Our history is full of such infrastructure stories, each one woven into America’s can-do spirit. And thanks to bipartisanship in the Senate, it can soon be our turn to write a new chapter. The infrastructure bill now moving ahead in the House provides us with an opportunity to create high-paying jobs today and to build for the next century of American growth and leadership. As a current and a former CEO of large global businesses, we know how modern infrastructure makes it easier for businesses like ours to strengthen our operations, benefiting employees, future hires, and the supply chain. This is a generational opportunity to make investments in infrastructure that can help keep the U.S. economy competitive globally, make our economic system more inclusive, and rebuild the resiliency our society needs to face future crises. Our responsibility when it comes to infrastructure is twofold. Yes, we need to boldly invest in our future. But, more than previous generations, we also need to develop the fortitude not to be overwhelmed by the job of just maintaining what we’ve been given. Our charge is to build what is necessary to meet future challenges while also reinventing our inherited physical infrastructure so that future generations benefit from it as much as we have. These efforts must start by addressing a major gap in infrastructure spending. In its most recent evaluation, the American Society of Civil Engineers gave the United States a C-grade and identified a $2.59 trillion shortfall in government spending on infrastructure projects, the impact extending well beyond crumbling roads and bridges. We need to act now to make U.S. infrastructure resilient enough to be an asset to us in addressing the existential threat posed by climate change, a threat seen in severe storms and raging wildfires. A federal analysis found that the U.S. electric grid lost power 285% more often in 2013 than it did in 1984, costing American businesses as much as $150 billion per year. Around the world countries and businesses are taking climate change seriously, and we risk falling further behind. The investment levels established in the bill would deliver the largest long-term investment in U.S. infrastructure in nearly a century, with four times the infrastructure investment unlocked by the 2009 Recovery Act. Critically, the bill’s priorities go well beyond roads and bridges. If the House passes this bill, we’ll not only make historic investments in repairing America’s road network, but in areas that are vital to our future. Making the largest investments in public transit and in passenger rail in our nation’s history would have an outsize impact on job creation, economic growth, and greening the transportation sector, the biggest source of emissions. Rail investment will improve equity and connect cities more efficiently than highway expansions. Let’s also not miss out on the opportunity proposed in the framework to modernize our electric grid and start building a nationwide network of electric vehicle chargers. The nation that built the interstate highway system and ushered in the automobile industry must lead the way forward. This is the step we need to catch up to other countries. There’s still another reason we should roll up our sleeves and get to work, though. Studies show that every dollar invested in infrastructure generates nearly $4 in economic growth. Economists also agree that infrastructure investment will create jobs and increase participation in the labor force. One study looking at the impact of infrastructure investment found that, of the millions of jobs created, 85% of positions will not require a four-year college degree. In 1935, by the time the final block was put down 726 feet above the canyon floor, more than 21,000 workers had been a part of making the Hoover Dam a reality. They stood up not only the then-tallest dam in the world, but, with its hydroelectric generation, a first-of-its-kind clean power project that reminds us of what’s possible today: workers nationwide building the infrastructure we need for a changing tomorrow, activating a nationwide supply chain. This decade started in darkness and disruption, but it can ultimately be known for transformation and bold action as we work together to shape the future we want. The choice is ours. We hope that bipartisanship will again prevail and that an infrastructure bill will become a reality. Let’s act now to reverse decades of underinvestment in America’s infrastructure and add to our remarkable legacy of construction, engineering, and innovation.

**Grid collapse causes extinction – it’s a threat buffer and the impact are understated.**

**Greene 19** – Sherrell, received his B.S. and M.S. degrees in Nuclear Engineering from the University of Tennessee, matter expert in nuclear reactor safety, nuclear fuel cycle technologies, and advanced reactor concept development, widely acclaimed for his systems analysis, team building, innovation, knowledge organization, presentation, and technical communication skills, During his career at ORNL, he served as Director of Research Reactor Development Programs and Director of Nuclear Technology Programs, "Enhancing Electric Grid, Critical Infrastructure, and Societal Resilience with Resilient Nuclear Power Plants (rNPPs)”, Nuclear Technology, Volume 205, 397-414, https://ans.tandfonline.com/doi/pdf/10.1080/00295450.2018.1505357?needAccess=true, 03-xx-2019

Societies and **nations are examples of large-scale,** **complex social-physical systems**. Thus, **societal resilience** **can be defined as the ability of a nation**, population, or society **to anticipate and prepare for major stressors or calamities and then to absorb, adapt to, recover from, and restore normal functions** in the wake of such events when they occur. **A nation’s dependence on its Critical Infrastructure** systems, **and the resilience of those systems, are therefore major components** **of national and societal resilience**. **There are a variety of events that could deal ~~crippling~~ [hindering] blows to a nation’s Grid**, **Critical Infrastructure**, **and** **social fabric**. The types of **catastrophes** under consideration here **are “very bad day” scenarios** **that might result from severe GMDs induced by solar** **CMEs**, **HEMP** attacks, **cyber** attacks, etc.5 As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s. Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39**), a HEMP attack over the Central U.S. could impact virtually the entire North American continent.** The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that **such an event could “kill up to** **90 percent of the national population through** **starvation**, **disease**, **and** **societal collapse**.” 44,45 **Most of these consequences are either direct or indirect impacts** **of the predicted collapse** **of virtually the entire U.S**. **Critical Infrastructure system** in the wake of the attack. Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that **cyber threats** to the U.S. Grid from both state-level and substatelevel entities **are likely to grow in number and sophistication** in the coming years, **posing a** **growing threat** to the U.S. Grid. **These three “very bad day” scenarios are not** **creations** **of** **overzealous science fiction writers**. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

#### the 50 states have done diplomacy, established international carbon markets, leveraged economic sanctions on foreign states, and signed international agreements—they can and do act in the international sphere and can sufficiently solve the aff

Paquin, 20

(Stéphane, professor at l'Ecole Nationale d'administration Publique and Canada Research Chair in International and Comparative Political Economy and Globalization, “Paradiplomacy,” 2020 <http://www.stephanepaquin.com/wp-content/uploads/2020/02/Paquin2020_Chapter_Paradiplomacy.pdf> NL)

The neologism “paradiplomacy” appeared in scientific literature in the 1980s, during a revival in the study of federalism and comparative politics. It was basically used to describe the international activities of Canadian provinces and American states in the context of globalization and an increase in cross-border relations in North America (Paquin 2004). The concept’s inventor, Panayotis Soldatos, defined paradiplomacy as “a direct continuation, and to varying degrees, from sub-state government, foreign activities” (Soldatos 1990, 34). Ivo D. Duchacek also espoused the concept, finding it superior to his idea of microdiplomacy, to which a pejorative meaning could be attributed. For Duchacek, adding “para” before “diplomacy” adequately expressed what was involved, namely a sub-state’s international policies that could be parallel, coordinated, or complementary to the central government’s, but could also conflict with the country’s international policies and politics (Duchacek 1990, 32). Although the concept of paradiplomacy tends to be the most widely used, it nonetheless remains contested by several authors. Some prefer to use the expression “regional sub-state diplomacy” (Criekemans 2011) while others favor multi-track diplomacy or “multi-level diplomacy” (Hocking 1993). In France, the expression “decentralized cooperation” is sometimes used. This article is divided into four parts. In the first part, I present the debate around the concept of paradiplomacy. In the second section, I address the issue of the phenomenon’s magnitude in the world. In the third part, I examine how foreign policy skills are formed and shared, and in the last section, I strive to describe what kinds of international actors represent non-central governments in world politics. The Concept of Paradiplomacy According to Brian Hocking, the concept of paradiplomacy was created to reinforce the distinction between the central government and sub-national governments, thereby increasing aspects of conflict between the two levels of government. For Hocking, however, that approach is incorrect. It would be preferable to situate sub-national or non-central governments in their “diplomatic complex environment” (Hocking 1993). In Hocking’s view, diplomacy cannot be seen as a segmented process between actors within the same state structure. Diplomacy must be perceived as a system intermingling actors from different levels of government and ministries. Actors change according to issues, interests, and their ability to operate in a multi-tiered political environment. Hocking’s rejection of the concept of paradiplomacy is based on “imperatives of cooperation” that exist between central governments and federated states. Thus, rather than talking about paradiplomacy, it would be preferable to refer to it as “catalytic diplomacy” or “multi-level diplomacy” (Hocking 1993). A similar argument is put forward by authors interested in multilevel governance, notably in the context of the European Union. The concept strives to describe the role of Europe’s regions in the process of European construction (Hooghe and Marks 2001). These concepts are interesting and useful in particular contexts, but they remain limited as they tend to underestimate the autonomy of regions, non-central governments, or federated states in pursuing their own international policies. Bavaria, for instance, is not active solely in Europe. It is deeply involved in activities within the conference of heads of government in partner regions. This group includes seven regions of sub-state governments (Bavaria, the Western Cape, Georgia, Upper Austria, Quebec, São Paulo, and Shandong) on four continents; they represent around 180 million inhabitants with a total gross domestic product of 2000 billion euros and are working toward economic and sustainable development. The conference of heads of government also strives to create a network that will enable them to deal with the international challenges regions are facing on the international level. The concept of paradiplomacy should also be distinguished from that of “protodiplomacy” and of “identity paradiplomacy” (Paquin 2002, 2005). Protodiplomacy refers to international strategies designed to promote diplomatic recognition as a way of preparing the establishment of a sovereign country. It is by definition a transitional phase. The concept could define the Catalan government’s strategy in 2017 or that of the government of Quebec before the 1995 referendum on sovereignty-partnership. The concept of identity paradiplomacy occurs on another level. It represents the international policies of a nation without a sovereign state, such as Quebec, Scotland, Flanders, Wallonia, or Catalonia, when the governments of those nations are not seeking independence (Paquin 2002, 2005; Paquin et al. 2015). Thus, one of the fundamental goals of these nations is to work internationally to further the strengthening or building of their nation within a multinational country. The identity entrepreneurs’ objectives are to promote exports, attract investments, seek resources they lack domestically, and try to gain recognition as a nation in the global arena, a crucial process in any attempt at nation-building. This situation tends to be highly conflictual if the central government is hostile to the “other nation’s” identity-based demands, such as with Catalonia and the Basque region in Spain or with Quebec in Canada. The concept of identity paradiplomacy is useful in explaining why the Quebec government, for instance, has adopted different international policies from other Canadian provinces. There is a strong identity-driven element in the Quebec government’s international policies. The government’s goal, whether run by federalists or sovereignists, is to reinforce the French language, to support the development of Francophonie, as well as to gain recognition from foreign governments that it forms the “nation” of Quebec. The Quebec government’s bilateral relations with the French government are greater than those between Canada and France and perhaps between Canada and Great Britain. Former Prime Minister of Quebec Jean Charest met French President Nicolas Sarkozy more often than any other head of state, with the exception of the German Chancellor Angela Merkel. Furthermore, a distinction should be made between “networks of government representatives” and paradiplomacy. According to Anne-Marie Slaughter, networks of government representatives are governmental or paragovernmental actors who exchange information and coordinate their activities in order to manage shared problems on a global scale (Slaughter 2004, 2). Among these actors are financial regulators, police investigators, judges, legislators, and central bank directors, for example. These international governmental networks are a key feature of the current world order according to Slaughter and are increasingly concerned with areas of jurisdiction on all levels of governments. When the Canadian and American police forces coordinate their activities to prevent terrorist attacks, for instance, it involves networks of government representatives rather than bilateral paradiplomacy. In the case of paradiplomacy, an actor—for example, a ministry—is formally mandated by a federated state or sub-state government to defend the state’s interests and promote them in the international arena. The ministry represents the government as a whole and speaks on its behalf. For example, the empowering legislation for the Quebec government’s Ministry of International Relations and la Francophonie entrusts the ministry with the task of establishing and maintaining relations with foreign governments as well as with international organizations. The ministry must safeguard Quebec’s interests in international negotiations and oversee the negotiations and implementation of “agreements” and international treaties. It attends to the implementation of Quebec’s international policies and handles its 32 representation abroad. Magnitude of the Phenomenon A marginal phenomenon in the 1960s and 1970s, paradiplomacy was not only in evidence in North American federated states. It also developed in Europe and elsewhere around the world and even became widespread within unitary states or ones with decentralized or devolved governments such as France, Great Britain, and Spain. It was also increasingly present at the municipal level, notably in global cities like London, New York, Paris, and Shanghai. Nowadays, the paradiplomatic phenomenon is large, intensive, extensive, and permanent despite the sizeable decline after the 2008 crisis. The actors of paradiplomacy, protodiplomacy, and identity paradiplomacy have a considerable degree of autonomy, numerous resources, and increasing influence in international politics (Paquin 2004; Aldecoa and Keating 1999; Tavares 2016). Quebec already had offices in Paris and London in the nineteenth century, despite the fact that very few cases of federated states have been identified as active in the international arena before the 1960s. Since then, things have evolved quickly, to the point where the phenomenon has become quite ordinary. In the United States, for instance, only four states had foreign offices in 1980, compared to 42 with 245 representatives in around 30 countries in 2008. Due to the recession, that number went down to 212 in 2015. In comparison, the American federal government has 267 embassies and consulates around the world (Fry 2017). Germany’s Länder have created around 130 political representations around the world since the 1970s, including over twenty in the United States. In Spain, Catalonia has 4 delegations (France, Belgium, Great Britain, Germany) as well as 34 trade bureaus, 4 cultural and linguistic representatives, 9 overseas development offices, 10 tourism centers, and 5 cultural industries representatives. In 2019, the Quebec government had 32 political representations in 18 countries, including the Quebec General Delegation in Paris whose status is akin to that of an embassy. Flanders has had 100 economic offices since 2004 although its activities mainly concern export and investment issues. Wallonie-Brussels international is the institution with the greatest number of trade offices per capita in the world. The phenomenon is also present in more centralized countries. In France, for instance, the Rhône-Alpes region and its partner Entreprise Rhône-Alpes International have several economic representations abroad. The same phenomenon can be observed in Japan, India, Australia, Austria, Switzerland, Brazil, and several other countries (Paquin 2004; Aldecoa and Keating 1999; Criekemans 2011). The international policies of federated states are an important phenomenon involving all international spheres of action, including economic and trade policies, promoting exports, attracting foreign investments and decision-making centers, science and technology, energy, the environment, education, immigration, and the movement of people, bilateral and multilateral relations, international development, and human rights, which are the major paradiplomatic issues. Paradiplomatic actors are also taking an increasing interest in non-traditional security issues such as terrorism, respecting human rights, cybersecurity, pandemics, and public health (Paquin 2004; Lequesne and Paquin 2017). Some examples of non-central governments participating in various international arenas are: the creation by the governments of California, Quebec, and Ontario of the second largest international carbon market in the world after the European Union; the presence of Australian states in the Australian government’s delegation at a UN conference on development and the environment; the presence of representatives from Texas at meetings of OPEC member countries, whereas the United States is not a member of the organization;

## 4

#### Increased antitrust enforcement destroys Pentagon AI innovation – less R&D and smaller datasets prove

Foster, 20

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Fourth, we assume national security-relevant AI technologies will result, to some extent, from breakthroughs in general, commercially oriented AI innovation. Most private AI research is not defense-oriented, given the Pentagon’s relatively minor role as a customer.34 Nonetheless, many private sector AI advances are or will be convertible to military ends.35 Some of this innovation will be transferred directly from the commercial or lab setting to defense applications by the original innovators—that is, commercially oriented tech companies. One recent example is Project Maven. In other cases, defense-focused intermediaries will convert other companies’ AI advances into military applications.36 We assume future AI breakthroughs, whether originating in the private sector or at universities, could be converted into defense applications. Innovate: Would smaller AI companies be less innovative? In this section, we evaluate the relationship between scale and innovation. Given a greater number of smaller companies in the AI market, would they and the overall market be more or less innovative? We consider the relationship between firm size and access to data, a critical input for AI innovation. We also examine the relationships between company scale, R&D expenditures, and innovation. If innovation tracks R&D spending, a post-breakup AI sector could be less innovative. Anti-competitive tactics are another concern. Finally, we consider other inputs and factors affecting AI innovation, including business strategy, human capital, and access to computing power. We estimate that antitrust action will likely reduce the net amount and diversity of data held by firms that are broken up and could also reduce firms’ R&D budgets. However, the effect these losses will have on innovation remains unclear. Similarly, we expect firms’ computing resources to diminish with yet undetermined consequences; shared compute resources could perhaps more than compensate for any loss. Data Quantity Data is a core ingredient in AI development, especially for AI algorithms using machine learning approaches (such as neural networks). Currently, in order to build machine learning models that successfully identify patterns, AI researchers need large volumes of data.37 Models trained on larger datasets are more accurate,38 advantaging big firms with more data and users.39 Breaking up these companies would diffuse large datasets, potentially slowing or preventing AI advances that could benefit the Pentagon. Even though datasets amassed by commercial companies may not always have immediate use for the Defense Department, we expect that most of Big Tech’s data can directly or indirectly support innovation relevant to the Pentagon.40 However, policy mechanisms, such as a federal data pool or mandated datasharing, could increase smaller firms’ access to data and mitigate this concern. Similarly, firms could contract with one another to increase data access. Such actions could equalize the data playing field or even give small firms an advantage. In addition, standardized data pools might be better for building or training models than the current system of disorganized or siloed data at large firms. At the same time, these mitigating mechanisms could discourage investments to secure additional data, reducing overall data quantities.41 For example, a company might rely on a publicly supported database instead of building an innovative application to collect data by other means. 1. How much data do firms really need to innovate? All else being equal, smaller AI firms have less data. While the relationship between the quantity of data inputs and the quality of algorithmic outcomes is not linear, a correlation is usually evident. For example, recent experiments by researchers at Google found a logarithmic relationship between the amount of data fed into an image recognition model and the model’s performance.42 If more data means more innovation, a post-breakup AI sector could be less innovative overall. Antitrust action would likely reduce the amount of data held by large companies. This might hurt innovation, especially in application areas requiring exceptionally high amounts of data for acceptable performance.43 In short, the impact of antitrust action on data-driven innovation may hinge on the size of broken-up companies and their data holdings. Google Search or Amazon Web Services, for example, would be large corporations in their own right.44 AWS, one of Amazon’s larger divisions, achieved revenues similar to Raytheon’s company-wide revenues in 2018,45 demonstrating the possible size of spin-offs.46 Although data currently plays a central role in machine learning approaches to AI, some question its future significance in innovation.47 Less data-intensive machine learning approaches, such as few-shot learning and training on synthetic data, raise questions about the long-term relevance of data to AI.48 In the longer term, data may be less important to innovation than presently thought, in which case a lower threshold (smaller quantities of data) might not significantly undermine innovation. Similarly, reduced access to traditional data inputs may incentivize companies to invest in alternative data collection and training approaches, which could spur new innovation. 2. How well are larger firms able to use the large quantities of data they have? Data only matters for innovation insofar as it can be accessed and used. Large companies may struggle to fully utilize their large data holdings, potentially limiting harm to innovation in the case of antitrust enforcement. Larger companies can’t necessarily consolidate and access all of their data. Siloing and scattering occur when data is isolated within certain departments, inhibiting broader collaboration or cross-company use. Data curation—the management and integration of data—also affects its functionality. AI models are only as strong as their training data, and without adequate curation, training data usability diminishes.49 Training AI models also requires flexible data easily adjusted or re-configured to fit various training approaches. 90 percent of manufacturing lacks this flexible format.50 Siloing and scattering disproportionately affect larger companies.51 At Chinese AI giant Tencent, for example, executives report that siloed data prevents the company from using its WeChat app data to improve other products.52 A third of executives at large U.S. companies53 report that data siloing impedes data utilization efforts.54 While antitrust action would likely limit the quantity of data within companies, it might not limit the amount of accessible, useful data as sharply if much of that data was inaccessible to begin with. On the other hand, if large companies currently leverage their diverse data well, collaboration between companies or between government and industry could mitigate the winnowing effect of antitrust enforcement. In 1987, DARPA funded SEMATECH, a consortium bringing together leading U.S. semiconductor companies, in an attempt to improve domestic semiconductor competitiveness.55 SEMATECH significantly reduced the amount of R&D funding needed to produce “each new generation of chip miniaturization” and lowered miniaturization cycles from three years to two.56 Today, other consortiums like the National Alliance for Advanced Transportation Battery Cell Manufacture and the Department of Energy’s solar initiative, SunShot, are modeled on SEMATECH.57 AI may call for a similar approach; short of breaking up leading tech companies, antitrust policymakers may even consider mandated data sharing (whether through consortia or other means) as an effective antitrust remedy. Data Diversity Diverse data can also enhance innovation. Given the option, Fortune 1000 companies are more likely to diversify data sources than expand the quantity of data from existing sources.58 Of Fortune 1000 executives, 69 percent reported that data variety was the most important factor in their data success.59 Companies with more diverse data receive “faster intelligence” about products and market trends, which may enable them to better anticipate next-generation technologies.60 Consistent with this broader dynamic, we assume companies with greater data variety would be better positioned to build new technologies for the Pentagon and other government customers. However, not all corporate data will be a relevant input for Pentagon applications. Mission-specific applications, in particular, will likely rely to some degree on classified or otherwise unique data already held by the DOD. 1. Do larger firms have more diverse data? The sheer scale of large tech companies makes their data quite diverse; all else equal, smaller AI firms have less diverse data. Alphabet, for example, collects data from Google Search, Maps, YouTube, and Gmail. Antitrust action could reduce the diversity of data held by large tech companies as they fracture and focus on narrower markets. Even if the broken-up companies and their data stores remained large, this data would lose appreciable diversity. If more diverse data means more innovation, a postbreakup AI sector could be less innovative overall. However, if companies’ data did become more homogenous, adverse effects could be mitigated. Companies created in the wake of antitrust enforcement would collectively hold diverse data. Creating a centralized data pool might yield an even more diverse stockpile of data than what’s currently held by the likes of Google or Amazon. The NIH’s Data Commons offers one such example, with proposals circulating to create a similar global data commons for AI.61 Data sharing through contracts or centralized pools would, however, present an additional set of challenges, including privacy concerns and data security. 2. How well do larger firms leverage their diverse datasets? Large companies may struggle to fully utilize their diverse datasets, limiting both the innovation upside of diverse data and the innovation downside should antitrust enforcement result in more homogenous datasets. Siloing concerns apply equally to diverse datasets. Antitrust enforcement becomes far less of a threat to innovation if companies cannot currently leverage their diverse data. R&D Spending 1. What is the relationship between scale and R&D expenditure? If R&D spending drives innovation, firms that can spend more on R&D— presumably large ones—will generally hold an edge in innovation. A postbreakup AI sector could be less innovative as a result. Large tech companies do in fact spend more on R&D both in absolute and relative terms. According to PricewaterhouseCoopers, in absolute terms, Amazon and Alphabet were the world’s top two corporate R&D spenders in 2018, with Samsung, Intel, Microsoft and Apple in the top ten.62 In terms of relative R&D spending—the percentage of total firm expenses spent on R&D—large tech companies remained among the highest spenders, led by Facebook (33 percent) in fifth place globally.63 Alphabet and Microsoft, which each spent 20 percent, and Amazon (13 percent) ranked among the top thirty. The smallest firm (based on total operating expenses) of the top 100 global relative R&D spenders was NXP Semiconductors, a Dutch firm with $6.8 billion in operating expenses.64 Because larger firms tend to spend more on R&D, breaking them up would likely reduce their R&D spending. Increases in spending at smaller firms could counter this decline, but the amount and efficacy of that spending are uncertain—both at the individual firm level and in the aggregate across the post-breakup AI ecosystem.65 That said, broken-up firms would remain very large, with sizable R&D budgets to match. Imagine a break-up of Alphabet, whose operating expenses amounted to $110 billion last year; a spin-off company with one-fourth of Alphabet’s current R&D budget would still be larger than 77 of the 100 leading global relative R&D spenders. 2. What is the relationship between R&D expenditure and innovation? AI innovation is expensive.66 If R&D spending fuels innovation, larger, wealthier companies with more to spend on R&D will likely lead. However, the research is contradictory: some studies indicate larger R&D expenditures yield greater innovation, while others find the opposite. Existing research on R&D may not translate neatly to AI innovation; for example, little research considers differences between massive companies like today’s tech giants and very large corporations. Analysis of “small” firms’ R&D patterns may not apply to potential post-breakup tech companies, which would probably remain quite large. In addition, much of the existing literature is years or decades old, and may not pertain to the fast-evolving AI economy. Nevertheless, existing research can at least guide further work, consistent with the questions and research priorities we frame in this paper. Since the writings of economist Joseph Schumpeter in the mid-20th century, researchers have debated the relationship between innovation and R&D resources. Schumpeter argued that a strong correlation exists, noting that large firms have the resources to support risk-taking, more experienced and specialized staff, and cheaper access to capital.67 He believed these characteristics made larger firms optimal for economic growth and innovation.68 Significant research now contradicts Schumpeter’s work. Some studies show R&D productivity decreases with firm size,69 and smaller firms are “more profit/cost efficient in innovation,”70 generating more patents and more citations per dollar spent on R&D.71 Smaller firms are also “disproportionately responsible for significant innovations,”72 compared to larger firms that produce fewer innovations per dollar spent.73 Even among larger firms, innovation doesn’t neatly track with R&D budgets. For example, Apple ranked as the 2018 Global Innovation 1000 Study’s most innovative company, but spent a relatively modest 5.1 percent of overall sales on R&D— far from the highest percentage among companies in the index.74 However, other researchers back Schumpeter. Their work finds large firms are more R&D “intensive”75 and responsible for “higher quality” innovations.76 Some posit that “R&D spending and R&D productivity increase with scale,” as does “basic research, process innovation, and incremental innovation.”77 Large firms conduct almost six times more R&D, in aggregate, than small firms, and do so more productively.78 Collectively, large firms make up 87 percent of the “economic contribution of industrial R&D,” making them the disproportionate engines of innovation.79 Clearly, no consensus exists around how R&D spending influences innovation. Predicting how antitrust action on R&D resources might affect AI company innovation is therefore difficult. However, some researchers argue more specifically that large firms are more ideally suited for research that utilizes “economies of scale and scope, or requires large teams of specialists such as fundamental, science-based innovations and large-scale applications.”80 AI research, with its high degree of specialization, may fall into this category.81 If so, scale-reducing antitrust actions could prove damaging.

