# 1NC

## 1NC

Topicality:

#### ‘Core antitrust laws’ are economy-wide.

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

Limits---sectors are unbounded, permitting any procedural change to all industries.

Ground---centralizes generics with literature prominence.

## 1NC

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

#### by expanding enforcement and scope of its core antitrust laws, substantially increase prohibitions on anticompetitive business practices by the private sector by banning drug patent settlements that include any considerations that would not have been available as a direct consequence of showing that the patent was invalid

#### ban pay-for-delay settlements

#### increase funding for pharmaceutical research, development, and innovation

#### 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.

#### And it solves an international precedent

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; Jordi Pujol’s one-on-one discussions with all the G7 heads of state (with the exception of Canada) while he was President of Catalonia; and the Mexican state of San Luis Potosí’s activities to facilitate money transfers sent by immigrants in the United States (Lequesne and Paquin 2017). Regarding security issues, one may observe: Baden-Württemberg’s participation in peacekeeping missions in Bangladesh, Russia, BosniaHerzegovina, Burundi, and Tanzania; the sanctions imposed by the state of Maryland against South Africa in 1985, or the 1996 Massachusetts Burma Law, since invalidated by the US Supreme Court, forbidding public contracts for companies working in Myanmar (Burma); the pressure exerted on the state of Victoria, Australia, to cancel contracts with French companies to protest against the nuclear tests carried out by France in the South Pacific in 1995; national guard officers from American states participating in international military exchange programs, etc. (Paquin 2004). Constitutions and Non-Central Governments Non-central governments hold asymmetrical powers in matters of international politics, which has a considerable effect on their ability to act. That asymmetry exists between countries as well as between regions within them. As a rule, the more decentralized a country, the more non-central governments have constitutional responsibilities that increase their ability to act in the international arena. The more expertise a non-central government has, the more financial resources and a large civil service (Paquin 2004; Michelmann 2009; Criekemans 2011). In unitary states like Denmark or Israel, non-central governments have very little autonomy. In unitary states with a more decentralized structure like France, or in devolved states like the UK, or quasi-federal ones like Spain, non-central governments have more autonomy, despite the central state’s powers remaining dominant (Table 4.1). In federal countries, sovereignty is constitutionally divided between a central government and federated states, such as with Australian and American states, German Länder, Canadian provinces, and Belgium’s regions and communities. To be designated a federal government, a central government cannot unilaterally modify the constitution to its advantage. In such countries, federated states hold a very high number of responsibilities. In Canada, provinces are responsible for issues of health, education, work, culture, and municipal policies. They are also partly responsible for issues relating to economic development, environmental protection, and even justice. India and Malaysia have constitutions that explicitly assign exclusive competence in international relations to the central state. But in several other federal countries, such as Canada, Australia, and Belgium, many specialists have highlighted the difficulty for central governments to negotiate and implement international agreements when the latter involve areas of federal jurisdiction (Twomey 2009). In Australia and Canada, the courts have ruled that the central government could negotiate agreements on all subjects, including those pertaining to federal jurisdiction in domestic law, but did not have the power to force states to implement them, which can create major problems with regard to respecting those countries’ international commitments. Other constitutions, including those of Australia, Germany, Switzerland, and Belgium, grant explicit powers to regional governments in matters of international relations. The Swiss, German, and Belgian constitutions even grant states the power to sign actual treaties by virtue of international law (Michelmann 2009, 6–7). The Belgian constitution goes even further. Since 1993, Belgium has been a federation that allows states to become true international actors. The division of powers in matters of international relations follows the division of jurisdiction by virtue of the constitutional principle: in foro interno, in foro externo, which can be translated as an international extension of domestic jurisdiction. According to that constitution, there are three kinds of treaties in Belgium: (1) treaties within federal jurisdiction; (2) treaties within the individual states’ authority; and (3) combined treaties involving two levels of government that require cooperation between the two in being negotiated and implemented. Furthermore, there is no hierarchy between levels of government, meaning that in reality a Belgian ambassador is not superior in rank to a Flemish diplomat (Paquin 2010). What Kind of International Actors? What kind of international actors are non-central governments? Their status is halfway between that of a sovereign country and a non-governmental organization (NGO). Their status is ambiguous due to being both sovereignty-bound and sovereignty-free, as James Rosenau has stated (1990). Since non-central governments are sovereignty-free, they are not recognized actors in international law. Apart from certain exceptions provided for in the domestic laws of countries such as Belgium, these governments cannot formally sign real international treaties as defined by international law. Nor can they have real embassies or consulates. That said, their status as sovereignty-free actors, thus not formally recognized by international law, does not take away their entire ability to act. Their means of action are more on the level of NGOs. Indeed, non-central governments send fact-finding and outreach missions abroad, take part in trade fairs and certain international forums such as the Davos World Economic Forum, and finance public relations campaigns to increase exports and attract investments. The Canadian province of Alberta was very active in Brussels during negotiations on the EU-Canada Comprehensive Economic and Trade Agreement in order to make sure that oil from tar sands would not be subject to sanctions by the European Union. Alberta was also highly active in Washington to pressure American officials to approve the Keystone XL pipeline project. It is also easier for non-central governments to adopt idealistic international positions, and they have greater latitude to take a strong stance on delicate topics. For example, they can more easily condemn the nonrespect of human rights. Countries, on the other hand, must take a more nuanced tone and a more diplomatic approach in order to take into account a number of political and economic factors. Sub-state governments can also defend their interests in foreign courts. The government of Ontario brought the issue of acid rain directly to American judges, as did British Columbia on the subject of the “salmon war” pitting Canada against the United States. Non-central governments are also sovereignty-bound actors, in that they have partial sovereignty over their territory. Several non-central governments have a minister in charge of international relations and a corresponding ministry. Furthermore, the range of tools available to federated states for international action is nearly as great as for sovereign countries, with the exception of the use of military force. Indeed, several non-central governments have organized official visits with other regional leaders or those from sovereign countries, such as the alternating visits of the prime ministers of France and Quebec. They have representation or “mini-embassies” abroad, establish bilateral and multilateral relations with sovereign countries and other federated states, create institutions for regional or transregional cooperation, and can sign international agreements. In this regard, the government of Quebec has signed 751 of them, including 385 still in effect. Over 80% of these agreements have been signed with sovereign countries. In certain cases, such as the Belgian federated states, it involves actual international treaties (Paquin 2010). Their localization within a sovereign state gives federated states access to decision-makers from the central government, including actors in the country’s foreign policy. Sharing sovereignty with a central government gives non-central governments a reason to establish an international presence and develop their means of influence. Thus, contrary to NGOs and multinationals, for instance, the government of a federated state may enjoy special access to international diplomatic networks if the central government agrees, and may take part in international negotiations within their country’s delegation (Paquin 2004; Lequesne and Paquin 2017). The phenomenon is growing. Since the end of the Second World War, there has been an increase in multilateralism and international negotiations. While in the late nineteenth century only one or two conferences or congresses involving official representatives were documented, today there are around 9000. The register of UN treaties provides access to about 250,000 treaties.1 Multilateralism and international negotiations have therefore become an indissociable component of globalization (Paquin 2013). Parallel to the above, there has been a substantial increase in federal governments around the world. Within the European Union, for example, only two countries had federal governments after the Second World War whereas today 19 of the 27 countries in the EU have experienced a significant increase in regional governments and several have real federal governments. The Forum of Federations estimates that 40% of the world’s population live in federal countries (Lequesne and Paquin 2017). The consequence of these two phenomena has been that all fields of government activity, even in federated states and municipalities, may enter into the jurisdiction of at least one intergovernmental organization and often of several (Paquin 2010; Lequesne and Paquin 2017). Thus, in the framework of international organizations and thematic conferences, topics are addressed regarding the environment, free trade, procurement contracts, education, public health, cultural diversity, corporate subsidies, treatment of investors, the removal of non-tariff barriers, agriculture, services, etc. In this context, federated states are increasingly aware that their political power or sovereignty—in other words, their ability to develop and implement policies—is the subject of negotiations within multilateral international forums. Since international negotiations are having a growing effect on federated states’ sovereignty, the latter have become crucial actors in negotiations. In the negotiations on climate change, for instance, the UN formally recognized the importance of such actors. According to the UN Development Programme: “[…] most investments to reduce GHG (Greenhouse gas) emissions and adapt to climate change – 50 to 80 percent for reductions and up to 100 percent for adaptation – must take place at the sub-national level”.2 Furthermore, at the 16th Conference of the Parties, UN Framework Convention on Climate Change in Cancún in December 2010, the importance of the role of non-central governments was stipulated in article 7 of the Cancún Agreements. During his speech to the delegates, the Canadian representative, John Baird, explicitly recognized the role of Canadian provinces, notably Quebec, on the issue of climate change (Chaloux et al. 2015). In terms of trade negotiations, the same trend can be observed. The provinces played a greater role during Canada’s trade negotiations with the European Union, the largest since the Canada-US Free Trade Agreement in the late 1990s. The European Union demanded that the Canadian government include the provinces in its delegation, with the aim of starting negotiations for a “new generation” free trade agreement. The main reason being that the issue of public procurement contracts in Canadian provinces and cities was of special interest to the European Union in the negotiations. In that context, the European Union deemed that, for the negotiations to succeed, they had to include representatives from the provinces at the negotiating table, since the latter are not required to implement agreements signed by the federal government in their areas of jurisdiction (Paquin 2013). There are many precedents in which representatives have taken part in meetings of international institutions—the European Union, the United Nations, the World Trade Organization, the World Health Organization and Unesco, or again at the Conference of the Parties, UN Framework Convention on Climate Change—both within a country’s delegation, and at times outside it, as with Quebec, New Brunswick, and the WallonieBrussels federation regarding la Francophonie. When central governments block non-central governments’ access to international negotiations, the latter may try to influence the negotiations by going on-site. To make its voice heard, the government of Quebec sent several representatives to the conference of the parties on climate change despite the objection of Stephen Harper’s climate-skeptic government. Another strategy consists in joining networks of non-central governments and creating an accredited NGO at the negotiations, which is entrusted with the mandate of defending the interests of those actors at the negotiations. This was the case for the NGO Network of Regional Governments for Sustainable Development, which represents the regions’ interests in climate change negotiations. ∗∗∗ The paradiplomatic phenomenon, although not generally spectacular, certainly represents an important change in the study of foreign policy and international politics. It is an extensive, intensive, and permanent phenomenon. The international interests of sub-national governments are highly varied and substantial. These governments have considerable leeway and resources in their international initiatives, despite the asymmetry. In short, the phenomenon can no longer be ignored, even in centralized countries such as France or Sweden. Although paradiplomacy has progressed a great deal in the last thirty years, and case studies are increasingly numerous, there are still several blind spots. There are few studies on paradiplomacy and security issues analyzed in the broad sense, for example. Moreover, few studies exist on non-central governments and international negotiations, in particular on negotiations and the implementation of international treaties.

