# 1NC

### Off

#### **Interpretation – Current “Scope” of core antitrust laws includes agreements between competitors, monopolization law, and merger and acquisition reviews. Topical affs cannot do any of these.**

Waller 20 – John Paul Stevens Chair in Competition Law, Loyola University Chicago School of Law

Spencer Weber Waller, “The Omega Man or the Isolation of U.S. Antitrust Law,” Connecticut Law Review, Vol. 52, April 2020, LexisNexis

The United States defines the antitrust laws as the substantive provisions of the Sherman, Clayton, and Federal Trade Commission acts along with a small number of subsidiary statutes. This limits the scope of antitrust law to agreements between competitors, monopolization law, and the review of potentially harmful mergers and acquisitions. In contrast, the EU and other jurisdictions have led the world to a broader understanding of the meaning and reach of competition law that is only partially understood or appreciated in the United States. This Section explores that broader vision of competition including market studies and investigations; prohibitions against public anticompetitive conduct; state aids; and the use of public interest factors normally not part of the U.S. vision of the antitrust enterprise.

#### Violation – The plan modifies agreements between competitiors

#### Vote neg for limits and ground—abandoning the floor means they can do any increase in enforcement resources, strategy, take one more case, or apply one more person to an existing case—no DAs link and makes the research burden impossible

### Off

#### The International Competition Network should establish that prohibiting private sector export cartel practices that produce anticompetitive effects in the markets of countries that agree to a reciprocal framework regarding competition law is a best practice recommendation.

#### The CP revitalizes the ICN and establishes international antitrust regulations which solves the case and prevents international protectionism—the perm is seen as American takeover which ruins ICN authority

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).

### Off

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

#### prohibit private sector export cartel practices that produce anticompetitive effects in the markets of countries that agree to a reciprocal framework regarding competition law

#### 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.

### Off

#### BBB will pass – it’s key to meeting the U.S.’s climate commitments

DUMAIN 11/8 (Emma; E&E Daily, “Democrats cheer reconciliation vote, but big fights remain,” <https://www.eenews.net/articles/democrats-cheer-reconciliation-vote-but-big-fights-remain/>, //pa-ww)

Congressional Democrats painted a rosy view this past weekend of the prospects for swift legislative action on their massive, $1.7 trillion climate and social spending package. From the White House on Saturday, President Biden said without equivocation, “We will pass this in the House, and we’ll pass it in the Senate.” From Glasgow, Scotland, on a panel at the United Nations climate talks, Sen. Ed Markey (D-Mass.) said his message to the entire international community was that the Senate would ultimately get the votes to advance the reconciliation bill, enabling Biden to meet his goal of achieving 50 percent emissions reductions below 2005 levels by the year 2030. “We will get this job done,” said Markey of legislation that would invest roughly $550 billion to fight the climate crisis — the biggest federal investment in the environment in history. And yesterday, White House chief of staff Ron Klain hammered the point home: “We are going to lead the world in tackling climate change,” he said on on NBC’s “Meet The Press,” adding, “We’re going to pass this bill and have the tools to do it.” But simmering beneath this optimism are real uncertainties as to how lingering disagreements over the cost and content of the reconciliation bill, known as the “Build Back Better Act,” will get resolved and fulfill the many promises on climate action Democrats intend to tout in Glasgow over the next several days. This past Friday, progressives finally agreed to clear the separate, $1 trillion bipartisan infrastructure package for the president’s signature, even without ironclad commitments from moderate Democratic Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona that they would vote for the separate, partisan bill. Those commitments had been a hard line that liberals had held on to for weeks. Meanwhile, another dilemma emerged: House Democratic moderates said they would not support the reconciliation bill until it had received an official cost estimate from the nonpartisan Congressional Budget Office. House Democratic leadership ultimately culled together the votes to pass the bipartisan infrastructure bill, 228-206, with all but six Democrats supporting and with help from 13 Republicans to make up the shortfall. Moderates essentially promised progressives they’d vote for the reconciliation bill once the CBO score is finalized. At the same time, Congress took a procedural step, 221-213, regarding the reconciliation bill to bring that measure closer to a final passage vote the week of Nov. 15, when the House returns following the Veterans Day recess. Rep. Josh Gottheimer (D-N.J.), one of the moderates who insisted the reconciliation bill be scored prior to a vote, said on CNN’s “State of the Union” yesterday he expected the score to be in line with White House projections, in which case he and his colleagues would back the bill as soon as next week. Party leaders, however, are taking a tremendous gamble that the CBO score will be sufficient. They are now working against a much tighter deadline to resolve intraparty differences on multiple policy proposals by the year’s end, where the final weeks of December will also be consumed by other legislative battles relating to the appropriations process and the debt ceiling. They are also putting tremendous trust in Biden’s ability to convince Manchin and Sinema to support the larger spending package, about which Manchin has expressed serious reservations while Sinema has stayed mostly mum. Manchin released a statement late Friday praising action on the infrastructure bill, which he helped write in the Senate; Sinema tweeted similar sentiments on Saturday. Neither said anything about the reconciliation package. The talking points following the chaos of last week, which culminated in a vote in the House on the bipartisan infrastructure bill in the early hours of Saturday morning, varied. Biden’s allies took to the Sunday talk show circuit to tout the most recent legislative victory and assure the public the reconciliation bill, with its historic climate investments, was next on tap. “What’s in our minds is the fact that the ‘Build Back Better’ plan that we’ve been talking about has the largest investment in American history to get us to a clean energy economy, to create millions of jobs in this country moving forward to sustainable, renewable energy,” Klain said Markey, who earlier this summer helped popularize the #NoClimateNoDeal campaign on Capitol Hill, made clear he had no interest in sowing seeds of doubt in Glasgow. “What we’re saying to the rest of the world here today [is] we are going to act domestically, we are going to act on methane, we are going to deliver on our promises,” he said at a COP 26 event hosted by the Climate Action Center. “You can turn the page on the Trump era,” said Markey. “We’re putting these [clean energy] tax breaks on the books for a 10-year period, there will be a climate bank … a $220 billion in private-sector investment in new clean energy technology … a Civilian Climate Corps.” Elsewhere, environmental advocates were making it very clear there would be political consequences for inaction on the reconciliation package, which contains the vast majority of the climate provisions for which environmentalists have been clamoring. Manish Bapna, president and CEO of the Natural Resources Defense Council, said there was reason to cheer passage of the infrastructure bill only insofar as it “clear[ed] the way” for passage of the reconciliation measure. “The infrastructure bill doesn’t confront the climate crisis,” Bapna said. “For that, we need Congress to enact the historic clean energy investment in the ‘Build Back Better Act’ without delay.” Tiernan Sittenfeld, senior vice president of government affairs with the League of Conservation Voters, agreed. “Today was not the historic day we’d hoped for,” she said in the hours after the House advanced the infrastructure bill but not the reconciliation deal. “Now is the time to finish the job, pass the Build Back Better Act and quickly get it to the President’s Desk.”

#### 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.

#### PC key to timely passage – overcomes all obstacles

BARRON-LOPEZ 11/11 (Laura; Politico, “Dems to White House: The only prescription is more Biden,” <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>, //pa-ww)

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again. Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt. The clearest solution to avoiding this, they argue, is more Biden. “All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.” Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.” Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate. But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change. Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15. “They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.” White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days. “There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said. The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal. The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.” A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass. But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan. "They need to sell [physical infrastructure] but also act like it's not enough," said the activist. "How are they also creating the urgency for BBB to get done, for it to stay on the timeline of getting it done by Thanksgiving? It's a balancing act.” Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country. “This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a very profound political imperative for Democrats to get this finished, to end the infighting and sausage-making and shift to creating a narrative about what Democrats have just done for Americans because they've been utterly unable to do that.” A number of groups plan to amp up pressure next week as Congress returns. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president. “We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to get Congress to act quickly and get the full back package.” Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.” The longer it takes to pass the social spending plan, the harder it becomes to keep the party unified, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced Biden to quickly issue a statement addressing the issue and ever-so-slightly shift his messaging, arguing that passage of the social spending plan would combat inflation. “Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

#### U.S. climate leadership is vital to preventing extinction from global climate change, addressing systemic racism, mitigating global conflict, preserving military readiness and U.S. competitiveness

BLINKEN ’21 (Antony J.; U.S. Secretary of State, “Tackling the Crisis and Seizing the Opportunity: America’s Global Climate Leadership,” <https://www.state.gov/secretary-antony-j-blinken-remarks-to-the-chesapeake-bay-foundation-tackling-the-crisis-and-seizing-the-opportunity-americas-global-climate-leadership/>, //pa-ww)

Well, good afternoon, everyone. And Will, thank you for a wonderful introduction. And thank you for lending us this absolutely spectacular setting and backdrop – certainly the best setting and backdrop I’ve had in my brief tenure as Secretary. And thanks so much to the Chesapeake Bay Foundation for your lasting commitment to save the Bay. The Chesapeake Bay was formed nearly 12,000 years ago by melting glaciers. Today, it stretches 200 miles and is home to over 3,600 species of plants and animals. A hundred thousand rivers and streams feed over 50 billion gallons of water into the Bay every single day. More than 18 million people live in the watershed, and many rely on it for their livelihood. The local seafood industry alone provides some 34,000 jobs and nearly $900 million in annual income. And yet, as Will alluded to, warming temperatures caused by human activity are transforming the Bay. Its water is rising. And the land – including where I stand right now – is sinking due to the melting of the glaciers that formed the Bay. If this continues at the current pace, in just 80 years, the Bay will extend inland for miles, overtaking the homes of 3 million people, destroying roads, bridges, farms. Many of the Bay’s plants and animals will die out. So will the fishing industry. To my children’s children, the landscape will be unrecognizable. We have to stop this from happening while we still can. That’s why President Biden took steps to rejoin the Paris Agreement right after taking office, and named Secretary Kerry as our nation’s first Special Presidential Envoy for Climate to lead our efforts around the world. It’s also why President Biden invited 40 world leaders to Washington this week for a summit on climate. And it’s why the Biden-Harris administration will do more than any in history to meet our climate crisis. This is already an all-hands-on-deck effort across our government and across our nation. Our future depends on the choices we make today. As Secretary of State, my job is to make sure our foreign policy delivers for the American people – by taking on the biggest challenges they face and seizing the biggest opportunities that can improve their lives. No challenge more clearly captures the two sides of this coin than climate. If America fails to lead the world on addressing the climate crisis, we won’t have much of a world left. If we succeed, we will capitalize on the greatest opportunity to create quality jobs in generations; we’ll build a more equitable, healthy, and sustainable society; and we’ll protect this magnificent planet. That’s the test we face right now. Today, I want to explain how American foreign policy will help us meet that test. Not too long ago, we had to imagine the impact of climate change. No one has to imagine it anymore. For the last 60 years, every decade has been hotter than the one that came before it. Weather events are becoming more extreme. During the cold wave this February, temperatures from Nebraska to Texas were more than 40 degrees below normal. In Texas alone, thousands were left homeless, over 4 million people went without heat and electricity, more than 125 people died. It may seem counterintuitive that global warming leads to cold weather. But as the Arctic warms, cold weather gets pushed south. And that can contribute to record cold spells like the one in Texas. The 2020 wildfire season burned more than 10 million acres. That’s more than the entire state of Maryland. We saw five of the six biggest wildfires in California’s history, and the single biggest wildfire in Colorado’s history. Together, natural disasters in 2020 cost the United States around $100 billion. Meanwhile, 2019 was the wettest year on record for the lower 48 states. Heavy rains and floods prevented farmers in the Midwest and Great Plains from planting 19 million acres of crops. And from 2000 to 2018, the American Southwest experienced its worst drought since the 16th century – the 16th century. We’re running out of records to break. The costs – in monetary damage, livelihoods, human lives – keep going up. And unless we turn this around, it’s going to get worse. More frequent and more intense storms; longer dry spells; bigger floods; more extreme heat and more extreme cold; faster sea level rise; more people displaced; more pollution; more asthma. Higher health costs; less predictable seasons for farmers. And all of that will hit low-income, black and brown communities the hardest. The last part’s important. The costs of the climate crisis fall disproportionately on the people in our society who can least afford it. But it’s also true that addressing climate change offers one of the most powerful tools we have to fight inequity and systemic racism. The way we respond can help break the cycle. These are all reasons why we must succeed in preventing a climate catastrophe. But the world has already fallen behind on the targets we set six years ago with the Paris Agreement. And we now know those targets didn’t go far enough to begin with. Today, the science is unequivocal: We need to keep the Earth’s warming to 1.5 degrees Celsius to avoid catastrophe. America has a key role to play in hitting that mark. We only have around 4 percent of the world’s population, but we contribute nearly 15 percent of global emissions. That makes us the world’s second biggest emitter of greenhouse gases. If we do our part at home, we can make a significant contribution to addressing this crisis. But that won’t be enough. Even if the United States gets to net zero emissions tomorrow, we’ll lose the fight against climate change if we can’t address the more than 85 percent of emissions coming from the rest of the world. Coming up short will have major repercussions for our national security. Pick a security challenge that affects the United States. Climate change is likely to make it worse. Climate change exacerbates existing conflicts and increases the chances of new ones – particularly in countries where governments are weak and resources are scarce. Of the 20 countries the Red Cross considers most vulnerable to climate change, 12 are already experiencing armed conflicts. As essential resources like water dwindle, as governments struggle to meet the needs of growing populations, we’ll see more suffering and more strife. Climate change can also create new theaters of conflict. In February, a Russian gas tanker sailed through the Arctic’s Northern Sea Route for the first time ever. Until recently, that route was only passable a few weeks each year. But with the Arctic warming at twice the rate of the rest of the global average, that period is getting much longer. Russia is exploiting this change to try to exert control over new spaces. It is modernizing its bases in the Arctic and building new ones, including one just 300 miles from Alaska. China is increasing its presence in the Arctic, too. Climate change can also be a driver of migration. There were 13 Atlantic hurricanes in 2020 – the highest number on record. Central America was hit especially hard. Storms destroyed the homes and livelihoods of 6.8 million people in Guatemala, Honduras, and El Salvador, and wiped out hundreds of thousands of acres of crops, leading to a massive rise in hunger. Months after the storms, entire villages are still subsumed in mud, and people are carving off pieces of their buried homes to sell as scrap metal. When disasters strike people who are already living in poverty and insecurity, it can often be the final straw, pushing them to abandon their communities in search of a better place to live. For many Central Americans, that means trying to make it to the United States – even when we say repeatedly that the border is closed, and even though the journey comes with tremendous hardships, especially for women and girls who face heightened risk of sexual violence. All of these challenges are placing greater demands on our military. The U.S. Naval Academy is only five miles north of here, and Naval Station Norfolk, the largest naval base in the world, about 200 miles to the south. Both bases – and the critical missions they support – face an imminent threat from climate change. And these are just two of the dozens of military facilities that climate change puts at risk. What’s more, our military often responds to natural disasters, which are getting more frequent and more destructive. In January, Secretary of Defense Austin announced that the military would immediately integrate climate change into its planning and operations and how it assesses risk. As Secretary Austin put it, and I quote, “There is little about what the department does to defend the American people that is not affected by climate change.” Having said all that, it would be a mistake to think about climate only through the prism of threats. Here’s why. Every country on the planet has to do two things – reduce emissions and prepare for the unavoidable impacts of climate change. American innovation and industry can be at the forefront of both. This is what President Biden means when he says, and I quote, “When I think of climate change, I think jobs,” end quote. To give you a sense of scale, consider that, by 2040, the world will face a $4.6 trillion infrastructure gap. The United States has a big stake in how that infrastructure is built. Not only whether it creates opportunities for American workers and businesses, but also whether it’s green and sustainable, and done in a way that’s transparent; respects workers’ rights; gives the local population a say; and doesn’t mire developing countries and communities in debt. That’s an opportunity for us. Or consider the massive investments countries are making in clean energy. Renewables are now the cheapest source of bulk electricity in countries that contain two-thirds of the world’s population. And the global renewable energy market is projected to be $2.15 trillion by 2025. That’s over 35 times the size of the current market for renewables in the United States. Already, solar and wind technicians are among the fastest growing jobs in America. It’s difficult to imagine the United States winning the long-term strategic competition with China if we cannot lead the renewable energy revolution. Right now, we’re falling behind. China is the largest producer and exporter of solar panels, wind turbines, batteries, electric vehicles. It holds nearly a third of the world’s renewable energy patents. If we don’t catch up, America will miss the chance to shape the world’s climate future in a way that reflects our interests and values, and we’ll lose out on countless jobs for the American people. Now, let me be clear: Goal number one of our climate policy is preventing catastrophe. We’re rooting for every country, business, and community to get better at cutting emissions and building resilience. But that doesn’t mean we don’t have a stake in America developing these innovations and exporting them to the world. And it doesn’t mean we don’t want to shape the way countries reduce their emissions and adapt to climate change. So how can we do that? We can start with leading by the power of our example. As we work to meet our ambitious climate targets, the following core principles will guide our approach. We will significantly increase our investment in clean energy research and development, because it’s how we will catalyze breakthroughs that benefit American communities and create American jobs. In all our climate investments, we will aim not only to promote growth, but also equity. We’ll be inclusive, focusing on providing Americans across the country – and from a range of communities – with good-paying jobs, and the opportunity to join a union. We’ll empower youth, not just because they will bear more of the consequences of climate change, but also because of the urgency, ingenuity, and leadership they’ve demonstrated in confronting this crisis. We will enlist states, cities, businesses large and small, civil society, and other coalitions as partners and models. Others have been doing groundbreaking work in this field for a long time. We’ll lift them up and share best practices. And this is important: We will be mindful that for all the opportunities offered by the unavoidable shift to clean energy, not every American worker will win out in the near term. Some livelihoods and communities that relied on old industries will be hit hard. We won’t leave those Americans behind. We’ll provide our fellow Americans with pathways to new, sustainable livelihoods, and support as they navigate this transition. Right after taking office, President Biden created the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization. It’s working across the government to identify and deliver federal resources to revitalize the local economics of coal, oil, gas, and power plant communities, and ensure benefits and protections for workers in those same communities. And as part of his American Jobs Plan, the President proposed a $16 billion upfront investment to put hundreds of thousands of people to work in union jobs plugging abandoned oil and gas wells and mines. If we can stay true to these principles while meeting our climate targets, we’ll demonstrate a model that other countries will want to partner with and follow. With those values in mind, here’s how the State Department will leverage our foreign policy to deliver for the American people on climate. First, we’ll put the climate crisis at the center of our foreign policy and national security, as President Biden instructed us to do in his first week in office. That means taking into account how every bilateral and multilateral engagement – every policy decision – will impact our goal of putting the world on a safer, more sustainable path. It also means ensuring our diplomats have the training and skills to elevate climate in our relationships around the globe. Now, what it does not mean is treating other countries’ progress on climate as a chip they can use to excuse bad behavior in other areas that are important to our national security. The Biden-Harris Administration is united on this: Climate is not a trading card – it’s our future. I am particularly delighted that President Biden named my friend John Kerry to serve as our Special Presidential Envoy for Climate. No one is more experienced or effective in convincing other countries to raise their climate ambitions. We need the whole world focused on taking action now, and through this decade, to promote the achievement of net-zero global emissions by 2050. I am with John 100 percent in this effort. The leaders of our other U.S. Government agencies, they are as well. And his leadership will be indispensable in weaving climate into the fabric of everything we do at the State Department. Second, as other countries step up, the State Department will mobilize resources, institutional know-how, technical expertise from across our government, the private sector, NGOs, and research universities to help them. In the last few weeks alone, we announced new funding for clean energy entrepreneurship and more efficient renewable energy markets in Bangladesh and to help India’s small businesses invest in solar energy. These investments move us toward our climate goals and bring energy access to people who had never had it before. Third, we’ll emphasize assisting the countries being hit hardest by climate change, most of which lack the resources and capacity to handle its destabilizing impacts. Now, that includes Small Island Developing States, a number of which are literally sinking into the ocean because of rising sea levels. In 2020, only 3 percent of climate finance was directed toward these countries. We’ve got to fix that. To that end, America is deploying experts and technology to vulnerable islands in the Pacific and the Caribbean to improve early warning and response systems, and we’re investing in building resilience in areas like infrastructure and agriculture. Fourth, our embassies will lead on the ground. They already are – helping governments design and implement climate-smart policies, while looking for ways to draw on the unique strengths of America’s public and private sectors. Just last month, the U.S. company Sun Africa broke ground on two massive solar energy facilities in Angola, including the 144-megawatt Biopio site. When finished, it will be the biggest solar facility in all of Sub-Saharan Africa. The project will provide enough power for 265,000 homes and eliminate 440,000 gallons of carbon-intensive diesel fuel that Angola imports and burns each year. Plus, this project is expected to use around $150 million in solar energy equipment exported from the United States. This effort is good for the Angolan people, good for climate, and good for American jobs and business. And it simply wouldn’t have happened if not for the efforts of our diplomats. Fifth, we will use all the tools in our kit to make U.S. clean energy innovators more competitive in the global market. That includes leveraging instruments like the financing provided by the Export-Import Bank to incentivize renewable energy exports; the proposed expansion of tax credits for clean energy generation and storage in the President’s American Jobs Plan; and the Administration’s ongoing efforts to level the global playing field for American-made products and services. Support like these can have an outsized impact, particularly because the current market for renewables is only a small fraction of the market to come. Beyond solar panels, wind turbines, batteries, there are more than 40 additional categories of clean energy, including clean hydrogen, carbon capture, and next-generation renewables like enhanced geothermal energy. No one has staked a dominant claim to these promising technologies yet. And, with a lift from our domestic and foreign policy, every one of them can be American-led and American-made. A Massachusetts start-up called Boston Metal shows how this can be done. The company pioneered a new process that can produce steel and other metals more efficiently and at lower costs, while also producing less pollution. Most of the U.S. steel sector already uses clean technologies, but the company’s CEO, a Brazilian immigrant, saw an untapped market in countries like Brazil, where Boston Metal is partnering with industry to replace older, dirtier ways of making steel. This company is creating good-paying, quality jobs in the United States. Steel is a $2.5 trillion global industry, and many of the world’s producers will need to make a similar leap. America can help them do it. Sixth, our diplomats will challenge the practices of countries whose action – or inaction – is setting the world back. When countries continue to rely on coal for a significant amount of their energy, or invest in new coal factories, or allow for massive deforestation, they will hear from the United States and our partners about how harmful these actions are. And finally, we’ll seize every chance we get to raise these issues with our allies and partners, and through multilateral institutions. At NATO, for example, there is consensus that we need to adapt our military readiness for the inevitability of climate change and reduce the reliance of the Allies’ forces on fossil fuels, which is both a vulnerability and a major source of pollution. I know that Secretary General Stoltenberg, who has called climate a “threat multiplier,” is as serious about addressing climate change as we are. We will convey a strong message to the meeting of the G7 next month, whose members produce a quarter of the world’s emissions. And I’ll also represent the United States at next month’s ministerial meeting of the Arctic Council, where I’ll reaffirm America’s commitment to meeting our climate goals and encourage other Arctic nations to do the same. All of these efforts, at home and abroad, will allow us to lead from a position of strength when the world comes together in November for the United Nations Climate Conference in Glasgow. I spend a great deal of my time focused on threats to America’s security and interests – aggressive actions by Russia or China, the spread of COVID-19, the challenges facing democracies. But an equally grave threat to the American people – and an existential one over the long term – can be seen right here, on the Chesapeake Bay, where the costs of climate change are already manifesting themselves. Yet from this very same place, we can also see examples of American innovation and leadership that – if taken to scale – can prevent a climate catastrophe and benefit American workers and communities. Maryland has committed to cutting the state’s emissions by at least 40 percent by 2030, and to 100 percent clean energy by 2040. Maryland also offers farmers strong incentives to plant cover crops, which help trap carbon dioxide. More than 40 percent of the state’s farmers are now using these crops. And countless others are doing their part to prevent climate change on the Bay – and often benefiting American jobs in the process. Just consider the Merrill Center building right here, from which I speak. When it opened 20 years ago, it was the first LEED Platinum Building in the entire world, a U.S. standard for energy efficiency that has since become the gold standard globally. Around a third of its energy comes from solar power. It uses 80 percent less water than most buildings its size. Nearly half of the building – the building materials, excuse me, came from within 300 miles. Its design saves $50,000 a year in energy costs alone. A newer facility the Chesapeake Bay Foundation built in 2014 is even more efficient, reflecting advances in American design and manufacturing. It produces more energy than it consumes, and all the water it uses is captured rainwater. Its solar panels come from Oregon, its wind turbines from Oklahoma. These solar panels and wind turbines are American-designed, American-owned, American-built. And people from around the world have come to study these buildings. It’s changes like these that will help preserve the Bay as we know it, and all of the communities and livelihoods that it sustains. This is the blueprint for American leadership on climate. Bringing together innovation from government and the private sector, communities and organizations. Not just meeting targets for controlling climate change, but doing it in a way that’s open, that’s a good investment, that creates opportunities for American workers. The climate crisis we face is profound. The consequences of not meeting it would be cataclysmic. But if we lead by the power of our example – if we use our foreign policy not only to get other countries to commit to the changes necessary, but to make America their partner in implementing those changes – we can turn the greatest challenge in generations into the greatest opportunity for generations to come. Thanks for listening.