#### AI innovation is key to hegemony – even the perception we’re falling behind leads to next-gen war

Johnson, 19

(James, Assistant Professor, School of Law & Government, Dublin City University, Non-Resident Fellow, Modern War Institute at the United States Military Academy, West Point, PhD Politics & International Relations, University of Leicester, MA Asia-Pacific Studies, University of Leeds, "The end of military-techno Pax Americana? Washington’s strategic responses to Chinese AI-enabled military technology", Taylor & Francis, 10-21-2019, https://www.tandfonline.com/doi/full/10.1080/09512748.2019.1676299)\\JM

This article has made the following central arguments. First, while disagreement exists on the likely pace, trajectory, and scope of AI defense innovations, a consensus is building within the U.S. defense community intimating that the potential impact of AI-related technology on the future distribution of power and the military balance will likely be transformational, if not revolutionary. These assessments have in large part been framed in the context of the perceived challenges posed by revisionist and dissatisfied great military powers (i.e. China and Russia) to the current U.S.-led international order – rules, norms, governing institutions – and military-technological hegemony. Today, the United States has an unassailable first-mover advantage in a range of AI applications with direct (and in some cases singular) relevance in a military context.

Second, the rapid proliferation of AI-related military-technology exists concomitant with a growing sense that the United States has dropped the ball in the development of these disruptive technologies. Even the perception that America’s first-mover advantage in a range of dual-use enabling strategic technologies (i.e. semiconductors, 5G networks, and IoT’s) was at risk from rising (especially nuclear-armed) military powers such as China, the implications for international security and strategic stability could be severe. In response to a growing sense of alacrity within the U.S. defense community cognizant of this prospect, the Pentagon has authored several AI-related programs and initiatives designed to protect U.S. dominance on the future digitized battlefield (e.g. the Third Offset, Project Maven, the JAIC, and the DoD’s debut AI strategy). Further, broader U.S. national security concerns relating to Chinese efforts to catch up (and even surpass) the U.S. in several critical AI-related enabling technologies, has prompted Washington to take increasingly wide-ranging and draconian steps to counter this perceived national security threat.

Third, and related, in the development of AI evocations of the Cold War-era space race does not accurately capture the nature of the evolving global AI phenomena. Instead, compared to the bipolar features of the U.S.-Soviet struggle, this innovation arms race intimates more multipolar characteristics. Above all, the dual-use and commercial drivers of the advances in AI-related technology will likely narrow the technological gap separating great military powers (chiefly the U.S. and China) and other technically advanced small-medium powers. These rising powers will become critical influencers in shaping future security, economics, and global norms in dual-use AI.

In the case of military-use AI applications, however, several coalescing features of this emerging phenomena (i.e. hardware constraints, machine-learning algorithmic complexity, and the resources and know-how to deploy military-centric AI code), will likely constrain the proliferation and diffusion of AI with militaries’ advanced weapon systems for the foreseeable future. In turn, these constraints could further concentrate and consolidate the leadership in the development of these critical technological enablers amongst the current AI military superpowers (i.e. China and the United States), which could cement a bipolar balance of power and the prospect of resurgent bi-polar strategic competition.

Today, the United States has an unassailable first mover advantage in a range of AI applications with direct (and in some cases singular) relevance in a military context. However, as China approaches parity, and possibly surpasses the U.S. in several AI-related (and dual-use) domains, so the U.S. will increasingly view future technological incremental progress in emerging technologies – and especially unexpected technological breakthroughs or surprises – through a national security lens. Thus, responses to these perceived threats will be shaped and informed by broader U.S.-China geopolitical tensions (Waltz, 1979). These concerns resonated in the 2018 U.S. Nuclear Posture Review (NPR). The NPR emphasized that the coalescence of geopolitical tensions and emerging technology in the nuclear domain, in particular, how unanticipated technological breakthroughs in ‘new and existing innovations,’ might change the nature of the threats faced by the United States and the ‘capabilities needed to counter them.’ (NPR, 2018, p.14). In sum, against the backdrop of U.S.-China geopolitical tensions, and irrespective of whether China’s dual-use applications can be imminently converted into deployable military-use AI, U.S. perceptions of this possibility will be enough to justify draconian countermeasures.

Several future research questions outside the scope of this study would benefit from further study: How might rising powers and nonstate actors leverage AI technologies in ways that threaten the strategic environment of nuclear-armed great powers? How might the diffusion of dual-use AI to medium-small and nonstate actors affect great power strategic stability? As the distribution of military AI capabilities begins to diffuse to small and medium rising powers, independent of poles how might these states behave in the new multipolar order? Related, under what conditions can mastery of a particular technology such AI affect the global balance of power? Less dependent on the U.S. for their security, might rising power be more (or less) inclined to cooperate and form new regional bonds, or instead, grow to fear one another? And, how might the pace of this transition influence this outcome.

## Adv 1

#### Econ decline doesn’t cause war

Walt, 20

(Stephen, Robert and Renée Belfer professor of international relations at Harvard University, "Will a Global Depression Trigger Another World War?", Foreign Policy, 5/13/2020, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/> JHW)

If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself. The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### Economic decline increases cooperation.

Christina L. **Davis &** Krzysztof J. **Pelc 17**, Christina L. Davis is a Professor of Politics and International Affairs at Princeton; Krzysztof J. Pelc is an Associate Professor of Political Science at McGill University, “Cooperation in Hard Times: Self-restraint of Trade Protection,” Journal of Conflict Resolution, 61(2): 398-429

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

#### Growth causes extinction via climate change, aging crisis, food and water wars, and global inequality—try or die for dedevelopment

Gagulina, 21

(Natalya Gagulina, Institute for Regional Economic Studies Russian Academy of Sciences Leading researcher, Artur Budagov, 2State University of Aerospace Instrumentation, Director of the Institute of Enterprinership Technologies, Elena Yanova, ITMO University, Faculty of Technological Management and Innovations, Department of Economics and Strategic Management, “Global Challenges of the Modern Paradigm of Economic Development,” SHS Web of Conferences 92 2021 NL)

1 Introduction Comprehension of the global problems at the beginning of the third millennium prompts us to take new approach to assessing the development of modern civilization, and sometimes to question the inviolability of values formed over centuries. For more than three centuries, the development of the world’s leading countries has been based on the paradigm, according to which realization of human creative potential occurs through the transformation of world and nature, and then society. Continuous growth of production and improvement of the human living standards, provided by the modern paradigm of development, are based on the ideas of progress, democracy, freedom and personal initiative. The flip side of the coin is exacerbation of key contradictions generated by the current paradigm of economic development: between wealth and poverty, liberal social practices and government guarantees, economic growth and the resource potential of nature. 2 Economic Development Paradigm Methods The progressive development of mankind within the framework of accepted scientific paradigm is continuous process of improving the laws, conditions of life, social reproduction, art, science, values. One of the most important results of formation of the modern development paradigm is to recreate the world general scientific picture as an integral system of scientific ideas about nature, man and society [1]. The important role in this is played by the rapid convergence of methodology of natural science and humanitarian knowledge. Thus, the ideas of irreversibility and variability in decision-making, the variety of directions for development of complex systems at bifurcation points and many other ideas that have been developed in synergetics are becoming more and more important for the humanities. The change in the place and role of man in the representation of most self-developing systems became manifestation of the principles of global evolutionism in the scientific paradigm of development and contributed to even greater dissemination of its ideas both in the scientific knowledge space and in the modern civilization space. The dominance of global evolutionism principles in the development paradigm has determined its influence on cultural values on the scale of the entire world economy. Besides convergence of the methodology of natural science and humanitarian knowledge, prerequisites are created for the convergence of the main, at first glance, diametrically opposed models of development of the modern East and West countries, which the main features are given in Table 1. Containing the human mind progress history, the modern paradigm of economic development has formed the basic laws, the laws of emergence and development of social relationships at all levels for many years to come. The manifestation of global evolutionism principles in the modern paradigm of economic development is becoming the important factor in cross-cultural interaction between East and West in connection with overarching significance of globalization, liberalization and informatization. Globalization has become tool for formation of world markets for goods, labour and capital, has expanded the information space to planetary scale. Liberalization, pushing the boundaries of private initiative in the implementation of economic activity, stimulated investment and entrepreneurship, created conditions for the effective use of information technologies. Informatization has created new capital-intensive and rapidly growing markets for infocommunication technologies and mass media. Perhaps the most significant result of the influence of these factors in formation of the cultural space at the turn of the XX-XXI centuries was the rooting and spread of the consumer society model on global scale, closed at consumption as a way of life. First of all, this was facilitated by new opportunities for standardizing the way of life, consciousness and behaviour, education, in increasing the role of supranational structures and transnational corporations, opened under the influence of globalization. The economy of consumer society is based on the principle of individual consumption, supported by system of attitudes and values that often ignore the laws of morality. Rapidly developing, dynamic and aggressive economy with its innovative guidelines and pronounced individualism of free personality, with active transformative vector in relation to the natural and social world, has had a huge impact on the entire social structure, starting with forms of human behaviour and social communication and ending with the rationalization of thinking in the whole [2,3]. The consumer economy does not encourage passivity and frugality, because they are accompanied by loss of consumer ability. Economic choice based on real human needs is replaced by choice dictated by the consumer society structure and the corresponding abstract values. Global scale result: overproduction and excessive consumption, accumulation of production and consumption wastes, anthropogenic pollution of atmosphere and water resources, energy overloads, etc. The processes generated by globalization are closely related to the tightening of competition in the world market for control over natural resources and information space through the use of the latest technologies. Market relations include natural resources that were previously outside the competition [4]. The problems of preserving the natural environment and ecology associated with degradation, and sometimes destruction of the environment of human life, are ignored. Social connections and relationships are increasingly falling into the sphere of private interests. Common human values are being levelled, creating the basis of morality, humanity and social justice. The influx of cheap labour into the labour market of prosperous countries complicates interethnic relations [5,6]. The influence of psychological shock of globalization processes creates the fertile ground for nationalism outbursts. Currently, the internationalization of all key problems is taking place against the background of globalization, liberalization and informatization: from interethnic and interconfessional conflicts to security problems [7,8]. This leads to the question of the crisis of the modern paradigm of economic development. 3 Results: Economic Development Paradigm Crisis The modern paradigm of economic development is continuation of the general development paradigm formed by the centuries-old history of scientific discoveries and achievements. At the present stage, the great influence on the general development paradigm, generally, and on the economic development paradigm, particularly, was exerted by convergence of methodology of natural science and humanitarian knowledge, exchange of attitudes of the current paradigm both within the natural science segment and in the field of natural sciences and social sciences and humanities. The combined application of principles of evolutionary and systemic approaches in the paradigm of economic development not only opened up new opportunities in describing complex self-regulating and self-developing systems, the search for approaches to managing such systems, but also identified problems that called into question the viability of paradigm itself. The aggravation of crisis situations in the economic, financial, socio-political, environmental and socio-spiritual spheres of the modern society life makes us take a new approach to understanding the modern paradigm of economic development. Achieving the better quality of life within the accepted paradigm of economic development seems to be difficult due to the problem of dominance of interests of subjects whose sources of income are non-renewable resources, harmful industries and outdated technologies. They not only stand in the way of progress, but also contribute to the emergence of such social risks as the loss of jobs, cuts in investment programs, reduction in tax payments to budgets of various levels, etc. Regarding the complication of classical contradictions and problems of the economy, some market instruments, mechanisms, institutions become poorly managed, stochastic, and acquire a spontaneous character. The existing classical contradictions are supplemented by new ones (Figure 1). Particularly, the classical contradiction between labour and capital was supplemented by contradictions between various forms of capital, rapidly developing science-intensive technologies of material production and archaic forms of capital reproduction, etc. At the international level, the contradiction between the world market globalization process and the national interests of the participating countries is growing [9], the crisis has emerged in the post-war system of international law and international organizations. A series of problematic situations that have no explanation by modern science and crises that arise in vital spheres of the economy indicate a crisis of the very economic development paradigm. At the same time, problems and challenges that are urgent for all countries of the world deserve special attention. 3.1 Global Problems and Challenges The term "global problems" began to be used in scientific literature in connection with concerns about population growth, environmental pollution, depletion of natural resources, etc., that is, almost simultaneously with the first models of J. Forrester, D. Meadows, and others. Understanding global problems as a set of social, natural-resource and socio-cultural problems, as the progressive development and preservation of civilization depends on the attitude towards them and which require the united efforts of all mankind for their resolution, we will group them (Figure 2). Among the problems of humanitarian nature are the problems of eliminating poverty, exploitation and other forms of social inequality, problems of education, health care, planning and regulation of the life level and quality. Natural resource problems include a wide range of problems caused not only by the objective limited natural resource potential of the planet, but also by the alarmingly high rates of its use. Comparing the growth rates of the planet's population and the rate of changes in the volumes of extraction of the main types of mineral raw materials, we see that the intensity of oil and gas consumption per capita is growing (Table 2). Problems that cannot be solved without revising international relations owe their origin to the loss of functionality by some codes of international law and international organizations. The close analysis of global problems, which are becoming more acute as the modern paradigm of economic development takes root, enable singling out the following ones from them: Climatic, ecological and biological aspects of the problem of human survival. The problem of preserving the individual integrity in the context of the disintegration of the traditional structures of transmission from generation to generation of such eternal global values as the value of labour, the living control of society over moral behaviour, etc. The inclusion of person simultaneously in many systems of social relations leads to personality splitting and stress. The problem of communicative unity of mankind and the need to resolve conflicts without the use of force. For successful dialogue focused on consent, tolerance, pluralism of opinions, new criteria and approaches are needed, and the use of double standards is unacceptable. The exacerbation of existing or the emergence of new global problems due to failures, which is adopted the economic development paradigm as a basis, produces global challenges (Figure 3). Challenges are consequence of the emergence of new factors in world development that disrupt the stability of the normal functioning of reproduction mechanisms, intercultural relations, etc. Thus, the acceleration of historical time is facilitated by a constant reduction in the life cycles of goods, services, infrastructures and ways, endless and rapid change of new methods of labour and technologies in the context of accelerating the period of implementation of scientific discoveries. This complicates the adaptation of people to changes in the technological, social and cultural environment. Not having time to fully realize the benefits of change, to take advantage of them, people are faced with new, more and more technically complex aspects of life. The global demographic imbalance, which manifests itself in the population structure change, the birth rate decrease and the indigenous population decline in developed countries, the general aging of the world's population, including the spread of the demographic deficit to some countries in Asia and South America, contributes to the emergence of migration waves, increases economic instability. The problem of shortage of food and fresh water in the world is caused not only by the fact of limited natural resources, but also by their irrational use [11]. Economic inequality, uneven distribution of food in the world and climate change have led to the fact that more than 1 billion people in underdeveloped countries are undernourished, and between 500 million and 1 billion people go hungry. The crisis of values, provoked by the predominance of the principles of global evolutionism in the development paradigm, threatens all further development of mankind. The problems and challenges associated with the new technological reality deserve special attention. 3.2 Digital Economy Problems and Challenges The contours of new technological reality in the context of global issues have emerged due to globalization, liberalization and informatization as the leading features of the modern paradigm of economic development. The emergence of the main innovations of new technological reality in form of information and telecommunication technologies, digital communication networks and virtual reality put on different scales the advantages and disadvantages of the digital economy, selectively presented in Figure 4. Digitalization satellites on global scale are the Internet of Things and smart cities, open source public access platforms, cloud information technologies, dynamic capitalization of Internet business and info-business, increase in the volume of financial assets and the emergence of their new forms (digital assets), predictive software events providing, increasing the influence of "new media" and much more [12-14]. The formation of information space covering the whole world has become innovative form of globalization, which is accompanied by its inherent problems. In our opinion, the following can be attributed to the global challenges of the digital economy: Accelerated virtualization of the economy associated with the phenomenon of virtual reality. According to M. Poster, the problematization of reality, which so far only occurs in the field of modern telecommunications (games, teleconferences, etc.), casts doubt on the validity, exclusivity and conventional evidence of "ordinary" time, space and identity. Information superhighways and virtual reality, which have not yet become common cultural practices, have enormous potential for creating such a subject that exists only into interactive environment. Examples of large-scale transformation processes caused by many years of virtualization can be observed in the economy financial sector [15-17]. b) The spontaneous reduction of jobs in the labour market and disappearance of occupations that were widespread and in demand until recently: teachers, shop assistants, cashiers, postmen, tourism managers, notaries, call centre operators, packers, accountants, etc. The number of "useless people" includes not only the listed professions "from the risk zone", but also older age categories, which find it more difficult to adapt to innovative technological changes. c) Computerization of the decision-making process at different levels, leading to the "cybernation" of the subject of control through the use of supercomputers. The inability of the subject of management to make adequate decisions about the most complex processes in social and technical systems in real time has led to the management crisis. Computer models, which incorporate more than a thousand mathematical equations and huge amounts of various kinds of data, enable to predict the types of behaviour of people in various situations and, in a time frame commensurate with the time for solving problems, develop ready-made solutions. d) The gradual decrease in the ability of individuals to make decisions due to formation of stereotype to overcome the limitation of individual cognitive abilities by tools of info communication technologies. The list of global challenges of the digital economy presented by us is very general, it can be supplemented and expanded taking into account the ongoing changes. 4 Discussions Global actions in response to global challenges are foreseen in almost all spheres of human life, which are usually associated with the human welfare and well-being. The list of global actions has more than half a century history and includes the UN Conference "Man and the Environment" (1972), the World Conservation Strategy (1980), the International Commission on Environment and Development Paper (1983), UN Conference on Environment and Development (COSR-92), Earth Summit +5, Millennium Declaration - 2000, Earth Summit - 2002, RIO + 20, Sustainable Development Goals (SDGs), developed and adopted by the UN for the period up to 2030, and a number of other equally important international events. It should be noted that the coordination of state policies in the field of legal regulation of information space, ecology, fight against terrorism, drug trafficking and crime also contributes to the development and implementation of global actions in response to global problems and challenges. At the same time, it can be argued that the crisis state of the modern paradigm of economic development is accompanied by a conflict of archaic and newest forms of economic reality, which "explode" it from the inside (Figure 5). The emergence of the newest forms of economic reality in the context of the acceleration of historical time creates the risk of delay in global actions in response to global challenges. This is especially true of the challenges associated with the economic space digitalization. 5 Conclusion The stability of adopted paradigm of economic development in the context of global challenges is under threat, therefore, a new look at the relationship "global challenges - global actions" is needed. The global problems and challenges we have outlined in the modern economic development paradigm force us to start searching for a new biocompatible and biocentric paradigm aimed at harmoniously solving the problems of life support, which is accompanied by revision of views on consumption and fair distribution, attitude to the living environment and nature, life values and dominant needs. The economic development paradigm change presupposes the initial condition change for existence of socio-ecological-economic system, which will radically affect the subsequent evolution of the system and the entire organizational structure of society. In this case, it seems appropriate, in our opinion, to use the quality economics methodology, which is distinguished by interdisciplinary and comprehensive scientific approach [18,19]. The economy of quality has features that make it possible to correlate it with a new, synergetic, paradigm for development of modern scientific knowledge. It is an integral part of all scientific areas, focusing on the need to take into account the quality features studied in a given aspect.