#### States can enforce antitrust suits against big pharma better than the federal government—recent cases prove

Arteaga, 21

(Juan A Arteaga is a partner in Crowell & Moring’s antitrust and white-collar groups. His practice focuses primarily on advising companies, boards of directors, and executives in a broad range of civil and criminal antitrust matters, including litigation, merger reviews, governmental and internal investigations, and counselling regarding various business practices. Between 2013 and 2017, Mr Arteaga was a senior official in the Antitrust Division of the US Department of Justice. During this period, he served as the Deputy Assistant Attorney General for Civil Enforcement, where he worked on and oversaw numerous civil merger and non-merger investigations and litigations involving various industries. Mr Arteaga also served as the chief of staff and senior counsel to the Assistant Attorney General for the Antitrust Division. While at the Antitrust Division, Mr Arteaga worked on various high-profile merger litigations, including the DOJ’s challenges to the Aetna/Humana, US Airways/American Airlines, Halliburton/Baker Hughes, Electrolux/General Electric, Energy Solutions/Waster Control Specialists and National Cinemedia/Screenvision transactions. Mr Arteaga regularly represents Fortune 500 companies and financial institutions in connection with complex transactions and high-stakes litigation and government investigations. Mr Arteaga has been recognised as a leading practitioner by numerous professional publications and bar associations, including the American Bar Association, New York City Bar Association, Hispanic National Bar Association, New York Law Journal, Law360 and the Ethisphere Institute. He has also received numerous awards for his pro bono work and civic service. & Jordan Ludwig is a counsel in the antitrust group in Crowell & Moring’s Los Angeles office, where he focuses on antitrust litigation, civil and criminal antitrust investigations, and appeals. Jordan has extensive experience litigating high-stakes cases in the state and federal courts under the Sherman Act, Cartwright Act, the California Unfair Competition Law, and the California Unfair Practices Act. As a dynamic litigator, Jordan regularly represents both plaintiffs and defendants across a diverse array of industries, including healthcare, telecommunications, hospitality, financial services, and consumer products. "The Role of US State Antitrust Enforcement," Jan 28 2021 <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement> NL)

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.

## 1NC

#### The International Competition Network should recommend substantially increasing prohibitions on anticompetitive business practices by the private sector by banning drug patent settlements that include any considerations that would not have been available as a direct consequence of showing that the patent was invalid 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

(Oliver, Professor of Economic Theory at Ilmenau University of Technology and Professor of Competition and Sports Economics, Markets & Competition Group, at the University of Southern Denmark, Campus Esbjerg. “International Antitrust Institutions,” Ilmenau Economics Discussion Papers, Vol. 17, No. 72 NL)

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).

## 1NC

#### 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.

## Access

Cartels

Biod

Global readiness

Deforestation

#### No Cartels Impact — “Regional spillover” is an empty signifier.

Daudelin 12 — Jean Daudelin, Professor at Carleton, former job, holds Ph.D. in Political Science from University Laval, 2012 (“The State And Security in Mexico : Transformation and Crisis in Regional Perspective,” *Published*, Available Online at https://books.google.com/books?id=o-Tu81Bq6s4C&pg=PA127&lpg=PA127&dq=mexico+state+collapse&source=bl&ots=Yhx\_8YtFb4&sig=pa7WFUmTZL9ABazqwXvl8euUKw&hl=en&sa=X&ei=46UHVNGWOIfxgwSRlYDACg#v=onepage&q=mexico%20state%20collapse&f=false, Accessed 09-23-2020)

A careful look at the evidence and the fact that the U.S. seems to be disengaging from what has ultimately been a limited involvement in the region's drug and organized-crime scene suggests that, from whichever angle one looks at the problem, the latter does not represent a very significant threat to U.S. security. In that context, a sizable increase in Canada's involvement can hardly be justified by the dangers the problem represents to its main ally. The prospects of narco-traffickers provoking a state collapse in Mexico are essentially nonexistent, notwithstanding alarmist declarations by some U.S. public officials.14 No reputable expert on the country has supported that view.54 Such prospects for Guatemala, Honduras, or even El Salvador are much less far-fetched, however, which is why an effort is currently being made by the World Bank, the European Union, the U.S., and Canada to bolster the region's governments\* individual and collective capacity to confront the organized-crime challenge." It is difficult to argue, however, that the emergence of a narco-state or some kind of state collapse in Central America and the Caribbean would represent a significant threat for Canada itself. These regions—Central America and Haiti in particular—have long been plagued by corruption, violence, and instability and have previously-seen long episodes of civil war without any ripple effect on Canada. Were such developments to occur, they would create, relative to North America, the situation that currently exists in the urban peripheries of large Latin American countries, such as Colombia or Brazil, whose stability and economic prospects are not significantly impacted by the anarchy and violence that prevail in small "uncontrolled territories."

#### BioD loss isn’t existential

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 deforestation

Brannen, 19

(Peter Brannen – science writer, The Amazon Is Not Earth’s Lungs: Humans could burn every living thing on the planet and still not dent its oxygen supply, 8/27/2019, <https://www.theatlantic.com/science/archive/2019/08/amazon-fire-earth-has-plenty-oxygen/596923/>)

The Amazon is a vast, ineffable, vital, living wonder. It does not, however, supply the planet with 20 percent of its oxygen.

As the biochemist Nick Lane wrote in his 2003 book Oxygen, “Even the most foolhardy destruction of world forests could hardly dint our oxygen supply, though in other respects such short-sighted idiocy is an unspeakable tragedy.”

The Amazon produces about 6 percent of the oxygen currently being made by photosynthetic organisms alive on the planet today. But surprisingly, this is not where most of our oxygen comes from. In fact, from a broader Earth-system perspective, in which the biosphere not only creates but also consumes free oxygen, the Amazon’s contribution to our planet’s unusual abundance of the stuff is more or less zero. This is not a pedantic detail. Geology provides a strange picture of how the world works that helps illuminate just how bizarre and unprecedented the ongoing human experiment on the planet really is. Contrary to almost every popular account, Earth maintains an unusual surfeit of free oxygen—an incredibly reactive gas that does not want to be in the atmosphere—largely due not to living, breathing trees, but to the existence, underground, of fossil fuels.

Shanan Peters, a geologist at the University of Wisconsin at Madison, is working to understand just how it was that our lucky planet ended up with this strange surplus of oxygen. At a presentation in June, at the North American Paleontological Convention in Riverside, California, he pulled up a somewhat unusual slide.

“What would happen if we combusted every living cell on Earth?” it asked. That is, Peters wanted to know what would happen to the atmosphere if you burned down not just the Amazon, but every forest on Earth, every blade of grass, every moss and lichen-spackled patch of rock, all the flowers and bees, all the orchids and hummingbirds, all the phytoplankton, zooplankton, whales, starfish, bacteria, giraffes, hyraxes, coatimundis, oarfish, albatrosses, mushrooms, placozoans—all of it, besides the humans.

Peters pulled up the next slide. After this unthinkable planetary immolation, the concentration of oxygen in the atmosphere dropped from 20.9 percent to 20.4 percent. CO2 rose from 400 parts per million to 900—less, even, than it does in the worst-case scenarios for fossil-fuel emissions by 2100. By burning every living thing on Earth.

“Virtually no change,” he said. “Generations of humans would live out their lives, breathing the air around them, probably struggling to find food, but not worried about their next breath.”

## Econ

#### No internal link to China leadership and econ – pay for delay is only a minute fraction of healthcare costs – so many alt causes

#### No China rise

Brett Morris 2017, international relations writer @ Medium and Vox, “China Is Not a Significant Threat to the United States”, Medium, November 2, https://medium.com/s/just-world-order/china-is-not-a-significant-threat-to-the-united-states-8593733e0080

In September, the chairman of the Joint Chiefs of Staff told Congress he believes China will pose the “greatest threat” to the United States by 2025. It’s something we’ve been hearing a lot of from commentators: Is China a rising superpower? Will it someday displace the United States as the world’s most powerful country? Will the United States and China go to war? In short, the answers are: no, very unlikely, and probably not. Obviously, no one can predict the future, but the “threat of China” has been seriously overblown. To be sure, China is a rising power and expanding its global influence, but there is no reason to believe it’s on the cusp of becoming a superpower that could rival the likes of the United States. It’s true that China has the world’s largest population, and its economy has expanded rapidly over the past several decades. However, China has enormous problems that stand in its way of becoming a potential superpower. Furthermore, though the “decline of American power” is a real phenomenon, the United States is likely to remain the superior actor (though the decline is, in many ways, self-inflicted). China Is Still a Poor Country By many measures, China’s economy is doing quite well. Its GDP is worth $11 trillion (ranked second only to the United States), its economy grew 6.7 percent in 2016, and it has lifted hundreds of millions of people out of extreme poverty over the past few decades. However, a closer look reveals that China has significant problems. First, though the country’s economic growth is still quite impressive, the rate has slowed and is unlikely to reach double-digit growth again: Furthermore, in per capita terms, China’s GDP is quite low: just over $8,000 and ranked below such countries as Costa Rica, Romania, and Equatorial Guinea. (The per capita GDP of the United States is more than $57,000.) In addition, China’s impressive GDP numbers are actually somewhat misleading. A substantial portion of China’s “exports” that drives its GDP are anything but. Take, for example, the iPhone — turn it over and you’ll see that it says “Made in China.” But this isn’t really true. The iPhone is designed in the United States, and most of its component parts are manufactured in Taiwan and South Korea. These parts are then shipped to China, where the iPhone is assembled by low-wage workers and then exported. It isn’t really “made in China”; it is merely assembled there. As the political economist Sean Starrs has pointed out, “China’s rise is assembled in China but designed in the United States.” This is because “it is foreign corporations — especially American — that ultimately own and profit by far the most from the bulk of the internationally oriented sectors in China.” As Starrs explains, “The traditional way of conceptualizing national power,” including a measure like GDP, is inadequate in the era of globalization when transnational corporations have operations spread across the world. “Even though China has a virtual monopoly on the export of iPhones, for instance, it is Apple that reaps the majority of profits from iPhone sales. More broadly, more than three-quarters of the top 200 exporting firms from China are actually foreign, not Chinese,” Starrs says. Overall, China is ranked 90th on the Human Development Index. Its two wealthy neighbors, Japan and South Korea, are ranked 17th and 18th, respectively. The United States is ranked 10th. (Norway is ranked first.) Though China continues to improve its HDI values, the rate of its progress has slowed and is mostly stuck at around its current numbers. Another problem China will have to confront is its aging population—a “looming societal crisis,” as Howard W. French explains in the Atlantic: China today boasts roughly five workers for every retiree. By 2040, this highly desirable ratio will have collapsed to about 1.6 to 1. From the start of this century to its midway point, the median age in China will go from under 30 to about 46, making China one of the older societies in the world. At the same time, the number of Chinese older than 65 is expected to rise from roughly 100 million in 2005 to more than 329 million in 2050 — more than the combined populations of Germany, Japan, France, and Britain. With more people exiting the workforce than entering it, economic growth will inevitably slow. Indirectly, it will probably also decrease the likelihood of a military conflict with outside powers such as the United States, because China will be forced to dedicate resources to care for its elderly instead of spending on the military. Beyond this, China has huge environmental problems. China is the world’s largest emitter of greenhouse gases. As Eleanor Albert and Beina Xu write in a backgrounder for the Council on Foreign Relations: The country’s energy consumption has ballooned, with reports from late 2015 implying that it consumed up to 17 percent more coal than previously reported. In January 2013, Beijing experienced a prolonged bout of smog so severe that citizens dubbed it an “airpocalypse”; the concentration of hazardous particles was forty times the level deemed safe by the World Health Organization (WHO). In December 2015, Beijing issued red alerts for severe pollution — the first since the emergency alert system was established. The municipal government closed schools, limited road traffic, halted outdoor construction, and paused factory manufacturing. At least 80 percent of China’s 367 cities with real-time air quality monitoring failed to meet national small-particle pollution standards during the first three quarters of 2015, according to a Greenpeace East Asia report. As Albert and Xu write, water depletion and pollution are also major problems: 90 percent of its water supplies are dedicated to either the agriculture or coal industries, leaving two-thirds of China’s cities with water shortages. More than a quarter of China’s key rivers are “unfit for human contact” because of pollution, and more than a million square miles of China’s landmass is undergoing desertification because of “negligent farming practices, overgrazing, and the effects of climate change.” The United States Versus China China is aware of its problems and is doing what it can to solve and mitigate them; for example, becoming a leading investor in renewable energy. But the country clearly has a long way to go before it becomes as powerful and rich as a first-world country like the United States. That’s not to say that the “rise of China” — such as it is — isn’t in some ways threatening, with its island building and expansion into the South China Sea. It may also bring opportunities. China’s “Belt and Road” initiative — the country’s investment in numerous infrastructure projects along the old Silk Road across Eurasia — could lead to greater regional integration, more prosperity, and a decline in ethnic/religious tensions. China is similarly investing in infrastructure projects in Africa. In many ways, what China is trying to do is overcome its “century of humiliation” (when China was subject to Western and Japanese imperialism from the mid-19th to the mid-20th centuries) and reestablish something like the tributary system that used to exist in the region. To an extent, it’s probably inevitable, but it’s important to bear in mind all the problems China still faces, as discussed above. While the “decline of American power” is real, it is not as severe as some say, and there’s no reason to believe the center of world power will shift from the United States to China. When it comes to American power, it probably peaked at the end of World War II, when the United States emerged as the strongest and most economically dominant country, with much of the rest of the world in ruins. Soon, however, Europe, Japan, and the Soviet Union recovered, and, naturally, U.S. power declined somewhat. When the communists emerged victorious in China’s civil war, U.S. power declined further. So the “decline of American power” is nothing new. To the extent that it’s happening, however, much of it is self-inflicted. Rather than fretting about China, the United States could instead look at what it is doing to itself: Its formal democratic institutions are increasingly failing to reflect popular opinion. It lacks the basic social safety-net programs that comparable countries have. It’s going backwards with climate change policy, leaving China to take the lead. Its wars in the Middle East have resulted in widespread devastation and growth in jihadist terrorism at the cost of trillions of dollars. Its animosity toward a declining power like Russia is only driving Moscow into Beijing’s arms. And apparently enough of the country’s citizens are so disgusted with the status quo that they are willing to vote for a narcissistic reality TV host for president. Despite all this, the United States will remain far more powerful. It spends far more on its military than China or any other country. In 2016, U.S. military spending was $611 billion (3.3 percent of U.S. GDP) while China spent $215 billion (1.9 percent of its GDP). In September, the Senate voted 89–8 to increase military spending to $700 billion, more than what President Trump wanted. (The American Empire is a bipartisan project.) While China is increasing its military budget as well, its increase is the smallest in decades. Beyond the actual spending, however, the U.S. military remains far better trained and technologically sophisticated, despite China’s increasing modernization of its military forces. Its single aircraft carrier — “a refurbished secondhand vessel” — doesn’t compare to the U.S. Navy’s multiple supercarriers that “dwarf all other flat-tops worldwide both in size and capability,” according to Popular Mechanics. China has a nuclear arsenal of 270 weapons, while the United States has about 6,800. Furthermore, U.S. military superiority in the region is amplified by arms sales and security agreements with various countries in the region: Japan, South Korea, Taiwan, and the Philippines. In addition, the United States has more than 73,000 of its troops stationed in Asia, mostly in Japan and South Korea. China has nothing comparable — either in the region or near the United States. The “rise of China” is real, but not as profound or significant as many U.S. commentators assume, just as the “decline of American power” is real, which is similarly not as profound or significant as those same commentators lament. It is clear there are challenges ahead, and both the U.S. and Chinese governments are likely to engage in counterproductive actions endangering the peace. The responsibility for keeping that peace thus falls to the citizens of both countries.