### Off

#### Antitrust enforcers are drawing from other areas to challenge health care mergers now. The plan flips that strategy on its head.

Baer 20, Visiting Fellow, Governance Studies, The Brookings Institution (Bill, “Before the United States House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law,” <https://www.brookings.edu/wp-content/uploads/2020/05/Bill-Baer-5.19.20-Submission-to-Subcommittee-on-Antitrust-Commercial-and-Administrative-Law-of-the-House-Judiciary-Committee.pdf>)

The dollars and resources need to be increased for a number of reasons. First, as I have discussed, the courts today place a high burden on the government to prove an antitrust violation. That means the enforcers need to devote significant resources to investigating and proving their cases, including extensive document reviews, witness interviews and depositions and expert opinion – industrial organization economists and others. It is time-consuming; it is expensive; and it is resource-intensive.

As an example in 2016 the Antitrust Division challenged two proposed mergers that would have dramatically consolidated the health insurance industry: Anthem’s proposed acquisition of Cigna and Aetna’s effort to acquire Humana.13 We successfully persuaded the courts to enjoin both deals, but to get there required the commitment of 25 to 30% of the Division’s professional staff. My colleagues in the FTC’s Bureau of Competition were similarly constrained as they litigated in multiple forums during that same time. That inevitably meant other matters were understaffed. That is no way to ensure adequate enforcement.

#### Health consolidation collapses public health

Numerof 20, PhD @ Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, <https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0>)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Public Health coverage is key to preventing future pandemics – extinction

Yong, 9/29

(Ed, staff writer at The Atlantic, citing Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, Mike Osterholm, an epidemiologist at the University of Minnesota, Eric Lander, OSTP director and Biden’s science adviser, former CDC Director Tom Frieden, Alexandra Phelan, an expert on international law and global health policy at Georgetown University, “WE’RE ALREADY BARRELING TOWARD THE NEXT PANDEMIC”, The Atlantic, 9-29-2021, https://www.theatlantic.com/health/archive/2021/09/america-prepared-next-pandemic/620238/)\\JM

A year after the United States bombed its pandemic performance in front of the world, the Delta variant opened the stage for a face-saving encore. If the U.S. had learned from its mishandling of the original SARS-CoV-2 virus, it would have been better prepared for the variant that was already ravaging India. Instead, after a quiet spring, President Joe Biden all but declared victory against SARS-CoV-2. The CDC ended indoor masking for vaccinated people, pitting two of the most effective interventions against each other. As cases fell, Abbott Laboratories, which makes a rapid COVID-19 test, discarded inventory, canceled contracts, and laid off workers, The New York Times reported. Florida and Georgia scaled back on reporting COVID-19 data, according to Kaiser Health News. Models failed to predict Delta’s early arrival. The variant then ripped through the U.S.’s half-vaccinated populace and once again pushed hospitals and health-care workers to the brink. Delta’s extreme transmissibility would have challenged any nation, but the U.S. nonetheless set itself up for failure. Delta was an audition for the next pandemic, and one that America flubbed. How can a country hope to stay 10 steps ahead of tomorrow’s viruses when it can’t stay one step ahead of today’s? America’s frustrating inability to learn from the recent past shouldn’t be surprising to anyone familiar with the history of public health. Almost 20 years ago, the historians of medicine Elizabeth Fee and Theodore Brown lamented that the U.S. had “failed to sustain progress in any coherent manner” in its capacity to handle infectious diseases. With every new pathogen—cholera in the 1830s, HIV in the 1980s—Americans rediscover the weaknesses in the country’s health system, briefly attempt to address the problem, and then “let our interest lapse when the immediate crisis seems to be over,” Fee and Brown wrote. The result is a Sisyphean cycle of panic and neglect that is now spinning in its third century. Progress is always undone; promise, always unfulfilled. Fee died in 2018, two years before SARS-CoV-2 arose. But in documenting America’s past, she foresaw its pandemic present—and its likely future. More Americans have been killed by the new coronavirus than the influenza pandemic of 1918, despite a century of intervening medical advancement. The U.S. was ranked first among nations in pandemic preparedness but has among the highest death rates in the industrialized world. It invests more in medical care than any comparable country, but its hospitals have been overwhelmed. It helped develop COVID-19 vaccines at near-miraculous and record-breaking speed, but its vaccination rates plateaued so quickly that it is now 38th in the world. COVID-19 revealed that the U.S., despite many superficial strengths, is alarmingly vulnerable to new diseases—and such diseases are inevitable. As the global population grows, as the climate changes, and as humans push into spaces occupied by wild animals, future pandemics become more likely. We are not guaranteed the luxury of facing just one a century, or even one at a time. It might seem ridiculous to think about future pandemics now, as the U.S. is consumed by debates over booster shots, reopened schools, and vaccine mandates. Prepare for the next one? Let’s get through this one first! But America must do both together, precisely because of the cycle that Fee and Brown bemoaned. Today’s actions are already writing the opening chapters of the next pandemic’s history. Internationally, Joe Biden has made several important commitments. At the United Nations General Assembly last week, he called for a new council of national leaders and a new international fund, both focused on infectious threats—forward-looking measures that experts had recommended well before COVID-19. But domestically, many public-health experts, historians, and legal scholars worry that the U.S. is lapsing into neglect, that the temporary wave of investments isn’t being channeled into the right areas, and that COVID-19 might actually leave the U.S. weaker