#### Corona sent shockwaves throughout the global economy and makes collapse inevitable—we need a new system to ensure survival

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We don’t know the precise figure because our system of unemployment registration was not built to track an increase at this speed. On successive Thursdays, the number of those making initial filings for unemployment insurance has surged first to 3.3 million, then 6.6 million, and now by another 6.6 million. At the current rate, as the economist Justin Wolfers [pointed out](https://www.nytimes.com/2020/04/03/upshot/coronavirus-jobless-rate-great-depression.html) in the New York Times, U.S. unemployment is rising at nearly 0.5 percent per day. It is no longer unimaginable that the overall unemployment rate could reach 30 percent by the summer. Thursday’s news confirms that the Western economies face a far deeper and more savage economic shock than they have ever previously experienced. Regular business cycles generally start with the more volatile sectors of the economy—real estate and construction, for instance, or heavy engineering that depends on business investment—or sectors that are subject to global competition, such as the motor vehicles industry. In total, those sectors employ less than a quarter of the workforce. The concentrated downturn in those sectors transmits to the rest of the economy as a muffled shock. The coronavirus lockdown directly affects services—retail, real estate, education, entertainment, restaurants—where 80 percent of Americans work today. Thus the result is immediate and catastrophic. In sectors like retail, which has recently come under fierce pressure from online competition, the temporary lockdown may prove to be terminal. In many cases, the stores that shut down in early March will not reopen. The jobs will be permanently lost. Millions of Americans and their families are facing catastrophe. The shock is not confined to the United States. Many European economies cushion the effects of a downturn by subsidizing short-time working. This will moderate the surge in unemployment. But the collapse in economic activity cannot be disguised. The north of Italy is not just a luxurious tourist destination. It [accounts](https://www.bloomberg.com/news/articles/2020-03-31/nightmare-haunting-euro-s-founders-may-now-be-reality-with-italy) for 50 percent of Italian GDP. Germany’s GDP is predicted to fall by more than that of the United States, dragged down by its dependence on exports. The latest set of [forecasts](https://www.ft.com/content/b427db58-77e6-11ea-af44-daa3def9ae03) from the Organization for Economic Cooperation and Development are apocalyptic across the board. Hardest hit of all may be Japan, even though the virus has had a moderate impact there. In rich countries, we can at least attempt to make estimates of the damage. China was the first to initiate shutdowns on Jan. 23. The latest official figures show China’s unemployment at 6.2 percent, the highest number since records began in the 1990s, when the Chinese Communist Party reluctantly admitted joblessness was not a problem confined to the capitalist world. But that figure is clearly a gross understatement of the crisis in China. Unofficially, perhaps as many as [205 million migrant workers](https://www.scmp.com/economy/china-economy/article/3078251/coronavirus-chinas-unemployment-crisis-mounts-nobody-knows) were furloughed, more than a quarter of the Chinese workforce. How one goes about counting the damage to the Indian economy from Prime Minister Narendra Modi’s abrupt 21-day shutdown is anyone’s guess. Of India’s workforce of 471 million, only 19 percent are covered by social security, two-thirds have no formal employment contract, and at least [100 million](https://www.business-standard.com/article/economy-policy/coronavirus-lockdown-headed-home-as-migrants-have-no-room-to-isolate-120032501678_1.html) are migrant workers. Many of them have been sent in headlong flight back to their villages. There has been nothing like it since partition in 1947. The economic fallout from these immense human dramas defies calculation. We are left with the humdrum but no less remarkable statistic that this year, for the first time since reasonably reliable records of GDP began to be computed after World War II, the emerging market economies will contract. An entire model of global economic development has been brought skidding to a halt. An entire model of global economic development has been brought skidding to a halt. This collapse is not the result of a financial crisis. It is not even the direct result of the pandemic. The collapse is the result of a deliberate policy choice, which is itself a radical novelty. It is easier, it turns out, to stop an economy than it is to stimulate it. But the efforts that are being made to cushion the effects are themselves historically unprecedented. In the United States, the congressional stimulus package agreed within days of the shutdown is by far the largest in U.S. peacetime history. Across the world, there has been a move to open the purse strings. Fiscally conservative Germany has declared an emergency and removed its limits on public debt. Altogether, we are witnessing the largest combined fiscal effort launched since World War II. Its effects will make themselves felt in weeks and months to come. It is already clear that the first round may not be enough. An even more urgent task is to prevent the slowdown from turning into an immense financial crisis. It is commonly said that the U.S. Federal Reserve under Chairman Jerome Powell is following the 2008 playbook. This is true. Day by day, it spawns new programs to support every corner of the financial market. But what is different is the scale of the Fed’s interventions. To counter the epic shock of the shutdown, it has mobilized an immense wave of liquidity. In late March, the Fed was buying assets at a rate of $90 billion per day. This is more per day than Ben Bernanke’s Fed purchased most months. Every single second, the Fed was swapping almost a million dollars’ worth of Treasurys and mortgage-backed securities for cash. On the morning of April 9, at the same moment that the latest horrifying unemployment number was released, the Fed announced that it was launching an additional $2.3 trillion in asset purchases. This huge and immediate counterbalancing action has so far prevented an immediate global financial meltdown, but we now face a protracted period in which falling consumption and investment drive further contraction. Seventy-three percent of American households report having [suffered](https://www.ft.com/content/7a7233a3-160a-41be-8d63-40f64e041e57) a loss of income in March. For many, that loss is catastrophic, tipping them into acute need, default, and bankruptcy. Delinquencies on consumer debt will no doubt surge, leading to sustained damage to the financial system. Discretionary expenditure will be deferred. Petrol consumption in Europe has [fallen](https://www.ft.com/content/4c59fd16-6020-4798-b8f1-5df686bbd97a) by 88 percent. The market for automobiles is stone dead. Auto manufacturers across Europe and Asia are sitting on giant lots of unsold vehicles. The longer we sustain the lockdown, the deeper the scarring to the economy and the slower the recovery. In China, regular economic activity is inching back. But given the risk of second- and third-wave outbreaks, no one has any idea how far and fast the resumption of normal life can safely go. It seems likely, barring a dramatic medical breakthrough, that movement restrictions will need to stay in place to manage the unevenness of containment. A protracted and halting recovery seems far more likely at this point than a vigorous V-shaped bounce back. And even once current production and employment have restarted, we will be dealing with the financial hangover for years to come. The argument over fiscal policy is rarely engaged in the heat of the moment. In a crisis, it is easy to agree to spend money. But that fight is coming. We are engaged in the largest-ever surge in public debt in peacetime. Right now we are parking that debt on the balance sheet of central banks. Those central banks can also hold the interest rate low, which means that the debt service will not be exorbitant. But that defers the question of what to do with them. To the conventional mind debt must be eventually repaid through surpluses History suggests, however, there are also more radical alternatives. One would be a burst of inflation, though how that would be engineered given prevailing economic conditions is not obvious. Another would be a debt jubilee, a polite name for a public default (which would not be as drastic as it sounds if it affects the debts held on the account of the central bank). Some have [suggested](https://voxeu.org/article/fight-covid-pandemic-policymakers-must-move-fast-and-break-taboos#.Xos1vsVFjSp.twitter) it would be simpler for the central banks to cut out the business of buying debt issued by the government and instead simply to credit governments with a gigantic cash balance. And on 9 April that is exactly what the Bank of England [announced](https://www.ft.com/content/664c575b-0f54-44e5-ab78-2fd30ef213cb) it would be doing. For all intents and purposes, this means the central bank is simply printing money. That this is even being considered, and under a conservative government, is a measure of how extreme the situation is. It is also symptomatic that, rather than howls of outrage and immediate panic selling, the Bank of England’s decision has so far produced little more than a shrug from financial markets. They are under few illusions about the acrobatics that all the central banks are performing. This resigned attitude is helpful from the point of view of crisis-fighting. But do not expect the calm to last. When the lid comes off, politics will resume and so will the arguments about “debt burdens” and “sustainability.” When the lid comes off, politics will resume and so will the arguments about “debt burdens” and “sustainability.” And given the scale of the liabilities that have already been accumulated, we should expect it to get ugly.

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But that defers the question of what to do with them. To the conventional mind debt must be eventually repaid through surpluses History suggests, however, there are also more radical alternatives. One would be a burst of inflation, though how that would be engineered given prevailing economic conditions is not obvious. Another would be a debt jubilee, a polite name for a public default (which would not be as drastic as it sounds if it affects the debts held on the account of the central bank). Some have [suggested](https://voxeu.org/article/fight-covid-pandemic-policymakers-must-move-fast-and-break-taboos#.Xos1vsVFjSp.twitter) it would be simpler for the central banks to cut out the business of buying debt issued by the government and instead simply to credit governments with a gigantic cash balance. And on 9 April that is exactly what the Bank of England [announced](https://www.ft.com/content/664c575b-0f54-44e5-ab78-2fd30ef213cb) it would be doing. For all intents and purposes, this means the central bank is simply printing money. That this is even being considered, and under a conservative government, is a measure of how extreme the situation is. It is also symptomatic that, rather than howls of outrage and immediate panic selling, the Bank of England’s decision has so far produced little more than a shrug from financial markets. They are under few illusions about the acrobatics that all the central banks are performing. This resigned attitude is helpful from the point of view of crisis-fighting. But do not expect the calm to last. When the lid comes off, politics will resume and so will the arguments about “debt burdens” and “sustainability.” When the lid comes off, politics will resume and so will the arguments about “debt burdens” and “sustainability.” And given the scale of the liabilities that have already been accumulated, we should expect it to get ugly.

#### Transition is possible in a post-coronavirus world—there’s a sea change towards sustainability

Cohen, 20

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For nearly 30 years, since the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, sustainability proponents have sought in various ways to foster a “sustainable consumption transition.” For instance, Chapter Four of Agenda 21 forthrightly observes that “[w]hile poverty results in certain kinds of environmental stress, the major cause of the continued deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialized countries, which is a matter of grave concern, aggravating poverty and imbalances” (United Nation 1992; see also Cohen 2001). During the following decades, numerous governments, multilateral organizations, scientific societies, and others developed carefully detailed plans outlining how to facilitate less resource intensive forms of consumption and to ensure prosperity without transgressing planetary boundaries (Royal Society of London and the United States National Academy of Sciences 1997; Nash 2009; Scholl et al. 2010). For instance, in 1998 the United Nations Development Program described the circumstances of the affluent nations as a “runaway consumption train” (UNDP 1998). Consistent with this characterization, the Nordic Council, the Organization for Economic Co-operation and Development, the European Commission, the Royal Society of London, and the United States National Academy of Sciences highlighted the challenges of designing more sustainable means of consumption and production. More recently, given the close correspondence between consumption practices and greenhouse-gas emissions, the Paris Climate Agreement appropriately recognized, “sustainable patterns of consumption and production … play an important role in addressing climate change” (United Nations 2015; refer also to Alfredsson et al. 2018). The issue of sustainable consumption has evolved on the international policy agenda since the Rio Conference through three loosely demarcated phases. First, the 1990s were largely marked by an emphasis on the promotion of cleaner and more efficient processes for manufacturing consumer goods and their intermediary inputs (Hertwich 2005). Second, during the early 2000s attention shifted to “greener” forms of household provisioning exemplified by strategies devoted to educating consumers, designing eco-labels on product packages, and “nudging” shoppers to make responsible choices (Matthias, Mont, and Heiskanen 2016; Sunstein 2015). Finally, in the years since the onset of the global financial crisis in 2008, we have witnessed growing appreciation of the need for systemic change of the social and institutional arrangements that perpetuate contemporary consumerist lifestyles—in short, to achieve absolute reductions in consumptive throughput (Cohen 2019; Foden et al. 2019; see also Akenji et al. 2016). Against this background, we are now struggling to anticipate the impacts of COVID-19. Major financial markets are gyrating and international supply chains are in turmoil, prompting managers to canvass about to find local sources of fabricated materials to maintain industrial production. Tourism is grinding to a halt as travelers cancel trips, airlines suspend flights, and hotels become increasingly vacant. Sporting events, concerts, theatrical performances, museum exhibitions, and other public showcases are being postponed. Growing numbers of companies are encouraging employees to take time off from work and contemplating the imposition of compelled furloughs. Economic forecasters are warning that gross domestic product for many countries will contract, perhaps very significantly, in coming months. While the present situation is being treated as an emergent economic crisis, it merits acknowledging that sustainability scientists and policy makers have implicitly been seeking to achieve over the past decade broadly similar objectives—albeit with greater political subtlety and awareness for adverse societal consequences—in the form of a sustainable consumption transition (see, e.g. O’Rourke and Lollo 2015; Valentine, Ruwet, and Bauler 2015; Røpke 2015; Welch and Southerton 2018).1 It merits recognizing that COVID-19 is simultaneously a public health emergency and a real-time experiment in downsizing the consumer economy. Social scientists have long recognized that disasters, especially when the scale of their tragic consequences emerges with modest but steady pace, have a tendency to catalyze processes of social change. For instance, the renowned Russian-American sociologist Pitirim Sorokin observed in 1942 that society “is never the same as the one that existed before the calamity. For good or ill, calamities are unquestionably the supreme disruptors and transformers of social organization and institutions” (Sorokin 1942). Although current circumstances pose unique challenges to foretelling the future, it is notable that medical authorities are now making comparisons to the Spanish flu of 1918 and 1919 that internationally resulted in the death of 50 million people (Chen et al. 2020; Lambert 2020). While it is extremely premature to suggest that the current public health emergency will reach this alarming level, political regimes in a number of the most severely affected countries are coming under profound strain due to intensifying anxiety about the coronavirus epidemic. With respect to supply chains, at least some of the stopgap measures being implemented to get through the next few weeks or months will become locked in on a longer-term basis. Consumers are stockpiling nonperishable food and other supplies and public authorities have not disclaimed the eventual need for rationing and other consumption controls. A practical outcome is that we are liable to see customarily face-to face activities move to virtual platforms as users become more acclimated with online interfaces for conducting business, delivering educational programing, and engaging in a widening range of social activities. Experience in China to date suggests that extended periods of quarantine create novel forms of consumer demand as people cope with the exigencies of isolation. The more protracted the threat of contagion proves to be, the further engrained and resistant to reversal these adaptive responses will become. As is frequently the case in the aftermath of disasters, we will quickly forget “how things used to be.” Nonetheless, as soon as circumstances allow, there will be vigorous promotional efforts encouraging us to revert to “normal.” We should expect a relentless stream of inducements from governments and companies encouraging consumers to get out of the house and back on the bandwagon. Central banks are already signaling a willingness to lower interest rates—already in negative territory in some countries—as far as necessary to make this happen. Many individuals are likely, at least initially, to respond positively to these appeals, but we should not be surprised in due course to discover that other predilections have supplanted once-familiar practices. While it may seem both fanciful and insolent, COVID-19 is an opportunity to reduce over the longer term the prevalence of lifestyles premised on large volumes of energy and material throughput. At the same time, imperatives for social distancing to lower the risk of community transmission will regrettably reinforce commitments to individualized rather than public and shared modes of consumption. Despite what appears to be an increasingly dire public health emergency, policy makers should work to ensure that the coronavirus outbreak contributes to a sustainable consumption transition. This would be one way to offset some of the unfortunate suffering and disruption caused by this event.

#### Vote neg to allow the system to collapse—a degrowth paradigm is possible from within the shell of the current system—any evidence to the contrary is from neoliberal hacks