#### 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.

## Innovation

#### No impact to disease

Owen Cotton-Barratt 17, et al, PhD in Pure Mathematics, Oxford, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute, 2/3/2017, Existential Risk: Diplomacy and Governance, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

# 2NC

## States

### A2: Perm Do Both

#### **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

### A2: Perm Do CP

#### They say perm do the CP but that’s severance—the federal government is the central government located in DC and is distinct from the 50 states and subfederal entities

US Legal, 16

(US Legal, “United States Federal Government Law and Legal Definition”, <https://definitions.uslegal.com/u/united-states-federal-government/>, accessed 8-10-17, AFB)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

### A2: 50 States Theory

#### Second, states is core of the literature—the NAAG spans across all 50 states and allows for uniform action, which proves the CP is predictable and not utopian

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)

State action is continuing to rise, with collective action becoming a cemented enforcement strategy. 151 The National Association of Attorneys General ("NAAG") serves to help organize disparate state enforcers and gives them a forum to discuss enforcement policies and cooperation. 15 2 The NAAG emulates a federal agency in geographic breadth of enforcement but is comprised of individual states and their elected officials (the States' Attorneys General).1 53 It achieves its influence through standing committees and task forces, including its Multistate Antitrust Task Force. 154

#### An anti-Google case involved 50 state and US territories

McGinnis and Sun 21, John O. McGinnis is the George C. Dix Professor in Constitutional Law at Northwestern Pritzker School of Law. McGinnis is a panelist called on to decide WTO disputes and graduate of Harvard Law School, Linda Sun is an intellectual property lawyer at Wilmerhale and former editor in chief of Northwestern Journal of Technology and Intellectual Property during her time at Northwestern Pritzker School of Law, “Unifying Antitrust Enforcement for the Digital Age”, 78 Wash. & Lee L. Rev. 305, 2021

Big Tech's rise has not gone unnoticed. After the 2016 presidential election, many questioned whether large tech platforms wield too much influence.i0 2 In the years following, Big Tech has come under fire from lawmakers on both sides of the political spectrum.103 In 2019, the House Judiciary Subcommittee on Antitrust opened a bipartisan "top-to-bottom" investigation of the tech industry, calling on tech executives to address allegations of anti-competitive behavior.10 4 In the same year, fifty attorneys general from U.S. states and territories opened an antitrust investigation of Google.i05 Another coalition of state attorneys general announced a similar probe into Facebook. 06

#### Anti-tobacco cases in the early 2000s involved multistate action

Pridgen, 18

(Dee, Carl M. Williams Professor of Law and Social Responsibility, University of Wyoming College of Law, Pridgen has also been a Visiting Professor of Law at the University of Baltimore School of Law, the University of Maryland School of Law, and the Catholic University of America, Columbus School of Law. Before she joined the College of Law Faculty at the University of Wyoming, she served as a Staff Attorney, for the Federal Trade Commission, Bureau of Consumer Protection, Washington, D.C. from 1978-82. She was also a law clerk for the Honorable Barrington D. Parker, U.S. District Court, District of Columbia from 1974-76. In May of 2003, Pridgen was elected to membership in the American Law Institute. Dee Pridgen's publications include two treatises aimed at practicing attorneys, Consumer Protection and the Law, and Consumer Credit and the Law, coauthored with Richard M. Alderman both published by Thomson/Reuters, and both of which are updated yearly. She is also a coauthor of a law school casebook entitled Consumer Law: Cases and Materials (4th ed. 2013; West Academic). She is the principal author (with coauthor Gene A. Marsh) of Consumer Protection in a Nutshell (4th ed. 2016). She has written articles and reports on consumer law, and has given presentations at international consumer law meetings in Helsinki, Finland and Auckland, New Zealand, B.A., Cornell University (1971), Phi Beta Kappa and with distinction, J.D., New York University (1974), Order of the Coif and cum laude, “The Dynamic Duo of Consumer Protection: State and Private Enforcement of Unfair and Deceptive Trade Practices Laws”, (2018). *Faculty Articles*. 13. https://scholarship.law.uwyo.edu/faculty\_articles/13)\\JM

II. KEY ROLE OF STATE ATTORNEYS GENERAL As stated in the preceding part, the FTC developed their model state UDAP statute with a goal of broadening the reach of the FTC’s consumer protection mission to the states. The state government enforcers were viewed as allies, perhaps even foot soldiers, in the fight against unfair and deceptive trade practices. But since the vehicle for this extension of FTC authority to the states came in the form of independently enacted state laws, the FTC had no direct control over the activities of the states in this sector, other than the federal preemption doctrine. Over the years, the power and enthusiasm of the state AG’s for their consumer protection mission grew, while the FTC and the federal government in general became less enthusiastic about perceived over-regulation of the free market during the 1980s and in later periods as well. Further venturing past their federal “parent,” states also enhanced their power by joining together in multistate litigation to take on large corporate advertisers, such as the tobacco companies and magazine publishers using sweepstake marketing. In the 2000s, states used their UDAP statutes to challenge prescription drug makers and predatory lenders, among others, and sometimes employed outside private counsel on a contingent fee basis to further enhance the efficiency and effectiveness of their cases. And yet despite the periodic federal/state tensions regarding the appropriate role of government regulation in the consumer protection arena, both the FTC and the more recently created Consumer Financial Protection Bureau, continue to partner with the state AGs on so-called enforcement “sweeps.” All in all, the role of the states in enforcing the state UDAPs has been beneficial for consumers and the relationship with the federal agencies has been more of a sibling rivalry than an armed conflict.

#### Fourth, the aff is just as undebatable as the CP is—sweeping changes to the core antitrust laws are impossible in a divided Congress, especially given a conservative GOP which would just water down any antitrust legislation—this means their theory arg is either arbitrary or it justifies no affs on this topic and destroys debate

Serwer, 21

([Adam Serwer](https://www.theatlantic.com/author/adam-serwer/) is a staff writer at The Atlantic "‘Woke Capital’ Doesn’t Exist," April 6 2021 <https://www.theatlantic.com/ideas/archive/2021/04/dont-buy-conservative-rebellion-against-corporations/618519/> NL)

Republicans cannot imagine labor relations as exploitative except in that someone might have to sit through a tedious video on race or gender sensitivity in the workplace. They do not perceive the concentration of corporate power as perilous unless companies’ desire to retain their customer base interferes with Republican schemes to entrench their own political dominance. They see freedom of speech as vital, unless it prevents them from using the state to sanction forms of political expression they oppose. Their criticisms of “woke capital” go no deeper than this. As such, the Republican anti-corporate turn is entirely superficial. That’s a shame, because the concentration of corporate power has had a negative effect on American governance, leading to an age of inequality in which economic gains are mostly enjoyed by those in the highest income brackets. Since the 1970s, despite massive gains in productivity, most Americans have seen their wages rise very slowly, while the wealthiest have reaped almost all the gains of economic growth. That outcome was a policy choice, not an inevitability. “Starting in the 1970s, the people in charge of designing and implementing the tax code increasingly favored those at the very top,” the political scientists Jacob Hacker and Paul Pierson wrote in Winner-Take-All Politics. “The rich are getting fabulously richer while the rest of Americans are basically holding steady or worse.” Notably, they argued, this trend “is not obviously related to either the business cycle or the shifting partisan occupancy of the White House.” Economists on the left have concluded that this is because the extremely wealthy have a stranglehold on American politics that prevents policy changes that would more fairly distribute economic gains. And that, in turn, helps explain the seemingly high stakes of the culture war over corporate-branding decisions: The concentration of corporate power means that large companies wield outsize cultural influence, and their policy priorities are more often translated into law than those [with broader public support](https://www.reuters.com/article/us-usa-election-inequality-poll/majority-of-americans-favor-wealth-tax-on-very-rich-reuters-ipsos-poll-idUSKBN1Z9141). “One thing that is clear from the emerging evidence is that economic inequality reinforces differences in political and social power, and these in turn affect market outcomes,” the economist Heather Boushey, now a member of President Joe Biden’s Council of Economic Advisers, wrote in Unbound. This diagnosis lends itself to certain solutions, some of which are apparent in the Biden administration’s agenda. Although in the past, Democratic Party policies have exacerbated the problem, in recent years, much of the party has moved left on economic issues and now appears to recognize the threat that extreme inequality represents. The obvious Republican insincerity on deficits, and the depth of the coronavirus crisis, [expanded the horizon](https://www.theatlantic.com/ideas/archive/2020/04/republican-party-discovers-virtues-stimulus/609244/) for Democrats as they contemplated policy changes. The design of generous unemployment provisions, direct-aid payments, and [the recently passed child allowance](https://www.theatlantic.com/ideas/archive/2021/03/biden-chose-prosperity-over-vengeance/618279/), all of which disproportionately benefit the low-wage workers who have borne the brunt of the pandemic, reflected that new ambition, and Biden has already proposed modestly raising [corporate tax rates](https://www.nytimes.com/2021/04/05/business/raising-taxes-corporations.html) in his infrastructure plan. But reducing corporate power, and with it the grip of the wealthy on government, will require more than that. Strengthening [organized labor through](https://www.epi.org/publication/pro-act-problem-solution-chart/) the PRO Act, which would make it easier to unionize, would provide a needed counterbalance to corporations. The Biden administration has also indicated a willingness to use [antitrust regulations](https://www.washingtonpost.com/politics/2021/01/18/biden-antitrust-big-tech/) against tech firms that have amassed a stunning amount of power over Americans’ daily lives in the past few decades. Proposals from the left wing of the party to [reestablish postal banking](https://www.washingtonpost.com/outlook/2020/07/21/postal-banking-is-making-comeback-heres-how-ensure-it-becomes-reality/) and [mandate worker representation](https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html) on corporate boards would further diminish the influence of the extremely wealthy. Perhaps Republicans don’t like these ideas. They are, after all, liberal and left-wing ideas. But when it comes to breaking the concentration of political and economic power in the hands of the very wealthy, Republicans have no ideas of their own to speak of, beyond issuing colorful threats to employ state coercion against firms that fail to do their bidding. The GOP is unbothered by the concentration of wealth or power as such, which is not only why it opposes all of these measures, but also why the centerpiece of its agenda the last time it controlled both Congress and the White House was a [massive and regressive tax cut](https://www.nytimes.com/interactive/2018/08/12/opinion/editorials/trump-tax-cuts.html). What vexes Republicans is the sight of corporations responding to market incentives by making public displays of support for egalitarianism and nondiscrimination, which is not the same as corporations actually supporting those things. Putting out statements supporting Black Lives Matter or adorning their logos with pride colors is very easy for big corporations, but such gestures do not signal a commitment to fair wages, safe working conditions, or a willingness to pay their share in taxes, let alone racial egalitarianism in all but the most cosmetic sense. They are merely brand management. “Woke capital” does not actually exist, only capital—and its interests remain the same as they have always been. Like the Republican turn against democracy, the newfound opposition to the market fundamentalism that conservatives once espoused and the free-speech principles they pretended to revere is superficial and contingent. Free speech, democracy, and free-market capitalism were fine as long as Republicans could expect victory in these arenas. But with public opinion shifting against them on key priorities, their focus has now turned to rigging the rules of the game to their advantage rather than winning over a larger share of the public. They do not seek to achieve a more equitable distribution of either money or power, but to ensure that the present inequities work to their political advantage. An irony is that the era with which the right is enraptured was in part a product of a set of mid-century economic arrangements—higher taxes on the wealthy, greater union density, stronger regulations—that the left is attempting to restore, in some form, while including [a novel commitment](https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america) to racial and gender equality. Republicans have no interest in curtailing corporate power in this fashion—not when they believe that power could be used to reimpose a diminished cultural hegemony. These so-called populist Republicans do not wish to throw the one ring into Mount Doom; they simply want to wield it on their own behalf.