against whatever emerges next. Donald Trump’s egregious mismanagement made it easy to believe that events would have played out differently with a halfway-competent commander who executed preexisting pandemic plans. But that ignores the many vulnerabilities that would have made the U.S. brittle under any administration. Even without Trump, “we’d still have been in a whole lot of trouble,” Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, told me. “The weaknesses were in the rootstock, not high up in the trees.” The panic-neglect cycle is not inevitable but demands recognition and resistance. “A pandemic is a course correction to the trajectory of civilization,” Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, told me. “Historical pandemics challenged us to make some fairly fundamental changes to the way in which society is organized.” Just as cholera forced our cities to be rebuilt for sanitation, COVID-19 should make us rethink the way we ventilate our buildings, as my colleague Sarah Zhang argued. But beyond overhauling its physical infrastructure, the U.S. must also address its deep social weaknesses—a health-care system that millions can’t access, a public-health system that’s been rotting for decades, and extreme inequities that leave large swaths of society susceptible to a new virus. Early last year, some experts suggested to me that America’s COVID-19 failure stemmed from its modern inexperience with infectious disease; having now been tested, it might do better next time. But preparedness doesn’t come automatically, and neither does its absence. “Katrina didn’t happen because Louisiana never had a hurricane before; it happened because of policy choices that led to catastrophe,” Gonsalves said. The arc of history does not automatically bend toward preparedness. It must be bent. On September 3, the White House announced a new strategy to prepare for future pandemics. Drafted by the Office of Science and Technology Policy, and the National Security Council, the plan would cost the U.S. $65 billion over the next seven to 10 years. In return, the country would get new vaccines, medicines, and diagnostic tests; new ways of spotting and tracking threatening pathogens; better protective equipment and replenished stockpiles; sturdier supply chains; and a centralized mission control that would coordinate all the above across agencies. The plan, in rhetoric and tactics, resembles those that were written before COVID-19 and never fully enacted. It seems to suggest all the right things. But the response from the health experts I’ve talked with has been surprisingly mixed. “It’s underwhelming,” Mike Osterholm, an epidemiologist at the University of Minnesota, told me. “That $65 billion should have been a down payment, not the entire program. It’s a rounding error for our federal budget, and yet our entire existence going forward depends on this.” The pandemic plan compares itself to the Apollo program, but the government spent four times as much, adjusted for inflation, to put astronauts on the Moon. Meanwhile, the COVID-19 pandemic may end up costing the U.S. an estimated $16 trillion. “I completely agree that it will take more investment,” Eric Lander, OSTP director and Biden’s science adviser, told me; he noted that the published plan is just one element of a broader pandemic-preparedness effort that is being developed. But even the $65 billion that the plan has called for might not fully materialize. Biden originally wanted to ask Congress to immediately invest $30 billion but eventually called for just half that amount, in a compromise with moderate Democrats who sought to slash it even further. The idea of shortchanging pandemic preparedness after the events of 2020 “should be unthinkable,” wrote former CDC Director Tom Frieden and former Senator Tom Daschle in The Hill. But it is already happening. Others worry about the way the budget is being distributed. About $24 billion has been earmarked for technologies that can create vaccines against a new virus within 100 days. Another $12 billion will go toward new antiviral drugs, and $5 billion toward diagnostic tests. These goals are, individually, sensible enough. But devoting two-thirds of the full budget toward them suggests that COVID-19’s lessons haven’t been learned. America failed to test sufficiently throughout the pandemic even though rigorous tests have long been available. Antiviral drugs played a bit part because they typically provide incremental benefits over basic medical care, and can be overly expensive even when they work. And vaccines were already produced far faster than experts had estimated and were more effective than they had hoped; accelerating that process won’t help if people can’t or won’t get vaccinated, and especially if they equate faster development with nefarious corner-cutting, as many Americans did this year. Every adult in the U.S. has been eligible for vaccines since mid-April; in that time, more Americans have died of COVID-19 per capita than people in Germany, Canada, Rwanda, Vietnam, or more than 130 other countries did in the pre-vaccine era. “We’re so focused on these high-tech solutions because they appear to be what a high-income country would do,” Alexandra Phelan, an expert on international law and global health policy at Georgetown University, told me. And indeed, the Biden administration has gone all in on vaccines, trading them off against other countermeasures, such as masks and testing, and blaming “the unvaccinated” for America’s ongoing pandemic predicament. The promise of biomedical panaceas is deeply ingrained in the U.S. psyche, but COVID should have shown that medical magic bullets lose their power when deployed in a profoundly unequal society. There are other ways of thinking about preparedness. And there are reasons those ways were lost. In 1849, after investigating a devastating outbreak of typhus in what is now Poland, the physician Rudolf Virchow wrote, “The answer to the question as to how to prevent outbreaks … is quite simple: education, together with its daughters, freedom and welfare.” Virchow was one of many 19th-century thinkers who correctly understood that epidemics were tied to poverty, overcrowding, squalor, and hazardous working conditions—conditions that inattentive civil servants and aristocrats had done nothing to address. These social problems influenced which communities got sick and which stayed healthy. Diseases exploit society’s cracks, and so “medicine is a social science,” Virchow famously said. Similar insights dawned across the Atlantic, where American physicians and politicians tackled the problem of urban cholera by fixing poor sanitation and dilapidated housing. But as the 19th century gave way to the 20th, this social understanding of disease was ousted by a new paradigm. When scientists realized that infectious diseases are caused by microscopic organisms, they gained convenient villains. Germ theory’s pioneers, such as Robert Koch, put forward “an extraordinarily powerful vision of the pathogen as an entity that could be vanquished,” Alex de Waal, of Tufts, told me. And that vision, created at a time when European powers were carving up other parts of the world, was cloaked in metaphors of imperialism, technocracy, and war. Microbes were enemies that could be conquered through the technological subjugation of nature. “The implication was that if we have just the right weapons, then just as an individual can recover from an illness and be the same again, so too can a society,” de Waal said. “We didn’t have to pay attention to the pesky details of the social world, or see ourselves as part of a continuum that includes the other life-forms or the natural environment.” Germ theory allowed people to collapse everything about disease into battles between pathogens and patients. Social matters such as inequality, housing, education, race, culture, psychology, and politics became irrelevancies. Ignoring them was noble; it made medicine and science more apolitical and objective. Ignoring them was also easier; instead of staring into the abyss of society’s intractable ills, physicians could simply stare at a bug under a microscope and devise ways of killing it. Somehow, they even convinced themselves that improved health would “ultimately reduce poverty and other social inequities,” wrote Allan Brandt and Martha Gardner in 2000. This worldview accelerated a growing rift between the fields of medicine (which cares for sick individuals) and public health (which prevents sickness in communities). In the 19th century, these disciplines were overlapping and complementary. In the 20th, they split into distinct professions, served by different academic schools. Medicine, in particular, became concentrated in hospitals, separating physicians from their surrounding communities and further disconnecting them from the social causes of disease. It also tied them to a profit-driven system that saw the preventive work of public health as a financial threat. “Some suggested that if prevention could eliminate all disease, there would be no need for medicine in the future,” Brandt and Gardner wrote. This was a political conflict as much as an ideological one. In the 1920s, the medical establishment flexed its growing power by lobbying the Republican-controlled Congress and White House to erode public-health services including school-based nursing, outpatient dispensaries, and centers that provided pre- and postnatal care to mothers and infants. Such services were examples of “socialized medicine,” unnecessary to those who were convinced that diseases could best be addressed by individual doctors treating individual patients. Health care receded from communities and became entrenched in hospitals. Decades later, these changes influenced America’s response to COVID-19. Both the Trump and Biden administrations have described the pandemic in military metaphors. Politicians, physicians, and the public still prioritize biomedical solutions over social ones. Medicine still overpowers public health, which never recovered from being “relegated to a secondary status: less prestigious than clinical medicine [and] less amply financed,” wrote the sociologist Paul Starr. It stayed that way for a century. During the pandemic, many of the public-health experts who appeared in news reports hailed from wealthy coastal universities, creating a perception of the field as well funded and elite. That perception is false. In the early 1930s, the U.S. was spending just 3.3 cents of every medical dollar on public health, and much of the rest on hospitals, medicines, and private health care. And despite a 90-year span that saw the creation of the CDC, the rise and fall of polio, the emergence of HIV, and relentless calls for more funding, that figure recently stood at … 2.5 cents. Every attempt to boost it eventually receded, and every investment saw an equal and opposite disinvestment. A preparedness fund that was created in 2002 has lost half its budget, accounting for inflation. Zika money was cannibalized from Ebola money. America’s historical modus operandi has been to “give responsibility to the local public-health department but no power, money, or infrastructure to make change,” Ruqaiijah Yearby, a health-law expert at Saint Louis University, told me. Lisa Macon Harrison, who directs the department that serves Granville and Vance Counties, in North Carolina, told me that to protect her community of 100,000 people from infectious diseases—HIV, sexually transmitted infections, rabies, and more—the state gives her $4,147 a year. That’s 90 times less than what she actually needs. She raises the shortfall herself through grants and local dollars. Trifling budgets mean smaller staff, which turns mandatory services into optional ones. Public-health workers have to cope with not just infectious diseases but air and water pollution, food safety, maternal and child health, the opioid crisis, and tobacco control. But with local departments having lost 55,000 jobs since the 2008 recession, many had to pause their usual duties to deal with COVID-19. Even then, they didn’t have staff to do the most basic version of contact tracing—calling people up—let alone the ideal form, wherein community health workers help exposed people find food, services, and places to isolate. When vaccines were authorized, departments had to scale back on testing so that overworked staff could focus on getting shots into arms; even that wasn’t enough, and half of states hired armies of consultants to manage the campaign, The Washington Post reported. In May, the Biden administration said that it would invest $7.4 billion in recruiting and training public-health workers, creating tens of thousands of jobs. But those new workers would be air-dropped into an infrastructure that is quite literally crumbling. Many public-health departments are housed in buildings that were erected in the 1940s and ’50s, when polio money was abundant; they are now falling apart. “There’s a trash can in the hallway in front of my environmental-health supervisor’s office to catch rain that might come through the ceiling,” Harrison told me. And between their reliance on fax machines and decades-old data systems, “it feels like we’re using a Rubik’s Cube and an abacus to do pandemic response,” Harrison added. Last year, America’s data systems proved to be utterly inadequate for tracking a rapidly spreading virus. Volunteer efforts such as the COVID Tracking Project (launched by The Atlantic) had to fill in for the CDC. Academics created a wide range of models, some of which were misleadingly inaccurate. “For hurricanes, we don’t ask well-intentioned academics to stop their day jobs and tell us where landfall will happen,” the CDC’s Dylan George told me. “We turn to the National Hurricane Center.” Similarly, George hopes that policy makers can eventually turn to the CDC’s newly launched Center for Forecasting and Outbreak Analytics, where he is director of operations. With initial funding of about $200 million, the center aims to accurately track and predict the paths of pathogens, communicate those predictions with nuance, and help leaders make informed decisions quickly. But public health’s longstanding neglect means that simply making the system fit for purpose is a mammoth undertaking that can’t be accomplished with emergency funds—especially not when those funds go primarily toward biomedical countermeasures. That’s “a welfare scheme for university scientists and big organizations, and it’s not going to trickle down to the West Virginia Department of Health,” Gregg Gonsalves, the health activist and epidemiologist, told me. What the U.S. needs, as several reports have recommended and as some senators have proposed, is a stable and protected stream of money that can’t be diverted to the emergency of the day. That would allow health departments to properly rebuild without constantly fearing the wrecking ball of complacency. Biden’s $7.4 billion bolus is a welcome start—but just a start. And though his new pandemic-preparedness plan commits $6.5 billion toward strengthening the U.S. public-health system over the next decade, it might take $4.5 billion a year to actually do the job. “Nobody should read that plan as the limit of what needs to be done,” Eric Lander, the president’s science adviser, told me. “I have no disagreement that a major effort and very substantial funding are needed,” and, he noted, the administration’s science and technology advisers will be developing a more comprehensive strategy. “But is pandemic preparedness the lens through which to fix public health?” Lander asked. “I think those issues are bigger—they’re everyday problems, and we need to shine a spotlight on them every day.” But here is public health’s bind: Though it is so fundamental that it can’t (and arguably shouldn’t) be tied to any one type of emergency, emergencies are also the one force that can provide enough urgency to strengthen a system that, under normal circumstances, is allowed to rot. When a doctor saves a patient, that person is grateful. When an epidemiologist prevents someone from catching a virus, that person never knows. Public health “is invisible if successful, which can make it a target for policy makers,” Ruqaiijah Yearby, the health-law expert, told me. And during this pandemic, the target has widened, as overworked and under-resourced officials face aggressive protests. “Our workforce is doing 15-hour days and rather than being glorified, they’re being vilified and threatened with bodily harm and death,” Harrison told me. According to an ongoing investigation by the Associated Press and Kaiser Health News, the U.S. has lost at least 303 state or local public-health leaders since April 2020, many because of burnout and harassment. Even though 62 percent of Americans believe that pandemic-related restrictions were worth the cost, Republican legislators in 26 states have passed laws that curtail the possibility of quarantines and mask mandates, as Lauren Weber and Anna Maria Barry-Jester of KHN have reported. Supporters characterize these laws as checks on executive power, but several do the opposite, allowing states to block local officials or schools from making decisions to protect their communities. Come the next pandemic (or the next variant), “there’s a real risk that we are going into the worst of all worlds,” Alex Phelan, of Georgetown University, told me. “We’re removing emergency actions without the preventive care that would allow people to protect their own health.” This would be dangerous for any community, let alone those in the U.S. that are structurally vulnerable to infectious disease in ways that are still being ignored. Biden’s new pandemic plan contains another telling detail about how the U.S. thinks about preparedness. The parts about vaccines and therapeutics contain several detailed and explicit strategies. The part about vulnerable communities is a single bullet point that calls for strategies to be developed. This isn’t a new bias. In 2008, Philip Blumenshine and his colleagues argued that America’s flu-pandemic plans overlooked the disproportionate toll that such a disaster would take upon socially disadvantaged people. Low-income and minority groups would be more exposed to airborne viruses because they’re more likely to live in crowded housing, use public transportation, and hold low-wage jobs that don’t allow them to work from home or take time off when sick. When exposed, they’d be more susceptible to disease because their baseline health is poorer, and they’re less likely to be vaccinated. With less access to health insurance or primary care, they’d die in greater numbers. These predictions all came to pass during the H1N1 swine-flu pandemic of 2009. When SARS-CoV-2 arrived a decade later, history repeated itself. The new coronavirus disproportionately infected essential workers, who were forced to risk exposure for the sake of their livelihood; killed Pacific Islander, Latino, Indigenous, and Black Americans; and struck people who’d been packed into settings at society’s margins—prisons, nursing homes, meatpacking facilities. “We’ve built a system in which many people are living on the edge, and pandemics prey on those vulnerabilities,” Julia Raifman, a health-policy researcher at Boston University, told me. Such patterns are not inevitable. “It is very clear, from evidence and history, that robust public-health systems rely on provision of social services,” Eric Reinhart, a political anthropologist and physician at Northwestern University, told me. “That should just be a political given, and it is not. You have Democrats who don’t even say this, let alone Republicans.” America’s ethos of rugged individualism pushes people across the political spectrum to see social vulnerability as a personal failure rather than the consequence of centuries of racist and classist policy, and as a problem for each person to solve on their own rather than a societal responsibility. And America’s biomedical bias fosters the seductive belief that these sorts of social inequities won’t matter if a vaccine can be made quickly enough. But inequity reduction is not a side quest of pandemic preparedness. It is arguably the central pillar—if not for moral reasons, then for basic epidemiological ones. Infectious diseases can spread, from the vulnerable to the privileged. “Our inequality makes me vulnerable,” Mary Bassett, who studies health equity at Harvard, told me. “And that’s not a necessary feature of our lives. It can be changed.” “To be ready for the next pandemic, we need to make sure that there’s an even footing in our societal structures,” Seema Mohapatra, a health-law expert at Indiana University, told me. That vision of preparedness is closer to what 19th-century thinkers lobbied for, and what the 20th century swept aside. It means shifting the spotlight away from pathogens themselves and onto the living and working conditions that allow pathogens to flourish. It means measuring preparedness not just in terms of syringes, sequencers, and supply chains but also in terms of paid sick leave, safe public housing, eviction moratoriums, decarceration, food assistance, and universal health care. It means accompanying mandates for social distancing and the like with financial assistance for those who might lose work, or free accommodation where exposed people can quarantine from their family. It means rebuilding the health policies that Reagan began shredding in the 1980s and that later administrations further frayed. It means restoring trust in government and community through public services. “It’s very hard to achieve effective containment when the people you’re working with don’t think you care about them,” Arrianna Marie Planey, a medical geographer at the University of North Carolina at Chapel Hill, told me. In this light, the American Rescue Plan—the $1.9 trillion economic-stimulus bill that Biden signed in March—is secretly a pandemic-preparedness bill. Beyond specifically funding public health, it also includes unemployment insurance, food-stamp benefits, child tax credits, and other policies that are projected to cut the poverty rate for 2021 by a third, and by even more for Black and Hispanic people. These measures aren’t billed as ways of steeling America against future pandemics—but they are. Also on the horizon is a set of recommendations from the COVID-19 Health Equity Task Force, which Biden established on his first full day of office. “The president has told many of us privately, and said publicly, that equity has to be at the heart of what we do in this pandemic,” Vivek Murthy, the surgeon general, told me. Some of the American Rescue Plan’s measures are temporary, and their future depends on the $3.5 trillion social-policy bill that Democrats are now struggling to pass, drawing opposition from within their own party. “Health equity requires multiple generations of work, and politicians want outcomes that can be achieved in time to be recognized by an electorate,” Planey told me. That electorate is tiring of the pandemic, and of the lessons it revealed. Last year, “for a moment, we were able to see the invisible infrastructure of society,” Sarah Willen, an anthropologist at the University of Connecticut who studies Americans’ conceptions of health equity, told me. “But that seismic effect has passed.” Socially privileged people now also enjoy the privilege of immunity, while those with low incomes, food insecurity, eviction risk, and jobs in grocery stores and agricultural settings are disproportionately likely to be unvaccinated. Once, they were deemed “essential”; now they’re treated as obstinate annoyances who stand between vaccinated America and a normal life. The pull of the normal is strong, and our metaphors accentuate it. We describe the pandemic’s course in terms of “waves,” which crest and then collapse to baseline. We bill COVID-19 as a “crisis”—a word that evokes decisive moments and turning points, “and that, whether you want to or not, indexes itself against normality,” Reinhart told me. “The idea that something new can be born out of it is lost,” because people long to claw their way back to a precrisis state, forgetting that the crisis was itself born of those conditions. Better ideas might come from communities for whom “normal” was something to survive, not revert to. Many Puerto Ricans, for example, face multiple daily crises including violence, poverty, power outages, and storms, Mónica Feliú-Mójer, of the nonprofit Ciencia Puerto Rico, told me. “They’re always preparing,” she said, “and they’ve built support networks and mutual-aid systems to take care of each other.” Over the past year, Ciencia PR has given small grants to local leaders to fortify their communities against COVID-19. While some set up testing and vaccination clinics, others organized food deliveries or educational events. One cleaned up a dilapidated children’s park to create a low-risk outdoor space where people could safely reconnect. Such efforts recognize that resisting pandemics is about solidarity as well as science, Feliú-Mójer told me. The panic-neglect cycle is not irresistible. Some of the people I spoke with expressed hope that the U.S. can defy it, just not through the obvious means of temporarily increased biomedical funding. Instead, they placed their faith in grassroots activists who are pushing for fair labor policies, better housing, health-care access, and other issues of social equity. Such people would probably never think of their work as a way of buffering against a pandemic, but it very much is—and against other health problems, natural disasters, and climate change besides. These threats are varied, but they all wreak their effects on the same society. And that society can be as susceptible as it allows itself to be.

### Off

**The aff’s faith in the law obscures legalistic violence—that reintrenches military dominance that creates interventions—turns the aff—the alt is to reject their legalistic notions of reformism**

**Smith, 02**

Thomas SMITH Gov’t & Int’l Affairs @ South Florida 2 [“The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence” Int’l Studies Quarterly, 46, p. 367-371] This ev is gender modified

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, **the Pentagon wields law with technical precision**. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. **Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems**, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Ruppert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shotwell, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombudsmen either. The article acknowledged that the JAG faces pressure to demonstrate that he **can be a “force multiplier” who can “show the tactical and political soundness of ~~his~~[their] interpretation of the law**” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade **the focus has shifted visibly from restraining violence to legitimizing it.** The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “**judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept**” ~The Guardian, 2001!. **Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law.** As noted, humanitarian law is firmest in areas of marginal military utility. When operational demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that **civilian discrimination is “one of the least codified portions” of the law of war** ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” munitions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collateral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report **carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack”** ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. **Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology**. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding anticipated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calculated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that **this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.**” **Legal fine print,** hand-in-hand with new technology, **replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.**” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. **The crowning irony** is that NATO **went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure.** Perhaps **the most powerful justification was provided by law itself**. **War is often dressed up in patriotic abstractions**—Periclean oratory, jingoistic newsreels, or heroic memorials. **Bellum Americanum is cloaked in the stylized language of law**. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. **Most striking is the use of legal language to justify the erosion of noncombatant immunity.** Hewing to the legalisms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Harvard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic wordplay, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” **The Pentagon’s legal narrative is certainly detached from the carnage on the ground,** but **it** also **oversimplifies and even actively obscures the moral choices involved in** aerial **bombing. Lawyers and tacticians made very deliberate decisions** about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. **By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians.** While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? **International law certainly has** helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has **mirrored wartime practice**. On the ad bellum side, the erosion of right authority and **just cause has eased the path toward war**. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. **If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted**. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. **By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war”** ~Woollacott, 1999!. “We’ve come to expect the immaculate,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “**Precision-guided munitions make it very much easier to go to war than it ever has been historically.**” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “**standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do**” ~Belsie, 1999!.¶ Conclusion **The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications.** The aspirations of humanitarian law are sound. Rather, **it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences**,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. **This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script.** While the attack on the World Trade Center confirmed a thousand times over the illegality and inhumanity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. **Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor**. **A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage.** Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 **No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law.** But these disputes have only underscored the ambiguities of humanitarian law. **As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.**

### Off

T

#### Interp---private sector means all non-governmental individuals or entities.

Senate Report 95. “S. Rept. 104-1 – Unfunded Mandate Reform Act of 1995”. 104th Congress. 1995. https://www.congress.gov/congressional-report/104th-congress/senate-report/1

“Private sector” is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Violation---the plan only applies to standard-setting organizations and firms that license standard-essential patents, a specific subset of the private sector.