Alexander, 20

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This article examines how to proactively design the end of capitalism rather than simply waiting for its collapse. It argues that capitalism is unable to resolve the emerging crises, for capitalism cannot function without economic growth, yet for ecological reasons economic growth cannot continue. However, there is a coherent alternative political economy – degrowth – and the emergence of various grassroots alternatives that, suitably scaled up, could help to form a post-capitalist economy. But our culture is not yet ready to embrace degrowth, with consumer affluence and techno-optimism still at the heart of mainstream conceptions of the ‘good life’. Nonetheless, it is important to keep alive these ideas of what an ecocentric, post-capitalist economy could look like, for in a crisis what today seems impossible or implausible can suddenly become possible and even probable. This article addresses the subject of post-capitalist political economy. That is an intimidating topic, especially since transcending capitalism will be a monumental task. Capitalism certainly is not going to lie down like a lamb at the polite request of left-leaning environmentalists. What this means is that sustainability and justice advocates with radical visions of societal futures need to think very carefully about the question of strategy. More specifically, we must confront the question of where and how to invest our time, energy and resources, if we genuinely seek a fundamentally different type of economic system ‘beyond capitalism.’1 Attempting to save capitalism through so-called ‘green growth’ is increasingly recognized as little more than neoliberal ideology, the function of which is to entrench the status quo while pretending to change (Smith, 2016; Hickel and Kallis, 2019). And yet hopes for an imminent proletarian uprising that abolishes capitalism and erects an eco-socialist utopia governed by an enlightened centralized state seems equally misconceived. This paucity of hope has led critical theorist Frederic Jameson (2003) to note that it is now easier to imagine the end of the world than the end of capitalism, although perhaps that says more about a sterility of contemporary political imagination than it does about our future. This exploratory article will share some thoughts on what might come after capitalism and how we might manage and drive this transition by design rather than disaster. I say by design not disaster, hinting at a certain optimism, however it will become clear that there is, in fact, an underlying pessimism that shapes my perspective – a pessimism which some readers might share. Or, perhaps rather than ‘pessimism,’ a better term to describe my orientation might be ‘apocaloptimism.’ This neologism can be defined as the view that ‘everything is going to hell but that things might still turn out okay.’ While in truth I am neither apocalyptic nor optimistic, this term does evoke something of the grounded but cautious hope that will inform my analysis. It will be argued that deepening crisis in the current system is probably unavoidable now; for a range of reasons, our time for a smooth transition may have passed. Nevertheless, I certainly will not use that to justify inaction or despair; quite the opposite. Indeed, the instability created by systemic crisis may be one of the prerequisites for deep societal change – unsettling though that is to admit. Our challenge will be to turn deepening crises, as they emerge, into opportunities to create something other than capitalism: a post-capitalist society that better accords with our shared ideals for social justice, ecological viability and human flourishing. If capitalism is coming to an end in coming years or decades as it collides with various ecological and financial limits, we can ask ourselves: how can we proactively design the end of capitalism rather than wait for its collapse? Or even, if necessary, how can we design the collapse of capitalism in ways that makes the best of a bad situation? These are the questions of an apocaloptimist. Over the last ten years I have been part of a movement advocating for a ‘degrowth’ process of planned economic contraction (Alexander, 2009, 2015a, 2015b; Alexander and Gleeson, 2019). In what follows I am going to use this alternative economic paradigm to frame and analyse the political economy of post-capitalism. I don’t expect anyone to like the terminology of degrowth – I know very well it is an ugly term – and it may never be the banner under which a social or political movement marches. But as a slogan for justice and sustainability, I maintain that degrowth captures an essential insight: it directly evokes, more clearly than any other term, the need for planned contraction of the energy and resource demands of overgrown or ‘developed’ economies. That is an agenda that mainstream environmental and social discourse refuses to acknowledge, because significant contraction of energy and resource demands is incompatible with ongoing growth in GDP. This growth fetish must be overcome (Hickel and Kallis, 2019). The following sections offer some thoughts on why the degrowth paradigm signifies the most coherent political economy for a post-capitalist society and how such a transition might unfold. I will also highlight the role grassroots social movements and alternative economic experiments may need to play prefiguring degrowth economies and creating the cultural conditions for a politics and macroeconomics of degrowth to emerge. Prerequisites for a degrowth transition Recently the Danish political economist Hubert Buch-Hansen (2018) published a paper which outlined a conceptual framework that is useful for thinking about how paradigm shifts in political economy occur. He argues that there are four main prerequisites. There must be: 1 a crisis or series of crises that cannot be resolved within the existing political economy; 2 a coherent alternative political project; 3 a comprehensive coalition of social forces attempting to produce the alternative paradigm through political struggle and social activism; 4 broad-based cultural consent – even passive consent – for the new paradigm. I am going to adopt this framework, add my own analytical flesh to its theoretical bones, and use it to discuss the question of a degrowth transition to a post-capitalist society. I hope this provides a useful and provocative broad-ranging analysis to get this special issue underway, although I am sure I will raise more questions than I answer. Capitalism is not in crisis – capitalism is the crisis The first prerequisite, then, for a paradigm shift in the existing political economy is crisis – but not just any crisis. It must be a crisis or series of crises in the system that the system itself cannot resolve. There are many reasons to think this prerequisite is met. Growth economics is sometimes called the ‘ideology of the cancer cell,’ and this provocative metaphor neatly summarizes the fatal anomaly in capitalism, namely, that on the one hand, it must keep growing for stability, and, on the other hand, for various ecological and financial reasons, it simply cannot keep growing. Like a chorus of others, I do not believe capitalism can resolve this fundamental contradiction, which is creating conditions for a new, postcapitalist paradigm to replace it. Today, a range of theorists (from radical reformers, to eco-anarchists and eco-socialists) argue that degrowth is a necessary feature of any coherent macroeconomic alternative (Kallis et al., 2018). The clearest way to understand the multidimensional crisis of capitalism is to grasp the so-called ‘limits to growth’ predicament, which I will now review very briefly, and this will also help frame and define the post-capitalist alternative of degrowth. Limits to growth: A restatement By a wide range of indicators, the global economy is now exceeding the sustainable carrying capacity of the planet. Climate change is perhaps the most prominent ecological transgression, but there is also biodiversity loss, resource depletion, pollution, deforestation, and a long list of other deeply unsustainable impacts. In the haunting words of James Lovelock (2010), the face of Gaia is vanishing. It is important to understand the extent of ecological overshoot, because responding appropriately to the global predicament depends on a clear understanding of our situation. The ecological footprint analysis indicates that humanity would need 1.7 planets if the existing global economy could be sustained over the long term (Global Footprint Network, 2019). If the United States or Australian way of life were globalized to the world’s population, humanity would need four or five planets worth of biocapacity, implying a need to reduce our ‘first world’ impacts by 75% or more. Despite the global economy being in this state of ecological overshoot, it is also known that billions of people on the planet are, by any humane standard, underconsuming (Hickel, 2017). If these people are to raise their living standards to some dignified level of material sufficiency, as they have every right to do, it is likely that this will place further burdens on already overburdened ecosystems. To make matters more challenging still, there are now 7.7 billion people on Earth, increasing by about 200,000 people everyday. Recent projections from the United Nations suggest we are heading for around 9.7 billion by mid-century and 11 billion by 2100. All this calls radically into question the legitimacy of continuous economic expansion and rising material living standards in rich nations. And yet, despite the fact that humanity is already making grossly unsustainable demands on a finite biosphere, all nations on the planet – including or especially the richest nations – are seeking to grow their economies without apparent limit. It is assumed that a larger economy is always better; that ongoing growth is necessary for ‘progress.’ One does not have to be a sophisticated thinker to see that this is a recipe for ecological disaster, although alarmingly this point seems to be lost on almost all politicians and most economists. Capitalism cannot resolve its ecological contradictions In theory, there are two broad ways to respond to the limits to growth predicament within capitalism. The first is to try to create a form of capitalism that deliberately stops growing and actually voluntarily contracts in order to operate within sustainable limits. The problem here is that there are various growth imperatives built into the structure of capitalism, which makes the notion of ‘degrowth capitalism’ a contradiction in terms (to be distinguished of course from capitalism in recession, which is unplanned economic contraction). Therefore, the only other means of resolving the limits to growth predicament within capitalism is to radically decouple economic activity from environmental impact through what is called ‘green growth.’ The hope here is that technological innovation, market mechanisms and efficiency improvements will reduce energy and resource demands even as economies continue to grow in terms of GDP. Nice in theory, perhaps, but what is happening is that the absolute reductions in energy and resource demands needed for sustainability are not occurring – certainly not to sufficient degrees – and as the global economy seeks ongoing growth, absolute decoupling gets harder and harder to achieve (Kallis, 2017; Hickel and Kallis, 2019). Efficiency without sufficiency is lost. This brings us to the most egregious flaw in growth economics, which is the apparent failure to understand the exponential function and its ecological implications. Post-growth economist Tim Jackson (2009) has shown that if the OECD nations grew their economies by a modest 2% over coming decades and by 2050 a global population of nine billion had achieved similar income per capita, the global economy would be fifteen times larger than it is today. It is obvious that ecological limits will not permit that scenario to eventuate. Even an economy twice as large as today’s economy would surely wreak ecological havoc. The critical point is that the degree of ‘decoupling’ required to make ongoing growth ‘sustainable’ is simply too great. So capitalism wants or needs what it cannot have: that is, limitless growth on a finite planet. This ecological predicament is the defining contradiction of capitalism in the 21st century, insofar as growth is now causing the problems that growth was supposed to be solving. This suggests that the first prerequisite of a paradigm shift in political economy is well and truly met: capitalism is facing a multi-dimensional crisis that it cannot resolve, and therefore, sooner or later, capitalism will come to an end. The question of our time, as stated in my introductory comments, is how to make the transition beyond capitalism by design rather than disaster. The crisis of ecological overshoot also provides insight into what any alternative must look like. Broadly speaking, the implications here are clear but radical: if the global economy is to operate within the sustainable carrying capacity of the planet, this requires (among other things) the richest nations to initiate a degrowth process of planned economic contraction, on the path to a ‘steady state’ economy of stable and sustainable biophysical throughput. Obviously, the poorest nations would also need to achieve some ‘steady state’ in time, but first their economic capacities must be developed in some appropriate form to ensure basic needs for all are met. However, the focus of this discussion is the wealthy nations. An alternative political project The second prerequisite for a paradigm shift in political economy – for a degrowth transition, in particular – is the existence of an alternative political project. This is not the forum to comprehensively defend this alternative political project, so I am just going to state it, or one version of it, in order to show that an alternative post-capitalist political project is beginning to take form. The following political agenda is, in my view, both coherent and attractive, but it is, all too obviously, disconnected from political ‘realism’ in developed nations (or anywhere) today. Of course, I would argue that this is an indictment of mainstream politics, rather than of degrowth. However, the political and social unpalatability of degrowth is a point to which I will return, because it has implications for the question of strategy. But as an exercise in political imagination, these policies could initiate a transition to a degrowth society. n Alternatives to GDP: Any political transition beyond capitalism requires transcending the GDP fetish (Hamilton, 2003) and establishing better and more nuanced ways to measure societal progress, such as the Genuine Progress Indicator (see Kubiszewski et al. [2013]). Post-growth measures of progress like this open up space for political parties to implement policy and institutional changes – including those which I am about to review – which would genuinely improve social wellbeing and enhance ecological conditions, even if these would not increase, and probably even decrease, GDP. n Diminishing resource caps: If the rich, overgrown economies are serious about moving toward a just and sustainable human inhabitation of Earth, then first, we must acknowledge that we are hugely over-consuming our fair share of global resources, and second, we must institute diminishing resource caps which put strict limits on national resource flows. Fortunately, this would incentivize the efficient use of resources and disincentivize waste, and lead to degrowth in ecological impacts. Eco-socialists would argue that reducing societal material and energy flows will require significant nationalization of key industries for stability during the planned contraction (e.g. Smith, 2016) whereas eco-anarchists would argue that a confederation of small self-governing communities would be the better path (e.g. Trainer, 2010). This debate is likely to continue (Alexander and Burdon, 2017) and it may be this controversy can only be resolved through practical experimentation not theory. n Reduced working hours (in the formal economy): One obvious implication of diminishing resource caps is that a lot less resource-intensive production and consumption would take place in a degrowth economy. This would almost certainly lead to reduced GDP. To avoid the unemployment that typically flows from declining GDP, a degrowth economy would reduce work in the formal economy and share available work amongst the working population. Financial security in a contracting economy could be maintained through policies such as a Universal Basic Income, Universal Basic Services or a Job Guarantee. n Rethink government spending: Currently, governments shape many of their policies and spend much of their money in order to promote economic growth. Under a degrowth paradigm, it follows that the ways government spend their funds would need to be fundamentally reconsidered. For example, fewer airports, roads, and military equipment; more bike lanes and public transport. How we spend our money is one way to vote for what exists in the world. Rethinking government spending would also need to go hand in hand with transformations in the systemic provision of basic services. For example, Cubans have better health on average than US citizens and yet spend an estimated 90% less on healthcare per capita (Hamblin, 2016). This suggests that there is ample room to provide for basic services in an affordable way while also making more public money available to fund other social projects (like a Universal Basic Income or renewable energy technologies). n Renewable energy transition: In anticipation of the foreseeable stagnation and eventual decline of fossil fuel supplies, and recognizing the grave dangers presented by climate change, a degrowth economy would divest from fossil fuels and invest in a renewable energy transition with the urgency of ‘war time’ mobilization. This will be much more affordable and technically feasible if energy demand across society is greatly reduced, and that is a key feature of a degrowth society (Alexander and Floyd, 2018). The energy transition needed cannot just involve ‘greening’ the supply of energy, it must also involve greatly reduced demand. This means anticipating and managing what David Holmgren calls ‘the energy descent future’ (Holmgren, 2018). n Banking and finance: Our systems of banking and finance currently have a growth imperative built into their structures. Any degrowth society would have to create systems that did not require growth for stability. Debt jubilees would probably be required, especially with respect to the poorest nations. These are particularly complex issues and the forces of opposition will be fierce. But the point is that any post-growth transition is going to require deep changes to the most fundamental financial institutions of capitalism. n Population policies: This is always controversial territory, especially in an age of Trump, but the environmental logic is compelling. As population grows, more resources are required to provide for the material conditions of human wellbeing. As Paul Ehrlich once said, “whatever problem you’re interested in, you’re not going to solve it unless you also solve the population problem.” I will not suggest specific policies here; the point is that we need to discuss this topic openly and with all the wisdom and compassion we can muster (e.g. Kuhleman, 2018). Population policy must be part of any coherent politics of sustainability in recognition that we live on a ‘full Earth.’ n Distributive justice: Last but not least, environmental concerns cannot be isolated from social justice concerns, both nationally and globally. The conventional path to poverty alleviation is via the strategy of GDP growth, on the assumption that a ‘rising tide will lift all boats.’ A degrowth economy would recognize that a rising tide will sink all boats, and thus poverty alleviation must be achieved much more directly. Rather than growing the economic pie, a politics of degrowth would slice the economic pie differently through a major redistribution of wealth and power. Prominent policies in this space include the notion of a Universal Basic Income, while others argue for a Job Guarantee, or Universal Basic Services (see Mitchell and Wray [2005] and Frankel [2018]). These types of policies would go a long way to directly eliminating poverty, with inequality further reduced by policies such as maximum wage legislation, and progressive wealth, income and land taxes. Again, eco-socialists would argue that a just distribution of wealth and power would have to involve significant socialization of property and curtailment of ‘the market.’ How far socialization would need to go, and the nature of such a transformation, is obviously open to debate. These policy platforms – all in need, of course, of far more elaboration and discussion – are coherent political, economic and social goals if a transition to a degrowth society were recognized as necessary. Each of these policies could take various forms, and there is, and should be, debate within the degrowth movement and beyond about various ways to structure a post-capitalist society. But my present point is simply that a relatively coherent and developed alternative politicoeconomic project is emerging to replace the capitalist paradigm. So, the second prerequisite for a paradigm shift is also arguably present, which is to say: there is a coherent, alternative political economy. Nevertheless, as implied above, I am the first to admit that this policy platform, coherent though it may be (to my mind), is so unpalatable to the dominant cultural consciousness that it would be political suicide for any political party to try to implement it at present. In other words, what is arguably politically necessary is both socially and politically unthinkable – which is one reason, no doubt, for our current state of despairing political paralysis. Because of this situation, whereby the politically necessary is unthinkable, I would argue that the policy platform outlined is unlikely to initiate a degrowth transition, but will only ever be the outcome of social movements; the outcome, that is, of social forces that emerge out of crisis or a series of crises and which actively create the cultural consciousness that see policies for degrowth as both necessary and desirable (Alexander and Gleeson, 2019). It is through crisis that I see the citizenries in affluent societies being shaken awake from the depoliticizing effects of affluence. Encountering crises can play, and might have to play, an essential consciousnessraising role, if it triggers a desire to learn about the structural underpinnings of the crisis situation itself. While I do not deny the need for, and desirability of, deep structural changes in the nature of our economic and political systems, what I am proposing is that a post-capitalist government may only be the outcome, not the driving force, of a transition to a just and sustainable society. In other words, our best hope for inducing a degrowth transition by design is to build a post-capitalist economics ‘from below,’ within the shell of the current system that is currently in the process of deteriorating (Alexander and Burdon, 2017). Waiting for government to act would be like waiting for Godot – a tragi-comedy in two acts, in which nothing happens, twice. Support from a comprehensive coalition of social forces This leads me to the third prerequisite for a degrowth transition, and that is that it must have support from a comprehensive coalition of social forces. Again, space does not permit an in-depth review of these issues, but a few comments will be made on examples of post-capitalist grassroots activities that are exploring modes of economy that are transcending the profit-motive for the common good, or simply building new forms of informal or household economies ‘beyond the market.’ These can easily be seen to be prefiguring aspects of a degrowth economy, even if this terminology is not used. Four key features of post-capitalism that I see emerging from the grassroots – features which I feel must scale up for a degrowth economy to emerge – are as follows. 1 Non-monetary forms of the sharing economy, whereby communities selforganize to share resources in order to save money, partially ‘escape the market,’ and avoid significant amounts of production (Nelson, 2018). Indeed, this is a key feature of why a degrowth economy could still thrive even when contracting in GDP terms: produce much less but share much more, for societies can create common wealth through sharing. This is part of what ‘efficiency’ means in a degrowth economy. 2 A degrowth economy is likely to require a transformation of the household economy: from being merely a place of consumption, to becoming a place of production and self-provision. On this topic there is no better place to look than the work of permaculturist, David Holmgren (2018), whose vision and insights here are indispensable. There are two main reasons why a resurgence of household economies is central to a degrowth paradigm shift (Alexander and Gleeson, 2019): First, by producing more within the household, less time is needed to work in the formal economy, leaving more time outside the market for social activism and community engagement. This strategy is about escaping capitalism in order to erode it, that is, building the new economy within the shell of the old. Secondly, if financial crises deepen in coming years, the household economy may be an essential means of meeting basic needs, so the task is to prepare now for what may well prove to be harder economic times ahead. We should aim for sustainability, but we may have to settle for resilience. 3 A key feature of a degrowth economy involves significant localization of the economy, moving toward a ‘bioregional’ economy where local needs are predominantly met with local resources, shortening the chain between production and consumption (Trainer, 2010). 4 Finally, any post-capitalist economy is going to require new modes of production, moving away from profitmaximizing corporations (often owned by absentee shareholders), towards an economy where worker cooperatives, community enterprises and not-forprofit models are the dominant forms of economic organization, paying people living wages but reinvesting surpluses back into the local community (Albert, 2004; Gibson-Graham et al., 2013). Again, there are various ways to imagine such alternative economic arrangements. Experimentation may be required as societies pursue the goal of creating economic and social systems in which more wealth and power are held in common, rather than concentrating it in private hands. It seems to me that alternative modes of economy, such as these four, are bubbling everywhere under the surface, which is a hopeful sign. The Transition Towns Movement, for example, is a coherent manifestation of this grassroots approach to building local, community economies. But one must also admit that these transgressive experiments remain small and marginalized by the dominant modes of political economy. So, in terms of the third prerequisite for a post-capitalist transition, we have to conclude that the social forces are mobilizing but have not yet been able to scale up to positively disrupt, or even significantly threaten, the dominant paradigm. Cultural consent: The sufficiency imperative The final prerequisite for a post-capitalist degrowth transition is broad-based cultural consent. Passive consent may suffice here, without the majority of people actively seeking degrowth. This really is a critical element in any planned transition in political economy and one that currently does not exist in terms of degrowth. It seems that the majority of people either do not think degrowth (or what it represents) is necessary or, if they do, they do not like what it means in terms of reduced and transformed consumption and production practices. I think there are two main reasons why culture is not ready to embrace degrowth. The first reason is a deep-seated technooptimism that shapes cultural thinking about environmental problems. This view assumes that technology and market mechanisms will be able to resolve the crises of capitalism without system change and without even much in terms of ‘lifestyle’ change. In other words, the zeitgeist seems to be that consumer affluence is consistent with justice and sustainability, because it is assumed that efficiency improvements in modes of production will be able to produce ‘green growth’ without having to rethink consumption practices (Hickel and Kallis, 2019). Although this techno-optimistic blind spot is a major obstacle to degrowth, I hold some uneasy confidence that as capitalism continues to collide with ecological limits in coming years and decades, the case for degrowth will become clearer to more and more people, which could act as a mobilizing force. However, even if the crises of capitalism deepen and the majority of people come to desire a post-capitalist political economy, it does not follow that a degrowth economy is what they would demand. This points to a serious cultural obstacle to a degrowth transition: the fact that the dominant conception of the good life under capitalism is based on consumer affluence. It seems to me that there will never be a post-capitalist politics until there is a post-consumerist culture that is prepared to embrace material sufficiency as a desirable way of life (Alexander, 2015b). Herein lies the importance of the voluntary simplicity, simple living and downshifting movements. Although in need of radicalization (and organization for collective action), these movements or subcultures are beginning to create the cultural conditions needed for a politics and economics of degrowth to emerge. It all depends on the ideas (and practices) that are lying around When the crises of capitalism deepen – perhaps in the form of a new financial crisis or a second Great Depression – the task will be to ensure that such destabilized conditions are used to advance progressive humanitarian and ecological ends, rather than exploited to further entrench the austerity politics of neoliberalism. I recognize, of course, that the latter remains a real possibility, as did the archcapitalist Milton Friedman (2002: xiv), who expressed the point in these terms: Only a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes the politically inevitable. I do not often find myself in complete agreement with Milton Friedman, but on this point I am. It is essential for the ecocentric community to keep hopes of a radically different and more humane form of society alive, until what today seems impossible or implausible becomes, if not inevitable, then at least possible and perhaps even probable. And on those rare occasions when despair lifts and the human spirit shows itself in noble forms, ‘the ideas that are lying around’ and indeed ‘the practices that are lying around,’ look so strong and convincing that it tempts even this apocaloptimist into considering becoming a plain, old-fashioned optimist. Or, with a nod to Gramsci, at least one is permitted to proceed with a pessimistic intellect and a cautiously optimistic will.

## Adv 2

#### Sustainability isn’t an existential issue

Kareiva and Carranza, 18—Institute of the Environment and Sustainability, University of California, Los Angeles (Peter and Valerie, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, available online January 5, 2018, ScienceDirect, dml)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

**No impact to Oil – most comprehensive data.**

**Khadduri**, 8/23/**2011** (Walid – former Middle East Economic Survey Editor-in-Chief, The impact of rising oil prices on the economies of importing nations, Al Arabiya News, p. http://english.alarabiya.net/views/2011/08/23/163590.html)

**What is the impact of oil price shocks on the economies** of importing nations? At first glance, there appears to be large-scale and extremely adverse repercussions for rising oil prices. However**, a study published** this month **by researchers in the IMF Working Paper** group **suggests a different picture** altogether (it is worth mentioning that the IMF has not endorsed its findings.) The study (Tobias N. Rasmussen & Agustin Roitman, "Oil Shocks in a Global Perspective: Are They Really That Bad?", IMF Working Paper, August 2011) mentions that “**Using a comprehensive global dataset** […] **we find that the impact of higher oil prices** on oil-importing economies **is generally small: a 25 percent increase in oil prices typically causes GDP to fall by about half of one percent** or less.” The study elaborates on this by stating that this impact differs from one country to another, depending on the size of oil-imports, as “oil price shocks are not always costly for oil-importing countries: **although higher oil prices increase the import bill, there are partly offsetting increases in external receipts** [represented in new and additional expenditures borne by both oil-exporting and oil-importing countries]”. In other words, **the more oil prices increase**, benefiting exporting countries, **the more these new revenues are recycled,** for example **through the growth in demand for new services, labor, and commodity imports**. The researchers argue that the series of oil price rallies (in 1983, 1996, 2005, and 2009) have played an important role in recessions in the United States. However, **Rasmussen and Roitman state** at the same time **that significant changes in the U.S. economy** in the previous period (the appearance of combined elements, **such as improvements in monetary policy**, the institution of **a labor market more flexible** than before **and a relatively smaller usage of oil** in the U.S. economy) **has greatly mitigated the negative effects of oil prices on the U.S. economy. A 10 percent rise** in oil prices **before 1984**, for instance, **used to lower the** U.S. **GDP by about 0.7 percent** over two to three years, **while this figure started shrinking to no more than 0.25 percent** after 1984, owing to these accumulated economic changes. This means that while oil price shocks continue to adversely impact the **U.S. economy**, the latter **has managed**, as a result of the changes that transpired following the first shock in the seventies, **to overcome these shocks, and** subsequently, **the impact of oil price shocks has become extremely limited** compared to previous periods.