### A2: Patchwork

#### Second, patchwork is good in antitrust law—causes efficiencies which solve the case

Harvard Law, 20

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

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

## Econ Adv

#### No diversionary war – they use rhetoric instead

Carter 18 [Erin Baggott Carter, Assistant Professor, School of International Relations, University of Southern California. Diversionary Cheap Talk: Unemployment and US Foreign Policy Rhetoric, 1945-2010. August 29, 2018. www.erinbcarter.org/documents/diversionUS.pdf]

There is a large literature on diversionary conflict in international relations, but it focuses on material conflicts like militarized interstate disputes rather than foreign policy rhetoric. It is based in social identity theory, which suggests that leaders can increase ingroup affinity by making intergroup distinctions more salient (Closer, 1950; Simmel, 1955; Tajfel and Turner, 1979). A recent review concludes that though the internal logic of diversionary conflict is “compelling and theoretically well supported,” the empirical evidence is “decidedly mixed” (Baum and Potte r, 2008, 48). Several studies find evidence of diversionary aggression in US foreign policy (Clark, 2003; DeRouen, 2000; DeRouen and Peake, 2002; Fordham, 1998a, 6; Hess and Orphanides, 1995; Howell and Pevehouse, 2005; James and Hristoulas, 1994; James and Oneal, 1991; Levy, 1989«,fc; Morgan and Bickers, 1992; Ostrom and Job, 1986) and elsewhere (Bennett, 2000; Dassel and Reinhardt, 1000; Davies, 2002; Enterline and Gleditsch, 2000; Gelpi, 1997; Heldt, 1999; Lebow, 1981; Mansfield and Snyder, 1995; Oneal and Tir, 2006; Russett, 1990; Sobek, 2007; Tir, 2010). Yet skeptics have amassed opposing evidence (Chiozza and Gormans, 2003, 2004; Foster and Palmer, 2006; Gowa, 1998; Johnston, 1998; Leeds and Davis, 1997; Lian and Oneal, 1993; Meernik, 2000, 2004; Meeraik and Waterman, 1996; Moore and Lanoue, 2003; Potter, 2007). Some cases are hard to reconcile with the theory: in Britain, there were rallies in the Falklands War and the Gulf War but not in other cases in which rallies would be expected, such as the Korean, Suez, and Kosovo wars (Lai and Reiter, 2005). Some go so far as to call diversionary aggression a “myth” (Meernik and Waterman, 1996).

Others have developed scope conditions for diversionary aggression. It is more likely between states with pre-standing rivalries (McLaughlin and Prins, 2004), when leaders are accountable (Carter, 2018; Kisangani and Pickering, 2011), and in mature democracies, consolidating autocracies, and transitional polities (Pickering and Kisangani, 2005). It is less likely when states avoid provoking troubled adversaries (Clark, 2003; Fordham, 2005; Leeds and Davis, 1997; Miller, 1999). Diversion appears more likely to produce a rally when supported by Security Council authorization (Chapman, 2011; Chapman and Reiter, 2004), when the White House draws attention to a dispute (Baker and Oneal, 2001), and in conditions of media attention, popular leadership, divided government, non election years, and first terms (Colaresi, 2007). Most recently, scholars have asked whether diversion occurs outside democracies. They find some autocracies, especially single party regimes, divert as well (Carter, 2018; Pickering and Kisangani, 2011).

This study extends the logic of diversionary conflict to foreign policy rhetoric. There is surprisingly little research on rhetoric in international relations. The international relations literature deems talk “cheap” (Fearon, 1995; Kydd, 2005). The audience cost literature considers rhetoric meaningful, but only if it invokes audience costs through explicit, public threats (Fearon, 1994; Schultz, 2001; Smith, 1998; Tomz, 2007). However, if foreign policy rhetoric can activate ingroup identity, then it may be appealing for leaders who wish to improve their ratings without incurring the substantial risks of militarized interstate disputes. While it might be “outlandish” for presidents to engage in the impeachable exercise of diversionary war (Meernik and Waterman, 1996), hostile foreign policy rhetoric is far less outlandish a risk.

To develop a theory of diversionary cheap talk, this paper draws upon research in political psychology and political communication. These literatures find persuasive evidence that elite statements influence citizen beliefs (Behr and Iyengar, 19s."); Bennett. Lawrence and Livingston, 2006; Brody, 1991; Cohen, 1995; Jentleson, 1992; Zaller and Chiu, 2000). I draw on social identity theory to argue that diversionary cheap talk highlights intergroup differences between nations and leads citizens to evaluate their leader favorably. When a leader criticizes foreigners, she cues ingroup identity, which increases citizens’ social attachment to the nation and to herself as its leader. This is a “solidarity mechanism,” through which “[c]ollective group goals and common group identity are highlighted, norms of group-based altruism are strengthened, punishment and rejection of defectors are increased, and perceptions of the in-group and out-group are manipulated” (Halevy, Bernstein and Sagiv, 2008, 405).

The theory generates observable implications about when leaders use diversionary cheap talk and who they target. I follow the consensus in the diversionary conflict literature in focusing on poor economic conditions as the most important source of public disapproval for leaders. Low approval ratings limit leaders’ ability to advance their domestic agenda. Therefore, when the economy deteriorates, leaders will criticize foreign nations to improve their approval ratings and restore the political capital necessary for them to govern. Second, a key observation from social identity theory is that the depth of intergroup differences is important for group attachment. Therefore, consonant with recent empirical findings in the diversionary conflict literature (McLaughlin and Prins, 2004), I expect diversionary rhetoric to be most effective when it targets threatening outgroups. In the context of foreign policy, these are best represented by historical adversaries. And finally, because diversionary cheap talk shifts the focus of political competition from the partisan to the international level, it has differential partisan effects. Because national identity cues widen the tent of the political ingroup, diversionary cheap talk is most effective at boosting support among the leader’s nonpartisans: liberal citizens for conservative leaders, and conservative citizens for liberal leaders.

I test these hypotheses with the American Diplomatic Dataset, an original record of over 50,000 US diplomatic events between 1945 and 2010 drawn from New York Times articles on foreign affairs. I used tools from computational social science to classify bilateral interstate interactions into hundreds of specific types and four aggregate categories: verbal cooperation, verbal conflict, material cooperation, and material conflict. This is by far the most historically extensive event dataset. As such, it allows an exploration of US foreign policy behavior across a variety of administrations and economic crises.

I find robust evidence of diversionary cheap talk in US foreign policy. First, I establish that US presidents face incentives to divert verbally rather than materially: while militarized interstate dispute initiation does not affect presidential approval ratings, critical rhetoric about other nations is associated with increased ratings, especially among nonpartisans. Responding to this incentive, presidents between 1945 and 2010 typically diverted in the form of words, not deeds. Simulations indicate that as unemployment varied from its minimum to its maximum observed value, hostile foreign policy rhetoric nearly doubled, depending on the administration. Throughout this study, estimates are conservative: I operationalize conflict as events the United States initiated, although findings are robust to a redefinition of conflict as events the United States participated in. The verbal statements in the dataset are high profile and likely to be noticed by the American public: all appeared in the headlines of the New York Times.

This study contributes to existing scholarship in several ways. First, it demonstrates that US foreign policy rhetoric responds significantly to domestic economic conditions. International relations scholars should therefore continue to focus more seriously on the communicative aspects of foreign policy, and in particular its relationship to domestic politics (Johnston, 2001, 2008; Kurizaki, 2007; Ramsay, 2011; Sartori, 2002, 2005; Trager, 2010, 2011, 201(i). The American Diplomacy Dataset will enable researchers to further explore the communicative aspects of foreign policy, and their relationships to material and economic factors, in more detail than existing datasets permit.

Second, this study contributes to the diversionary conflict literature by showing that in many cases where diversionary theory predicts conflict initiation, leaders instead choose rhetorical hostility. In this sense, leaders may have their cake and eat it too: They benefit from an ingroup rally without inviting an international crisis. The mixed empirical findings in the diversionary conflict literature may be partly due to the fact that existing scholarship considers only the most serious forms of diversion like militarized interstate disputes. It is possible that a wide range of diversionary behavior takes place at less extreme levels, such as the rhetorical hostility documented in this paper.1

**\*\*\*BEGIN FOOTNOTE 1\*\*\***

In the language of the foreign policy substitutability literature (Bennett and Nordstrom, 2000; Clark, Nordstrom and Reed, 2008; Most and Starr, 1984, 1989; Oakes, 2012), rhetorical hostility, like the development of new economic policies, may be seen as a substitute for diversionary conflict.