#### Vote Neg:

#### 1. Limits---there are infinite potential subsets---industries, products, companies, individuals, etc.

#### 2. Ground---only economy-wide Affs have link uniqueness and literature.

### Off

Clog DA

#### Expanding the scope of antitrust law opens the floodgates of antitrust court cases, clogging the courts.

Geoffrey Manne, 18. International Center for Law & Economics president & founder, Congressional Documents and Publications, “Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights Hearing; "A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU."; Testimony by Geoffrey Manne, President and Founder, International Center for Law and Economics,” December 19, 2018. Lexis, accessed 6-1-21

II. The specious lure of excessively discretionary antitrust

Antitrust is an attractive regulatory tool for a number of reasons. As noted above, the vague, terse language of the Sherman Act readily lends itself to "interpretation" imbuing it with virtually limit-less scope. Indeed, the urge to treat antitrust as a legal Swiss Army knife capable of correcting all manner of social and economic ills is apparently difficult to resist. Conflating size with market power, and market power with political power, many recent calls for regulation of the tech indus-try are framed in antitrust terms, even though they are mostly rooted in nothing recognizable as modern, economically informed antitrust legal claims or analysis. But that attraction is precisely why we should care about the scope, process, and economics of anti-trust and the extent of its politicization. Antitrust in the US has largely resisted the relentless effort to politicize it. Despite being rooted in vague and potentially expansive statutory language, US anti-trust is economically grounded, evolutionary, and limited to a set of achievable social welfare goals. In the EU, by contrast, these sorts of constraints are far weaker. Whether or not that is suitable for the particular political and historical circumstances of the EU is a separate question. But, undoubt-edly, applying a controversial legal regime to the United States -- a markedly different jurisdiction with a unique governance structure -- and upsetting more than a century of legal, technological, and social development, is deeply problematic. This conclusion is in no way altered by the fact that US antitrust law has become the outlier of global antitrust enforcement, compared to the EU's more "consensual" approach. n26 What matters is a policy's actual results, not whether it is widely adopted; the world is full of debunked beliefs that were once widely shared. And it is far from certain that the widespread adoption of the EU model is in any way indicative of superior results. It is equally (or even more) plausible that this model has proliferated because it naturally accommodates politically useful populist narratives -- such as "big is bad," robin hood fallacies and robber baron myths -- that are constrained by the US's more evidence-based and rational antitrust decision-making. n27 America's isolation might thus be a testament to its success rather than an emblem of its failure. But even if by some chance the European approach proved to be optimal for many other countries in the world, it is still dubious that its adoption would lead to improved economic performance in the United States. As has already been alluded to, the unique features of the US legal regime make it unlikely that the best policy for the EU would also happen to be the best one for America. The EU's more aggressive pursuit of technology platforms under its antitrust laws demonstrates many of the problems with its approach in general. I urge this subcommittee to consider not just whether the EU approach seems to permit the government to reach a preconceived outcome -- i.e., placing large tech platforms under increased antitrust scrutiny -- but whether it is truly desirable at all to emulate the EU's approach and to try to reach the goals of EU competition policy under US antitrust law. Endorsing the European approach to antitrust, in a naive attempt to bring high-pro-file cases against large Internet platforms, would prioritize political expediency over the rule of law. It would open the floodgates of antitrust litigation and facilitate deleterious tendencies, such as non-economic decision-making, rent-seeking, regulatory capture, and politically motivated enforce-ment. Bringing US antitrust enforcement in line with that of the EU would thus unlock a veritable Pandora's box of concerns that are currently kept in check. Chief among them is the use of antitrust laws to evade democratically and judicially established rules and legal precedent. When consider-ing this question, it is important to see beyond any particular set of firms that enforcement offi-cials and politicians may currently be targeting. An antitrust law expanded to consider the full scope of soft concerns that the EU aims at will not be employed against only politically disfavored companies, companies in other jurisdictions, or in order to expediently "solve" otherwise political problems. Once antitrust is expanded beyond its economic constraints and imbued with political content, it ceases to be a uniquely valuable tool for addressing real economic harms to consumers, and becomes a tool for routing around legislative and judicial constraints**.**

#### Makes it difficult to address terror.

StuartTaylor, 99. Stuart Taylor, Jr. is an author and freelance writer focusing on legal and policy issues and a contributing editor for the National Journal. (“Irrational Excesses, Barbaric Penalties and Political Opportunism”, National Journal, 2-27, Lexis.)

So did another unhealthy trend, deplored in a Feb. 16 ABA task force report titled ''The Federalization of Criminal Law.'' The 16-member panel was headed by Meese, who is more used to being a punching bag for the liberal-leaning legal establishment than a spokesman for it. He lends bipartisan heft to the ABA report's long-overdue conclusions. There was only perfunctory media attention to the ABA report because this is bland stuff: no charges of racism or ''sexual McCarthyism,'' no summons to yet another war on drugs, no purple prose. Still, the message is worthwhile. Although crime rates have fallen, the ABA report explains, the proliferation of new federal criminal prohibitions deserves none of the credit: ''There is no persuasive evidence that federalization of local crime makes the streets safer for American citizens.'' This is because the properly limited (albeit rapidly expanding) number of federal law enforcement officials can conduct only about 5 percent of all prosecutions. At the same time, federalization does subtle but pervasive damage: It gives federal prosecutors too much inherently arbitrary and unreviewable discretion to focus on a tiny percentage of all possible targets; it clogs federal courts with garden-variety criminal cases, diverting them from national problems such as international terrorism, espionage, bribery of federal officials, big antitrust cases, white-collar fraud, and multistate drug conspiracies; it disrupts the federal-state balance; it moves the nation ''rapidly toward two broadly overlapping, parallel, and essentially redundant sets of criminal prohibitions, each filled with differing consequences for the same conduct.''

#### Nuclear terrorism causes global war.

Irma Arguello & Emiliano J. Buis 18. \*Founder and chair of the NPSGlobal Foundation, and head of the secretariat of the Latin American and Caribbean Leadership Network. \*\*Researcher and professor at the NPSGlobal Foundation. 3-4-2018. “The Global Impacts of a Terrorist Nuclear Attack: What Would Happen? What Should We Do?” Bulletin of the Atomic Scientists, vol. 74, no. 2, pp. 114–119.

Making matters worse, there is evidence of an illicit market for nuclear weapons-usable materials. There are sellers in search of potential buyers, as shown by the dismantlement of a nuclear smuggling network in Moldova in 2015. There certainly are plenty of sites from which to obtain nuclear material. According to the 2016 Nuclear Security Index by the Nuclear Threat Initiative, 24 countries still host inventories of nuclear weapons-usable materials, stored in facilities with different degrees of security. And in terms of risk, it is not necessary for a given country to possess nuclear weapons, weapons-usable materials, or nuclear facilities for it to be useful to nuclear terrorists: Structural and institutional weaknesses in a country may make it favorable for the illicit trade of materials. Permeable boundaries, high levels of corruption, weaknesses in judicial systems, and consequent impunity may give rise to a series of transactions and other events, which could end in a nuclear attack. The truth is that, at this stage, no country in possession of nuclear weapons or weapons-usable materials can guarantee their full protection against nuclear terrorism or nuclear smuggling. Because we live in a world of growing insecurity, where explicit and tacit agreements between the relevant powers – which upheld global stability during the post- Cold War – are giving way to increasing mistrust and hostility, a question arises: How would our lives be affected if a current terrorist group such as the Islamic State (ISIS), or new terrorist groups in the future, succeed in evolving from today’s Manchester style “low-tech” attacks to a “high-tech” one, involving a nuclear bomb, detonated in a capital city, anywhere in the world? We attempted to answer this question in a report developed by a high-level multidisciplinary expert group convened by the NPSGlobal Foundation for the Latin American and Caribbean Leadership Network. We found that there would be multiple harmful effects that would spread promptly around the globe (Arguello and Buis 2016); a more detailed analysis is below, which highlights the need for the creation of a comprehensive nuclear security system. The consequences of a terrorist nuclear attack A small and primitive 1-kiloton fission bomb (with a yield of about one-fifteenth of the one dropped on Hiroshima, and certainly much less sophisticated; cf. Figure 1), detonated in any large capital city of the developed world, would cause an unprecedented catastrophic scenario. An estimate of direct effects in the attack’s location includes a death toll of 7,300-to-23,000 people and 12,600-to-57,000 people injured, depending on the target’s geography and population density. Total physical destruction of the city’s infrastructure, due to the blast (shock wave) and thermal radiation, would cover a radius of about 500 meters from the point of detonation (also known as ground zero), while ionizing radiation greater than 5 Sieverts – compatible with the deadly acute radiation syndrome – would expand within an 850-meter radius. From the environmental point of view, such an area would be unusable for years. In addition, radioactive fallout would expand in an area of about 300 square kilometers, depending on meteorological conditions (cf. Figure 2). But the consequences would go far beyond the effects in the target country, however, and promptly propagate worldwide. Global and national security, economy and finance, international governance and its framework, national political systems, and the behavior of governments and individuals would all be put under severe trial. The severity of the effects at a national level, however, would depend on the countries’ level of development, geopolitical location, and resilience. Global security and regional/national defense schemes would be strongly affected. An increase in global distrust would spark rising tensions among countries and blocs, that could even lead to the brink of nuclear weapons use by states (if, for instance, a sponsor country is identified). The consequences of such a shocking scenario would include a decrease in states’ self-control, an escalation of present conflicts and the emergence of new ones, accompanied by an increase in military unilateralism and military expenditures. Regarding the economic and financial impacts, a severe global economic depression would rise from the attack, likely lasting for years. Its duration would be strongly dependent on the course of the crisis. The main results of such a crisis would include a 2 percent fall of growth in global Gross Domestic Product, and a 4 percent decline of international trade in the two years following the attack (cf. Figure 3). In the case of developing and less-developed countries, the economic impacts would also include a shortage of high-technology products such as medicines, as well as a fall in foreign direct investment and a severe decline of international humanitarian aid toward low-income countries. We expect an increase of unemployment and poverty in all countries. Global poverty would raise about 4 percent after the attack, which implies that at least 30 million more people would be living in extreme poverty, in addition to the current estimated 767 million. In the area of international relations, we would expect a breakdown of key doctrines involving politics, security, and relations among states. These international tensions could lead to a collapse of the nuclear order as we know it today, with a consequent setback of nuclear disarmament and nonproliferation commitments. In other words, the whole system based on the Nuclear Non- Proliferation Treaty would be put under severe trial. After the attack, there would be a reassessment of existing security doctrines, and a deep review of concepts such as nuclear deterrence, no-firstuse, proportionality, and negative security assurances. Finally, the behavior of governments and individuals would also change radically. Internal chaos fueled by the media and social networks would threaten governance at all levels, with greater impact on those countries with weak institutional frameworks. Social turbulence would emerge in most countries, with consequent attempts by governments to impose restrictions on personal freedoms to preserve order – possibly by declaring a state of siege or state of emergency – and legislation would surely become tougher on human rights. There would also be a significant increase in social fragmentation – with a deepening of antagonistic views, mistrust, and intolerance, both within countries and towards others – and a resurgence of large-scale social movements fostered by ideological interests and easily mobilized through social media.

## Trade

#### Trade doesn’t solve conflict-- asymmetry mitigates positive effects

Li, 18

(\* Yuhua Li (Corresponding author), associate professor, School of International Trade and Economics, Jiangxi University of Finance and Economics, China, Ze Jian, Professor, Nanjing University of Finance and Economics, China, Faqin Lin, associate professor, School of International Trade and Economics, Central University of Finance and Economics(CUFE) “Trade Asymmetry and Political Conflicts: Geographic Distance and Political Regime Matter”, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3115896> NL)

The relationship between political conflicts and international trade has attracted substantial scholarly interest ranging from political science to political economy, and it remains a hot subject (Berger, Easterly, Nunn, & Satyanath, 2013). Previous studies focus either on how political conflicts affect trade1 or the peace effects of trade. While the pacifying effects of trade have been examined from the perspective of trade interdependence by many studies (Kinne, 2014; Long, 2008; Polachek, 1997), however, trade interdependence cannot manifest the degree of inequity gains between trade partners, which is an important cause of political conflicts (Gartzke & Westerwinter, 2016). The effect of trade asymmetry, which is the main variable to manifest inequity gains, on international conflicts is seldom examined in the literature. Trade asymmetry has given rise to political frictions and even ruffles between trading partners in the past decade or so. It is an increasingly important issue in the dyadic political and economic relationship with the increasing trade protection in the world. For example, China is the largest source country of United States’ (U.S.) trade deficit, the trade deficit with China reached 347 billion U.S. dollars in 2016, accounting for nearly 50% of the total U.S. trade deficit.2 Obviously, the Sino–U.S. political relationship is often complicated by the two countries’ trade asymmetry Thus, it is interesting to examine whether and how trade asymmetry affects political conflicts. This paper examines the effects of trade asymmetry in political conflicts by employing the instrumental variable regression method and controlling five levels of fixed effects based on 142 countries’ data during 1979–2012. We find that trade asymmetry between trading partners aggravates the partners’ dyadic political conflicts, and a 1% rise in trade asymmetry results in a 2.67% increase in political conflicts. We also further examine which factors affect the influences of trade asymmetry on political conflicts. Geographic distance has a dual role in political conflicts through territorial disputes (Vasquez, 1995) and more interactions by nature of geographic proximity (Robst, Polachek, & Chang, 2007). Political regime differences affect interstate conflicts through ideology differences (Holsti, 1991) and foreign policy preferences (Werner, 2000; Souva, 2004). The estimation results also show that the geographic proximity and political regime differences intensify the aggravating effects of trade asymmetry on political conflict. Our paper contributes in three points. First, different from most previous studies, we extend the effects of trade on conflict by focusing on trade asymmetry, which can measure the inequity gains between trade partners. Second, most previous studies have not identified any conditions under which trade asymmetry might lead to increased conflict between trade partners. We further examine which factors intensify the effects on political conflicts. Third, most of the previous studies have been concerned with the effects of trade on military conflicts. However, the emphasis on international conflicts has moved from a focus on war to lower levels of conflict such as threats, displays, or uses of force by one country against another (Hatipoglu & Palmer, 2012). Therefore, this paper examines the effects on political conflicts, which are initiated by the government of one country against the government of another. The remainder of the paper is organized as follows. Section 2 provides a brief review of the related literature. Section 3 introduces the data, the variables, and the specification model. The main empirical findings and instrumental variable estimation are provided in Section 4. Section 5 concludes. 2. Literature review 2.1. Conflict and trade The relationship between conflict and trade could be studied from two directions. One direction is to study the effect of conflict on trade, such as Che, Du, Lu, and Tao (2015), Du, Ju, Ramirez, and Yao (2017), Fuch and Klann (2013), and Heilmann (2016). The other direction is to study the effect of trade on conflict, which is the concern of this paper. Bilateral trade is found to generate economic benefits for both sides and, hence, deters trading partners from engaging in conflict because of either opportunity cost3 (Krustev, 2006; Long, 2008; Polachek, 1997) or credible signaling4 (Gartzke, 2007). The pacifying effects of trade on conflicts are most clearly seen in relatively symmetric country pairs (Hegre, 2004). However, in asymmetric trade pairs, trade asymmetry usually mean inequity gains between trade partners; thus, it may undermine the pacific effects of trade.

#### No LIO impact or collapse

Mueller, 21

(John; February 17; Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies; The Stupidity of War: American Foreign Policy and the Case for Complacency, “The Rise of China, the Assertiveness of Russia, and the Antics of Iran,” Ch. 6)

Complacency, Appeasement, Self-destruction, and the New Cold War It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conflict as can be seen in the case of the Cuban missile crisis of 1962. As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938. Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try. If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129 Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy. However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion o f the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130 The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities. The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods. However, as discussed in Chapters 1 and 2, the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct.134 It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony. Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so. There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other. More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence. In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

#### No impact to disease

Barratt, 17

(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

#### Richards card is backwards---says globalization leads to runaway geonengineering, means protectionism is good BUT

#### Rogue geoengineering is impossible---it’s either too expensive or it’s not geographically feasible

Florian Rabitz 16, Institute for International Relations, University of São Paulo, “Going rogue? Scenarios for unilateral geoengineering,” *Futures*, Volume 84, 2016, pp. 98-107

Cost estimates for SAI vary widely across different studies and delivery vehicles. One study considers the cost for aircraft delivery to amount to US$ 0.2–20 billion annually, with installation costs between US$ 1 and 30 billion; delivery via tethered stratospheric balloons would cost US$ 1–10 billion annually, with US$ 1–60 billion for installation; delivery via artillery shells or rockets will likely result in costs which are significantly higher (EUTRACE, 2015: 42). While aircraft delivery is thus the cheapest option, the technical requirements are high, as planes need to be able to carry full payloads into the stratosphere where aerosols will persist for up to two years due to horizontal winds (Hamilton, 2013: 59). Reaching the equatorial stratosphere, which commences at 18 km, is “at or above the upper end of the operational range of most existing airplanes” (Aurora, 2011: 22–23). While supersonic aircraft such as the decommissioned Concorde have service ceilings of 18 km and above, no civilian models are presently in use.

Several military aircraft possess both sufficient payloads and ceilings to reach the lower stratosphere in the polar region or at middle-latitudes. One study assesses cost projections for two different tanker jets, the KC-10 Extender and the KC-135 Stratotanker. A fleet of 9 and 15 units, respectively, would be sufficient for delivering 1 Mt of sulphur particles annually with operating costs of US$ 225 and 375 million, respectively (Robock et al., 2009). Those costs accordingly scale with the required injection volume, sometimes estimated at up to 10 Mt per year (NAS, 2015a: 79–84) more than twice the global lift capacity of FedEx (Aurora, 2011: 19). While the financial constraints may be overcome even by small states and non-state actors, procurement of military jets is hampered by arms export legislation. Cost constraints for modified civilian models are more substantial. With modifications, business jets could reach altitudes of above 18 km, with annual operating costs for the delivery of 1 Mt estimated to be between US$ 2.89 and 5.96 billion, depending on whether aerosols are dispersed only regionally or in transit flights along the Equator (Aurora, 2011: 38). While equatorial injections would achieve global coverage as the aerosols mix horizontally through the entire stratosphere until they reach the polar caps, the financial constraints on rogue actors intending to deploy sufficient amounts over a sustained period of time are thus significant, constituting a sizeable share of, or even exceeding, the GDP of Small Island Developing States.

Cost constraints may be overcome by injecting aerosols in the Arctic region where the lower stratosphere commences at about 8 km. Here, temperature changes are above the global average so that aerosols would protect against the loss of ice cover and methane releases. While in the reach of most commercially-available aircraft, this raises the problem of geographical access: aircraft would need to operate continuously within, or transit through, the airspace of states with relatively low vulnerabilities to climate change, or even economic stakes in the melting of Arctic ice to free up shipping routes or facilitate resource extraction (Borgerson, 2008). Arctic states thus have strong incentives to interfere with high-risk geoengineering activities in their vicinity. While the same arguably applies to other governments, any type of international response to unilateral action does not have a firm basis in international law as the legal status of SAI is ambiguous and, unlike for OIF, no enforcement measures are explicitly provided for. A robust mandate for interference would likely need to be based on a UN Security Council resolution.