# 2NC

## ICN CP

#### No nuke terror

Dr. John Mueller 20, Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies at Ohio State University, Senior Fellow at the Cato Institute, PhD from the University of California, Los Angeles, “Assessing International Threats During and After the Cold War”, Cato Institute, 5/6/2020, https://www.cato.org/publications/study/assessing-international-threats-during-after-cold-war

In the decade after the Cold War, a similar process of threat identification took place as problems previously considered to be of minor, or at least of secondary, concern were promoted. Anxieties about international terrorism substantially increased during the 1990s and were set into highest relief with the terrorist attacks of September 11, 2001. Extrapolating wildly from 9/11, a terrorist event ten times more destructive than any other in history, terrorism of that sort has repeatedly been taken to present a direct, even existential, threat to the United States or to the West — or even to the world system or to civilization as we know it.6 Wild extrapolations have precipitated costly antiterrorism and antiproliferation wars and huge increases in security spending. In these ventures, trillions of dollars have been squandered and well over two hundred thousand people have perished, including more than twice as many Americans as were killed on 9/11.7 There has been a tendency to see these exercises as misguided elements of a coherent plan to establish a “liberal world order” or to apply “liberal hegemony.“8 However, the overwhelming impetus was far more banal: to get the bastards responsible for 9/11.

Islamist terrorism in the United States has killed some six people per year since 9/11, and far more people in Europe perished yearly at the hands of terrorists in most years in the 1970s and 1980s.9 But there has nonetheless been a tendency to continue to inflate al-Qaeda’s importance and effectiveness.

In fact, al‐​Qaeda Central has done remarkably little since it got horribly lucky in 2001. It has served as something of an inspiration to some Muslim extremists, has done some training, seems to have contributed a bit to the Taliban’s far larger insurgency in Afghanistan, and may have participated in a few terrorist acts in Pakistan. It has also issued a considerable number of videos filled with empty, self‐​infatuated, and essentially delusional threats.10 Even isolated and under siege, it is difficult to see why al‐​Qaeda could not have perpetrated attacks at least as costly and shocking as the shooting rampages (organized by others) that took place in Mumbai in 2008, in Paris in 2015, or in Orlando and Berlin in 2016. And, although billions of foreigners have entered legally into the United States since 2001, not one of these, it appears, has been an agent smuggled in by al‐​Qaeda. The exaggeration of terrorist capacities has been greatest in the many overstated assessments of their ability to develop nuclear weapons. In this, it has been envisioned that, because al‐​Qaeda operatives used box cutters so effectively on 9/11, they would, although under siege, soon apply equal talents in science and engineering to fabricate nuclear weapons and then detonate them on American cities.11

It is possible to argue, of course, that the damage committed by jihadists in the United States since 9/11 is so low because “American defensive measures are working,” as Peter Bergen puts it.12 However, although security measures should be given some credit, it is not at all clear that they have reduced the amount of terrorism significantly. There have been scores of terrorist plots rolled up in the US by authorities but, looked at carefully, the culprits left on their own do not seem to have had the capacity to increase the death toll very much.13 As Brian Jenkins puts it, “Their numbers remain small, their determination limp, and their competence poor.“14 Nor can security measures have deterred terrorism. Some targets, such as airliners, may have been taken off the list, but potential terrorist targets remain legion.15 To a considerable degree, terrorism is rare because as Bruce Schneier puts it bluntly, “there isn’t much of a threat of terrorism to defend against.“16

## States

#### It solves the whole aff—the past 30 years prove the states have taken the leading role in antitrust, that the states can farther than the feds, and that there’s no preemption

Arteaga, 21

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In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so. Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123) In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120) In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement. During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114) Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[[15]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-113) During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[[16]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-112) Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[[17]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-111) State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[[18]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-110) In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include: •The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[[24]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-104) In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[[19]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-109) After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[[20]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-108) Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[[21]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-107) and filing submissions that argued against the states’ requested injunction.[[22]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-106) Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[[23]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-105) None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[[25]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-103) In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[[26]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-102) After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[[27]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-101) After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[[28]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-100) Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses: the federal and state antitrust laws under which state enforcers operate; the processes through which state enforcers coordinate with each other and their federal counterparts; the opportunity for coordination and conflict between state enforcers and private counsel during litigation; strategic and practical considerations when engaging with state attorneys general; and certain noteworthy enforcement actions that state enforcers have recently prosecuted. Statutory regime governing US state antitrust enforcement Civil enforcement of federal antitrust laws Enforcement actions on behalf of state governmental entities Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services.[[29]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-099) In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.[[30]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-098) In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges.[[31]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-097) In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market.[[32]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-096) In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy.[[33]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-095) While general harm to a state’s economy can serve as a basis for injunctive relief, state attorneys cannot base their request for damages on such harm.[[34]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-094) Parens patriae enforcement actions A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’.[[35]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-093) Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations.[[36]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-092) In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.[[37]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-091) State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’.[[38]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-090) In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies.[[39]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-089) Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens.[[40]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-088) In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies.[[41]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-087) State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their unsuccessful challenge to T-Mobile’s acquisition of Sprint, various state attorneys general alleged that the transaction would result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies.[[42]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-086) Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three.[[43]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-085) There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation;[[44]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-084) (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages);[[45]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-083) (3) exclude harm suffered by indirect purchasers of the goods and/or services in question;[[46]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-082) (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries;[[47]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-081) and (5) arise out of actual financial losses rather than general harm to their state’s economy.[[48]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-080) Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation.[[49]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-079) In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing] [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court.[[50]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-078) In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which was done by the state attorneys general who challenged the T-Mobile/Sprint merger.[[51]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-077) Civil enforcement of state antitrust laws Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act.[[52]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-076) In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act.[[53]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-075) These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.[[54]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-074) Some states may have statutes that go beyond the scope of the federal antitrust statutes. For example, California recently passed a statute that would deem certain ‘reverse-payment settlements’ to be presumptively anticompetitive.[[55]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-073) State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’.[[56]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-072) Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.[[57]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-071) In bringing enforcement actions under state antitrust laws, state antitrust enforcers typically have the authority to seek a broad range of relief, including treble damages, disgorgement of unlawful profits, injunctions, and attorney’s fees and costs.[[58]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-070) In some states, antitrust enforcers can also seek to have a contract declared void; suspend a violator’s ability to be awarded state contracts for a certain period; rescind an out-of-state company’s ability to do business within the state; and terminate an in-state company’s corporate charter.[[59]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-069) Moreover, state attorneys general can often seek relief on behalf of indirect purchasers when exercising their state law parens patriae authority. This is an important distinction between the parens patriae authority that state attorneys general enjoy under federal and state antitrust laws. The United States Supreme Court’s decision in Illinois Brick Co. v. Illinois precludes state attorneys general from seeking damages on behalf of indirect purchasers in parens patriae actions brought under the federal antitrust laws.[[60]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-068) In direct response to this decision, nearly 25 states and the District of Columbia have passed ‘Illinois Brick repealer’ laws that expressly authorise state attorneys general to recover damages on behalf of indirect purchasers that were harmed by state law antitrust violations.[[61]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-067) Notably, the United States Supreme Court has rejected constitutional challenges to these laws on the bases that states are free to permit indirect purchasers to recover damages given that (1) Congress has not passed legislation that preempts such state laws and (2) allowing indirect purchaser recovery under state law does not frustrate the legislative purpose of the federal antitrust laws.[[62]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-066) The states that have passed Illinois Brick repealer laws include California, New York and Illinois.[[63]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-065) Criminal enforcement of state and federal antitrust laws While many states have criminal penalties for state law antitrust violations, ‘[f]ew state attorneys general’s offices have significant experience prosecuting criminal antitrust violations.’[[64]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-064) Indeed, most state criminal prosecutions for antitrust violations have involved local bid-rigging schemes.[[65]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-063) Coordination in multistate investigations and litigation Coordination among state antitrust enforcers State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states.[[66]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-062) To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’.[[67]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-061) This committee is comprised of 12 state attorneys general[[68]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-060) and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.[[69]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-059) In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’.[[70]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-058) This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’.[[71]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-057) The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee[[72]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-056) and has a representative from each NAAG member state.[[73]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-055) The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.[[74]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-054) The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.) In conducting the investigation, the working group will often have a participating state issue information requests under its authorising state laws and thereafter obtain waivers from the respondent that permit the state to share the information with the other participating states.[[75]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-053) As the investigation progresses, the lead state will typically provide the working group with oral and written status reports detailing the work that has been completed, summarising the factual record that has been developed, identifying any key factual and legal issues, and setting forth proposed next steps. Once the working group has completed its fact-gathering, the lead state will prepare a recommendation indicating whether an enforcement action should be brought and, if so, whether it would be appropriate to enter a settlement. This recommendation is typically shared with the working group first and then with any other interested states. If the lead state recommends that a contested enforcement action be filed, such a recommendation will often be accompanied with briefing material setting forth the legal and factual basis for the recommendation and a draft complaint. After reviewing this material, each state makes an independent determination on whether to join the enforcement action. If more than one state decides to join the enforcement action, the participating states will often file a single complaint in federal court that alleges both federal antitrust causes of action and pendent state law claims. In most cases, the complaint will invoke the participating states’ federal and state law parens patriae authority. Once the decision to file a contested enforcement action has been made, the participating states will often create a litigation working group that coordinates and handles their day-to-day litigation tasks, such as pre-trial motion practice, fact and expert discovery, and witness preparation. In addition, the participating states typically create committees that help oversee the litigation and provide input on important strategic decisions and policy-related issues. The most common committees established in multistate enforcement actions include an executive committee, a discovery committee, an expert committee and a settlement committee. To help cover the cost of prosecuting contested enforcement actions, the participating states typically enter into cost-sharing agreements. These cost-sharing agreements usually provide that common litigation expenses, such as expert and vendor fees, shall be apportioned based on the participating states’ population, thereby requiring larger states to cover a larger portion of the costs. As a result, larger states, such as New York and California, have recently begun advocating for the adoption of a hybrid cost-sharing model that determines each state’s contribution based on a pro rata formula and population figures. In certain instances, the cost-sharing agreements will also specify how any settlement or judgment shall be allocated among the participating states once any common litigation expenses have been paid. In addition to cost-sharing arrangements, state antitrust enforcers sometimes seek to fund enforcement actions through grants from the NAAG’s ‘milk fund’, which was established in 1989, and helps cover expert fees in antitrust investigations and litigation. This fund was set up using portions of the settlements that were secured in a series of bid-rigging cases involving school milk contracts in New York.[[76]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-052) Over the years, the NAAG has maintained the ‘milk fund’ by requiring the repayment of grants provided to enforcement actions that result in a settlement or judgment and by obtaining contributions from recoveries obtained in other antitrust enforcement actions.[[77]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-051) More recently, state attorneys general have also sought to help finance multistate antitrust investigations and enforcement actions through the NAAG’s ‘Volkswagen fund’, which was established in 2017 following settlements that state attorneys general reached with Volkswagen for emissions standards violations.[[78]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-050) Coordination among state and federal enforcers Cooperation in civil matters The level and nature of coordination between state and federal antitrust enforcers can vary based on whether their enforcement philosophies and objectives are aligned. For instance, the current level of coordination between the DOJ and state attorneys general appears to be significantly lower than in recent history as reflected by the conflicting enforcement decisions reached in multiple high-profile investigations and certain new restrictions that the DOJ has implemented with respect to the sharing of investigative material with state attorneys general. Likewise, the collaboration between state and federal antitrust enforcers can vary based on the particular circumstances of an investigation, such as the subject matter of the investigation and the resources and past investigative experience of the state attorneys general involved in the investigation. For instance, the FTC and state attorneys general have a long history of working hand-in-hand on investigations and litigation related to hospital mergers given that such transactions have particularly local impacts.[[79]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-049) As a general matter, however, state and federal antitrust enforcers (especially their career staffs) seek to maximise their coordination when conducting parallel investigations because they have long recognised that ‘[e]ffective cooperation between [them] benefits the public through the efficient use of antitrust enforcement resources’ while ‘promot[ing] consistent enforcement [decisions]’ and ‘minimiz[inig] the burden of duplicative investigations’.[[80]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-048) While state and federal enforcers have most often coordinated on merger investigations, they have a strong track record of working closely on civil non-merger investigations.[[81]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-047) During state-federal investigations, the DOJ or FTC typically take the lead because they have greater resources (including large teams of lawyers and economists), significant expertise in the relevant industries and oftentimes the business operations of the companies being investigated, and extensive experience conducting large and complex investigations. If an investigation involves numerous states, the state attorneys general typically establish an executive committee to coordinate their work and serve as the point of contact for the DOJ or FTC’s investigative team. During the investigation, the DOJ or FTC’s investigative team will provide the participating state attorney general offices with regular updates on the status of the investigation and any key issues. At the conclusion of the investigation, the DOJ or FTC’s investigative team will advise the state attorneys general whether it believes the facts and law support the filing of an enforcement action and, if so, whether a settlement should be entered with the companies being investigated. Each state participating in the investigation makes an independent determination on whether to agree with the DOJ or FTC’s conclusions. In most instances, the state attorneys general reach the same enforcement decision as the DOJ or FTC. However, there have been instances where the state attorneys general reached a very different enforcement decision as shown by the recent AT&T/Time Warner and T-Mobile/Sprint merger investigations. If state and federal antitrust enforcers file a contested enforcement action, the DOJ or FTC will typically take the lead in litigating and trying the case. However, the state attorneys general will continue to play an important and substantive role, including assisting with pre-trial submissions, offensive and defensive depositions, expert reports, and trial witness preparation.[[82]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-046) Coordination between state enforcers and private counsel In general, there often is an overlap between the victims of antitrust violations that state attorneys general seek to represent when suing for damages in their parens patriae capacity and those that private class action counsel seek to represent. This overlap creates the opportunity for close coordination as well as direct conflict. On the one hand, this overlap in ‘clients’ can lead to significant conflict because state antitrust enforcers and class counsel ‘can differ sharply in their respective goals, approaches, and incentives’.[[83]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-045) On the other hand, this overlap in ‘clients’ can result in significant coordination because state antitrust enforcers and private counsel can realise meaningful efficiencies by working together during fact and expert discovery, and can ultimately obtain a better result by ‘presenting a united front in settlement discussions’.[[84]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-044) In addition, state antitrust enforcers can benefit from having access to class counsel’s ‘more experienced trial attorneys and readier access to economic experts’.[[85]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-043) In turn, class counsel can utilise the state antitrust enforcers’ ‘pre-complaint discovery’ to defeat any motions to dismiss and implement an effective fact and expert discovery plan.[[86]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-042) Moreover, class counsel can avoid various class certification issues when state attorneys general invoke their parens patriae authority.[[87]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-041) Oftentimes, the degree of coordination between state antitrust enforcers and class counsel will depend on various factors, such as the stage of the case, the state attorneys general and private lawyers involved in the case, and each group’s perceptions of possible outcomes.[[88]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-040) For instance, state antitrust enforcers are generally less inclined to coordinate with class counsel where class counsel is perceived as simply filing a follow-on action that seeks to piggyback off the work conducted by government enforcers during their investigation and litigation.[[89]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-039) In contrast, state attorneys general are more inclined to coordinate with class counsel that has made significant investments in developing the case and demonstrated a genuine desire to secure the best outcome for consumers rather than simply maximising their fee award.[[90]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-038) The e-Books Litigation is a recent example of effective coordination between state attorneys general and class counsel that resulted in consumers receiving nearly US$600 million in direct repayments from the defendants. Another example of effective coordination between state attorneys general and class counsel are the lawsuits brought by 23 state attorneys general and private class counsel related to a vitamin price-fixing conspiracy that resulted in US$305 million in settlements for indirect purchasers.[[91]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-037) Strategic and practical considerations when engaging with state attorneys general Below are several factors that parties should consider when assessing the most effective manner in which to engage with state antitrust enforcers prior to or during an investigation. Unlike the leaders of the DOJ Antitrust Division and FTC, most state attorneys general are elected officials who have to answer to their constituents. As a result, state attorneys general might be more inclined to take into consideration possible public reaction when making an antitrust enforcement decision. In addition, they might be more willing to listen to the views of key players in their state’s electoral process – such as influential lawmakers, important employers and labour unions, and powerful interest groups – prior to making an enforcement decision. Thus, the efforts of parties seeking to persuade an attorney general office to reach a specific enforcement decision could be helped by having these types of groups advocate – either through public statements or direct communications with state attorneys general – for their desired outcome. Such third-party advocacy is likely to be more persuasive and effective when presented within an antitrust analytical framework. Given that state antitrust enforcers have recently become more active and shown a willingness to act separately from their federal counterparts, parties should assess early on whether any state attorneys general are likely to be particularly interested in an investigation and, if so, determine whether their objectives would be served by proactively engaging with these state attorneys general. Such proactive engagement at the outset of an investigation could take the form of early meetings with senior leaders and investigative staff, written submissions that frame the key issues, or expressing a willingness to respond to targeted information requests. Factors that may influence a state attorney general office’s interest in an antitrust matter could include whether a large number of residents would be or have been harmed by a transaction or business practice; whether an investigation relates to an important industry in the state; whether a merger may result in significant job losses in the state; or whether the issues involved in an investigation have received considerable local or national media attention. While state attorneys general have recently shown a greater willingness to bring enforcement actions when federal enforcers fail to do so, the inability to rely on the DOJ or FTC’s expertise and resources poses challenges that could make state enforcers more reluctant to bring cases that present higher litigation risks, such as vertical merger challenges or conduct that would require a full blown rule of reason analysis. Accordingly, parties should take into account the theories of harm that are likely to arise in an investigation and whether federal enforcers are likely to act on such theories when formulating and adjusting their engagement strategy with respect to state enforcers. There are significant differences among state attorneys general. Some offices have a more pro-enforcement culture and philosophy when it comes to antitrust matters. Certain offices have more experienced staff and greater resources that enable them to take an aggressive enforcement approach. Consequently, parties should take these differences into account when determining their strategy for engaging with state antitrust enforcers. For instance, these differences may cause parties to seek to set the tone for an investigation early on by lining up the support of potentially ‘friendlier’ state attorneys general through immediate and proactive engagement with them. These differences could also cause parties to focus their efforts on state attorneys general that are viewed as leaders within the state antitrust enforcement community. If faced with parallel state and federal investigations, parties should generally welcome and encourage coordination between the investigative teams. Such coordination helps limit the time, burden and cost associated with overlapping investigations. In addition, such coordination can help parties minimise the risk of conflicting enforcement decisions that can disrupt their business operations, hurt employee morale, and create challenges with important customer and supplier relationships. Similarly, parties faced with parallel state and federal investigations should ensure that the positions they take before both investigative teams are consistent because state and federal enforcers often share information with each other. If they believe that parties are misleading them in any way, this can prolong both investigations, increase the time and money that parties have to spend on the investigations, and make it much harder to obtain the desired outcome. Certain state laws provide less confidentiality protection than federal laws. Thus, parties should familiarise themselves with each state’s confidentiality protections for material produced during antitrust investigations when negotiating the scope of information requests and any related confidentiality agreements. Given that state antitrust enforcers tend to have small staffs and limited resources, they may consider closing or limiting the scope of an investigation if they believe that consumer harm is not sufficiently widespread to justify the expenditure of those resources. Similarly, state antitrust enforcers may take a ‘wait and see approach’ in an investigation if there is pending private litigation that could adequately protect consumers and the competitive process. Thus, while not conceding any wrongdoing, parties seeking to persuade state attorneys to close or curtail an investigation could highlight the limited alleged harm or the fact that such harm (if any) would likely be adequately addressed through other proceedings. Recent examples of state enforcement litigation Cartel cases In recent years, the states have been at the forefront of several cartel-related civil litigations. Their role in such cases has varied from taking the lead entirely and breaking from their federal counterparts, to working with the federal government and private plaintiffs. The most prominent example of the state attorneys general taking the lead in civil cartel litigation is their role in the massive (and continuously expanding) In re Generic Pharmaceuticals Pricing Antitrust Litigation.[[92]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-036) In this case, the attorney generals for 47 states and the District of Columbia and Puerto Rico, led by the Connecticut Attorney General, joined a complaint after an extensive investigation that alleges an industry-wide conspiracy to inflate the price of certain generic drugs.[[93]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-035) Two years later, the state attorneys general for 43 states and Puerto Rico, again led by the Connecticut Attorney General, filed a new, second complaint against several manufacturers and, notably, many individuals. The newer complaint, nearly 500 pages long and concerning over 100 different drugs, alleges ‘an overarching conspiracy, the effect of which was to minimize if not thwart competition across the generic drug industry’.[[94]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-034) Most recently, a coalition of 51 states and territories filed a third complaint against 26 corporate defendants and 10 individual defendants alleging that the defendants fixed prices and allocated markets for 80 topical generic drugs.[[95]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-033) The DOJ, by contrast, has been slower to act and pursue this alleged conduct, although it has become more aggressive in 2020. The DOJ obtained two guilty pleas from executives in late 2016. The allegations in the executives’ charging documents concerned only two drugs, as opposed to the sprawling conspiracy alleged by the states.[[96]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-032) Since then – mostly in 2020 – the DOJ has charged six companies and four individuals in the alleged generic drugs conspiracy, most of whom have pleaded guilty.[[97]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-031) DOJ’s charging documents are often of a much narrower scope than the conspiracies alleged by the states.[[98]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-030) This, of course, does not mean that the allegations the states are pursuing have merit or that the DOJ will not ultimately cover more ground, but to date, the states have undeniably taken the more aggressive approach in this sweeping investigation. The Generic Drugs MDL also illustrates the advantages and challenges of coordination with a large contingent of state attorneys general in multi-district litigation. The state attorneys general can be extremely valuable allies for plaintiffs in multi-district litigation. Unlike private plaintiffs, they have the benefit of pre-litigation compulsory process and any complaint they file will benefit from their ability to conduct pre-litigation discovery. To illustrate, the states’ later-filed complaint in the Generic Drugs MDL was based on: (1) the review of many thousands of documents produced by dozens of companies and individuals throughout the generic pharmaceutical industry, (2) an industry-wide phone call database consisting of more than 11 million phone call records from hundreds of individuals at various levels of the Defendant companies and other generic manufacturers, and (3) information provided by several as-of-yet unidentified cooperating witnesses who were directly involved in the conduct alleged herein.[[99]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-029) In only the rarest of circumstances could a private antitrust plaintiff hope to gain access to so much information prior to filing an action. Therefore, by simply being a part of a multi-district litigation, the states can be tremendous sources of information and, to the extent permitted, can significantly assist private plaintiffs. On the other hand, states can (and do) have unique interests from private litigants and may try to distance themselves, as has occurred in the Generic Drugs MDL. There, the states filed a motion to establish a separate government track for case management purposes, apart from the private plaintiffs. Specifically, the states sought a ruling that would exempt them from the court’s requirement to file complaints on a drug-by-drug basis.[[100]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-028) Among other things, the states highlighted the ‘fundamental differences’ between state plaintiffs and class plaintiffs,[[101]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-027) and that the states’ theory was based on an ‘extensive multi-year investigation, including information . . . that was unavailable to the private plaintiffs when pleading their separate complaints’.[[102]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-026) Finally, the states noted that they were not part of the multidistrict litigation when the court issued its original order requiring drug-by-drug complaints.[[103]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-025) The court granted the states’ request with ‘no hesitation’.[[104]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-024) While the Generic Drugs MDL may not be wholly unique, it has previously been less common for states to take the leading role in cartel-related civil litigation, even where states may have started the investigation. The e-Books Litigation discussed above is illustrative of what has been the more traditional dynamic, although that may well be changing. As senior DOJ officials have noted, the e-Books Litigation serves as a ‘remarkable example of effective federal-state cooperation’, where the investigation was opened by the Texas Attorney General’s Office; early investigative work done by the state attorney general offices in Texas and Connecticut enabled the DOJ to get up to speed quickly; one of the best documents in the case was found during a document review by an Arkansas attorney; depositions taken by Texas and Connecticut lawyers were important during trial; and the states’ economist testified at trial, which complemented testimony from the DOJ’s economist.[[105]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-023) Despite the undeniably important role the states played throughout this litigation, the case remained captioned United States v. Apple Inc., and the DOJ took the lead role in establishing liability at trial and prevailing on appeal. One important feature often seen in cartel-related civil litigation (as was seen in the e-Books Litigation and may be seen in the Generic Drugs MDL) is the states’ parens patriae authority. Parens patriae suits are powerful tools in several respects. Unlike private class actions, certain attorneys general are granted ‘statutory authority to sue in parens patriae and need not demonstrate standing through a representative injury nor obtain certification of a class in order to recover on behalf of individuals’.[[106]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-022) Likewise, a state suit in parens patriae can even have a res judicata effect in private litigation.[[107]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-021) For that reason, it is critical for private litigants to be mindful of any parens patriae lawsuits and to engage state enforcers early in the process in order to ensure their cooperation as much as possible. Non-cartel civil conduct cases State attorneys general have also played pivotal roles in recent non-cartel civil conduct cases. Perhaps most notably is certain states’ roles in the American Express anti-steering litigation—an unusual rule of reason case that raised novel issues of relevant market definition. In American Express, the DOJ and 17 states sued Visa, MasterCard, and American Express over each network’s anti-steering rules. Visa and MasterCard settled, but American Express took the case to trial. American Express’ anti-steering rules prohibited merchants who accept American Express cards from ‘steering customers to alternative credit card brands’.[[108]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-020) Led by a DOJ trial team, the DOJ and states prevailed after a month-long trial.[[109]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-019) The district court concluded that ‘[b]y preventing merchants from steering additional charge volume to their least expensive network, for example, the [anti-steering rules] short-circuit the ordinary price-setting mechanism in the network services market by removing the competitive “reward” for networks offering merchants a lower price for acceptance services’.[[110]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-018) American Express, however, appealed the decision and secured a complete reversal of the district court’s judgment; the Second Circuit remanded the case with instructions to enter judgment for American Express.[[111]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-017) At this point, after a change in presidential administrations and after obtaining several extensions of time to file a petition for writ of certiorari, the DOJ dropped out. Led by Ohio, 11 of the original 17 states filed a petition for a writ of certiorari seeking review of the Second Circuit’s decision.[[112]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-016) In an interesting twist, the DOJ then filed a brief opposing review of the Second Circuit’s decision, while nonetheless arguing the decision was incorrect.[[113]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-015) Despite the fact that the DOJ, as the lead plaintiff at trial, affirmatively opposed the grant of certiorari, the United States Supreme Court agreed to review the case. Ohio took the lead at oral argument (although it split oral argument with the DOJ, which rejoined the states’ efforts after certiorari was granted). In a five-to-four decision, the United States Supreme Court affirmed the Second Circuit’s decision, concluding that American Express’ anti-steering rules did not violate the Sherman Act.[[114]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-014) While the scope of the decision is beyond the focus of this chapter, the United States Supreme Court addressed novel issues involving relevant markets for two- or multi-sided platforms and appeared to endorse, for the first time, a structured rule of reason analysis.[[115]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-013) Another high profile non-cartel conduct case brought by a state attorney general is California’s case against Sutter Health (Sutter Health Litigation). Interestingly, this case followed two private class actions: one brought in the California state court and one brought in the federal court.[[116]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-012) In the Sutter Health Litigation, the California Attorney General alleged that Sutter Health ‘unreasonably restrained trade through a variety of anticompetitive [contractual] terms’ that fall into three buckets: all-or-nothing terms, which require health plans that offer services at a Sutter Health hospital or related health care provider to also offer the services at every other Sutter Health hospital or related health care provider;[[117]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-011) anti-incentive terms, which forbid or penalise health plans that use tiered networks or other incentives to incentivise enrollees for choosing a cheaper competing hospital or provider over a more expensive one;[[118]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-010) and price-secrecy terms, which prohibit health plans from disclosing the prices that Sutter Health negotiated for services offered through the health plan.[[119]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-009) Based on these contractual terms, the California State Attorney alleged three violations of California’s antitrust statute, the Cartwright Act. The first cause of action was for price tampering, the second for tying and the third for conspiracy to monopolise. The court denied Sutter Health’s motion for summary judgment,[[120]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-008) and subsequently held that, with one potential exception, the state’s claims would be adjudicated under the rule of reason.[[121]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-007) On the eve of trial, Sutter Health settled the actions brought by the California State Attorney General and private plaintiffs, agreeing to pay $575 million to resolve the class damages claims and agreeing to ‘comprehensive injunctive relief that will enjoin . . . Sutter’s alleged restrictions on the ability of health plans to steer patients away from higher cost providers’.[[122]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-006) The terms of the settlement will in many ways determine the importance and impact of the Sutter Health Litigation but commentators have already noted that this litigation represents a ‘landmark case’, as it ‘is really important for other big health systems and is a clear signal that the state enforcers are looking out for [the challenged business practices] and recognising this as anticompetitive behavior’.[[123]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-005) If nothing else, ‘it reflects a potential expansion of antitrust enforcement from state attorneys general where federal enforcers may be reluctant to intervene.’[[124]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-004) Commentators have also noted that the private plaintiffs received a significant lift when the California Attorney General decided to join the litigation and adopt their theories of harm because it gave ‘them more weight than they might otherwise have if brought solely by private plaintiffs’.[[125]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-003) Merger litigation Traditionally, it has been the federal government that has taken the lead on challenging mergers through litigation. But recently, the states have shown that they are willing to independently challenge high-profile mergers even where federal enforcers have opted not to so. The most notable example by far is the 2019 lawsuit filed by numerous state attorneys generals that unsuccessfully sought to block the merger of T-Mobile and Sprint. Led by New York, these states filed their lawsuit before the DOJ made its enforcement decision. Moreover, the states continued pressed forward with their lawsuit even after the DOJ and Federal Communications Commission negotiated settlements with the companies that included certain structural and behavioural relief. As commentators have observed, there does not appear to have ever been another ‘situation where state antitrust enforcers went to court to challenge a merger without waiting for a decision by their federal counterparts’, or where ‘states tr[ied] to stop a telecommunications merger approved by both the [DOJ] and [FCC]’.[[126]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-002) This state enforcement action was made all the more remarkable by the fact that the states proceeded to try the case to judgment even in the face of the DOJ’s active opposition, which, as noted above, included the DOJ’s efforts to disqualify the states’ retained private counsel as well as the DOJ’s filing of court submissions opposing the states’ requested injunction. There have been other lower profile, but still significant, instances of states independently flexing their enforcement muscle as well. Notably, states have shown a willingness to seek more aggressive remedies to protect their citizens where the federal government fails to do so. As mentioned above, when Optum sought to acquire DaVita Medical Group, the FTC declined to seek any Colorado-related remedies. The Colorado Attorney General, however, took independent action by filing a complaint under the Colorado Antitrust Act with a consent judgment that sought additional protections in Colorado, namely, precluding UnitedHealth Group (Optum’s parent) from enforcing certain exclusivity provisions and from entering into new agreements with certain exclusivity provisions, and keeping in place agreements between DaVita Medical Group and other health plans.[[127]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-001) In seeking this additional remedy, the Colorado Attorney General stated: ‘Traditionally, state attorney general offices have taken a back seat to the federal government in protecting consumers. . . . Today’s action is a path-marking step that demonstrates Colorado’s commitment to protecting consumers from anti-competitive mergers or other harmful actions.’[[128]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-000) Overall, merging parties should not neglect state enforcers in attempting to gain approval for a transaction, even if it appears that federal approval is likely. As the above examples show, states are willing to depart from their federal enforcement partners if they believe their citizens’ interests and state economies will be harmed by a merger.