**\*\*\*END FOOTNOTE 1\*\*\***

# 1NR

## DA

#### Outweighs nuclear war

McDonald ‘19 (Samuel Miller McDonald is a writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition; 1/4/19; “Deathly Salvation”; *The Trouble*; https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### Warming turns nuke war – causes global nuclear conflagration – applies to China AND Mexico scenario

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

President Donald Trump may not accept the scientific reality of climate change, but the nation’s senior military leaders recognize that climate disruption is already underway, and they are planning extraordinary measures to prevent it from spiraling into nuclear war. One particularly worrisome scenario is if extreme drought and abnormal monsoon rains devastate agriculture and unleash social chaos in Pakistan, potentially creating an opening for radical Islamists aligned with elements of the armed forces to seize some of the country’s 150 or so nuclear weapons. To avert such a potentially cataclysmic development, the US Joint Special Operations Command has conducted exercises for infiltrating Pakistan and locating the country’s nuclear munitions. Most of the necessary equipment for such raids is already in position at US bases in the region, according to a 2011 report from the nonprofit Nuclear Threat Initiative. “It’s safe to assume that planning for the worst-case scenario regarding Pakistan’s nukes has already taken place inside the US government,” said Roger Cressey, a former deputy director for counterterrorism in Bill Clinton’s and George W. Bush’s administrations in 2011.

Such an attack by the United States would be an act of war and would entail enormous risks of escalation, especially since the Pakistani military—the country’s most powerful institution—views the nation’s nuclear arsenal as its most prized possession and would fiercely resist any US attempt to disable it. “These are assets which are the pride of Pakistan, assets which are…guarded by a corps of 18,000 soldiers,” former Pakistani president Pervez Musharraf told NBC News in 2011. The Pakistani military “is not an army which doesn’t know how to fight. This is an army that has fought three wars. Please understand that.”

A potential US military incursion in nuclear-armed Pakistan is just one example of a crucial but little-​discussed aspect of international politics in the early 21st century: how the acceleration of climate change and nuclear war planning may make those threats to human survival harder to defuse. At present, the intersections between climate change and nuclear war might not seem obvious. But powerful forces are pushing both threats toward their most destructive outcomes.

In the case of climate change, the unbridled emission of carbon dioxide and other greenhouse gases is raising global temperatures to unmistakably dangerous levels. Despite growing worldwide reliance on wind and solar power for energy generation, the global demand for oil and natural gas continues to rise, and carbon emissions are projected to remain on an upward trajectory for the foreseeable future. It is highly unlikely, then, that the increase in average global temperature can be limited to 1.5 degrees Celsius, the aspirational goal adopted by the world’s governments under the Paris Agreement in 2015, or even to 2°C, the actual goal. After that threshold is crossed, scientists agree, it will prove almost impossible to avert catastrophic outcomes, such as the collapse of the Greenland and Antarctic ice sheets and a resulting sea level rise of 6 feet or more.

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

On the other side of the equation, an intensifying arms race will block progress against climate change by siphoning resources needed for a global energy transition and by poisoning the relations among the great powers, impeding joint efforts to slow the warming.

With the signing of the Paris Agreement, it appeared that the great powers might unite in a global effort to slash greenhouse gas emissions quickly enough to avoid catastrophe, but those hopes have since receded. At the time, Obama emphasized that limiting global warming would require nations to work together in an environment of trust and peaceful cooperation. Instead of leading the global transition to a postcarbon energy system, however, the major powers are spending massively to enhance their military capabilities and engaging in conflict-provoking behaviors.

Since fiscal year 2016, the annual budget of the US Department of Defense has risen from $580 billion to $738 billion in fiscal year 2020. When the budget increases for each fiscal year since 2016 are combined, the United States will have spent an additional $380 billion on military programs by the end of this fiscal year—more than enough to jump-start the transition to a carbon-​free economy. If the Pentagon budget rises as planned to $747 billion in fiscal year 2024, a total of $989 billion in additional spending will have been devoted to military operations and procurement over this period, leaving precious little money for a Green New Deal or any other scheme for systemic decarbonization.

Meanwhile, policy-makers in Washington, Beijing, and Moscow increasingly regard one another as implacable and dangerous adversaries. “As China and Russia seek to expand their global influence,” then–Director of National Intelligence Dan Coats informed Congress in a January 2019 report, “they are eroding once well-established security norms and increasing the risk of regional conflicts.” Chinese and Russian officials have been making similar statements about the United States. Secondary powers like India, Pakistan, and Turkey are also assuming increasingly militaristic postures, facilitating the potential spread of nuclear weapons and exacerbating regional tensions. In this environment, it is almost impossible to imagine future climate negotiations at which the great powers agree on concrete measures for a rapid transition to a clean energy economy.

In a world constantly poised for nuclear war while facing widespread state decay from climate disruption, these twin threats would intermingle and intensify each other. Climate-​related resource stresses and disputes would increase the level of global discord and the risk of nuclear escalation; the nuclear arms race would poison relations between states and make a global energy transition impossible.

#### Infrastructure is impact filter – success is key to Biden’s agenda at the UN Climate Summit which is the only way to spur global follow-on

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

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.

#### Solves the economy via green tech and job growth

Kuttner, 9/17

(Robert, professor at Brandeis University’s Heller School. "Biden’s Build Back Better Plan Is First and Foremost a Jobs Plan,' 9/17/21 <https://prospect.org/infrastructure/building-back-america/bidens-build-back-better-plan-first-and-foremost-jobs-plan/> NL)

The Build Back Better legislation now working its way through the budget reconciliation process does many important things, but let’s not lose sight of the job creation benefits. Even after a partial and intermittent recovery, the U.S. economy currently has 5.3 million fewer jobs than in the last pre-pandemic month of February 2020. Our friends at the Economic Policy Institute have done a [comprehensive study](https://www.epi.org/publication/iija-budget-reconciliation-jobs/) of the combined impact of the bipartisan infrastructure bill plus the larger reconciliation package based on Biden’s Build Back Better. They find that the two, taken together, will directly create upward of four million new jobs. Of the direct job creation, 556,000 new jobs would be created yearly in manufacturing; 312,000 in construction industries; 763,000 in climate-related jobs, including electric-vehicle infrastructure and federal procurement of clean technologies, public transit, power infrastructure, climate resilience, agriculture and forestry innovations, environmental remediation, and scientific research and development; and 1.2 million in the caregiving professions. So there is a powerful synergy between the social investment that the economy needs and the complementary gains in job creation. Since these federal outlays come with wage standards (and manufacturing and construction jobs already pay well above median wage), these public investments also have major benefits in the form of higher worker pay. Build Back Better not only creates upward of four million new jobs; it creates good jobs. This is especially important in the caregiving occupations, where earnings have been a disgrace. By dramatically increasing public investments in universal pre-K, child care, home care, and other forms of elder care, government both enables workers to gain more skills that command higher pay and provides leverage for government standards to raise earnings directly. EPI’s analysis also provides a very useful comparison between Biden’s Build Back Better as revised by budget reconciliation, and the much-touted bipartisan infrastructure bill, now known as the Infrastructure Investment and Jobs Act. That act, with a much lower price tag of $548 billion in new money, creates only 772,000 new jobs per year, or just 19 percent of the combined total. Build Back Better, investing $3.5 trillion, creates the lion’s share—3.2 million new jobs per year. Build Back Better provides an array of complementary gains that will benefit citizens of red states along with blue ones. This is the benefit of going big. Before these deals are done, Congress may shave the total figure and shift some of it to spending disguised as tax cuts, such as the refundable Child Tax Credit. But the order of magnitude will not change much, and it is monumental. As we’ve seen from reports of jobs going begging, workers now have increased bargaining power to turn down lousy jobs with low pay. That dynamic, in turn, has raised prevailing wages, even without a higher statutory minimum wage. When the federal government creates another four million good jobs via direct public spending, that will increase worker bargaining power and earnings even more. This four-million-job figure does not even take into account multiplier effects, as the public investment helps underwrite and stimulate new economic activity in the private sector, making the likely real total well in excess of five million new jobs. It has long been established by social science research that increases in early-childhood education pay dividends several times over in the form of improved prospects of lifetime earnings and reduced need for social services and reduced entanglement with the criminal justice system. But similar kinds of multiplier benefits result from other areas of public investment. As the EPI analysis points out, Spending on infrastructure yields immediate benefits due to the labor- and capital-intensive demands of these investment projects, and it continues to yield economic dividends for years to come by allowing people, goods, and ideas to move around more efficiently. Estimates of the longer-term economic impacts of infrastructure spending find returns on investment range from 17 to 73% as businesses more efficiently reach markets, workers access more job opportunities, and families find it easier to access quality education and health care. Build Back Better provides an array of complementary gains that will benefit citizens of red states along with blue ones, Trump voters as well as Biden voters. There was a time when both parties recognized the benefits of this scale of public investment, from the original 1944 GI Bill to the Eisenhower-sponsored interstate highway system, as late as ARPA-E, intended to increase U.S. capacity in renewable energy, and created in 2007 under George W. Bush. No longer. Though the bipartisan infrastructure bill pointed in the right direction, it is a pittance compared with the need. It would be a miracle if even one of the Republican co-sponsors voted for Build Back Better, which thankfully can be enacted with 50 Democratic votes.

#### Infrastructure is the only antidote to the covid economy

Kivity, 20

(Shai A. Kivity holds a Master of Public Administration from the Harvard Kennedy School and an MBA from The Wharton School - Summa Cum Laude. Shai served in the Israel Defense Forces for 9 years as part of the prestigious Talpiot elite program. As a Major in the IDF, Shai Won the 2015 Israel Defense Award (associate winner), Israel’s highest security award, as well as several other awards. Today, Shai serves as a company commander in reserve the IDF number 7 armored brigade. Shai is an expert Financier whos professional experience includes leading highly complex technical projects that require the combination of both policy and technological expertise. Shai also holds a Bachelor's in Physics and Computer science and a Master's in International Relations. His hobbies include writing and language learning and he speaks five languages, including Arabic and Chinese. "Why infrastructure is the only way to fight a COVID-19 recession in the US," March 27 <https://www.weforum.org/agenda/2020/03/covid-19-recession-us-infrastructure-solution/> NL)