## Harmonization

#### Harmonization based on national-level enforcement inevitably collapses

Abbott B. Lipsky, Jr. 09, Former Deputy Assistant Attorney General, specializing in antitrust. "MANAGING ANTITRUST COMPLIANCE THROUGH THE CONTINUING SURGE IN GLOBAL ENFORCEMENT" Antitrust Law Journal, Vol 75. <https://www.lw.com/thoughtLeadership/managing-antitrust-compliance-during-global-enforcement>

I have tried to describe the three waves of the continuing global antitrust surge in a way that conveys their power, scope, and potential for enterprise-threatening impact. I have also pointed out why it should be an easy decision for any business enterprise contemplating cross-border operations—and that category includes a large and increasing number of enterprises within the continuing evolution of the global economy— to adopt a global perspective on antitrust compliance. I conclude here with a few thoughts on the future of antitrust, given the reality of this massive and still-expanding global antitrust enforcement network.

This network is characterized by great diversity, extreme complexity, and by the potential for heavy legal consequences in many different jurisdictions around the world. Taking it as assumed that strong antitrust laws are desirable, the huge range of diversity in the approaches of different jurisdictions is not necessarily beneficial. The themes of convergence (“soft” and “hard”—meaning “somewhat aligned” versus “identical” or nearly so), harmonization, and the like have been much discussed in the extensive literature on international antitrust enforcement.69 There are pros and cons and the considerations are shifting and complex.

There are real questions about the viability of an antitrust enforcement environment in which (1) over 100 national (and supranational) jurisdictions enforce their own laws through their own procedures, (2) many of these jurisdictions allow private remedies in some form—perhaps in very powerful forms, such as treble-damage opt-out class actions, (3) many of these jurisdictions allow independent antitrust enforcement efforts to be undertaken by subordinate jurisdictions, such as the states of the United States, the EU Member States, the Spanish autonomous communities, and the Canadian provinces, (4) none of these jurisdictions will defer fully or even substantially to any other, except in relatively rare and limited circumstances, (5) there is no international body—and within national jurisdictions there is often no national body—with the capacity or authority to reconcile and coordinate these additive and sometimes conflicting demands. (Consider the United States—with the longest and strongest antitrust tradition—where federal antitrust law does not generally preempt the antitrust laws of the fifty states, and even at the federal level we have two agencies that waste time squabbling over their jurisdiction in some particular matters.)

The costs and complexities of this network system are enormous. We are just beginning to adopt the most rudimentary mechanisms for reducing them. The ICN has made some progress in the area of merger notification and procedures. The United States and the European Union work hard to anticipate overlaps and conflicts in the merger review process, with apparent success. But coordinating EU-U.S. approaches to the conduct of globally significant firms—viz., IBM and Microsoft—is visibly unsuccessful. The right blend of uniformity and diversity is still not clear and may never become clear as circumstances change. (What will happen—and what should happen—to U.S.-EU cooperation in merger review when notification regimes come on line in China and India?) Are the agencies in the smaller jurisdictions destined to become bystanders in the global antitrust game? That makes no sense if an important resource or industry or class of consumers is concentrated in that jurisdiction. There seems to be no general formula by which compliance overlaps and conflicts can be reconciled.

The implication seems clear: there must be a new model—a model not based on such a huge diversity of supranational, national, and subnational enforcement structures.70 The new model might involve a clearing out of this multiplicity of enforcement structures, but even the outlines of such a model have yet to emerge. Certainly, a higher degree of unity within specific jurisdictions (e.g., state-federal in the United States; national-provincial in Canada, EU-Member State-Member State subjurisdictions, etc.) might be a logical starting point. In the meantime, as I have argued previously, the costs and complexities of antitrust enforcement cannot be permitted to climb higher at their present rate forever. At some point—we may be well past that point—costs outweigh benefits. Global economic health depends on innovation and flexibility, which are stifled by a heavy regulatory hand. Are we already past the point where the “trimming and pruning” phase should have begun? Some like ICN are toiling to bring some degree of order and harmony to this antitrust garden—but this and similar efforts are still no match for the kudzu-like growth of the global antitrust network.

#### Multilateralism fails---leaders can’t agree and too slow

Tim Ross 19, Leading UK politics coverage & lobby team for Bloomberg, Co-author of Betting the House, 8/22/19, “Multilateralism Is Dead. Long Live the G-7”, https://www.bloomberg.com/news/articles/2019-08-22/multilateralism-is-dead-long-live-the-g-7

Forums such as the G-20 and the upcoming Group of Seven meeting in France Aug. 24-26 were first dreamed up in the 1970s as a place for foreign officials to come together, fight, disagree, but ultimately resolve issues that go beyond borders. At first the discussion was primarily on economics, but the agendas quickly grew to encompass human rights, international security, global health, and climate change. The joint statement of values typically produced at one of these gatherings, known as the summit communiqué, lacks the force of law, or really any force beyond symbolism. But what it signifies—multilateralism, globalization, international understanding—has formed the foundation of the world order in what we like to think of as the modern era.

That foundation is beginning to crack. In the age of the strongman leader embodied by Vladimir Putin of Russia and Turkey’s Recep Tayyip Erdogan, and especially since the election of U.S. President Donald Trump, disrupting international norms has become a norm in itself. After last year’s G-7 meeting in Canada, Trump blew up the communiqué he’d agreed to mere hours earlier, reacting to a perceived slight from Prime Minister Justin Trudeau. Despite their valiant effort, the Sherpas at this year’s G-20 failed to craft language that all of the assembled leaders could agree to and had to insert a special section for the U.S. position on climate change.

If the era of agreement is over, what will the future look like? French President Emmanuel Macron has been grappling with that question as his country prepares to host this year’s G-7 in Biarritz. “I have battled at the G-20 and ended up at 19,” he said at the end of the G-20, “and I have battled at the G-7 to be all seven together and then have the U.S. pull out.” Desperate to avoid a repeat of the summit in Canada, Macron decided to abandon the communiqué all together. “We are living through a very deep crisis of democracy,” Macron said on Wednesday. “No one reads the communiqués, let’s be honest. And in recent times you read the communiqués only to find disagreements.”

These are hardly abstract concerns. While Macron and others have framed their search for solutions in terms of improved protocol, disagreements that begin at international meetings have a way of rippling into far less rarefied circles, and vice versa. Trump’s pique at Trudeau concerned the latter’s attempt to retaliate against tariffs the U.S. had applied to Canadian steel and aluminum weeks before. The Iran nuclear deal and the Paris climate accord were both reached through carefully orchestrated international discussions—and both were shredded single-handedly by Trump.

Yet even on the question of how to achieve unity, there’s disagreement. According to a high-ranking German official, Chancellor Angela Merkel also left the Osaka G-20 summit frustrated that once again a major gathering of world leaders had been hijacked by Trump. In her view, these events were turning into opportunities for the U.S. president to put on a show and boost his ego. But Merkel also insisted that reaching a common final declaration still ought to be paramount, however weak the language might be.

“Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks”

Trump isn’t alone in turning international diplomacy into a stage for political posturing, complete with a global audience and background leaders to populate the scenery. Chinese leaders, for instance, have been frequent spoilers. Since Trump took office, however, his bilateral meetings have occupied center stage. Before the G-20, his anticipated meeting with China’s Xi Jinping dominated press coverage. In all, Trump held eight one-on-one meetings in Osaka, including with Saudi Crown Prince Mohammed bin Salman, still under a cloud after having been accused of orchestrating the murder of critic Jamal Khashoggi; Brazilian President Jair Bolsonaro, a gun-loving ex-military leader regarded as the Trump of South America; Erdogan; and Putin.

In Biarritz, the marquee event will be Trump’s meeting with the group’s latest populist entrant, Boris Johnson. Since he became Britain’s prime minister in July, Johnson has shown no interest in compromising on Brexit policy with his critics in London, let alone with his European counterparts; he waited nearly a month after taking office to travel for talks with the European Union’s two most powerful leaders, finally making a last-minute dash to Paris and Berlin in the days before heading to Biarritz.

As a former foreign secretary, Johnson is well aware of the diplomatic conventions he’s defying. The danger, says Alistair Burt, a Conservative member of Parliament who served with Johnson in the Foreign Office, is that the rest of the world shifts to accommodate that defiance rather than challenge it. “If you revert to a foreign policy where ‘my country comes first and stuff the rest of you,’ ” Burt says, global leaders risk contributing to the appeal of those who’ve succeeded at home by looking tough and standing alone on the world stage. “Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks.”

Not that the global leadership has ever been entirely without conflict, even in the days when cooperation was a given. The G-7 used to be the G-8, of course, until 2014, when a U.S.-led coalition moved to suspend Russia from the group over its annexation of Crimea. Later that year, Australia’s then-Prime Minister Tony Abbott borrowed a term for an aggressive challenge in Australian football and vowed to “shirtfront” Putin at that year’s G-20, after pro-Russian rebels in Crimea had shot down a Malaysia Airlines plane carrying some Australian citizens. (He didn’t, but Putin nevertheless found himself isolated.) Years earlier, in 2009, Italy so bungled preparations for the G-8 that some were already questioning its continued relevance.

Innovation aside, some realpolitik ways to limit dissent already exist. According to an Italian official, G-7 diplomats expect the French to announce which foreign affairs topics will be on the agenda close to the beginning of the summit, perhaps only two days before. No full plenary discussion is likely on trade, and a minimal restatement of existing positions is likely on climate change. Should Trump make it impossible to reach a joint position, France, as the host, has the option of issuing its own statement at the end of the meeting.

Formal diplomacy has always been a complicated dance, which may pose a problem more fundamental than those created by chaos-loving nationalists. With or without Trump, the G-7 is already too slow for a world that will have fully digested whatever news comes out of it by the time everybody gets home. The talks among Sherpas have almost always been tortuous—the summit in Japan was less the exception than an extreme example of the rule. Much as with fusion cuisine, the result is usually an unhappy compromise designed to please the tastes of all that ultimately satisfies no one.

#### It’s structurally ineffective BUT regional institutions fill-in

Harlan Grant Cohen 18, UGA Law Professor, January, “Multilateralism's Life Cycle,” American Journal of International Law, 112.1, 47-66

This insight suggests a seeming paradox: that the anti-globalist turns described above are a reflection not of multilateralism’s failures, but of its successes. The great multilateral institutions of the post-World War II world—the General Agreement on Tariffs and Trade (GATT) and the WTO, the United Nations, human rights treaties, the Rome Statute of the International Criminal Court—reflected efforts to increase and spread global wealth, stability, and peace (among other goals). And while much work remains to be done, these institutions have in many ways succeeded. Wealth and power are now widely dispersed across the world.13 Human rights remain under serious threat (in some places, more than before14), but institutions have developed tools that can be effective, at least some of the time.15 Success, however, has fundamentally changed the calculus of individual states, and in turn, their views of global goals and multilateral strategies. The success of multilateralism may have made that strategy more difficult over time.16 The success of post-World War II mass multilateralism, this essay argues, has had four profound and intertwined effects on global negotiating dynamics, which together should shift and may be shifting states away from that strategy. The first is true global multipolarity.17 Current global institutions were founded against a backdrop of unipolarity, bipolarity, or even tripolarity. It is fair to ask whether those institutions are mere reflections of earlier power relations that no longer exist, whether existing global institutions are compatible with true multipolarity. Multipolarity highlights a second effect of success: the diminishing value of issue linkages. When one or a few wealthy, powerful states dominate the international order, they can demand much more of others. Previously, in return for access to markets or security, the United States, the Soviet Union, and the European Union could demand that other states sign up to rules in which those others states had little to no interest. True multipolarity, though, radically diminishes the force of those linkages. Smaller states no longer “need” the more powerful ones in the same way. They may be powerful or wealthy enough to hold out for better deals. They may have greater relative regional power that offsets losses in dealing with traditional global powers. And, the wider dispersion of power means that the more traditional powers now face competition. No state is essential. This second effect combines with a third—the increased effectiveness of these institutions— to further change global negotiating dynamics. For states with little interest in particular institutions, greater effectiveness means greater cost. If the value of linkages decreases while the costs of membership increase, states may have little incentive to remain. For other states, effectiveness results in real benefits, increasing the value of membership. This though can make it easier for certain states to free-ride on the regime, betting that they can benefit from the global goods the regime produces, even as they seek special benefits at everyone else’s expense. Fourth and finally, multipolarity and success may change what states fundamentally want out of these negotiations, increasing focus on relative as opposed to absolute welfare. In an era of massive wealth and power disparities, all states can focus on the absolute gains of global agreements. Raising the welfare of the poorest serves the interests of the wealthy, and the poorest want only to better their position. Multipolarity, however, changes that dynamic. Studies in behavioral economics have shown that people often care more about relative wealth than absolute. At the international level, the United States worries about its shrinking wealth relative to China or Mexico, questioning trade agreements that, while valuable to the United States, give their rivals too large a share of the growing pie.18 President Trump complains openly about how little other members of the North Atlantic Treaty Organization (NATO) are paying for their defense.19 China and India, worried about the environment, worry equally that new environmental rules will burden them more than others, hurting their relative global position.20 The events listed above may thus best be described as the growing pains of an increasingly mature, successful, global system. But if multilateralism’s success makes further multilateralism more difficult, those seeking to solve global problems and provide global public goods face a quandary. The last part of this essay thus suggests some ways forward. Again paradoxically, as multilateral institutions deepen, the best strategies to achieve global solutions may be ones that encourage competition rather than foster cooperation. Regional, club, and national strategies may need to pick up where multilateralism leaves off.

#### No resource depletion – innovation solves

McAfee, 19

(Andrew, scientist and cofounder of the MIT’s Initiative on the Digital Economy, “Technology Will Keep Us From Running Out of Stuff”, Wired, 10-23-2019, https://www.wired.com/story/technology-will-keep-us-from-running-out-of-stuff/)\\JM

In 1972 a team of computer modelers at MIT led by Donella Meadows published The Limits to Growth, another blockbuster. Their simulations found that unchecked exponential growth in populations and economies was bound to cause a massive global crash of resource depletion, sometime during the 21st century. Even under the most optimistic scenarios, known global reserves of gold would be used up within 29 years of 1972; silver within 42; copper and petroleum 50; and aluminum 55. These predictions weren’t accurate at all. We still have gold and silver—large reserves, in fact. Much bigger than in 1972, despite almost half a century of additional consumption. Known global reserves of gold are almost 400 percent larger today than in 1972, and silver reserves are more than 200 percent larger. And it’s probably not too early to say that we’re not going to run out of copper, aluminum, and petroleum as quickly as estimated in The Limits to Growth. Known reserves of each are much larger than they were then. Known aluminum reserves are almost 25 times what they were in the early 1970s. Given what we know about the power of capitalism and tech progress, we should expect rich countries to be getting more from less.

# Not 1NC

## States

#### **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

#### 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

#### Third, we have ev about all 50 states acting uniformly to do antitrust actions, which means it is predictably grounded in the literature and you can research it—

#### 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 and prescription drug cases

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.

#### 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

#### The threshold for CP solvency is dramatically lowered because their 1AC Francis ev says that the aff is not a treaty nor is it binding under international law, which takes out all their “binding key” or “official recognization” style arguments

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

#### \*Yellow

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

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

Weiser, 20

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

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

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

Magnuson, 20

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

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

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

Grosso, 21

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

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

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

Grosso, 21

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

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

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

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

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

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

Engstrom, 18

(David Freeman Engstrom (dfengstrom@law.stanford.edu) is a professor of law at Stanford Law School, and Jeremy M. Weinstein (jweinst@stanford.edu) is a professor of political science and a senior fellow at the Freeman Spogli Institute for International Studies at Stanford University “What If California Had a Foreign Policy? The New Frontier of States’ Rights,” The Washington Quarterly, 41:1, 27-43, 2018 DOI: 10.1080/0163660X.2018.1445356 NL)