#### **Second, the perm tanks solvency—ruins enforcement and gets struck down**

Weiser, 20

(Philip J., Colorado Attorney General; Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, "The Enduring Promise of Antitrust." Loyola University Chicago Law Journal, vol. 52, no. 1, Fall 2020, p. 1-14. HeinOnline.)\\JM

Unfortunately, federal antitrust authorities don't always show respect for state antitrust enforcement. In late 2019, for example, the Department of Justice (DOJ) filed a brief taking an unfortunate and unjustified position in the Sprint/T-Mobile merger.1 3 In particular, the DOJ asserted in its brief that the states' "[quasi-sovereign] role does not permit states to override the sovereign interests of the United States." 14 In essence, the DOJ argued that the DOJ itself is the supreme arbiter of antitrust law. On the DOJ's view, once it takes a position on a matter, the states are foreclosed from any enforcement that would be contrary to the selected path of the federal agency.' 5 That view runs contrary to what Congress intended in framing broad enforcement of the antitrust laws that recognizes the critical role of the states. 16 Because this position would upend forty-five years of antitrust practice and jurisprudence, the litigating states properly responded that the "[s]tates are independent enforcers of the antitrust laws, and it is the role of the Court-not any federal agency-to decide the lawfulness of the merger."17 The DOJ's flawed argument in the T-Mobile case was based on the dissenting opinion in Georgia v. Pennsylvania Railroad Co. 18 Notably, the majority in that case held that states are authorized to seek injunctive relief under the antitrust laws. Moreover, the DOJ's suggestion-that the DOJ and FCC (Federal Communications Commission) merger review in the T-Mobile case is exclusive and preclusive-contradicts Congress' empowerment of state AGs and is a dangerous idea as well. Under the DOJ's theory, if a federal antitrust agency approves a merger, antitrust enforcement against the merger would be precluded as long as the merger was subject to review and approval by the federal agency. That would diminish antitrust enforcement and would, in effect, permit the federal antitrust agencies to extinguish the rights of states and private parties to enforce and seek remedies for harm caused by violations of antitrust laws. The DOJ's rationale in the T-Mobile case would also justify exempting transactions from antitrust review because a federal regulatory agency approved such a matter. Notably, the DOJ invoked the FCC's regulatory action in that case as a basis for stripping states of authority to challenge the merger. This is a dangerous claim and goes flatly against federal merger law, which has consistently refused to reject antitrust claims for non-antitrust reasons since the Supreme Court's 1963 decision in Philadelphia National Bank.19

#### There are about a thousand examples of states doing and influencing foreign policy AND on top of all of that, even if they get preempted, the states will just ignore the federal government and do it anyway—the Constitution is a dead document and no one cares about it anymore

Engstrom, 18

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When President Donald Trump announced his decision to withdraw the United States from the Paris agreement on climate change, the response from local and state officials was swift. The mayors of 61 U.S. cities quickly released an open letter promising to meet the commitments agreed to under the Paris framework. Twelve states and Puerto Rico announced the formation of the United States Climate Alliance, a coalition of state governments committed to upholding the Paris agreement. And Michael Bloomberg, the U.N. special envoy for cities and climate change, submitted to the U.N. a joint statement signed by more than one thousand business leaders, mayors, governors, and others prepared to quantify the emissions reductions that can be achieved in the United States without the federal government’s help. Entitled, “We are Still In,” the letter symbolizes an important phenomenon in U.S. foreign policy, one that is taking off in the age of Trump—the rise of assertive states and cities ready to act on their own on the international stage. Leading the pack is California, led by Governor Jerry Brown who is in the home stretch of his more than forty years in public life. Even as President Trump spoke in the Rose Garden in June 2017, Brown was on his way to China, where a formal meeting with President Xi Jinping in the Great Hall of the People—an honor typically reserved for visiting Heads of State—signaled a budding partnership between California and China to battle carbon emissions. Brown eagerly positioned California at the forefront of global efforts to confront climate change, just as China seemed poised to assume the leadership role abandoned by President Trump. But this was not just symbolism, and it was only the most recent chapter in California’s international climate policy. While the state’s far-reaching fuel economy standards get the lion’s share of attention, more than 170 jurisdictions, including Canada and Mexico, have embraced Brown’s Under 2 Coalition—a nonbinding, global agreement launched in 2015, before the Paris agreement, that commits signatories to reduce their emissions to net-zero by 2050. Collectively, the signatories represent nearly 40 percent of the global economy.1 Because California prides itself on its global reach, the idea of a distinctively Californian foreign policy has been kicking around for a while. Governor Arnold Schwarzenegger famously celebrated the state as the modern-day equivalent of Athens and Sparta in 2007, a “nation state” by virtue of its economic strength, population, and technological force.2 Indeed, California is the world’s sixth largest economy— larger than France or Brazil. Its 40 million residents make it the most populous state in the United States. And between Silicon Valley and Hollywood, California has almost unrivaled capability in terms of technological leadership and cultural influence. By virtually any measure, California would be a global powerhouse except for two fundamental constraints: it lacks many of the legal attributes and policy instruments of a nation-state, and the U.S. Constitution expressly reserves for the federal government responsibility for the conduct of foreign affairs. As a result, until recently, the enthusiasm for a Californian foreign policy far exceeded the reality. Before its climate leadership, California’s foreign policy looked pretty parochial and a lot like any other state or province with a focus on export promotion, trade, and foreign investment. Though some legal constraints remain, the Trump presidency has spurred, and will likely continue to galvanize, a range of new efforts by California—and other states and municipalities—to test the legal limits of federal power in foreign affairs. Californians are proud that their commitments to diversity, the environment, and human rights set them apart from what they see emanating from Washington D.C., while California’s politicians will undoubtedly see the value in resisting Trump administration policies and distinguishing California from the United States as an actor in global politics. Among others, an ambitious governor—one who already ran for president three times—is seemingly prepared to see just how far California can get. Whether these efforts succeed will depend, in part, on how much latitude the courts ultimately grant to the states. Historically, the answer has been not much. But these new state initiatives may be emerging at just the right time. In the midst of a long-running transformation in how foreign affairs are conducted and an evolution in legal thinking about federalism’s boundaries, the time to challenge federal foreign affairs powers may have finally arrived. Subfederal actors are building a legal case and infrastructure for their expanded role, while pressing forward on climate, human rights, and immigration. While the federal government could rely on the judiciary to referee this contest in an episodic fashion, the pace of expanded state and municipal activism is unlikely to slow. National policymakers would be wise to wake up to this new set of practices and think strategically about how to harness the opportunities while mitigating the risks. Erosion of the Unitary State It used to be the case that foreign policy was considered the sole province of diplomats and soldiers—agents of a national government pursuing its interests on the international stage. To understand foreign policy, one needed only to understand the power and interests of competing nation-states. National governments were seen to act as coherent units, making decisions that served the national interest and contending with one another to accumulate greater power and influence. This state-centric view of world affairs originated with the Peace of Westphalia in 1648, and is still taught to undergraduates as a first approximation of how international relations operate. For better or worse, it is also how our Constitution conceptualizes the appropriate roles of national and state governments in the conduct of foreign affairs. But this perspective was never fully compelling as an empirical matter. It missed the diverse interests and competing power centers of the federal government. Cabinet agencies, Congress, the military, and the courts all shape how national interests are defined and what instruments are used to pursue them. It overlooked the network of domestic actors outside of government—corporations, non-governmental organizations, unions, religious institutions, unaffiliated billionaires, and others—that seek to influence the foreign policy priorities of the United States, shape the international environment in which foreign policy is conducted, and impact domestic politics in other countries directly, often acting autonomously in pursuit of their own interests. And it ignored the growing web of transnational governmental relations: networks of government officials (including policymakers, regulators, and enforcement agencies) that operate across borders to cooperate on issues as diverse as banking, transnational crime, corruption, taxation, and immigration, often without explicit direction from the president. Over time, these realities have brought significant changes to the architecture of U.S. foreign policy. The emergence and growth of the National Security Council since the passage of the National Security Act of 1947 reflects a recognition that the management and coordination of competing power centers in the executive branch is key to articulating and implementing a coherent foreign policy. The proliferation of informal mechanisms for consultation, formal advisory committees, and public-private partnerships signal how seriously policymakers take the task of understanding, influencing, and channeling the attention and resources of non-governmental actors including NGOs, corporations, and philanthropies. Whereas it used to be the case that international diplomacy was conducted through the State Department, using a professional corps of trained diplomats, now almost every federal agency—from the Department of Agriculture to Health and Human Services and the Environmental Protection Agency—has its own office of international affairs, facilitating the kind of expert-led, transnational cooperation that is key to addressing global problems. The dispersal and fracturing of the international relations function across government has, no doubt, made life more difficult for State Department diplomats, and it has fundamentally challenged the notion of a single and unified U.S. government operating with a clear and coherent mandate. The foreign policy activism of states and cities fits quite naturally in this increasingly complex network of actors that influence and make foreign policy. In one sense, they are like any other pressure group in the political system. In the bargaining process to determine U.S. foreign policy, states and cities can make their voice heard by advocating directly to senior policymakers in the executive branch, influencing elected officials in Congress, or leveraging their relationships with federal agencies. But states and cities differ in important ways as well. In particular, governors and mayors are elected representatives of a geographic constituency with a mandate to advance that state’s or region’s particular interests. When those interests are poorly served by the federal government’s foreign policy, the pressure to act in ways that challenge the federal government’s preeminence can be irresistible. Examples abound. In the 1970s and 1980s, hundreds of cities and states declared themselves nuclear-free zones to keep nuclear weapons production-related materials out of their jurisdictions during the Cold War. Today’s resistance to federal immigration law has its roots in the “sanctuary” movement of the 1980s, when Wisconsin and a number of cities, including Berkeley—spurred by religious congregations—committed to provide safe-haven to refugees fleeing conflicts in Central America. When the Reagan administration was embracing “constructive engagement” with South Africa’s apartheid regime in the 1980s, states and municipalities played a significant role in advancing the sanctions movement, prohibiting engagement with businesses investing in South Africa.