In fighting the COVID-19 crisis, the [Federal Reserve has used all of its monetary tools](https://www.bloomberg.com/opinion/articles/2019-10-31/federal-reserve-cuts-rates-and-puts-monetary-policy-on-pause). A new recession is underway or, as some may say, [it’s already here](https://www.ft.com/content/be732afe-6526-11ea-a6cd-df28cc3c6a68). When monetary policy isn’t enough, a country must turn towards fiscal policy. Right now, reviving the lagging US infrastructure sector may be the best approach: infrastructure creates economic growth, 5G cellular infrastructure will allow for faster data rates, a better electric grid allows us to drive electric cars and new roads reduce congestion and commute times. However, despite its benefits, the US is still 30 years behind on its infrastructure. Its roads are under-maintained and its electricity lines cause fires in California owing to insufficient investment. [Just investing in infrastructure isn’t enough](https://thehill.com/opinion/energy-environment/488428-infrastructure-spending-as-an-economic-stimulus-requires-a-nepa) – the US infrastructure problem is deeper than one that money can easily solve. Some may blame the 30-year lack of investments, but expert policy-makers, financiers and entrepreneurs all believe that if an infrastructure project would make society a better place, there is almost always a way to finance it. The main problem is that infrastructure is “resource inefficient” in the US. Projects are poorly managed with no centralized authority, which [causes costs to increase](http://nymag.com/intelligencer/2019/07/why-we-cant-figure-out-why-infrastructure-is-so-expensive.html). Despite being the world’s leader in innovation, the US has not been able to merge its technological capabilities with traditional infrastructure practices. The infrastructure world has yet to join the Fourth Industrial Revolution. The best way to exemplify the huge infrastructure gap is to look at [China’s construction of the Sanyuan Bridge, which took less than 43 hours to build](https://www.citylab.com/life/2015/11/beijing-replaced-this-huge-bridge-in-only-43-hours/416925/). In the first 24 hours, the bridge was demolished; in the remaining 19 hours, the new-and-improved structure was built in its place. While the US takes years to build a road, China takes days. The difference is not just the cost, but the speed of execution. Needless to say, [a full-blown fiscal plan](https://www.enotrans.org/article/looming-recession-sparks-familiar-calls-for-infrastructure-as-stimulus/) that focuses on infrastructure can close some of the gaps with China. Beyond a new spending budget [similar to that just announced in the UK](https://www.globalgovernmentforum.com/uk-budget-pledges-funds-for-corona-infrastructure-and-laws-on-cash-access/), the three causes of the infrastructure sector’s systemic problems must be addressed: inefficient decision-making processes at the municipality and state level, a lack of authority to execute projects due to over distributed authority and the high cost of construction resulting from old inefficient business practices. There are three solutions to these problems that the US must enact: 1. Consolidate government authority to execute infrastructure projects. Today, project alternatives are chosen by politicians. Review-and-outreach processes are then run to support those preferences, even when they add cost and provoke community objections that must be expensively addressed. The root cause of these capital-construction failures is [usually diagnosed as a lack of accountability](http://nymag.com/intelligencer/2019/02/cuomo-and-de-blasios-plan-doesnt-fix-biggest-mta-problem.html): nobody knows who’s in charge, so nobody has the fear of taking the blame for obscene costs and endless delays. There is a need to establish a federal infrastructure agency with a mandate to promote the industry to the next stage of its evolution. The first step of such an agency will be to strengthen the authority of municipalities to execute infrastructure projects. Although the US is mostly against over-centralized decision-making, in a hyper-localized industry, it is time to start acting according to national priorities, to create a long-term vision for infrastructure and to centralize some of the decision-making processes required to execute it. 2. To prioritize projects, the US should also start using data-driven decision-making processes. Most infrastructure projects are not a result of central planning, but, instead, reflect a governor or a mayor’s political aspirations. As an example, states [build roads in rural areas that don’t make economic sense](https://www.city-journal.org/html/if-you-build-it-14606.html), while underinvesting in urban areas desperately in need of infrastructure. We know this because today there is more data available than one could ever imagine. Start-ups can create weather simulations to [anticipate the wind speeds](https://www.climacell.co/) in a square mile by the hour or use traffic simulations to know the traffic levels by the minute, but, for some reason, cities are not using data to prioritize infrastructure projects on a national scale. Municipalities fail to use data to create a top-to-bottom process. If the infrastructure industry can learn how to take advantage of data, to create objective KPIs for infrastructure and help decision-makers to prioritize infrastructure projects, projects will be able to move to the execution phase more quickly and with greater efficiency. 3. Finally, we need to harness innovation and the Fourth Industrial Revolution to improve construction technology. From software and hardware to data, robots, construction tech (Contech), there is underinvestment. The industry received a mere $6 billion of investments last year. Meanwhile, a recent Deloitte report suggests [the US is missing $2.1 trillion in infrastructure investment](https://www2.deloitte.com/us/en/pages/risk/articles/infrastructure-investment-funding.html). If Contech can save 10% of the cost of infrastructure, it would save the taxpayer $210 billion worth of investments – and it can save so much more. It is estimated that the lack of construction efficiency in the industry increases a project’s costs by up to half. In infrastructure, as in other fields, the investment in tech pays for itself in the long run. Globally, the Fourth Industrial Revolution has yet to reach the world’s biggest industry – the construction industry. Encouraging investments in Contech by removing regulatory constraints and inviting Silicon Valley VCs to join the effort is critical to the US infrastructure industry. Furthermore, we should create the right incentives for US companies to adopt the technological revolution of Contech. There will be no way out of the coming recession without a fiscal plan that involves infrastructure. If the US is [going to invest hundreds of billions of dollars](https://www.governing.com/finance/New-Stimulus-Plan-Intended-to-Soften-Effects-of-COVID-19-Recession.html) in the infrastructure industry, it must use the crisis to reform the sector and make sure it emerges from this recession with a stronger, more durable economy than before.

### UQ

#### Uniting Dems will be tough but Biden is using a proven strategy

LEMIRE and MILLER 9/18 (Jonathan and Zeke; Associated Press, “One stunning afternoon: Setbacks imperil Biden's reset,” <https://www.clickondetroit.com/news/politics/2021/09/18/one-stunning-afternoon-setbacks-imperil-bidens-reset/>, //pa-ww)

The West Wing is recreating a legislative strategy that worked to secure passage of the $1.9 trillion COVID relief in March and pushed the $1 trillion bipartisan infrastructure bill through the Senate in August, according to a half dozen White House aides and outside advisors who were not authorized to discuss internal deliberations. With Biden cajoling lawmakers, the infrastructure bill is to be passed through the House along with the $3.5 trillion spending bill that contains many of the president’s priorities — like climate change and child care — and would pass the Senate along party lines. With the Senate in a 50-50 tie and Democrats’ margin in the House only a handful of seats, few votes can be lost, and it could be a formidable task to unite Democratic moderates, like Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, who want a far smaller spending bill, with liberals like Sen. Bernie Sanders of Vermont, who has steadfastly said it could not shrink. The White House also has begun filling the president’s schedule again with events meant to highlight the need to pass the bills, including linking visits to the sites of natural disasters — fires in California and Idaho, hurricanes in New York and New Jersey — to the climate change funding in the legislation. And this past Thursday, on what had previously been tentatively planned as a down day for Biden, the White House scheduled him to give a speech from the East Room during which he zeroed in on how tax enforcement to get big corporations and wealthy Americans to pay more would help fund his plan, without offering any new details. But there are roadblocks. Manchin told Biden that he could not support $3.5 trillion and White House aides have begun signaling that they would settle for a smaller package, even if it raises the ire of progressives. Still, Biden’s advisers believe that, even if there is some unhappiness with the package, no Democratic lawmaker would want to be perceived as undermining the centerpiece of the agenda of a president from their own party. As the activity moves back to Washington, the White House is also scaling back the president’s travel to support the agenda on Capitol Hill, but it’s led to elevated concerns among some Democratic lawmakers that Biden wasn’t doing enough to personally sell the legislation to their constituents across the country. The White House notes that Biden’s Cabinet has been traveling aggressively to promote the legislation, even when the president has been kept back in Washington. The scaled-back travel comes amid some worry from aides about the exposure level Biden may have faced when he mingled in groups during a recent grueling trip west and his three-stop journey to mark the September 11th anniversary, two officials said. Biden, 78, also did not get a summer vacation. His plan to spend time at his Delaware home in August was scuttled by the Afghanistan crisis. Aides had finally scheduled him a break, a long weekend at his house in Rehoboth Beach along Delaware’s coastline. He reached his home Friday just after 1:30 p.m. Ninety minutes later, any hope for a quiet weekend vanished.

#### Will pass but pc key

Bose, 9/16

(Nandita, reporter for Reuters, "Biden expects Congress to approve spending, infrastructure bills," 9/16/21 <https://www.reuters.com/world/us/biden-says-he-expects-congress-deliver-spending-infrastructure-bills-2021-09-16/> NL)

Sept 16 (Reuters) - U.S. President Joe Biden on Thursday expressed confidence that Congress will pass both a bill funding infrastructure investments and a supplementary spending bill as Democrats seek to infuse trillions of dollars into the U.S. economy. Democrats in Congress are writing a $3.5 trillion spending bill that funds child care, community college and other social programs with an increase in taxes on companies and the very wealthy. The party seeks to pass the massive package as a companion to a $1 trillion infrastructure bill that has bipartisan support. "I know we still have a long way to go, but I’m confident that Congress will deliver to my desk both the bipartisan infrastructure plan and the Build Back Better Plan I proposed," he said, using the spending bill's name. Biden later had a "positive discussion" with House of Representatives Speaker Nancy Pelosi and Senate Democratic leader Chuck Schumer about progress in advancing the bills, the White House said. They also discussed plans to pass a continuing resolution to fund government operations, the White House said. The resolution must be passed by the end of September to keep government operations funded. While the infrastructure plan has support on both sides of the aisle, Democrats in the Senate, where they narrowly hold control, face a tough battle to finalize the plan that would expand the social safety net. As Republicans decline to support or negotiate on the $3.5 trillion package, Senate Democrats are taking a route known as budget reconciliation to pass the bill with a simple majority vote. The party must convince moderate members in its own ranks, like Senators Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, to back the bill. Both have raised questions about the size and scope of the program.

### L

#### Pharma would take SIGNIFICANT PC – they have like the biggest lobby in the world

Scott, 20

(Dylan Scott, "What Joe Biden could do to bring down drug costs", Vox, 12-7-2020, https://www.vox.com/policy-and-politics/2020/12/7/22158418/joe-biden-prescription-drug-prices-agenda)\\JM