When President Donald Trump announced his decision to withdraw the United States from the Paris agreement on climate change, the response from local and state officials was swift. The mayors of 61 U.S. cities quickly released an open letter promising to meet the commitments agreed to under the Paris framework. Twelve states and Puerto Rico announced the formation of the United States Climate Alliance, a coalition of state governments committed to upholding the Paris agreement. And Michael Bloomberg, the U.N. special envoy for cities and climate change, submitted to the U.N. a joint statement signed by more than one thousand business leaders, mayors, governors, and others prepared to quantify the emissions reductions that can be achieved in the United States without the federal government’s help. Entitled, “We are Still In,” the letter symbolizes an important phenomenon in U.S. foreign policy, one that is taking off in the age of Trump—the rise of assertive states and cities ready to act on their own on the international stage. Leading the pack is California, led by Governor Jerry Brown who is in the home stretch of his more than forty years in public life. Even as President Trump spoke in the Rose Garden in June 2017, Brown was on his way to China, where a formal meeting with President Xi Jinping in the Great Hall of the People—an honor typically reserved for visiting Heads of State—signaled a budding partnership between California and China to battle carbon emissions. Brown eagerly positioned California at the forefront of global efforts to confront climate change, just as China seemed poised to assume the leadership role abandoned by President Trump. But this was not just symbolism, and it was only the most recent chapter in California’s international climate policy. While the state’s far-reaching fuel economy standards get the lion’s share of attention, more than 170 jurisdictions, including Canada and Mexico, have embraced Brown’s Under 2 Coalition—a nonbinding, global agreement launched in 2015, before the Paris agreement, that commits signatories to reduce their emissions to net-zero by 2050. Collectively, the signatories represent nearly 40 percent of the global economy.1 Because California prides itself on its global reach, the idea of a distinctively Californian foreign policy has been kicking around for a while. Governor Arnold Schwarzenegger famously celebrated the state as the modern-day equivalent of Athens and Sparta in 2007, a “nation state” by virtue of its economic strength, population, and technological force.2 Indeed, California is the world’s sixth largest economy— larger than France or Brazil. Its 40 million residents make it the most populous state in the United States. And between Silicon Valley and Hollywood, California has almost unrivaled capability in terms of technological leadership and cultural influence. By virtually any measure, California would be a global powerhouse except for two fundamental constraints: it lacks many of the legal attributes and policy instruments of a nation-state, and the U.S. Constitution expressly reserves for the federal government responsibility for the conduct of foreign affairs. As a result, until recently, the enthusiasm for a Californian foreign policy far exceeded the reality. Before its climate leadership, California’s foreign policy looked pretty parochial and a lot like any other state or province with a focus on export promotion, trade, and foreign investment. Though some legal constraints remain, the Trump presidency has spurred, and will likely continue to galvanize, a range of new efforts by California—and other states and municipalities—to test the legal limits of federal power in foreign affairs. Californians are proud that their commitments to diversity, the environment, and human rights set them apart from what they see emanating from Washington D.C., while California’s politicians will undoubtedly see the value in resisting Trump administration policies and distinguishing California from the United States as an actor in global politics. Among others, an ambitious governor—one who already ran for president three times—is seemingly prepared to see just how far California can get. Whether these efforts succeed will depend, in part, on how much latitude the courts ultimately grant to the states. Historically, the answer has been not much. But these new state initiatives may be emerging at just the right time. In the midst of a long-running transformation in how foreign affairs are conducted and an evolution in legal thinking about federalism’s boundaries, the time to challenge federal foreign affairs powers may have finally arrived. Subfederal actors are building a legal case and infrastructure for their expanded role, while pressing forward on climate, human rights, and immigration. While the federal government could rely on the judiciary to referee this contest in an episodic fashion, the pace of expanded state and municipal activism is unlikely to slow. National policymakers would be wise to wake up to this new set of practices and think strategically about how to harness the opportunities while mitigating the risks. Erosion of the Unitary State It used to be the case that foreign policy was considered the sole province of diplomats and soldiers—agents of a national government pursuing its interests on the international stage. To understand foreign policy, one needed only to understand the power and interests of competing nation-states. National governments were seen to act as coherent units, making decisions that served the national interest and contending with one another to accumulate greater power and influence. This state-centric view of world affairs originated with the Peace of Westphalia in 1648, and is still taught to undergraduates as a first approximation of how international relations operate. For better or worse, it is also how our Constitution conceptualizes the appropriate roles of national and state governments in the conduct of foreign affairs. But this perspective was never fully compelling as an empirical matter. It missed the diverse interests and competing power centers of the federal government. Cabinet agencies, Congress, the military, and the courts all shape how national interests are defined and what instruments are used to pursue them. It overlooked the network of domestic actors outside of government—corporations, non-governmental organizations, unions, religious institutions, unaffiliated billionaires, and others—that seek to influence the foreign policy priorities of the United States, shape the international environment in which foreign policy is conducted, and impact domestic politics in other countries directly, often acting autonomously in pursuit of their own interests. And it ignored the growing web of transnational governmental relations: networks of government officials (including policymakers, regulators, and enforcement agencies) that operate across borders to cooperate on issues as diverse as banking, transnational crime, corruption, taxation, and immigration, often without explicit direction from the president. Over time, these realities have brought significant changes to the architecture of U.S. foreign policy. The emergence and growth of the National Security Council since the passage of the National Security Act of 1947 reflects a recognition that the management and coordination of competing power centers in the executive branch is key to articulating and implementing a coherent foreign policy. The proliferation of informal mechanisms for consultation, formal advisory committees, and public-private partnerships signal how seriously policymakers take the task of understanding, influencing, and channeling the attention and resources of non-governmental actors including NGOs, corporations, and philanthropies. Whereas it used to be the case that international diplomacy was conducted through the State Department, using a professional corps of trained diplomats, now almost every federal agency—from the Department of Agriculture to Health and Human Services and the Environmental Protection Agency—has its own office of international affairs, facilitating the kind of expert-led, transnational cooperation that is key to addressing global problems. The dispersal and fracturing of the international relations function across government has, no doubt, made life more difficult for State Department diplomats, and it has fundamentally challenged the notion of a single and unified U.S. government operating with a clear and coherent mandate. The foreign policy activism of states and cities fits quite naturally in this increasingly complex network of actors that influence and make foreign policy. In one sense, they are like any other pressure group in the political system. In the bargaining process to determine U.S. foreign policy, states and cities can make their voice heard by advocating directly to senior policymakers in the executive branch, influencing elected officials in Congress, or leveraging their relationships with federal agencies. But states and cities differ in important ways as well. In particular, governors and mayors are elected representatives of a geographic constituency with a mandate to advance that state’s or region’s particular interests. When those interests are poorly served by the federal government’s foreign policy, the pressure to act in ways that challenge the federal government’s preeminence can be irresistible. Examples abound. In the 1970s and 1980s, hundreds of cities and states declared themselves nuclear-free zones to keep nuclear weapons production-related materials out of their jurisdictions during the Cold War. Today’s resistance to federal immigration law has its roots in the “sanctuary” movement of the 1980s, when Wisconsin and a number of cities, including Berkeley—spurred by religious congregations—committed to provide safe-haven to refugees fleeing conflicts in Central America. When the Reagan administration was embracing “constructive engagement” with South Africa’s apartheid regime in the 1980s, states and municipalities played a significant role in advancing the sanctions movement, prohibiting engagement with businesses investing in South Africa.3 The notion that foreign policy functions as a reflection of the interests of a “unitary state” has eroded in practice. Today, a huge diversity of actors—sometimes acting in unison, oftentimes acting in parallel, occasionally conflicting— shape how U.S. interests are defined and advanced on the world stage. Will the law adapt to this new reality? There are some reasons to think that California and others may have more room to play, as a result of a revolution in federalism that has challenged federal preeminence in a range of new areas. “One Voice” in Foreign Policy? If the “unitary state” has given way to a richer transnational vision of international relations, then it might follow that legal understandings have shifted as well. After all, the majesty of the law, as Justice Oliver Wendell Holmes said long ago, is its ability to adapt to changing circumstances. But legal change in the area of foreign affairs federalism, as it is sometimes called, has come more slowly. The growing disconnect between the law and ground-level realities of how foreign relations are actually conducted has put the two on a collision course. The result is a heady mix of legal risks and opportunities as California and other subfederal governments move onto the global stage. The conventional view is that the Constitution makes foreign affairs the exclusive province of the federal government. While this view has many facets, much of it is built around a single and appealing turn of phrase: the United States must be able to speak with “one voice.” The idea, built out of multiple provisions of the Constitution and voiced by the Supreme Court as far back as the 1820s, is that sound foreign relations depend on clear and deliberate communication among sovereigns. It cannot be entrusted to a provincial and parochial chorus of states and localities. The “one voice” idea is a convenient shorthand, but the legal case in its favor is hardly ironclad. Begin with the text of the Constitution itself. True, the Framers plainly prohibited certain state actions. States may not engage in war or make treaties, and they may not enter into compacts or agreements with other states, whether domestic or foreign, without Congress’s permission. But the textual case for the “one voice” concept otherwise lacks much punch. To begin, the Constitution sprinkles foreign affairs powers across both the legislative and executive branches. Congress gets to regulate foreign commerce, define offenses under international law, declare war, and raise and regulate the military, while the president is the commander in chief, makes treaties, and nominates ambassadors (the latter two with Senate concurrence). From the start, then, the Constitution’s commitment to separation of powers has meant multiple federal voices on foreign affairs, not a single one. More importantly, on foreign affairs the Constitution is, as a leading scholar put it, a “strange, laconic

document.”4 It carefully specifies many foreign affairs powers but omits mention of others. Where, to cite a few examples, is the power to recognize other governments, open consulates in other countries and admit foreign consulates, or acquire or cede territory? The Supreme Court has tried to fill gaps by fleshing out the “one voice” concept, but questions remain as to just how far the concept stretches. In cases of direct conflict between federal and state policies, all agree that state policy must yield. The Supremacy Clause, which says that federal law trumps state law, is clear on that score. But that leaves myriad situations in which federal and state law do not formally conflict, where the case for “one voice” is more complicated and only a small handful of Court decisions light the way. A standard concern about multiple voices is that, even where there is no direct conflict between federal and state law, state actions can still create big federal problems. Indeed, an ill-considered state tax on foreign commerce, the Court has said, might benefit the particular state but risk retaliation—whether economic, military, or otherwise— against the whole nation. Here, the “one voice” doctrine can be seen as a curb on a kind of free-rider behavior by states, but it is not always obvious which state actions are rogue enough to count. The Court has further suggested that it is not just state interference with concrete and continuing federal action, but also potential federal action, which can impair the federal government’s solo voice. For instance, state action can, by removing a potential “bargaining chip,” deprive the federal government of needed leverage in its dealings with other nations. Thus, when Massachusetts moved in 1996 to sanction Myanmar by refusing to enter into procurement contracts with companies that did business with its repressive government, the Court held that the Bay State’s refusal to deal was preempted by a federal law that imposed similar sanctions but gave the president flexibility to raise or lower them in nudging the regime toward better behavior. The Massachusetts law thus stood as an “obstacle” to federal policy because it took away “levers of influence” that the federal government might wish to hold in reserve for future use.5 On this expansive version of the “one voice” idea, even seemingly symbolic state-level slights can muffle the federal government’s voice. In a key case from the 1960s, the Court confronted an Oregon law that, in a jab against Communist countries, barred foreign nationals from collecting inheritances in Oregon unless an Oregonian would have the same rights in the other country. The Court struck down application of the law, but it did so not because of a direct conflict between federal and state law—the Nixon administration told the Court the Oregon law did not affect its conduct of foreign affairs.6 Rather, the Oregon law fell because it would require judges to sit in judgment of foreign nations—and gauge their “democracy quotient,” as Justice William Douglas put it.7 This, the Court said, was a task for the feds alone—a move in the Cold War’s ideological chess match that was far too important to leave to the state-level rabble. Weaving together multiple threads of the “one voice” concept, we can imagine current legal doctrine as creating a defensive halo that radiates out from any particular area of federal foreign policymaking. This halo is brightest near its center, where federal and state policies directly conflict. But its light grows progressively dimmer as it moves outward and touches state actions that pose a less direct conflict with federal law. The million-dollar questions as California and other subfederal governments move onto the global stage are: Just how far out does the defensive halo extend as the degree of federal-state conflict weakens—or, in the current context, where the federal government has left the field altogether and has no policy at all? And how, in determining the halo’s reach, should the Court weigh other factors, such as the importance and pedigree of the state interest, the state’s motive in pursuing it, or the level of competence the state brings to the table? Because the Court has only sporadically addressed these questions over time, and as states and localities steadily move onto the global stage in the new and more dynamic world of foreign relations, the foundation of the “one voice” idea suddenly seems full of fissures and cracks. It is these fissures and cracks that states and other subnational governments will have to exploit as they pursue opportunities for global leadership. Testing Constitutional Limits Will California and other states and cities seeking a place on the global stage be able to move the law? The answer, as good lawyers know, is as much logistical as it is legal. Two examples highlight some of the legal opportunities a state like California might seize under current doctrine. The first surfaces most cleanly in a 2003 case in which the Supreme Court invalidated a California law that required insurance companies to disclose details of insurance policies held by Jews during the Holocaust and, further, made it illegal for insurers to refuse to pay claims on those policies. The problem was that the law conflicted with an executive agreement, signed by President Clinton and the leaders of several other countries, that took a purely voluntary approach to the problem, cajoling insurers rather than commanding them. Echoing its earlier decision in the Myanmar case, the Court invalidated California’s law because, while the federal approach used “kid gloves,” California’s used an “iron fist,” thus undermining the president’s “diplomatic discretion.”8 But tucked in the decision was a sleeper. In striking down the law, the Court said its analysis might be different where a state was acting within its “traditional competence” and, further, that analysis of federal-state conflict would turn, at least in part, on “the strength or the traditional importance of the state concern asserted.”9 For a state like California that is fast moving into the climate space, this is manna from heaven. Indeed, the Supreme Court said more recently in a 2007 case that Massachusetts, as both a sovereign and landowner, has a powerful and longstanding interest in protecting its own shorelines against the rising sea levels that come with climate change.10 Of course, this argument may not wash, so to speak, in land-locked Oklahoma. But for coastal states like California, it provides a ready-made defense to a “one voice” challenge to state action. As states and cities move onto the global stage and attack global problems, expect them to frame their efforts as local efforts to protect people and property—the core of a state’s traditional, time-tested police powers. As they do so, the distinction between what is foreign and domestic will blur—and could fall away entirely— further undermining the “one voice” idea in the climate space and perhaps even beyond, in areas like immigration or human rights, wherever states can plausibly point to concrete interests. The second opportunity states can seize might be the Constitution’s bar on state-level compacts with foreign nations. Though the Constitution prohibits foreign-state compacts absent congressional consent, in reality states have entered into them on myriad issues, from trade and firefighting cooperation to transboundary bridges and water diversion. States are entering such compacts at a growing clip—there have been 340 agreements since the 1950s, and some 200 of them in the last ten years alone.11 Few of these, however, have suffered invalidation. Part of the reason is explicit or implicit congressional authorization. But the Court has also been quick to read congressional silence on compacts and agreements as acquiescence and, thus, approval.12 If the current trend continues and the number of foreign-state agreements continues to rise, Congress will face an unsavory choice: bluntly disallow entire categories of agreements and thereby risk the ire of friends and foes alike, or spend valuable time and energy sifting good and bad ones on a case-by-case basis. Either approach brings costs. And in the current era of partisan gridlock and political paralysis, one wonders just how often Congress will be able to muster action at all. In seeking to exploit these and other legal opportunities, California will also be aided by the shifting political tides of federalism. Throughout much of American history, federalism and states’ rights have been a conservative war cry—a needed check on a liberal, overweening federal government. The most recent wave arose in decisions throughout the 1980s and 1990s, as the Supreme Court, with Chief Justice William Rehnquist leading the charge, trimmed federal power and strengthened the states’ position across numerous policy areas, often to deregulatory effect. But last November’s election and the recent wave of state-level activism has flipped federalism’s political valence, making states the hope of progovernment progressives. Will this matter? To be sure, as cases testing the boundaries of foreign affairs federalism reach the Court, the decisions might prove, once and for all, that federalism is just a political football. But so far, at least, the smart money seems to be that the commitment to state autonomy at the core of the Rehnquist Court’s federalism revolution will continue to enjoy significant sway in the Roberts Court. At the very least, a more forward-leaning state role on climate, trade, and other problems with a global cast will create uncomfortable dissonance for conservative justices who have long laced their opinions with encomiums to federalism’s virtues. The other reason to believe California will be able to exploit available legal opportunities is logistical. Legal revolutions are not built on ideas alone. They also require an infrastructure—and a set of institutional actors with the will and capacity to advance novel legal claims and make them stick. The most significant development here is the dramatic rise in recent decades of state attorneys general —and their steady acquisition of resources and topflight legal talent. Notable as well is California’s recent high-profile retention of former Attorney General Eric Holder to quarterback the state’s strategizing on federalism matters.13 Even local governments have built impressive litigation shops and staffed them with some of the best and brightest young lawyers. During yesteryear, San Francisco might have buckled in response to Trump administration threats to cut off federal funding if the city does not assist federal immigration authorities. So might have nearby Santa Clara County. Today, both have sued the Trump administration on the issue and, so far at least, are winning.14 To this point, much of this new subfederal legal infrastructure has been given over to what might be called defensive legal efforts. Think here of state-led opposition to the Trump administration’s travel ban, or—as just noted—litigation challenging the federal government’s effort to pull federal funding from sanctuary jurisdictions unwilling to play ball with federal immigration authorities. Both have a clear defensive posture—an effort to push back against federal policies. But the growing and increasingly sophisticated legal infrastructure can also be deployed to defend more affirmative policymaking efforts as California and other subfederal governments move onto the global stage. New Frontiers of State Action In what policy areas are California and other jurisdictions most likely to push the envelope? Top of the list is climate policy, as recent headlines attest. Yet while Governor Jerry Brown’s Beijing sit-down with President Xi Jinping dramatized California’s global ambitions and bolstered Brown’s status as a de facto envoy for the United States on climate issues, the actual conversation was mostly benign—little different from the assurances aired when state trade delegations make nice in foreign countries. Even the Under 2 Coalition’s memorandum of understanding promises only “coordination and cooperation” on emission reductions, with signatories to pursue “their own strategies.”15 However, bolder state initiatives are afoot, in California and elsewhere, and may soon crest as legal issues. The best example is regional cap-and-trade programs for reducing carbon emissions that reach across international borders, linking American states with foreign governments. The idea dates back to well before Trump. In 2007, California spearheaded an effort to create a cap-and-trade program among five western states, following in the footsteps of a more limited effort among New England and Mid- Atlantic states. But the western version soon took on a novel international flavor when four Canadian provinces climbed aboard. Reaching across borders is good: more territory brings scale economies, a thicker market for trading carbon permits, and a reduced threat of “leakage” when industry picks up and moves outside the system. That was the initial attraction of a multi-state approach, even before Canadian provinces got involved. But when the Great Recession and turnover at governor’s mansions sent all the other American states to the exits, California suddenly found itself pursuing Canadianonly linkages, beginning with Quebec in 2013. The problem is that linkage involves lots of paperwork—and a set of written understandings between sovereigns that looks far meatier than the oral statements that passed between Governor Brown and President Xi in Beijing. To be sure, the linkage document inked in 2013 by California’s Air Resources Board and Quebec’s government is a skinny 14 pages, and its preamble contains plenty of hedging language that it does not limit either government’s “sovereign right and authority.”16 But the rest of the document belies such claims, including its formal styling as an “agreement” and its parade of “shall” clauses. Most worrying from a legal perspective are termination and withdrawal provisions requiring participants to remain in the agreement for a year after serving notice to the other side. These details present legal challenges and opportunities. The main challenge is that much of the agreement has a binding feel and so might be said to deprive the federal government of a potential “bargaining chip” or otherwise impair its ability to speak with “one voice” in its dealings with Canada. But there is an equally big opportunity, too. Cap-and-trade linkage may be the best way for California to expand the beachhead the Supreme Court provided in 2007 when it recognized Massachusetts’s sovereign interest in safeguarding its own shorelines against the effects of climate change. That view explicitly connects climate policy to a “traditional state concern” that the Court has said must be weighed in assessing federal-state conflict around foreign affairs. Cap-and-trade linkage may also test Congress. Despite its power to disapprove state agreements under the Compacts Clause, Congress never objected to the Quebec linkage. But California recently finalized a second Canadian linkage, to Ontario. Doing so has provided a focusing event that could raise congressional antennae. But do climate-denying Republicans in landlocked states have the stomach to disallow climate policy in a distant state, particularly one that may help, rather than hinder, their own states’ efforts to attract mobile capital and industry? Continued congressional silence would go a long way toward entrenching a norm in favor of cross-border state action, paving the way for other state efforts to step onto the global stage on climate issues and beyond. State-Led Human Rights Advocacy Affirmative efforts to confront human rights violations and other egregious behavior by foreign governments—including repression, corruption, and human trafficking— represent another area ripe for action. The evidence so far suggests that the Trump administration is advancing a narrow conception of American self-interest, deemphasizing the universal values of freedom and opportunity that have occupied a central place in the foreign policies of Democrats and Republicans for decades. In particular, Trump’s embrace of leading autocrats and proposed budget cuts for the federal agencies that lead on these issues —the State Department and USAID—put the administration on a collision course with activists around the country who want to maintain American leadership on human rights. The experience with apartheid provides them with an important precedent. While the Reagan administration chose quiet dialogue and cooperative engagement with South Africa—prioritizing instead the fight against communist insurgencies in the developing world—dozens of states and cities across the United States embraced an aggressive divestment campaign that some say played a key role in ending the apartheid system.17 The result was a web of subnational laws limiting the extent to which state and local governments could contract with companies doing business in South Africa and authorizing public pension funds to divest from companies working with the apartheid state. Moved at least in part by this subnational mobilization, the federal government adopted comprehensive sanctions against South Africa of its own, over President Ronald Reagan’s veto. At the time, the authority of states and cities was never challenged in the courts. The enthusiasm for state and local action using procurement sanctions and investment/divestment policies has not waned, though the legal basis for doing so has narrowed. Since the Court held in 1996 that federal law preempted Massachusetts’ procurement sanctions against Myanmar, most state-level sanction regimes have been trained on Iran and Sudan pursuant to explicit authorization by Congress. But as states pursue a more global role, they will find firmer legal ground when it comes to divestment actions. Procurement sanctions prohibit the state government from conducting business with private corporate entities, either U.S. companies doing business in a human rights-abusing country or companies based in the targeted country. These companies and their dealings with targeted countries may also be the subject of federal regulation. Divestment statutes arguably sit closer to the exercise of purely state power: states’ management of their own investment funds. And because state public pension funds have a fiduciary obligation to protect their members’ investments, divestment can be framed as a strategy of managing investment risks that flow from repressive and politically unstable regimes. The potential impact is significant, with nearly $3 trillion of investment capital available in state pension funds in 2015. Beyond divestment, look for states to test-drive new policies in areas where traditional state competence is beyond question: state-chartered banks and local real estate markets. For example, New York has long been at the forefront of efforts to strengthen regulatory oversight of state-chartered banks. Because every major international bank is chartered in New York, the state has a powerful platform to police efforts by repressive autocrats to keep their regimes afloat by laundering the proceeds of corruption and bypassing sanctions programs. States are also well positioned to help clean up the U.S. real estate market, where human rights abusers and kleptocrats use a lack of transparency or anonymous shell companies to launder and store money. With pressure mounting against such practices, state governments can use their authority over real estate markets to impose higher standards for customer due diligence and transparency around beneficial ownership. With these kinds of regulations in place, it would be far more difficult for corrupt and repressive regimes to stash wealth in the United States. States’ Role in Immigration Policymaking A third area where states and localities are carving out a more global role and pushing the legal envelope is immigration. As already noted, much of the headline- grabbing action here is defensive, with sanctuary jurisdictions like San Francisco and Chicago pushing back against the federal government in lawsuits invoking constitutional doctrines that protect them against federal coercion. But in the shadow of this litigation is a longer and deeper record of subnational action that has put states like California on the front lines of immigration policymaking. As with so much else in the world of foreign affairs federalism, Trump’s election last November was not so much a sudden, seismic event as a punctuation point for trends long in the making. Viewed at a distance, immigration federalism can look different from other policy areas that implicate foreign affairs. First, the case for exclusive federal authority is stronger in the immigration area. This is because the “one voice” doctrine is bolstered by the Constitution’s grant of power to Congress to “establish an uniform Rule of Naturalization.”18 The Supreme Court has consistently held that this clause confers exclusive federal authority over admission, deportation, and naturalization of noncitizens. This makes the second distinctive feature of immigration federalism something of a paradox: State and local policymaking around immigration is far thicker than in other policy areas that implicate foreign affairs. In fact, the last decade has seen an explosion of legislative activity in statehouses on immigration matters—so much so, that it is not a stretch to say the United States has already undertaken “immigration reform,” just not at the federal level.19 Some states have taken a restrictionist approach, pledging state and local support for federal enforcement efforts—and some, like Arizona, have gone beyond mere cooperation and engaged in more rigorous enforcement than federal law does, drawing a rebuke from the Supreme Court in 2012 for a state law that imposed additional sanctions on undocumented persons and authorized arrests beyond what federal law provides.20 Other states’ laws, by contrast, are integrationist. Some of these, like the current litigation efforts, are defensive and aim to secure sanctuary at home, work, and school by, among other things, expressly prohibiting state and local officials from cooperating with federal enforcement efforts. But a raft of other measures in California and elsewhere take a more affirmative approach to integration, granting immigrant access to education, medical care and other public benefits, and driver’s as well as professional licenses. A lesson here is that, even if the federal government holds exclusive power over admission, deportation, and naturalization, states can do much to modulate immigrant flows via policies that either foil or foster settlement and permanency. This may prove once and for all that the current era of rapid globalization has rendered the line between what is foreign and domestic, in the immigration area and beyond, more apparent than real. And this is part of why many integrationist laws—unlike Arizona’s harsh restrictionist approach—have survived legal challenges. Without a clear way to distinguish laws designed to shape immigration flows and those performing the traditional state functions of protecting the welfare of persons within state borders, the Court has instead reached a rough equilibrium granting states and localities latitude to regulate immigrants and immigrant services so long as they leave regulation of immigration to the feds. But two further examples of subnational action may test this equilibrium. The most dramatic is state efforts to advance more inclusive constructions of state citizenship. A bill first put forward in New York in 2014 would grant citizenship to state residents regardless of immigration status, granting them full access to public benefits and—reviving a practice common earlier in American history— entitling them to vote in state and local elections.21 More recently, Utah passed a law establishing a state guest worker program for noncitizens. Though implementation has since stalled under the threat of a Department of Justice lawsuit, a key point here is that Utah is only the most visible actor in a long-running and increasingly tense drama: More than a dozen other states, frustrated by chronic shortages of workers in the agriculture, energy, construction, and tech sectors, have proposed measures by which Congress would grant state and local control over federal guest worker visas. If Congress continues to punt on immigration—or, as the Trump administration recently suggested, the feds take a more restrictive line even as to legal immigration—look for more assertive, boundary-pushing action by states that could chip away at plenary federal power. The second type of boundary-pushing state action on immigration may lack the diplomatic feel of a Brown-Xi summit, but nonetheless has states and localities carving out a global role: the increasingly dense web of relations between state and local officials and the fifty-plus U.S.-based Mexican consulates. This is evident in the proliferation of memoranda of understanding between states and localities and consulates on deportation defense and legal proceedings involving Mexican children. Harder to see, but no less important, is an increasingly rich and routinized system of communication around other key issues impacting immigrant communities, including notario fraud, in which non-lawyers falsely represent themselves as qualified to offer immigration-related legal services, and the Ventanilla de Salud (literally, “windows of health”) system, a Mexican program run through its U.S. consulates to provide Mexican nationals with health counseling and referrals. This dense web of consular agreements and communications is important, and not just because it sits at the center of a shadow system of subnational diplomacy on immigration matters. If we squint hard enough, we can also see in it a much wider process of capacity-building as state and local governments draw in talent and expertise that can drive a new, more global role. This process began long ago in big states like California, where many state officials have done time in the federal foreign policy apparatus. But it is becoming visible in other places as gridlock in Washington, on immigration and more generally, has moved smaller states and a growing corps of self-styled “global cities” to reach beyond the water’s edge. Just the Beginning Trump’s election and his administration’s major shifts in policy on the environment, human rights, and immigration have thrust a wide range of subfederal initiatives into near-daily headlines. Undoubtedly, these efforts will serve the political interests of progressive policymakers in Democratic-leaning states looking to challenge the policies of the Trump administration at every turn, and they are sure to find a receptive audience overseas where long-standing U.S. allies are looking for ways to continue making progress on shared priorities and to stand up to President Trump. They will also test the boundaries of federal foreign affairs power, raising the question of whether the Justice Department is preparing for a fight. But it is also important to note that the enthusiasm of states and cities to exercise leadership on the global stage has been long in the making; it will not go away when Trump does. Nor is it limited to hot button, highly politicized areas like climate, human rights, and immigration. Exhibit A is cyber security, where a patchwork federal presence has moved states to the front lines of policymaking despite the fact that cyber-regulation’s frequent extraterritoriality—think here of a Parisian bookseller who fails to safeguard a Massachusetts customer’s online data—would seem to make it an ideal candidate for federalization. Most arresting of all, some say state-level cybersecurity efforts to combat botnets and other malware could soon involve countermeasures—that is, malware that goes the other way and attacks the perpetrator’s systems—that look a lot like state-led warfare. Is U.S. foreign policy enabled or hobbled by growing subfederal activism in foreign affairs? This is not an easy question to answer, even if the trend is difficult to reverse. Two of the central virtues of federalism—its potential to spur policy innovation and the ability to bring the locus of policy choice closer to voters—are in direct tension with the view that U.S. power depends on policy coherence and the leverage that comes from acting in unison. In an environment of strong bipartisan agreement on major national security priorities, few were concerned about activist states and municipalities; with a shared sense of direction, the energy of subfederal actors was seen as a virtue, opening up new tools and channels for advancing U.S. interests. But with the loss of that bipartisan consensus, the likelihood that the federal government and states may act at cross-purposes is increasing, and the incentives for pushing the boundaries even stronger. Whether the courts will allow the most forward-leaning state policy efforts to proceed is anyone’s guess at this stage, but it is not clear that judges are best positioned to help policymakers navigate this new terrain. Judges will encounter these issues only episodically, in a subset of policy domains, and without the expertise to identify the conditions under which a more expansive subfederal role advances U.S. policy goals. Policymakers, on both sides of the aisle, would be wise to get ahead of the courts on this one. While it may be too late to turn back the clock, the challenge of harnessing all the instruments of American power involves figuring out how to lead this diverse network of players in a common direction with a shared goal—a significant organizational task for any president, and one made far more difficult when views on policy are so polarized.