#### **This is explicit in law—Congress has clearly stated that the federal government does not have the authority to stop the states from going further than the feds on antitrust law**

Weiser, 20

(Philip J., Colorado Attorney General; Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, "The Enduring Promise of Antitrust." Loyola University Chicago Law Journal, vol. 52, no. 1, Fall 2020, p. 1-14. HeinOnline.)\\JM

I. THE ROLE OF THE STATES IN ANTITRUST ENFORCEMENT During the 1970s, Congress began to develop a range of "cooperative federalism" regulatory programs. Under such programs, Congress authorizes state enforcement of federal law and generally calls on the federal government to set a floor for enforcement. In so doing, it generally provides states with additional authority to tailor standards as well as pick up any slack in enforcement. By instituting such a model, Congress adopted a hedging strategy-ensuring a base level of uniformity, allowing for appropriate experimentation, and building in the opportunity to pick up the slack as to any underenforcement at the federal level. 2 The environmental laws provide the classic example of cooperative federalism in action, with the Clean Air Act being a clear case in point. 3 Under the Clean Air Act's model, the Environmental Protection Agency (EPA) authorizes state agencies to address air pollution using a variety of tools, provided that they ensure a basic level of air quality. Where state agencies decide to go above the level specified by the EPA, they are permitted to do so. 4 Following this precedent, both telecommunications regulation and health care policy later adopted a cooperative federalism architecture, blending state and federal authority and calling on state agencies to develop and enforce federal regulatory standards. Antitrust law operates in a functionally similar manner to other cooperative federalism regimes. In 1976, by adopting the Hart-Scott-Rodino Antitrust Improvements Act, Congress embraced the ability of state AGs to enforce federal antitrust law on behalf of their states, using what is called "parens patriae" authority.5 The theory of this delegation of authority, like other cooperative federalism programs, is twofold: (1) states may be better positioned to know of competitive issues in their jurisdictions; and (2) states may have a greater willingness to take action and have the ability to collect damages on behalf of their citizens, thereby further advancing the goals of antitrust law. As the Supreme Court stated, the role of states in antitrust enforcement "was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition." 6 One of the questions inherent in a cooperative federalism framework is whether the federal government has the authority to prevent states from going further than the federal government where, in their view, local conditions warrant. In the environmental arena, the EPA has the authority to ensure a minimum level of enforcement, but not to prevent states from taking additional action. In the antitrust arena, the situation is similar: the federal government can take action to ensure a basic level of enforcement, but it does not have the power to prevent states from going further-under federal or state law-to stop anticompetitive conduct.7 For an example of parallel federal and state action, consider the Microsoft case. 8 In that case, the federal government ultimately decided-after a remand on the remedies issue by the Circuit Court of Appeals of the District of Columbia-on a regulatory remedy and declined to pursue structural relief. A number of states that were part of this litigation took a different view and proceeded to challenge the absence of divestiture. As this case was litigated and ultimately decided, it was accepted that the states have the requisite authority to pursue a different view from the federal government if they choose to do so. 9 The opposite approach-empowering the federal government to bar states from antitrust enforcement whenever it so chooses-would undermine the architecture of cooperative federalism. Such an approach would also hurt consumers in states where state AGs pick up the slack in federal enforcement by bringing additional resources to bear and by applying their local expertise. Consider, for example, the case of a recent merger in Colorado Springs between DaVita's clinical network and UnitedHealth Group's Medicare Advantage insurance product.10 In this case, UnitedHealth consummated the merger after its market share declined from around 75% to around 50% as a result of the emergence of a disruptive entrant, Humana. Humana emerged as a rival after building its relationship with DaVita's clinics, which referred patients to Humana's Medicare Advantage offering. In the wake of the merger, however, Humana faced the prospect of losing access to referrals for its Medicare Advantage product from patients at DaVita's clinics. The Federal Trade Commission (FTC) reviewed the UnitedHealth/DaVita merger and declined to take action in the Colorado Springs market. 1 In Colorado, however, the Attorney General's office was concerned about the prospect of UnitedHealth using control over DaVita's clinics to reestablish its dominant position in the Medicare Advantage market-thereby leading to higher prices, less choice, and lower quality offerings to patients. By taking action in this case, separate and apart from the FTC, we were able to protect Colorado consumers. And rather than protest our action, the FTC respected our authority. Indeed, two commissioners wrote separately to highlight the valuable role state AGs play in enforcing antitrust law.12 Unfortunately, federal antitrust authorities don't always show respect for state antitrust enforcement. In late 2019, for example, the Department of Justice (DOJ) filed a brief taking an unfortunate and unjustified position in the Sprint/T-Mobile merger.1 3 In particular, the DOJ asserted in its brief that the states' "[quasi-sovereign] role does not permit states to override the sovereign interests of the United States." 14 In essence, the DOJ argued that the DOJ itself is the supreme arbiter of antitrust law. On the DOJ's view, once it takes a position on a matter, the states are foreclosed from any enforcement that would be contrary to the selected path of the federal agency.' 5 That view runs contrary to what Congress intended in framing broad enforcement of the antitrust laws that recognizes the critical role of the states. 16 Because this position would upend forty-five years of antitrust practice and jurisprudence, the litigating states properly responded that the "[s]tates are independent enforcers of the antitrust laws, and it is the role of the Court-not any federal agency-to decide the lawfulness of the merger."17 The DOJ's flawed argument in the T-Mobile case was based on the dissenting opinion in Georgia v. Pennsylvania Railroad Co. 18 Notably, the majority in that case held that states are authorized to seek injunctive relief under the antitrust laws. Moreover, the DOJ's suggestion-that the DOJ and FCC (Federal Communications Commission) merger review in the T-Mobile case is exclusive and preclusive-contradicts Congress' empowerment of state AGs and is a dangerous idea as well. Under the DOJ's theory, if a federal antitrust agency approves a merger, antitrust enforcement against the merger would be precluded as long as the merger was subject to review and approval by the federal agency. That would diminish antitrust enforcement and would, in effect, permit the federal antitrust agencies to extinguish the rights of states and private parties to enforce and seek remedies for harm caused by violations of antitrust laws. The DOJ's rationale in the T-Mobile case would also justify exempting transactions from antitrust review because a federal regulatory agency approved such a matter. Notably, the DOJ invoked the FCC's regulatory action in that case as a basis for stripping states of authority to challenge the merger. This is a dangerous claim and goes flatly against federal merger law, which has consistently refused to reject antitrust claims for non-antitrust reasons since the Supreme Court's 1963 decision in Philadelphia National Bank.19 In a later speech, DOJ Antitrust Division Chief Makan Delrahim defended the DOJ's position. 20 He argued that allowing states to bring antitrust actions of their own "creates the risk that a small subset of states, or even perhaps just one, could undermine beneficial transactions and settlements nationwide." 2 1 Moreover, he suggested that states should not be authorized to seek any "relief that is incompatible with relief secured by the federal government." 22 This concept of federal supremacy is incorrect and ignores the fact that states can enforce the federal antitrust laws only by bringing cases in federal court. If states advance claims that are unfounded and would undermine procompetitive mergers, the courts will reject them. And the courts can, of course, take into account any action or decision by the federal antitrust agencies in assessing a state's claims, just as the Court in Philadelphia National Bank took into account the actions of federal bank regulatory agencies. 23 But there is no basis in the statutes, the cases, or sound policy for a decision by a federal agency to preclude the states from exercising their rights under the antitrust laws by asking a federal court to prevent or provide remedies for a violation of those laws. Although the court ruled against the states in the T-Mobile case, Judge Marrero declined to adopt Delrahim's proposed limit on the states' role. Rather than reject the states' authority to bring the action, the court evaluated the case on the merits, noting that the views of federal regulators can be informative, but are not conclusive. 24 To be sure, the presence of a remedy-a fix to the harm occasioned by the merger, as it were-is a fact of life that the litigating states and the court rightly had to address. Similarly, the DOJ would also need to "litigate the fix" if another federal regulatory agency (say, the FCC) adopted a remedy in the face of a DOJ merger challenge. But to face challenges in litigation is a far cry from being barred from the courtroom. In short, the states are partners in antitrust enforcement, reflecting the cooperative federalism architecture adopted by Congress. In effect, Congress has empowered states to act as a check on federal enforcement, or, more precisely, on instances of federal underenforcement; as such, it declined to allow federal inaction or preference for particular remedies to remove the states from antitrust enforcement. In this sense, the central question is not-as the DOJ suggests-whether states might "displace the federal government's role as the nation's federal antitrust enforcer," 25 but rather whether states are positioned to pick up any slack and ensure that important issues are raised before the courts, whether or not the federal agencies are inclined or able to do so.26

#### The author of the Sherman act and Supreme Court agree

Dekeyser, 09

(Kris, Director "Policy and Strategy" at the European Commission’s Directorate General for Competition “Coordination among National Antitrust Agencies,” 10 Sedona Conf. J. 43 Lexis NL)

C. Cooperation Between Federal And State Antitrust Authorities All 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands, have passed antitrust laws that largely track the Sherman Act and the Clayton Act. In fact, the 1890 enactment of the Sherman Act occurred after 26 states had already put in place some form of antitrust prohibition, and the principal author of the Sherman Act himself stated that the federal statute was to "supplement the enforcement" of state law. During the Reagan administration, many states perceived federal antitrust efforts as lacking and accordingly became more active in enforcing both federal and state law. Today, state antitrust authorities coordinate more closely with federal authorities in the investigation and prosecution of anticompetitive conduct. 1. Background A majority of states have laws similar, many almost identical, to Sections 1 and 2 of the Sherman Act, and less frequently, laws similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. Many states' competition laws specifically require deference of varying degree to federal precedent, i.e., "harmonization statutes. In states where no harmonization statute exists, state courts generally follow federal caselaw. While some state courts have extended their jurisdiction's competition laws to interstate commerce, some states have used comity to curtail the extraterritorial reach of state law. The United States Supreme Court has held that state antitrust laws are not preempted by either the Commerce Clause or the Supremacy Clause of the US Constitution. In addition to state laws, states can bring suit under federal antitrust statutes. The H-S-R Act included provisions that ordered the DOJ to provide investigative information to state attorneys general and allowed state attorneys general to sue under the Sherman Act with parens patria actions in the name of state residents for treble damages. In addition, a state may bring suit as an injured purchaser on its own behalf under Section 4 of the Clayton Act, and a state can seek injunctive relief under Section 16 of the Clayton Act for harms to the state's economy. In 1983, the National Association of Attorneys General ("NAAG") created the Multistate Antitrust Task Force. In 1989, NAAG formed the Executive Working Group on Antitrust to coordinate federal and state enforcement efforts. A majority of states have joined the Voluntary Pre-Merger Disclosure Compact, which "encourages merging firms to submit pre-merger filings to the member states in return for an agreement by the states to forgo the issuance of individual state subpoenas and to obtain documents through the same process used by the relevant federal antitrust agency. Consultation, coordination, and cooperation between federal and state antitrust authorities can take on a variety of forms. For example, in criminal investigations, the DOJ and state antitrust authorities agreed to a cross-deputization program in which state attorneys generals could be appointed to assist in the prosecution of federal criminal antitrust cases. As another example, the NAAG Executive Working Group holds monthly teleconferences with federal authorities. In the past, the DOJ held Common Ground Conferences with state attorneys general to discuss coordination of state and federal antitrust enforcement. 2. Coordination Protocols In 1998, the DOJ, FTC, and NAAG adopted the Protocol for Coordination in Merger Investigations Between the Federal Enforcement Agencies and State Attorneys General ("Merger Protocol"). In 1996, the DOJ and NAAG adopted the Protocol for Increased State Prosecution of Criminal Antitrust Offenses ("State Prosecution Protocol"). Together, the Merger Protocol and the State Prosecution Protocol represent the two most important examples of the formal coordination between federal and state antitrust enforcement authorities. The Merger Protocol helps define the areas ripe for coordination in the merger review process. For example, to avoid subpoenas from multiple state enforcement agencies, the Merger Protocol specifies that the federal agency investigating the proposed merger will share H-S-R filing documents with the state authorities with the consent of the merging parties. Further, the Merger Protocol encourages the reviewing authorities to hold a teleconference early in the process to coordinate the collection of evidence and the hiring of experts. The Merger Protocol also urges federal and state authorities to work closely with each other during settlement negotiations, and if possible, hold joint settlement talks. The State Prosecution Protocol provides a mechanism for the DOJ to hand off criminal investigations to a state attorney general when the alleged anticompetitive conduct, usually bid-rigging or price fixing, only affects local concerns. The State Prosecution Protocol imposes two criteria: first, the state attorney general must have the legal and personnel resources to undertake the criminal prosecution, and second, the state attorney general is willing to undertake the criminal prosecution. If the attorney general satisfies those requirements, the DOJ will transfer all evidence related to the investigation. 3. Conflicts Between Federal and State Laws and Jurisprudence In Illinois Brick Co. v. Illinois, the Supreme Court closed the door on the recovery of damages for indirect purchasers harmed by Section 1 of the Sherman Act. Before and after the Court's 1977 decision in Illinois Brick, more than 25 states enacted laws, sometimes called "Illinois Brick repealers," that specifically permit recovery for indirect purchasers for violations of state antitrust laws. The Supreme Court ruled that these laws were not preempted by federal law in its seminal decision in California v. ARC America Corp. In that case, the state attorneys general of Alabama, Arizona, California, and Minnesota brought suit against ARC America under Section 4 of the Clayton Act as indirect purchasers who fell victim to a price fixing conspiracy in violation of Section 1 of the Sherman Act. The states also alleged violations of their state antitrust laws. In approving a settlement agreement, the District Court denied relief of the states' indirect purchaser statutes because it found that those laws were preempted by federal law, and the Ninth Circuit affirmed. The Supreme Court, however, found that the state indirect purchaser statutes are not preempted: [T]he Court of Appeals erred in holding that the state indirect purchaser statutes are pre-empted. There is no claim that the federal antitrust laws expressly pre-empt state laws permitting indirect purchaser recovery. [. . .] Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies.

#### Uniformity solves—the feds only intervene to check outlier laws but the CP establishes critical mass for antitrust reform which means the feds won’t intervene

Magnuson, 20

(William Magnuson, Associate Professor, Texas A&M University School of Law; J.D., Harvard Law School; M.A., UniversitA di Padova; A.B., Princeton University, “The Race to the Middle,” Notre Dame Law Review [Vol. 95:3] 2020 NL)

The final factor that drives states toward a race to the middle is the risk of federal intervention. 15 3 The observation here is a simple one: it is more likely that the national government will act to strike down a state's regulation if that regulation is an outlier. If, on the other hand, the state's regulation is well within the norms of behavior of other states, the national government will be less likely to intervene. To the extent that states seek to prevent the national government from stepping in to challenge or preempt their laws, they will have an interest in adopting regulations that look similar to those of their peers, rather than distinguishing themselves from the crowd. 154 Federal intervention may take a number of forms. First, and most formally, it may come in the form of congressional action: Congress may pass laws to prohibit states from enacting regulations with certain content.' 55 In some cases, Congress may be quite specific in the types of laws they are targeting. For example, when several states passed burdensome laws concerning trucking and shipping operations in their states, laws that made it more difficult for new entrants to compete with incumbent trucking companies, Congress stepped in to prohibit the practice, enacting in 1995 a law that prohibited stating from enacting or enforcing any "law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.' "156 Second, it may come in the form of actions by regulatory bodies or federal prosecutors seeking to challenge the state law as contrary to federal or constitutional law. A recent example of this kind of federal intervention has been seen in the debate around so-called "sanctuary cities," or cities that seek to protect immigrants from deportation under federal law.' 57 After President Trump took office in 2017, he issued an executive order for the Secretary of Homeland Security to prioritize deportation and to ensure that "sanctuary jurisdictions" that refuse to comply with their orders are held ineligible for federal grants. 158 Outlier states found that federal intervention could prove a powerful tool to thwart their legislative priorities. Whatever its form, federal intervention in state regulation is more likely in the case of states with regulations that are viewed as outliers, or more extreme than the regulations of the majority of states. This is so for a number of reasons. First, outlier states are more likely to garner public attention and, thus, become the subject of politically motivated action. If a state adopts a law that looks quite similar to laws in other jurisdictions, it is less likely to gain political attention and salience. On the other hand, if a state adopts a law that goes much further than other states, either in pandering to powerful interests (in the case of races to the bottom) or in creating more efficient solutions to long-term problems (in the case of races to the top), the law is more likely to become a hot-button issue in public discussion.1 59 Second, outlier states are more likely to have regulations that lead to extreme results that create demand for a federal response. State regulations that strongly favor the interests of one group over another can be expected to mobilize burdened groups to react, either by lobbying the state government to change its law or, if those efforts are ineffectual, by appealing to the federal government. 160 But regulations that simply copy the regulations in place in other jurisdictions can be expected to have more moderate effects on the interests of stakeholder groups and, thus, should generate fewer demands for intervention from the federal government. 161

#### Even if they do try to preempt, dozens of cases have been decided in favor of the states over the feds so it won’t be successful AND the states can just ignore the ruling and block mergers anyways so the CP still solves the aff

Grosso, 21

(Jacob P Grosso, J.D. Candidate, 2021, University of Richmond School of Law. B.A., 2018, George Mason University., The Preemption of Collective State Antitrust Enforcement in Telecommunications,” 55 U. RICH. L. REV. 615 (2021) NL)

While states may differ with respect to their enforcement policies, previous collective state action has led to several disagreements with federal enforcement decisions. In 1994, the DOJ and several states filed suit against Microsoft in the United States District Court for the District of Columbia, alleging violations of Sections 1 and 2 of the Sherman Act. 159 In the end, multiple states disagreed with the settlement forged by the federal enforcement agency.160 Nine states joined the DOJ settlement, while nine other states proposed substantially different remedies. 161 The dissenting states demanded concessions beyond the scope of the federal settlement, including forcing Microsoft to license significant intellectual property cheaply and to change the company's product offerings.16 2 Here, the states undercut a federally engineered settlement, resulting in delays to the suit and continued argument over the appropriate remedy.1 63 The undercutting of the Microsoft settlement is comparable to the T-Mobile-Sprint merger, where the DOJ and FCC negotiated for divestitures to ensure the national goals of both agencies were satisfied, but still faced pushback from a group of states. If the states and federal enforcers do not agree on the terms of a settlement, the states become a complication to the adjudication process. 164 The inability to rely upon a negotiated settlement agreement also creates uncertainty for merger parties. In 2015, during the AT&T-Time Warner merger, twenty states investigated; none joined DOJ's action. 165 The DOJ had filed suit to block the vertical merger, alleging violations of Section 7 of the Clayton Act.166 Nine states filed amicus briefs opposing the DOJ's suit.167 The DOJ eventually lost the appeal, and the merger proceeded. 168 Instead of a national industry facing a unified enforcement front, the enforcement efforts became fragmented and contradictory. The divergence in enforcement policies showed the competing interests at issue for each enforcer. This split is also apparent in the divergence between the states opposing the T-MobileSprint merger and the DOJ, FCC, and states supporting it.

#### Second, Congress doesn’t have to pass anything from the CP so even if feds get involved it’s not hostile

Bulman-Pozen 16 (Jessica, Associate Professor, Columbia Law School, EXECUTIVE FEDERALISM COMES TO AMERICA, 102 Va. L. Rev. 953, June, lexis)

Compared to legislative processes, executive federalism has several advantages in fostering negotiation across the political spectrum. First, as differentiated integration underscores, negotiations may be bilateral or partially multilateral. Instead of a need for a grand compromise that satisfies an aggregate national body, executive federalism may unfold through many smaller compromises that satisfy disaggregated political actors. n209 The sum total of these negotiations shapes national policy, but no one negotiation does. This disaggregated quality can reduce the partisan temperature and bring intraparty difference to the fore. Second, because it tends to arise in the process of implementing national policy over a period of time, state-federal bargaining involves iterated interactions over both bigger-picture issues and smaller details. Such implementation is policymaking, not mere transmission of preexisting instructions, but it is more concrete than lawmaking, and partisan dogmas may be unsettled as new issues arise in the implementation process. Third, federal and state executives tend to be differently situated with respect to particular programs: The states may rely on the federal executive for funding as the federal executive relies on the states to achieve its policy goals; or the states may rely on federal cooperation to achieve their policy goals as the federal government relies on the states for political capital. [\*1003] Such mutual reliance, but varied responsibilities and interests, may create more paths to, and incentives for, compromise. Finally, executive negotiations may transpire in greater secrecy than legislative deliberations that occur in the sunshine. Consider, for instance, how executive federalism has been remaking national healthcare law, with state-federal negotiations about insurance exchanges and the Medicaid expansion opening new routes to bipartisan compromise. n210 Such compromises are mostly arising from discrete interactions among particular state and federal executives, and they seize on finer-grained questions to begin to find common ground, or at least mutual acquiescence, amid sharp polarization. For instance, in negotiations around the creation of insurance exchanges, HHS repeatedly extended filing deadlines partly in response to requests from Republican governors; it allowed Utah to operate a separate small business exchange that the state cast as more "market-based" than HHS's understanding of the Act, which required "a more government-centric" approach resulting in "less choice and more reliance on public programs"; and it developed alternative forms of partnership exchanges that created ongoing working relationships between federal officials and Republican state officials. n211 Today, Arkansas, Kansas, Nebraska, Ohio, and South Dakota, among other red states, have agreed to coordinate with the federal executive. n212 Although HHS has decisive legal authority with respect to such exchanges, it also has a strong practical and political need for state assistance. Negotiations over the concrete particulars of exchange design have allowed Republican state officials to achieve significant concessions, as Democratic federal officials get more buy-in for the program.

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## Infrastructure

#### Solves grid collapse – immediate action is key to mitigate growing risks – their Pollett ev doesn’t assume new China risks

PPG 3/2/21 [Pittsburgh Post-Gazette Editorial Board. Invest in infrastructure. March 4, 2021. https://www.post-gazette.com/opinion/editorials/2021/03/05/Invest-in-infrastructure/stories/202102270028]

Now is the time for a reckoning, a realization: While it’s important to study the past to avoid repeating the same mistakes, the country must also look to its future and see the obvious — that America’s infrastructure as a whole needs some serious upkeep.

Democrats and Republicans alike have flirted with the idea of a sweeping infrastructure bill in recent years, and President Joe Biden’s team is working to outline such legislation. These efforts should proceed swiftly — now is the time for Congress to invest in infrastructure, not only to help prevent crises, but also to jump-start an economy mired in the coronavirus pandemic.

Despite being one of the richest countries in the world, the U.S. seems constantly to hover on the edge of disaster, with news of natural forces smashing through power grids and levies and fire prevention strategies on a yearly or monthly basis. Texas is only the most recent state to have been pushed over the edge.

The American Society of Civil Engineers just this week gave America’s infrastructure an overall grade of C-minus in its quadrennial report card. The last grade was D-plus and that report cited decades of underfunding and unheeded recommendations. C-minus is an improvement but deserves not just federal attention but actual intervention. The report notes “we are heading in the right direction, but a lot of work remains.”