Just as Joe Biden prepares to take over the presidency, the pharmaceutical industry is having its best political moment in years. Numerous Covid-19 vaccines are on the verge of approval, promising an (eventual) end to the pandemic that has upended every American’s life for the last nine months. Reducing prescription drug costs has long been a top priority for voters. But given the prospect of a divided government, the other health care issues likely to dominate the Biden administration’s attention, and pharma’s renewed political clout, lobbyists and health care experts are skeptical there will be significant action to rein in drug costs over the next few years. “Now that it’s looking like we’ll have successful vaccines, drug companies could come out of this pandemic as heroes that saved us from the evil virus,” Larry Levitt, executive vice president at the Kaiser Family Foundation, told me. “That will make it harder to demonize the pharmaceutical industry in a fight over drug pricing.” There are two kinds of drug pricing problems. One is the actual list prices set by drug companies, which most patients and health systems don’t actually pay, but still set the top line from which various discounts and rebates are applied. (And for the uninsured, that is their price unless they get some kind of assistance.) List prices are more difficult to control, without the more aggressive kind of price-setting that pharma and many lawmakers would balk at. The other issue is out-of-pocket costs, or what patients must pay under their insurance plan. That may be easier to fix; it’s just a matter of finding the money to improve, for example, the Medicare drug benefit so patients have smaller obligations when they fill a prescription. There could be an opportunity for incremental improvements through Congress. A bipartisan Senate bill would serve as an obvious template for a compromise, if the Senate remains in Republican hands and with Democrats holding onto the House. As one health care lobbyist told me, lawmakers are cognizant that after years of fierce partisan divisions that have stymied even small-bore improvements to US health care, “the voting public needs to see points on the board.” But any legislating could still be difficult, as even small coalitions in the House and the Senate can make it hard for bills to move forward, and pharma still wields tremendous influence within the US Capitol. As for President-elect Biden’s regulatory agenda, he will have to decide how much to prioritize drug pricing alongside improving Obamacare and reversing some of Trump’s actions on Medicaid. Pharmaceuticals are one area where the Trump administration has been more creative, but they also have failed to actually put many of their proposals in place. Biden could, in theory, pick up and build on some of the Trump initiatives. But many experts are skeptical he will. Health care activists are still pushing for big changes. The US public still wants drug affordability addressed. But the context of the debate has shifted. On top of the vaccine news, drug prices have not been rising as quickly as in previous years, and the headline-grabbing price gouging appears to have subsided from the days when Martin Shkreli was briefly the face of the industry. Taken together, experts have lowered their expectations about significant reforms happening any time soon, even though many Americans are still struggling to afford the medications they need. “I think now, you don’t have all those stories about insulin and Epipen, plus you have positive stories about vaccines and other drugs,” Walid Gellad, director of the Center for Pharmaceutical Policy and Prescribing at the University of Pittsburgh, says. “You don’t have as fertile an environment for more extreme drug measures.” There could be targeted action in Congress if everybody gets on board A bipartisan bill introduced last year by Sens. Chuck Grassley (R-IA) and Ron Wyden (D-OR) and passed out of the Senate Finance Committee could be the initial template for drug pricing legislation under the Biden administration. As the lobbyist told me, if Senate Republicans and Senate Democrats can agree on a plan, that will put intense pressure on the House to come to an agreement. The bill would penalize drug companies for any price hikes that are higher than inflation, requiring them to pay rebates to the Medicare program to make up the difference. For patients, the Finance Committee’s legislation would also redesign Medicare Part D benefits and cap patients’ out-of-pocket obligations at no more than $3,100 a year (and many would pay far less than that). The Congressional Budget Office projected that the bill would save beneficiaries a combined $20 billion over 10 years. Both of those provisions are shared in concept, if not in all the details, with the major drug pricing bill passed by House Democrats in 2019, indicating they would represent a common ground between the two chambers if Republicans retain control of the Senate. The Senate Finance bill didn’t get past the committee stage, partly because Senate Majority Leader Mitch McConnell was unenthused and President Donald Trump did little to apply pressure on reticent Republicans. Biden could try to use his bully pulpit to get a deal done. The legislation “just lacked the push from the president,” Gellad said. Under Biden, “I think you might actually see a push from the president.” Other policies cracking down on anti-competitive practices by drug makers have earned support from lawmakers in both parties. For example, a bipartisan Senate bill from Grassley and Sen. Amy Klobuchar (D-MN) and a plan sponsored by a group of House Republicans would bar brand-name manufacturers from making “pay for delay” payments to generic drug companies. Those arrangements currently can push back the introduction of generic competitors — one of the main tools in the US health system for limiting drug prices after the monopolies granted to new drugs expire — for months or more. But more direct negotiations between Medicare and drug companies, a popular campaign talking point for Biden and other Democrats, are likely off the table unless Democrats can win both Georgia Senate runoffs, and with them a narrow Senate majority. Republicans not named Donald Trump have never warmed to the idea. The health care lobbyist told me that a deal agreed to by Biden, McConnell, and Senate Democrats should be able to get through the House, too, even if the left and right wings balk. “Pelosi can’t say no. McCarthy can’t say no,” the lobbyist said. “They can bring enough of their guys.” Biden will have to decide whether to press on with any of Trump’s executive actions The Trump health department has been busy on drug prices. They’ve authorized drug importation from other countries and released a bevy of proposals to bring American drug prices more in line with other countries. The trouble has been in their lack of follow-through, which means the Biden administration will largely be left to decide whether to pick up Trump’s policies and run with them or start from scratch on their own. But if nothing else, Trump’s aggressive posture toward the pharma industry may give Biden more leeway to be ambitious during his own presidency. “Despite the Trump Administration’s failure to implement its most ambitious drug pricing policy goals, the administration’s rhetoric has been successful in normalizing and making the case for these bold reforms,” Rachel Sachs, a law professor at Washington University in St. Louis, wrote in Health Affairs shortly after the election. International reference pricing has been the calling card of Trump’s agenda, though his administration’s attempt to finalize it has been done in a legally shoddy, last-minute way that experts think leaves it vulnerable to the legal challenges already filed by the drug industry. In brief, under this “most favored nation” proposal, Medicare would not pay a higher price for drugs than other similarly wealthy countries do. Sachs suggested in her article that Biden’s team could reevaluate the referencing pricing model, but refine it to make it less administratively complex. They could also shift the focus from automatic price controls to an independent review board that would take the foreign prices into account while setting its own recommended prices for Medicare. Biden could also revisit the Obama administration’s plan to change how Medicare pays physicians for certain drugs, which was introduced too late to be fully implemented before Obama and Biden left office, Levitt said. The federal government theoretically has expansive powers to try to curb drug prices. Progressives argue the federal government could use existing authorities to effectively revoke patents issued to drug makers if their medicines were developed through substantial public investment. It is an idea with a lot of purchase on the left and something even Biden’s newly announced nominee to lead the Department of Health and Human Services, Xavier Becerra, has sounded receptive to under certain circumstances. Activists argue that the urgency of reducing drug costs for Americans has become only more apparent during the Covid-19 pandemic, even if pharmaceutical companies try to use their success with vaccines to their political advantage. “If there is anything that this pandemic should have taught us, it’s that something should be done. We shouldn’t allow ourselves to think it’s not possible,” Dana Brown, who promotes drug pricing reform for the Democracy Collaborative, told me. “Can we literally afford the status quo? For me, the answer is no.” Progressives will try to keep the pressure on Biden to go big. But there is a belief among savvy DC observers that drug pricing may be crowded out by other health care priorities. As Rob Smith, an analyst at the investment advisory firm Capital Alpha, wrote in a note in the days after the election: “We think drug pricing will fall to a third or fourth tier issue for the next administration.”

#### Pharma guaranteed to spark backlash – support for vaccines and failure of past bills prove

(Emmarie, Correspondent at Kaiser Health News, formerly covered Congress at the New York Times, “Democrats push to negotiate with drugmakers for lower prices on prescriptions covered by Medicare”, Fortune, 03-23-2021, https://fortune.com/2021/03/23/democrats-push-to-negotiate-with-drugmakers-for-lower-prices-on-prescriptions-covered-by-medicare/)\\JM

Democrats, newly in control of Congress and the White House, are united behind an idea that Republican lawmakers and major drugmakers fiercely oppose: empowering the Department of Health and Human Services to negotiate the prices of brand-name drugs covered by Medicare. But they do not have enough votes without Republican support in the Senate for the legislation they hope will lower the price consumers pay for prescription drugs. That raises the possibility that Democrats will use a legislative tactic called reconciliation, as they did to pass President Joe Biden’s COVID relief package, or even eliminate the Senate filibuster to keep their promise to voters. Regardless, Democrats hope to authorize Medicare negotiations on payments for at least some of the most expensive brand-name drugs and to base those prices on the drugs’ clinical benefits. Such a measure could put Republicans in the uncomfortable position of opposing an idea that most voters from both parties generally support. As chairman of a health and retirement subcommittee, Sen. Bernie Sanders (I-Vt.) on Tuesday was set to hold one of this Congress’ first hearings on drug prices, seen as a way for Sanders and his allies to highlight that drug prices in the United States are among the highest in the world. Dr. Aaron Kesselheim, a Harvard Medical School professor who researches the drug industry and will testify at the hearing, said there is no practical reason the federal government cannot negotiate a price based on independent assessments of a drug’s clinical benefits—as every other industrialized nation, and even some state Medicaid programs, do. “The real reason is the drug industry’s lobbying power,” he said. Negotiating Medicare drug prices has ebbed and flowed as a political issue for years, repeatedly defeated in Congress under pressure from the pharmaceutical industry. The government has been banned from negotiating Medicare drug prices since the creation of the Part D prescription drug benefit in 2006. Instead, the optional private plans through which Americans get Medicare drug benefits negotiate with drugmakers. It has been two years since Congress summoned executives from Big Pharma companies and pharmacy benefit plans to Capitol Hill for a scolding over skyrocketing prices and the loopholes and secretive contracts they use to block competitors and secure profits. Despite then-President Donald Trump’s keen interest in lowering drug prices, most proposals by both Democrats and Republicans on Capitol Hill went nowhere under Republican leaders, who argue government intrusion in the free market would hamper future innovation. They point to an estimate from the Congressional Budget Office suggesting the cuts to drugmakers’ revenue under Medicare negotiations could lead to nearly 40 fewer new drugs being developed in the next 20 years. The government currently approves about 30 drugs per year. The drug industry, bolstered by its quick efforts to develop a vaccine, has seen public opinion turn in its favor after several years of sharp declines. In early 2020, before the pandemic shut down much of the United States, only about one-third of Americans rated the industry positively, according to a Harris public opinion poll. In February, as vaccination efforts ramped up, about 62% rated it positively—a larger turnaround than any other industry in the past year. PhRMA, the lobbying organization that represents brand-name drugmakers, came out strong this month against the administration’s first drug-pricing action, a measure in Biden’s sprawling COVID relief package that is expected to result in drugmakers paying higher rebates to state Medicaid programs for their drugs. Brian Newell, a PhRMA spokesperson, suggested the fight is just beginning for Democrats. “The American people reject government price setting when they realize it will lead to fewer new cures and treatments and less access to medicines,” Newell said in a statement. “Our industry has partnered closely with policymakers in fighting the pandemic, and we hope they will partner with us to develop solutions that will lower drug costs for patients, protect access to life-saving medicines and preserve future innovation.” The power of negotiation Though they disagree on some of the details, such as how far penalties should go, Democrats are united on the need to address drug pricing. Biden, progressives like Sanders and moderates such as Sen. Joe Manchin (D-W.Va.) support proposals that would generally allow the government to set restrictions on brand-name drugs. Researchers say these drugs, initially priced without any competition or regulation, are a leading factor driving up costs for Americans, their employers and the government. In 2019, the Democratic-controlled House passed legislation that would allow the secretary of Health and Human Services to negotiate the prices for at least 25 of the most expensive drugs marketed in the United States that lack at least one competitor—prices that could be available to people insured by private plans as well. Senate Republicans refused to consider the bill, arguing the policy would discourage drug development. Top Democrats, including Sen. Ron Wyden of Oregon, chairman of the Senate Finance Committee, say that is likely to be incorporated into drug-pricing reform this year. Under the 2019 House bill, the negotiated price could not exceed 120% of the highest price in one of six other industrialized nations. Drugmakers would face escalating penalties for not complying. Sanders and some Democrats took a slightly different path in the previous Congress, sponsoring a package that would enable Medicare negotiations, as well as allow the importation of drugs and broadly tie drug prices to median drug prices in Canada, the United Kingdom, France, Germany and Japan. But party leaders prefer the House proposal for negotiating prices as a model for this year’s efforts. In addition to allowing negotiated payments for drugs, Democrats also want to cap prices so they could not rise faster than inflation and limit how much Medicare beneficiaries pay out-of-pocket each year. Democrats say there are more savings to be gained through giving negotiating power to the government, which would have more heft than any individual plan. In 2017, Medicare accounted for about 30% of the nation’s total retail spending on prescription drugs, according to KFF. Advocates of Medicare negotiation often cite the Veterans Health Administration as a possible model, noting the government already negotiates with drugmakers on behalf of retired service members and often secures drug prices that are about 35% lower than those paid by Medicare beneficiaries. Flashback to 2019 Fresh off the campaign trail and invigorated by polls showing about 8 in 10 Americans believe drug prices are unreasonable, senior lawmakers from both parties called the leaders of brand-name drugmakers and pharmacy benefit managers to testify about rising drug costs in early 2019. That year saw a wave of bills introduced, the most ambitious of which constrained the cost of brand-name drugs through direct price controls. Trump, who bucked his party and supported Medicare negotiation and other price-setting measures, offered a series of changes that mostly fell apart under court challenges. Sen. Chuck Grassley (R-Iowa) and Wyden, then the chairman and top Democrat on the Finance Committee, respectively, unveiled a proposal that, among other measures, would cap the price Medicare pays for brand-name drugs to the pace of inflation and trigger rebates if prices rise too quickly. Medicaid already uses a similar inflation cap—and tends to pay lower prices on drugs than Medicare. The HHS inspector general has said Medicare could collect billions of dollars from the drug industry if it followed Medicaid’s lead. But other Republicans refused to support Grassley on the bill, saying inflation caps amount to government intrusion in the free market, and Republican leaders never brought it up for a vote. Even Wyden said he was not sure he could vote for the proposal unless he was afforded an opportunity to offer a broader cost-containment measure, including price negotiation. “We’re not going to sit by while opportunities for seniors to use their bargaining power in Medicare are frittered away,” Wyden said at the time. The former legislative partners are still pushing the issue. Grassley has continued to press lawmakers to consider the earlier bill. Wyden has said he intends to “build off the bipartisan work” he did with Grassley and work with the House-passed Medicare negotiation bill as Democrats consider a reform package this year.