#### Fourth, States solve international cooperation – two centuries of subnational foreign relations jurisprudence proves

Manassa, 21

\*sfr = subnational foreign relations

(Romney, J.D. and Master of Laws in International Arbitration *cum laude*, University of Miami School of Law, certificate in International Cultural Heritage Law from the University of Geneva, graduated *magna cum laude* from Florida International University with a dual Bachelor of Arts in International Relations and Political Science and a minor in Economics, “Federalism in the Era of Globalization: The Exercise of Foreign Affairs Powers by Subnational Entities”, 52 U. Miami Inter-Am. L. Rev. 139 (2021), https://repository.law.miami.edu/umialr/vol52/iss2/6)\\JM

Justice Michael Kirby of the High Court of Australia once observed that while “[o]nce we saw issues and problems through the prism of a village or nation-state …. [n]ow we see the challenges of our time through the world’s eye.”310 Though he was referring to lawyers and judges, his statement could just as well apply to humanity as a whole. Even in the most authoritarian, nationalistic, or isolationist countries, the common person living in provinces, counties, cities, and even rural villages is more interconnected than ever.311 The world is on the cusp of developing into a truly global civilization, with a shared human identity that transcends the traditional confines of culture, religion, ethnicity, and political identity. Far from idealistic or Utopian, this development reflects the sober reality that, whatever our multitude of differences, our species shares common existential problems and concerns that well exceed the structural or legal frameworks of whatever country they happen to be born in. Aside from the more familiar and emblematic example of climate change, these concerns include the basics of human wellbeing and survival: Access to food, water, healthcare, economic resources, and more. All these issues and more are subject to an ever-growing array of nonbinding, informal, or otherwise extraconstitutional agreements, concluded not only by nation states, but by international organizations, nongovernment organizations, civil society groups, and subnational units of varying shapes, sizes, and labels. The U.S. Constitution, which has endured longer than the written constitution of any other nation, has long benefited from its versatility and ability to “respond to developing circumstances.”312 As this Note has hopefully demonstrated, the Constitution is adaptable to the challenges and realities of this rapidly globalizing century, namely the burgeoning relationships between Americans and their foreign counterparts, which are no longer constrained by the barriers of old—not even the federal government. After two centuries of courts never striking down SFR—and not for lack of opportunity—and an equally long period of both congressional and executive acquiescence, federal administrations should conform to constitutional language, state practice, and consistent judicial rulings allowing states broad discretion to engage in the international realm. Not only would such conformity be legally and politically sound, but it also would reap a range of practical and moral benefits: The United States could reclaim its standing as a responsible and engaged member of the international community; the people would have an outlet to express views and values otherwise unattainable through the comparatively more distant mechanisms of the federal government; and some of the most pressing problems facing the nation and the world can be addressed through hundreds of thousands more flexible, responsive, and bolder “laboratories” that make up the U.S. and almost 200 other nations.

#### Even your cards think states can do this----Georgia reads green

Oona A. Hathaway 13, Gerard C. and Bernice Latrobe Smith Professor of International Law atYale Law School, et al., “The Treaty Power: Its History, Scope, and Limits”, Cornell Law Review, 98 Cornell L. Rev. 239, January 2013, Lexis

See, e.g., Zechariah Chafee, Jr., Stop Being Terrified of Treaties: Stop Being Scared of the Constitution, 38 A.B.A. J. 731, 732 (1952); Chafee, Federal and State Powers, supra note 115, at 432 ("In a queer terror lest the Senate, which has been the graveyard of treaties, will suddenly nurture treaties like a crowded incubation ward in a lying-in hospital, the great difference between domestic affairs and foreign affairs has been forgotten. In domestic affairs, after the boundary of federal power is reached, there is no vacuum in the law because the states can legislate amply to meet all needs. But in foreign affairs there would be a vacuum if the federal treaty power were narrowly limited. The states cannot take over. They are forbidden to conduct negotiations with other nations. Consequently, unless the national government can act, nobody can act.").

#### Moore is a neg card--- also answers 1ar tarberet because it’s based on one voice – here’s the conclusion

David H. Moore 14, Wayne M. and Connie C. Hancock Professor of Law Professor of Law at the J. Reuben Clark Law School at Brigham Young University, BA and JD from Brigham Young University, “Beyond One Voice”, Minnesota Law Review, 98 Minn. L. Rev. 953, February 2014, Lexis

#### The one-voice doctrine is a frequent player in foreign relations law, having been invoked to answer critical questions regarding the foreign affairs powers of the President, Congress, courts, and states. Until now, the doctrine has escaped comprehensive evaluation. Filling that void, this Article demonstrates that the doctrine cannot withstand scrutiny. Not only is the doctrine inconsistent with constitutional text, structure, and history, as well as actual practice, but the doctrine applies along various dimensions that present divergent questions, masks different theories of constitutional interpretation, and ignores functional reasons for other or multiple voices in foreign affairs. In light of these flaws, the one-voice doctrine should be abandoned. At most it may be appropriate to argue for a single federal voice in individual cases, but such arguments must be evaluated on their own. They cannot masquerade as part of a one-voice doctrine, for it is too much to believe that there is or that we should retain such a thing.

## BBB DA

#### 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.

#### Outweighs on magnitude

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.