There is opportunity in the recent economic and environmental devastation that grabs headlines and breaks hearts. In the aftermath of the Great Depression, the government put millions to work improving parks and building roads and bridges and airports. President Dwight Eisenhower’s interstate highway system remains the life veins of interstate travel.

A new and vigorous infrastructure package for America would fix what needs to be fixed and offer the promise of an economic boon.

The purpose of the federal government is to address the needs of American society in a way that can’t be tackled by states in a piecemeal fashion. What has happened in recent days within The Lone Star State demonstrates keenly that this is the time — actually past the time — that our federal leaders must shore up the foundations of our federation. Congress should act swiftly to lead states in reversing the entropy chewing away at America’s foundations. Until this happens, society stands on shifting sands.

#### Blackouts cause societal collapse and extinction.

Rees 18 (Martin John Rees, Baron Rees of Ludlow, Kt, OM, FRS, FREng, FMedSci, FRAS is a British cosmologist and astrophysicist.; “On the Future: Prospects for Humanity”; pg. 108-109; October 16, 2018)//eleanor

Our world increasingly depends on elaborate net- works: electricity power grids, air traffic control, international finance, globally dispersed manu- facturing, and so forth. Unless these networks are highly resilient, their benefits could be outweighed by catastrophic (albeit rare) breakdowns—real- world analogues of what happened in the 2008 global financial crisis. Cities would be paralysed without electricity—the lights would go out, but that would be far from the most serious consequence. Within a few days our cities would be uninhabitable and an- archic. Air travel can spread a pandemic worldwide within days, wreaking havoc on the disorganised megacities of the developing world. And social media can spread panic and rumour, and economic contagion, literally at the speed of light. When we realise the power of biotech, robot- ics, cybertechnology, and AI—and, still more, their potential in the coming decades—we can’t avoid anxieties about how this empowerment could be misused. The historical record reveals episodes when ‘civilisations’ have crumbled and even been extinguished. Our world is so interconnected it’s unlikely a catastrophe could hit any region without its consequences cascading globally. For the first time, we need to contemplate a collapse—societal or ecological—that would be a truly global setback to civilisation. The setback could be temporary. On the other hand, it could be so devastating (and could have entailed so much environmental or genetic deg- radation) that the survivors could never regenerate a civilisation at the present level.

#### Civilizational collapse and extinction.

Friedemann 16 (Alice Friedemann is the founder of EnergySkeptic.com and the author of “Life After Fossil Fuels: A Reality Check on Alternative Energy”; “Electromagnetic pulse threat to infrastructure: U.S. House hearings 2012 & 2014”; Energy Skeptic; January 24, 2016; <https://energyskeptic.com/2016/the-scariest-u-s-house-session-ever-electromagnetic-pulse-and-the-fall-of-civilization/>) Accessed 6/26/21//eleanor

Modern civilization cannot exist for a protracted period without electricity. Within days of a blackout across the United States, a blackout that could encompass the entire planet, emergency generators would run out of fuel, telecommunications would cease as would transportation due to gridlock, and eventually no fuel. Cities would have no running water and soon, within a few days, exhaust their food supplies. Police, Fire, Emergency Services and hospitals cannot long operate in a blackout. Government and industry also need electricity in order to operate. The EMP Commission warns that a natural or nuclear EMP event, given current unpreparedness, would likely result in societal collapse. Terrorists, criminals, and even lone individuals can build a non-nuclear EMP weapon without great trouble or expense, working from Unclassified designs publicly available on the internet, and using parts available at any electronics store. In 2000, the Terrorism Panel of the House Armed Services Committee sponsored an experiment, recruiting a small team of amateur electronics enthusiasts to attempt constructing a radiofrequency weapon, relying only on unclassified design information and parts purchased from Radio Shack. The team, in 1 year, built two radiofrequency weapons of radically different designs. One was designed to fit inside the shipping crate for a Xerox machine, so it could be delivered to the Pentagon mail room where (in those more unguarded days before 9/11) it could slowly fry the Pentagon’s computers. The other radiofrequency weapon was designed to fit inside a small Volkswagon bus, so it could be driven down Wall Street and disrupt computers— and perhaps the National economy. Both designs were demonstrated and tested successfully during a special Congressional hearing for this purpose at the U.S. Army’s Aberdeen Proving Ground. Radiofrequency weapons are not merely a hypothetical threat. Terrorists, criminals, and disgruntled individuals have used home-made radiofrequency weapons. The U.S. military and foreign militaries have a wide variety of such weaponry. Moreover, non-nuclear EMP devices that could be used as radiofrequency weapons are publicly marketed for sale to anyone, usually advertised as ‘‘EMP simulators.’’ For example, one such simulator is advertised for public sale as an ‘‘EMP Suitcase.’’ This EMP simulator is designed to look like a suitcase, can be carried and operated by one person, and is purpose-built with a high energy radiofrequency output to destroy electronics. However, it has only a short radius of effect. Nonetheless, a terrorist or deranged individual who knows what he is doing, who has studied the electric grid for a major metropolitan area, could—armed with the ‘‘EMP Suitcase’’— black out a major city. A CLEAR AND PRESENT DANGER. An EMP weapon can be used by state actors who wish to level the battlefield by neutralizing the great technological advantage enjoyed by U.S. military forces. EMP is also the ideal means, the only means, whereby rogue states or terrorists could use a single nuclear weapon to destroy the United States and prevail in the War on Terrorism or some other conflict with a single blow. The EMP Commission also warned that states or terrorists could exploit U.S. vulnerability to EMP attack for coercion or blackmail: ‘‘Therefore, terrorists or state actors that possess relatively unsophisticated missiles armed with nuclear weapons may well calculate that, instead of destroying a city or military base, they may obtain the greatest political-military utility from one or a few such weapons by using them—or threatening their use—in an EMP attack.’’ The EMP Commission found that states such as Russia, China, North Korea, and Iran have incorporated EMP attack into their military doctrines, and openly describe making EMP attacks against the United States. Indeed, the EMP Commission was established by Congress partly in response to a Russian nuclear EMP threat made to an official Congressional Delegation on May 2, 1999, in the midst of the Balkans crisis. Vladimir Lukin, head of the Russian delegation and a former Ambassador to the United States, warned: ‘‘Hypothetically, if Russia really wanted to hurt the United States in retaliation for NATO’s bombing of Yugoslavia, Russia could fire an SLBM and detonate a single nuclear warhead at high altitude over the United States. The resulting EMP would massively disrupt U.S. communications and computer systems, shutting down everything.’’ China’s military doctrine also openly describes EMP attack as the ultimate asymmetric weapon, as it strikes at the very technology that is the basis of U.S. power. Where EMP is concerned, ‘‘The United States is more vulnerable to attacks than any other country in the world’’: ‘‘Some people might think that things similar to the ‘Pearl Harbor Incident’ are unlikely to take place during the information age. Yet it could be regarded as the ‘Pearl Harbor Incident’ of the 21st Century if a surprise attack is conducted against the enemy’s crucial information systems of command, control, and communications by such means as… electromagnetic pulse weapons… Even a superpower like the United States, which possesses nuclear missiles and powerful armed forces, cannot guarantee its immunity…In their own words, a highly computerized open society like the United States is extremely vulnerable to electronic attacks from all sides. This is because the U.S. economy, from banks to telephone systems and from power plants to iron and steel works, relies entirely on computer networks… When a country grows increasingly powerful economically and technologically…it will become increasingly dependent on modern information systems… The United States is more vulnerable to attacks than any other country in the world.’’ Iran—the world’s leading sponsor of international terrorism—in military writings openly describes EMP as a terrorist weapon, and as the ultimate weapon for prevailing over the West: ‘‘If the world’s industrial countries fail to devise effective ways to defend themselves against dangerous electronic assaults, then they will disintegrate within a few years… American soldiers would not be able to find food to eat nor would they be able to fire a single shot.’’ The threats are not merely words. The EMP Commission assesses that Russia has, as it openly declares in military writings, probably developed what Russia describes as a ‘‘Super-EMP’’ nuclear weapon—specifically designed to generate extraordinarily high EMP fields in order to paralyze even the best protected U.S. strategic and military forces. China probably also has Super-EMP weapons. North Korea too may possess or be developing a Super-EMP nuclear weapon, as alleged by credible Russian sources to the EMP Commission, and by open-source reporting from South Korean military intelligence. But any nuclear weapon, even a low-yield first generation device, could suffice to make a catastrophic EMP attack on the United States. Iran, although it is assessed as not yet having the bomb, is actively testing missile delivery systems and has practiced launches of its best missile, the Shahab–III, fuzing for high- altitude detonations, in exercises that look suspiciously like training for making EMP attacks. As noted earlier, Iran has also practiced launching from a ship a Scud, the world’s most common missile—possessed by over 60 nations, terrorist groups, and private collectors. A Scud might be the ideal choice for a ship-launched EMP attack against the United States intended to be executed anonymously, to escape any last-gasp U.S. retaliation. Unlike a nuclear weapon detonated in a city, a high-altitude EMP attack leaves no bomb debris for forensic analysis, no perpetrator ‘‘fingerprints.’’ Under present levels of preparedness, communications would be severely limited, restricted mainly to those few military communications networks that are hardened against EMP. Today’s microelectronics are the foundation of our modern civilization, but are over 1 million times more vulnerable to EMP than the far more primitive and robust electronics of the 1960s, that proved vulnerable during nuclear EMP tests of that era. Tests conducted by the EMP Commission confirmed empirically the theory that, as modern microelectronics become ever smaller and more efficient, and operate ever faster on lower voltages, they also become ever more vulnerable, and can be destroyed or disrupted by much lower EMP field strengths. Microelectronics and electronic systems are everywhere, and run virtually everything in the modern world. All of the civilian critical infrastructures that sustain the economy of the United States, and the lives of 310 million Americans, depend, directly or indirectly, upon electricity and electronic systems. Of special concern is the vulnerability to EMP of the Extra-High-Voltage (EHV) transformers, that are indispensable to the operation of the electric grid. EHV transformers drive electric current over long distances, from the point of generation to consumers (from the Niagara Falls hydroelectric facility to New York City, for example). The electric grid cannot operate without EHV transformers—which could be destroyed by an EMP event. The United States no longer manufactures EHV transformers. They must be manufactured and imported from overseas, from Germany or South Korea, the only two nations in the world that manufacture such transformers for export. Each EHV transformer must be custom-made for its unique role in the grid. A single EHV transformer typically requires 18 months to manufacture. The loss of large numbers of EHV transformers to an EMP event would plunge the United States into a protracted blackout lasting years, with perhaps no hope of eventual recovery, as the society and population probably could not survive for even 1 year without electricity. Another key vulnerability to EMP are Supervisory Control And Data Acquisition systems (SCADAs). SCADAs essentially are small computers, numbering in the millions and ubiquitous everywhere in the critical infrastructures, that perform jobs previously performed by hundreds of thousands of human technicians during the 1960s and before, in the era prior to the microelectronics revolution. SCADAs do things like regulating the flow of electricity into a transformer, controlling the flow of gas through a pipeline, or running traffic control lights. SCADAs enable a few dozen people to run the critical infrastructures for an entire city, whereas previously hundreds or even thousands of technicians were necessary. Unfortunately, SCADAs are especially vulnerable to EMP. EHV transformers and SCADAs are the most important vulnerabilities to EMP, but are by no means the only vulnerabilities. Each of the critical infrastructures has their own unique vulnerabilities to EMP: The National electric grid, with its transformers and generators and electronic controls and thousands of miles of power lines, is a vast electronic machine—more vulnerable to EMP than any other critical infrastructure. Yet the electric grid is the most important of all critical infrastructures, and is in fact the keystone supporting modern civilization, as it powers all the other critical infrastructures. As of now it is our technological Achilles Heel. The EMP Commission found that, if the electric grid collapses, so too will collapse all the other critical infrastructures. But, if the electric grid can be protected and recovered, so too all the other critical infrastructures can also be restored. Transportation is a critical infrastructure because modern civilization cannot exist without the goods and services moved by road, rail, ship, and air. Cars, trucks, locomotives, ships, and aircraft all have electronic components, motors, and controls that are potentially vulnerable to EMP. Gas stations, fuel pipelines, and refineries that make petroleum products depend upon electronic components and cannot operate without electricity. Given our current state of unpreparedness, in the aftermath of a natural or nuclear EMP event, transportation systems would be paralyzed. Traffic control systems that avert traffic jams and collisions for road, rail, and air depend upon electronic systems, that the EMP Commission discovered are especially vulnerable to EMP. Communications is a critical infrastructure because modern economies and the cohesion and operation of modern societies depend to a degree unprecedented in history on the rapid movement of information—accomplished today mostly by electronic means. Telephones, cell phones, personal computers, television, and radio are all directly vulnerable to EMP, and cannot operate without electricity. Satellites that operate at Low-Earth-Orbit (LEO) for communications, weather, scientific, and military purposes are vulnerable to EMP and to collateral effects from an EMP attack. Within weeks of an EMP event, the LEO satellites, which comprise most satellites, would probably be inoperable. Banking and finance are the critical infrastructure that sustain modern economies. Whether it is the stock market, the financial records of a multinational corporation, or the ATM card of an individual—financial transactions and record keeping all depend now at the macro- and micro-level upon computers and electronic automated systems. Many of these are directly vulnerable to EMP, and none can operate without electricity. The EMP Commission found that an EMP event could transform the modern electronic economy into a feudal economy based on barter. Food has always been vital to every person and every civilization. The critical infrastructure for producing, delivering, and storing food depends upon a complex web of technology, including machines for planting and harvesting and packaging, refrigerated vehicles for long-haul transportation, and temperature-controlled warehouses. Modern technology enables over 98 percent of the U.S. National population to be fed by less than 2 percent of the population. Huge regional warehouses that resupply supermarkets constitute the National food reserves, enough food to feed the Nation for 30–60 days at normal consumption rates, the warehoused food preserved by refrigeration and temperature control systems that typically have enough emergency electrical power (diesel or gas generators) to last only about an average of 3 days. Experience with storm-induced blackouts proves that when these big regional food warehouses lose electrical power, most of the food supply will rapidly spoil. Farmers, less than 2 percent of the population as noted above, cannot feed 310 million Americans if deprived of the means that currently makes possible this technological miracle. Water too has always been a basic necessity to every person and civilization, even more crucial than food. The critical infrastructure for purifying and delivering potable water, and for disposing of and treating waste water, is a vast networked machine powered by electricity that uses electrical pumps, screens, filters, paddles, and sprayers to purify and deliver drinkable water, and to remove and treat waste water. Much of the machinery in the water infrastructure is directly vulnerable to EMP. The system cannot operate without vast amounts of electricity supplied by the power grid. A natural or nuclear EMP event would immediately deprive most of the U.S. National population of running water. Many natural sources of water—lakes, streams, and rivers—would be dangerously polluted by toxic wastes from sewage, industry, and hospitals that would backflow from or bypass wastewater treatment plants, that could no longer intake and treat pollutants without electric power. Many natural water sources that would normally be safe to drink, after an EMP event, would be polluted with human wastes including feces, industrial wastes including arsenic and heavy metals, and hospital wastes including pathogens. Emergency services such as police, fire, and hospitals are the critical infrastructure that upholds the most basic functions of government and society—preserving law and order, protecting property and life. Experience from protracted storm-induced blackouts has shown, for example in the aftermath of Hurricanes Andrew and Katrina, that when the lights go out and communications systems fail and there is no gas for squad cars, fire trucks, and ambulances, the worst elements of society and the worst human instincts rapidly takeover. The EMP Commission found that, given our current state of unpreparedness, a natural or nuclear EMP event could create anarchic conditions that would profoundly challenge the existence of social order.

#### No link turn - Any major antitrust reform costs PC, even if it’s politically popular—especially given that key personnel are not yet in place and their Long ev only says that Sanders likes Glass-Steagal

Folio, 21

(Joseph Charles Folio III, JD from the George Mason School of Law, Lisa M. Phelan, JD from the American University School of Law, Jeff Jaeckel, JD from the University of Wisconsin School of Law, and Alexander Paul Okuliar, JD from the Vanderbilt School of Law, "Antitrust Update: Up and Down the Avenue" March 22 <https://www.mofo.com/resources/insights/210322-atr-update.html> NL)

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast. The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform. Two to go Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017. Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[[1]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn1) Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[[2]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn2) Meanwhile, on Capitol Hill … Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform? In short, although the prospects for sweeping legislative reform of the antitrust laws are dim, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [[3]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn3) House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[[4]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn4) On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action. In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) [introduced a bill](https://www.mofo.com/resources/insights/210211-far-reaching-bill.html) that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws. So, what does it all mean? In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[[5]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn5) But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time. The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

#### No thumpers – XO isn’t enough to outweigh his focus on infrastructure

#### Top of the docket and where all Biden’s PC is going

Lucey, 9/16

(Catherine Lucey and Kristina Peterson, reporters for the Wall Street Journal, "Biden Steps Up Efforts to Advance $3.5 Trillion Spending Bill," 9/16/21 <https://www.wsj.com/articles/biden-steps-up-efforts-to-advance-3-5-trillion-spending-bill-11631830726> NL)

WASHINGTON—President Biden is taking a more public role in the negotiations around Democrats’ roughly $3.5 trillion social welfare and climate bill, as [lawmakers work through thorny policy debates](https://www.wsj.com/articles/democrats-rethink-climate-measures-consider-carbon-tax-11631800800?mod=article_inline). At the White House Thursday, he touted proposals to increase taxes on high-income households and U.S. companies to finance the plan, saying, “Big corporations and the super wealthy have to start paying their fair share of taxes.” The president held a call Thursday with House Speaker [Nancy Pelosi](https://www.wsj.com/topics/person/nancy-pelosi) (D., Calif.) and Senate Majority Leader Chuck Schumer (D., N.Y.). A day earlier, he held private meetings with Sens. Joe Manchin (D., W.Va.) and Kyrsten Sinema (D., Ariz.), two moderates with concerns about the package and whose support will be crucial for the legislation’s passage. The president’s engagement comes as Democratic lawmakers hash out details of the sprawling package, with disputes flaring between moderate and liberal members over issues like drug pricing, climate proposals, tax provisions and the overall price tag. The House version of the bill moved through its committees this week, while Senate Democrats are still working on their proposals, which will require the support of the entire caucus to advance in the 50-50 Senate. All Republicans are expected to oppose the legislation During his remarks Thursday, Mr. Biden said there was a “long way to go” but expressed confidence that the social welfare bill and a separate, bipartisan infrastructure bill will reach his desk. The White House said following the call with Democratic leaders that the three are in regular touch, and White House press secretary Jen Psaki said the president is going to be very engaged with lawmakers and leadership to move his agenda forward. Lawmakers acknowledged this week that they still had work to do in resolving differences between the Senate, where centrists are pushing to lower the overall price tag, and the House. The bills voted on in the House total about $4.5 trillion in spending and tax cuts, according to congressional aides familiar with cost estimates, far higher than the price tag in the Senate. [Senate Democrats had previously settled on roughly $3.5 trillion](https://www.wsj.com/articles/infrastructure-deals-revenue-hopes-raise-gop-concerns-11626216975?mod=article_inline) as the target cost, down from about $6 trillion sought by progressives. “There’s lots of overlap among some of the major committees,” Sen. Chris Van Hollen (D., Md.) said of the two chambers. “There’s some big differences too, so we’re going to have to work through those going forward.” A White House official said the administration expects the reconciliation negotiations to be messy, and that the administration will be engaged on the Hill but will try to stay out of the fray as Democrats work out the legislative language. Another official said the president’s meetings with Mr. Manchin and Ms. Sinema were productive and that Mr. Biden is in touch with a range of members, as he seeks to advance the agenda.

#### Recent meetings with key democrats prove—it’s top of the docket

Bolton, 9/15

(Alexander, reporter for the Hill, "Democrats hope Biden can flip Manchin and Sinema," 9/15/21 <https://thehill.com/policy/energy-environment/572506-democrats-hope-biden-can-flip-manchin-and-sinema> NL)

President Biden met face to face with Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on Wednesday, stepping up his involvement in the effort to unify congressional Democrats behind a $3.5 trillion spending package. Democratic lawmakers are hailing Biden’s personal attention as a game-changing development at a critical moment. “The ones who are negotiating publicly, I think it is fair to say, they’re the toughest votes to get,” Sen. [Tim Kaine](https://thehill.com/people/tim-kaine) (D-Va.) said of Manchin and Sinema. “This is really important for the Biden administration, and so it’s all on deck,” he added of the efforts to get the two holdouts to support the reconciliation package. Kaine noted that Biden “has a strong personal relationship with Manchin.” “Both Joe and Kyrsten really want [Biden] to be a successful president. (A) It’s good for the country. (B) It’s good for their states. (C) It’s good for their own politics,” Kaine added. While the White House has been involved in negotiations with Senate Majority Leader [Charles Schumer](https://thehill.com/people/charles-schumer) (D-N.Y.) and Speaker [Nancy Pelosi](https://thehill.com/people/nancy-pelosi) (D-Calif.) over the size and scope of the spending package, Biden’s recent public appearances have focused more on the U.S. withdrawal from Afghanistan, the rise in COVID-19 cases, and wildfires and floods in various parts of the country. White House press secretary [Jen Psaki](https://thehill.com/people/jen-psaki) on Wednesday said the president knows the Manchin and Sinema meetings were only the start of negotiations with moderate Democrats. “The president certainly believes they’ll be ongoing discussions, not that there’s necessarily going to be a conclusion out of those today,” she told reporters at the White House.