#### Pharma lobbying guarantees backlash

Oshin, 21

(Olafimihan, Staff Writer @ The Hill, “Pharmaceutical industry donated to two-thirds of Congress ahead of 2020 elections: analysis”, The Hill, 06-09-2021, https://thehill.com/homenews/senate/557610-pharmaceutical-industry-donated-to-two-thirds-of-congress-ahead-of-2020)\\JM

More than two-thirds of Congress cashed a check from the pharmaceutical industry ahead of the 2020 election, according to an analysis from STAT. Pfizer, which played a big role in the creation and distribution of the COVID-19 vaccine, donated up to $1 million to 228 members of Congress in 2020, and has also written checks for 1,048 candidates in state legislative races. Meanwhile, Amgen, which is based in California, donated nearly $1.3 million to 218 members of Congress. The lawmakers who received the highest amount from the pharmaceutical industry include Rep. Richard Hudson (R-N.C.) — who sits on the Energy and Commerce Health subcommittee, which oversees a significant share of Congress's health care legislation — and Reps. Kurt Schrader (D-Ore.), Robin Kelly (D-Ill.) and Anna Eshoo (D-Calif.), according to STAT. The analysis comes after the government relied on drugmakers to develop a COVID-19 vaccine during the ongoing COVID-19 pandemic. But in 2019, Democratic lawmakers pushed for the Lower Drug Costs Now Act, which would have cost the industry $500 million in revenue, STAT noted. However, even with Democratic lawmakers attempting to pass the legislation, they still received $6.6 million in contributions from pharmaceutical companies. Republicans received $7.1 million. STAT's analysis was conducted using data from donations made by 23 drug manufacturers and trade groups to Congress members in 2019 and 2020.

### PC

#### Political capital theory true for Biden, especially at this stage

Politi 21 – world trade editor

James, 1/18. “Joe Biden’s challenge: big, early victories in a toxic political climate.” <https://www.ft.com/content/fa01bc64-a80c-4c32-abad-f8eb778c4fe6>

The shock of the mob attack on the US Capitol had barely subsided when Joe Biden took the stage last week at the Queen, a theatre in his hometown of Wilmington, Delaware to lay out his $1.9tn relief plan for the world’s largest economy. That evening, the president-elect made no mention of the January 6 insurrection that shook Washington, leaving five people dead and Donald Trump being swiftly impeached for the second time. Instead, he spoke of Patricia Dowd, the 57-year-old Californian and first known person to die from coronavirus in the US, and the millions of Americans who had lost what he called the “dignity and respect” of employment during the pandemic. “I promise you, we will not forget you. We understand what you’re going through. We will never ever give up and we will come back.” Mr Biden said, adding: “Come Wednesday, we begin a new chapter.” At 78 years old, Mr Biden will be sworn in on January 20 as the 46th US president, without any of the cheering crowds and celebrations afforded to his predecessors. In addition to coronavirus restrictions, his inauguration will be protected by 25,000 members of the National Guard in the US capital to avoid another episode in domestic terror. The bleak circumstances of Mr Biden’s first day in office have added sobriety to the moment, and pointed to the massive political challenge he is facing. Having won the White House by projecting a mix of competence, empathy and renewal to American voters after four years of Trumpism, he will have to translate all that into governing at a wrenching moment in US history. Mr Biden is no stranger to tough starts, given that he became vice-president to Barack Obama at the height of the financial crisis. But the problems now confronting the country are arguably more severe and multi-faceted than they were in 2009, requiring even more sure-handed intervention and political skill. Many Democrats believe Mr Obama spent too much of his first year trying to win bipartisan support for his plans. They are well aware that to be successful, Mr Biden will need to show rapid concrete results. “To be able to deliver tangibly in the near term in ways that all people in the country can see and feel and know is a critically important thing to do,” says Mara Rudman, vice-president for policy at the Center for American Progress, a left-leaning Washington think-tank, and a former official in the Clinton and Obama administrations. “We have had a self-perpetuating cycle in a very negative direction,” she adds. “I think we have the opportunity to get to a self-perpetuating cycle in the positive direction.” The president-elect’s transition team has already set out plans for a barrage of unilateral executive orders during the first 10 days to rejoin the Paris climate agreement and scrap the travel ban imposed on certain Muslim-majority countries, undoing some of Mr Trump’s most controversial policies. It has also made clear that Mr Biden wants to rebuild the US’s traditional alliances with other western nations that frayed during the past four years, while being more focused in confronting strategic rivals such as China and Russia. But Mr Biden has tried to focus the attention of lawmakers rattled by the assault on the Capitol — and an anxious public — primarily on his prescriptions to resolve America’s health and economic crises, as he prepares to enter the White House. Nearly 400,000 Americans have died from Covid-19, and 9.8m fewer Americans are employed compared with last February. At the Queen, the president-elect called on Congress to pass his sweeping relief plan, which includes a new round of direct payments to Americans, aid to cash-strapped states and cities, a top-up of federal jobless benefits, a beefed-up tax credit for children and more funding for vaccinations. Securing its passage will be the first big test of Mr Biden’s presidency, and no easy task given his Democratic party’s exceedingly tight edge in both the House of Representatives and the Senate — and the toxic climate on Capitol Hill that may be exacerbated by Mr Trump’s second impeachment trial. “There is going to be a compulsion to get something done and get something done quickly, but it is definitely under more difficult circumstances given the political environment, the non-cooperation of the Trump administration, the severity of the pandemic itself and the close margins in Congress,” says John Lawrence, former chief of staff to Nancy Pelosi, the House speaker. “It is going to be tough.” Mr Biden’s urgency in pushing for a large-scale coronavirus relief package — less than a month after another fiscal stimulus package, worth $900bn, was agreed by Congress — reflects the knowledge that new presidents often have a short window to make use of their political capital. Midterm elections, where the entire House of Representatives and one-third of the Senate will be up for grabs, will take place in less than two years, and Mr Biden’s Democratic predecessors, Mr Obama and Bill Clinton, each saw their agendas curbed and upended after their party lost control of the House in 2010 and 1994 respectively. “What you really have in American politics is 18 months. Every administration gets 18 months of policymaking every four years,” says Glenn Hutchins, founder of private equity group Silver Lake Partners and a former Clinton administration official. “So once you've begun the process of cleaning up the dystopian nightmare that Trump left behind, how do you then pivot to addressing the long term underlying issues of importance? What do you choose to focus on? That's going to be the main thing.” As the new administration grapples with priorities, there has been plenty of debate among Democrats in recent years about how to make progressive policies more easy to understand and more popular with the American public — which Mr Biden’s team has tried to absorb both in crafting its policies and its communication. “The ambitions are at the New Deal scale, they are about kitchen table, lunch-pail, meat-and-potatoes economic concerns that people have,” says Kenneth Baer, a former senior Obama administration official and co-founder of Crosscut Strategies, a consultancy in Washington. “And [the message is] we are going to help you.” In addition to the $1.9tn stimulus package laid out by Mr Biden last week, he is expected to move quickly in February to present a second recovery plan involving trillions of dollars in additional spending centred on infrastructure and green energy. To be at least partially funded by higher taxes on corporations and the wealthy, it is another hugely ambitious legislative endeavour. Mr Biden’s hopes of a successful first-term agenda did receive a big boost on January 5, the eve of the assault on the US Capitol, when Raphael Warnock and Jon Ossoff, two Democrats, won a pair of run-off Senate races in Georgia. The twin victories handed control of the upper chamber to Mr Biden’s party — albeit with a 50:50 split and tiebreaking votes cast by Kamala Harris, the incoming vice-president. Given that the Democrats now get to decide which proposals can be put up for a vote in the Senate, the Georgia results ensure that, at the very least, Mr Biden’s goals will not be blocked by Mitch McConnell, the Republican senate leader, at every turn. Mr Biden’s ability to enact crucial parts of his agenda will initially depend on keeping the Democratic party fully united behind any legislation, marrying the needs of conservative lawmakers with those of the progressive bloc, with very little room for defection.

#### Biden needs to prioritize infrastructure---political capital is zero-sum.

Smith 21 [Noah Smith is a Bloomberg Opinion columnist. He was an assistant professor of finance at Stony Brook University, and he blogs at Noahpinion. 1-13-2021, "Biden Must Avoid Obama's Mistake When Setting His Agenda," Bloomberg, accessed 7-12-2021, https://www.bloomberg.com/opinion/articles/2021-01-13/biden-must-avoid-obama-s-mistake-when-setting-his-agenda] //BY

The universe of possibilities for the Biden administration radically expanded after the Democrats clinched the Senate majority, but the increase in political capital isn’t infinite. When deciding which problems to tackle first, President Joe Biden should prioritize initiatives that address the pandemic while moving the nation toward long-term goals for public health and green-energy stimulus.

Biden can learn from the experience of Barack Obama, whose focus on health-insurance reform provoked a midterm backlash and probably forfeited a chance to boost the country out of the Great Recession sooner.

He should heed the words of Winston Churchill who urged, “never let a good crisis go to waste.” Because crises are times when the public understands that change is necessary, it’s possible to make deep and lasting reforms. President Franklin D. Roosevelt understood this when he focused parts of his New Deal on long-term alterations to America’s economic structure, such as Social Security and the National Labor Relations Board. These policies not only contributed to the recovery from the Great Depression — the reason for Roosevelt's election — but created a more equal and stable economy in which workers had more bargaining power and old people didn’t have to live in penury.

The U.S. was in the depths of the Great Recession when Obama took office in 2009. With the benefit of unified Democratic control of Congress, he passed a fairly substantial stimulus. But it was still too small to make more than a modest dent in the recession. It was too weighted toward tax cuts and it didn’t include much of a bailout for underwater homeowners. Instead, Obama spent much of his political capital on passing the Affordable Care Act, commonly known as Obamacare.

Now, it’s true that health insurance was, and is, one of the country’s biggest problems. And it’s also true that Obamacare substantially reduced the ranks of the uninsured, which was a big, important victory. But the system Obama crafted was a compromise, which left the problem of ruinously high costs mostly unaddressed. The legislation failed to satisfy many on the left, with a few now even labeling it as mass murder for not making deeper reforms. Meanwhile, Obamacare remained unpopular throughout Obama’s term in office and may have substantially contributed to the Democrats’ catastrophic midterm election losses in 2010.

Alternate histories are difficult to imagine, but it seems likely that had Obama spent his 2009 political capital on things more directly related to the recession — such as more infrastructure spending, a bigger bailout for underwater homeowners and a stronger welfare state — he'd have realized a higher return on that political capital. In other words, a crisis does present an opportunity for long-term reforms, but it’s best to use that opportunity for reforms that address the immediate crisis.

The Democratic victories in the Georgia Senate runoffs have given Biden an unexpected opportunity to pass major legislation in the first year of his presidency, instead of relying on executive action and the faint hope of bipartisan compromise. The left will be clamoring for major action on health care and a variety of other momumental issues, but Biden needs to spend his political capital on reforms that are also tied to the COVID-19 pandemic and the resulting recession.

The first priority is public health. COVID-19 exposed deep and catastrophic weaknesses in the U.S. public health institutions. Right now, vaccination is proceeding at a glacial pace due to an uncoordinated rollout that dumped vaccines in the lap of state public health agencies utterly unequipped to rapidly inoculate the entire populace. Biden needs to come right out of the gate with a coordinated, well-funded vaccination plan that reaches maximum vaccination rates as fast as possible. In doing so, he also needs to bolster public health agencies and revitalize and reform both the Centers for Disease Control and the Food and Drug Administration after years of neglect.

This will be a bigger challenge than is popularly realized because of the possibility that vaccine-resistant virus strains will emerge. Biden will need to reorient much of the U.S. economy toward vaccine production and distribution until COVID-19 has been decisively beaten all around the world. It will take a lot of money and a lot of will.

After the virus is beaten, the U.S. economy will still linger in recession unless the government acts decisively to boost demand. The best tool for doing this, as usual, is infrastructure investment. And the rapid progress in solar power and batteries means that Biden has a unique opportunity to address the climate crisis at the same time. A huge build-out of solar power and electric-car charging stations, including subsidies to rapidly replace fossil fuel plants and gasoline vehicles, will ensure that the U.S. economy comes roaring back while making huge steps toward decarbonization.

Public health and green infrastructure should be the top priorities for Biden in 2021 and 2022. Yes, there are lots of other things in America that need reform, including health care. But the realities of the political system mean these will have to wait. Reforms must fit the crisis of the day; Biden can’t afford to get sidetracked on a quixotic quest to fix everything that’s wrong with the American economy.