#### BBB will pass – Biden is fully invested and has momentum

DEESE 11/9 (Brian; Director – National Economic Council, “White House ‘confident’ Congress will pass Build Back Better bill,” <https://www.pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill>, //pa-ww)

Yamiche Alcindor: Since the infrastructure vote on Friday night, the Biden administration has directed its focus to the Build Back Better package. That's the $1.75 trillion bill with money for child care, health care, and climate change. It needs nearly every House Democrat and all 50 Senate Democrats on board to pass. Brian Deese is the director of the National Economic Council for the Biden administration. He's been a central figure in these negotiations. And he joins me now from the White House. Brian, thank you so much for being here. President Biden will soon pass the bipartisan infrastructure plan, but there were many lawmakers who wanted it tied to the Build Back Better act. What assurances can you give Americans that that Build Back Better act is going to become law? And how soon do you expect that to happen? Brian Deese, Director, National Economic Council: Well, for starters, what I can assure folks is that signing this historic infrastructure bill is going to do a lot of good for the country. We have waited decades to actually do something about infrastructure. And, in that period, the United States has fallen behind. We're 13th in the world in infrastructure. And with this piece of legislation that the president will sign soon, we're going to make historic investments in rebuilding both our physical infrastructure ports, and airports, roads, and bridges, transit, but also provide high-speed Internet to all Americans, clean water by replacing lead service lines across the country. So this is a big set of investments, a capital investment in America that we have waited way too long to do, and we're now finally going to make happen. And I think that's going to build real momentum for getting the second half of the president's economic agenda, the Build Back Better plan, into law. That will start next week, where we anticipate a vote in the House, and then onto the Senate as well. Yamiche Alcindor: Now, the Congressional Budget Office said today that it's releasing estimates for individual titles on this bill, but that it's not clear when it will have a final cost for the final bill. There are some moderates who say they want to see a CBO score before they vote for this. House Speaker Nancy Pelosi has said that she wants to vote on this Build Back Better Act on the week, next week, the week of November 15. How sure are you — how sure are you that this CBO score will be available by then? But also how worried is the president and yourself that there won't be the score needed to pass this bill in the House? Brian Deese: Well, we're very confident that this bill is fiscally responsible and fully paid for. We saw last week the Joint Committee on Taxation, which is the gold standard for the revenue provisions in this bill, reinforce that there is more than enough revenue, more than enough offsets to offset all of the new investment in this package. And this is the typical process. Both chambers of Congress typically vote on bills when they have enough information. So, we anticipate that there will be more information provided to lawmakers this week, and, consistent with the commitments that lawmakers and leadership made, that there will be a vote next week, based on that additional information, in the House. This is a process. The bill will pass the House and then will go to the Senate. But, at the end of the day, the most important bottom line is, these are high-value, targeted investments in the American people and the American economy that are fully paid for. Yamiche Alcindor: How confident are you that you have the votes to get this Build Back Better Act passed? And I also wonder what — you're in the room. What are you telling lawmakers as you try to close this deal? Brian Deese: We are confident that this framework will pass the House and will pass the Senate. And what we're telling lawmakers is, this is an easy vote. The American people are looking to lower the cost of prescription drugs. They're looking to lower the cost of child care and to provide a tax cut to middle-class families, so they finally can have some breathing room. People who are anxious about their economic circumstance, are seeing higher prices, what we — this bill will do is actually lower prices, lower inflationary pressure by getting more people to work. And it is fully paid for, and paid for in a responsible way, by asking the largest companies to pay a bit more, as well as the wealthiest Americans. So this is a straightforward plan to deliver where the American people need it most. We're making that case. And we're confident that we can get it through both houses of Congress. Yamiche Alcindor: I want to also ask you about paid family leave. It was added back into the Build Back Better Act. But senators, including Senator Manchin, they have been opposed to this. I wonder, do you expect paid family leave to be in the final bill? Brian Deese: Well, we're going to work on this issue, and we will see. There's some twists and turns ahead. Paid family leave is certainly something that the president has always and consistently been supportive of. There's been concerns raised by members of Congress. So we're going to work that through. But I think, at the core, the question is not what is not going to be in this package, but what this package will actually deliver for the American people. We have been talking about something like universal preschool for years and decades. Again, economists of all stripes have identified that as the one of the highest investments we could make in terms of value for the American economy, getting all our 3- and 4-year-olds educated at an early age. We have the potential to get that done and, again, get it done in a way that is fiscally responsible, fully paid for, doesn't raise taxes for anyone making less than $400,000 a year. That's the plan. Yamiche Alcindor: And, Brian, in the last administration that you worked for — that would be former President Obama — you were also a key expert on climate change. I want to ask you about climate change in this bill. Are you worried that there are critics who think that you gave up too much on climate and that this bill is too watered down as it relates to those issues? Brian Deese: This bill, as it's structured, would be the largest and most significant investment in climate change in our nation's history by a significant factor. It would, if enacted, reduce one gigaton of emissions from our economy. And, most importantly, it would spark new economic engines in our economy, from the electric vehicle industry, to the clean power industry, not only putting people to work in good-paying jobs around the country, but creating new export opportunities, so that the United States is actually exporting the next generation of, for example, American-made vehicles, electric clean vehicles all around the world. It's an enormous economic opportunity and a very significant investment. We feel good about what we can get done on climate change, in the same way that we feel good about what we can do to get more people to work by providing child care and eldercare and preschool. Yamiche Alcindor: And, right now, Americans are facing some real economic struggles. Gas prices are at a record high, the highest, some experts say, that they have been in seven years. There are people that are paying more for the meat that they want to put on the Thanksgiving table. What do you say that to some critics who think that the White House is too focused on long-term investments and are not focused enough on sort of short-term right now relief for Americans? Brian Deese: Look, President Biden understands deeply the impact that higher prices can have on a typical family, whether that's the price at the pump or the price at the grocery store. And he is focused like a laser on those issues. In fact, just today, he was making calls to CEOs of some of the biggest companies, our biggest retailers, as well as freight movers, like FedEx and UPS, to talk about how we can unstick the bottlenecks, some of these bottlenecks that are keeping goods from moving as quickly as they can throughout the economy. So he is on this case. But I would also underscore the economic momentum and progress that we are making is real. We have seen 5.6 million jobs created. The unemployment rate is down to 5.6 — to 4.6. That's two years faster than most experts created. And a lot of these supply chain challenges are actually a reflection of the fact that we are moving more goods, more products through the American economy now than at any time in history, significantly higher than before the pandemic. That's a good thing. It reflects the fact that Americans are out there unable to buy goods again. We're going to work through those challenges. And we are on that every day in the short term. But we think we can focus on both the short term and the medium and longer-term challenges. Part of why we're in this problem is, we haven't invested in building our infrastructure, so that we have more resilient ports, more resilient roads and bridges around America. We can do both of these things. That certainly is what we're focused on. Yamiche Alcindor: Well, thank you so much for joining us, Brian Deese, the director of the National Economic Council.

#### Manchin will come around

BOLTON 11/9 (Alexander; The Hill, “Manchin sees his power grow,” <https://thehill.com/homenews/senate/580647-manchin-sees-his-power-grow>, //pa-ww)

Manchin still hasn’t signed off on the framework, despite the significant concessions to him. But some moderate Democratic strategists are doubtful that lumping everything into one massive infrastructure package or keeping the bipartisan infrastructure bill firmly tied to the outcome of the negotiations on reconciliation bill would have moved Manchin to support more social spending. “That’s not what was going to happen. Manchin is happy to wait five more months,” said Jim Kessler, the executive vice president for policy at Third Way, a centrist Democratic think tank. Even when Democrats set a $3.5 trillion spending target for the reconciliation package in the budget resolution, Kessler thought “this is going to end up at $2 trillion” because of resistance from Manchin and other centrists. But Democratic strategists think Manchin will eventually sign onto the reconciliation package, though it may not be until the week of Thanksgiving, when the Congressional Budget Office is expected to provide an official cost estimate for the bill, or later. Steve White, the director of the Affiliated Construction Trades Foundation in Charleston, W.Va., said “the idea somehow that he doesn’t want the second bill, I think, is wrong.” “I think he doesn’t want all of the second bill. Half of the second bill is a lot,” he added of the reconciliation bill. “I’m looking forward to what it looks like and I think there will be a lot of good stuff for West Virginia.” White said the bipartisan infrastructure bill will have a “huge” impact on West Virginia but he said the reconciliation bill will also have significant investments for the state. He said spending on renewable energy, such as wind turbines, could create good job opportunities in the state.

#### Manchin will vote ‘yes’

AP 11/4 (Associated Press, “Biden Claims Historic Progress on Climate Efforts at Summit,” https://news.wttw.com/2021/11/04/biden-claims-historic-progress-climate-efforts-summit, //pa-ww)

President Joe Biden argued Tuesday that historic progress on addressing global warming was achieved at the U.N. climate conference in Glasgow, Scotland, and expressed optimism for a similar outcome in Washington, where his legislative agenda has been stalled by intra-party disagreements. Speaking in a press conference before boarding Air Force One to return to Washington, Biden highlighted new efforts to stop methane leaks, protect forests, invest in new technologies and spend money on clean energy infrastructure. But his efforts to meet U.S. commitments on climate change with a major domestic spending bill remained held up by legislative maneuvering. “I can’t think of any two days where more has been accomplished on climate than these two days,” Biden said. The president contrasted the U.S. posture of leading several major initiatives at the summit with those of Russia and China, who did not send their leaders to Glasgow. “The single most important thing that’s got the attention of the world is climate, everywhere, from Iceland to Australia,” Biden said, “and they’ve walked away.” “We showed up. We showed up,” Biden said. “And by showing up we’ve had a profound impact, I think, on how the rest of the world is looking at the United States.” Biden has been determined to demonstrate to the world that the U.S. is back in the global effort against climate change, after his predecessor Donald Trump pulled the U.S. — the world’s largest economy and second-biggest climate polluter — out of the landmark 2015 Paris climate accord. Putting the U.S. on the path to halve its own output of coal, oil and natural gas pollution by 2050, as his climate legislation seeks to do, “demonstrates to the world the United States is not only back at the table, it hopefully can lead by the power of our example,” Biden told delegates and observers on Monday. “I know that hasn’t always been the case,” he added, in a reference to Trump. But Biden has yet to deliver on his own commitments as coal-state U.S. Sen. Joe Manchin has again threatened Biden’s domestic effort. For all the optimism Biden has been radiating at the summit in Scotland, persistent doubts lurk about whether he can deliver solely through executive actions as continued talks with Congress have steadily cut into his ambitions. Manchin said Monday, at an unfortunate time for the president, that he remained undecided on Biden’s $1.75 trillion domestic policy proposal, which includes $555 billion in provisions to combat climate change. Manchin holds a key vote in the Senate, where Biden has the slimmest of Democratic majorities, and has successively killed off key parts of the administration’s climate proposals. He said Monday he was uncertain about the legislation’s impact on the economy and federal debt and was as “open to voting against” it as for it. Biden minimized Manchin’s objections on Tuesday, saying of the senator, “He will vote for this” and “I believe that Joe will be there.” He insisted no world leaders were pressing him on the fate of the legislation in Washington and expressed confidence in its passage. Biden has essentially bet that the right mix of policies on climate change and the economy are not only good for the country but will help Democrats politically. But questions remain about whether he has enough political capital at home to fully honor his promises to world leaders about shifting the U.S. toward renewable energy. Gubernatorial elections Tuesday in Virginia and New Jersey — states Biden won in last year’s election — will provide the first ballot-box test of how Americans view his presidency. Biden joined other leaders Tuesday for an initiative to promote safeguarding the world’s forests, which pull vast amounts of carbon pollution from the air. As part of a broader international effort, the administration is attempting to halt natural forest loss by 2030 and intends to dedicate up to $9 billion of climate funding to the issue, pending congressional approval. “Forests have the potential to reduce — reduce — carbon globally by more than one third,” Biden said. The president and European Commission President Ursula von der Leyen co-hosted an event to promote an alternative to China’s infrastructure financing programs. Biden compared his “Build Back Better World” policies to the Chinese programs, saying his would not expose countries seeking infrastructure funds to “debt traps and corruption.” He then highlighted the commitments by roughly 100 countries to cut methane emissions by 30% over the next decade. Biden also joined world leaders in promoting investments in new technology to fight climate change and build a carbon-neutral future. “Our current technology alone won’t get us where we need to be,” he said, “We need to invest in breakthroughs.” The president also met behind closed doors with Prince Charles and “commended the Royal Family for its dedication to climate issues,” the White House said. Crucial for his time in Scotland is that he’s emphasizing several policies that can be achieved without congressional buy-in, such as the methane pledges and private partnerships. Back home, his administration chose Tuesday to launch a wide-ranging plan to reduce methane emissions, targeting a potent greenhouse gas that contributes significantly to global warming. Biden came to the summit saying he hoped to see his legislation pass this week, but Manchin’s new objections threaten to close the narrow window Biden may have to win passage of his initiatives. The senator is eager to preserve his state’s declining coal industry despite coal’s falling competitiveness in U.S. energy markets. If Biden’s climate legislation falters, he could be limited to regulatory projects on climate that could easily be overturned by the next U.S. president, and turn his stirring cries for climate action abroad into wistful talk at home. Manchin’s statements are a possible sign that one of two key Democratic votes in the Senate wants to delay votes on the president’s agenda until the bill is fully reviewed. But House Democrats are still taking steps this week to pass Biden’s $1 trillion infrastructure package, which includes efforts to address climate change. The White House is seeking to turn both measures into law, linking them in hopes of appeasing a diverse and at times fractious Democratic caucus. White House press secretary Jen Psaki pushed back, saying the administration is confident the spending package already meets the criteria set by Manchin. “It is fully paid for, will reduce the deficit, and brings down costs for health care, childcare, elder care, and housing,” Psaki said. “We remain confident that the plan will gain Senator Manchin’s support.”

#### BBB top of docket

Cornwell, 11/09

(Susan, Doina Chiacu, and Jonathan Oatis, “U.S. House plans to pass 'Build Back Better' bill Nov 15 week -Pelosi”, Reuters, 11-09-2021, https://www.reuters.com/world/us/us-house-plans-pass-build-back-better-bill-nov-15-week-pelosi-2021-11-09/)\\JM

The U.S. House of Representatives intends to pass President Joe Biden's "Build Back Better" legislation the week of Nov. 15, House Speaker Nancy Pelosi told reporters in Glascow. "That is our plan to pass the bill the week of November 15," she said at a news conference during the United Nations Climate Chance Conference in the Scottish city.

#### The CBO number will be good and on time, delays only increase the chance of passage, and Biden will make up for it if they’re not

McPHERSON 11/9 (Lindsey; Roll Call, “Independent analysis says budget bill could add $200B to deficits,” <https://www.rollcall.com/2021/11/09/independent-analysis-says-budget-bill-could-add-200b-to-deficits/>, //pa-ww)

The White House felt confident enough in its preliminary estimate of the package to make that part of a deal House progressives and moderates struck late Friday. Five moderate Democrats who prevented the House from voting on the budget reconciliation package Friday because they wanted to see official CBO estimates said they will vote for the bill if the eventual CBO numbers are “consistent with the toplines for revenues and investments” in the White House estimate. The statement from Reps. Ed Case of Hawaii, Josh Gottheimer of New Jersey, Stephanie Murphy of Florida, Kathleen Rice of New York and Kurt Schrader of Oregon said they “remain committed to working to resolve any discrepancies” in the budget estimates. If the CRFB’s estimates align with the numbers the CBO produces, the moderates will have an escape hatch for their pledge. But only if the CBO works quickly. The five promised they’d support the package as soon as they get the CBO numbers “but in no event later than the week of November 15th.” President Joe Biden, who worked the phones with moderates and progressives as they brokered the deal, also promised to find enough revenue to make up the difference if CBO says the offsets are short of the spending, according to Rep. Jimmy Gomez, a progressive involved in the negotiations. "The president agreed … that if there's not enough revenue, he'll find the revenue to make it up," the California Democrat said. Gomez said the progressives and moderates carefully crafted every word of the statement, with progressives adding “toplines” to ensure that the CBO’s numbers do not need to match every line item in the White House analysis. The agreement was just that overall spending and revenue must match to prove the package is paid for as the White House has promised. “Basically, it has to balance," he said. CBO is expected to produce its estimates by Nov. 15 if there are no more changes to the package, Gomez said. But the progressives sought to add the line to the moderates’ statement that they’d vote for the measure that week regardless so that moderates didn’t push for further changes to delay the score, he said. Gottheimer, one of the five moderates who negotiated the deal with progressives, said Sunday he expected to see a CBO cost estimate next week that aligns with White House numbers. "We plan to move forward because it's going to meet our expectations, I'm sure," Gottheimer said on CNN's "State of the Union" program. "What's most important … is that this bill is fiscally responsible and paid for." Neal said the CBO score could potentially show even more deficit savings than the White House’s estimates. "I actually think you might be looking at a bit more revenue,” he said. “Once we get the chance to sort the prescription drug savings and once we get to take a look at the IRS projections … we might have a little bit more room at the edges."

#### The vote will happen next week regardless of CBO

JAGODA 11/9 (Naomi; The Hill, “CBO indicates lawmakers will have to wait for full score on social spending,” <https://thehill.com/policy/finance/580716-cbo-cost-estimate-for-spending-bill-will-be-released-as-soon-as-practicable>, //pa-ww)

The comments come as a small group of moderate House Democrats have sought information about the cost of the bill from CBO prior to voting on the package, which contains a slew of the party's priorities. Moderates and progressives struck a deal on Friday that allowed the House to take a procedural vote on the spending bill as well as to pass a Senate-approved bipartisan infrastructure bill. As part of the deal, five House moderates released a statement saying that they are committed to voting for the spending bill "as expeditiously as we receive fiscal information from the Congressional Budget Office – but in no event later than the week of November 15th." The lawmakers who issued the statement included: Reps. Ed Case (D-Hawaii), Josh Gottheimer (D-N.J.), Stephanie Murphy (D-Fla.), Kathleen Rice (D-N.Y.) and Kurt Schrader (D-Ore). Their statement does not specify how much information they need from CBO prior to a vote.

#### BBB will pass – Infrastructure gives Biden momentum to get it done

KEITH 11/7 (Tamara; NPR, “Biden's infrastructure win gives him some momentum. Here's why he needs that,” <https://www.npr.org/2021/11/07/1053214146/biden-infrastructure-bill-politics>, //pa-ww)

Friday night was a long one for President Biden, working the phones at the end of a week where his party lost a bellwether race in Virginia, following months of Democratic infighting over his agenda. Down in the polls, he had just returned from an overseas trip where he said he faced questions about whether he had support to back the pledges he made on the world stage. But by Saturday morning, Biden could not contain his ebullience, celebrating a major legislative victory: a long-stalled $1.2 trillion infrastructure bill had passed with bipartisan support. "Finally, infrastructure week," Biden said, chuckling over what had become a running joke about his predecessor, who failed to ever make a deal on the investment needed for the nation's roads and ports despite often promising to focus on the problem. "I'm so happy to say that: infrastructure week," he said. The bill's passage — combined with some positive news on the economy and the pandemic — could give Biden some momentum for tackling the next big piece of his agenda, a sprawling package of social programs, an overhaul of the tax system and billions of dollars of climate incentives. The size and scope of the plan has exposed deep division within his own party. But it's another win he's eager to secure ahead of looming 2022 congressional elections. "The week started rough for Biden, but the [infrastructure] win and great jobs numbers shows the path by which Biden can turn this around," said Jennifer Palmieri, who worked in the Obama White House. But there are a host of forbidding odds working against Democrats as they head into the 2022 midterm elections, says Doug Heye, a Republican political consultant. "Inflation, national security, the border and so much more," Heye said. "It's hard to find an issue where Democrats have an advantage now." Biden says he needs to do more to explain his bills Biden's Saturday morning speech likely won't be the last he'll give celebrating this victory. He said he wants to hold a signing ceremony for the infrastructure bill along with the Republicans who were key to its passage in both the House and Senate — a nod to an idea he campaigned on, that Washington can work for the American people despite political polarization. His advisers have also acknowledged that the White House needs to do a better job explaining their giant legislative packages to Americans. His first bill, a $1.9 trillion COVID aid package, contained a series of measures that Democrats have had a hard time getting credit for, including monthly child tax credit payments. This week, Biden said he'll be talking about ports — a sector that will get a lot of long-overdue investment of $17 billion from the infrastructure package. In Biden's view, his job now is to try to "put people at ease and let them know there's a way through this," whether it's the pandemic or the supply chain snarls that he says have shaken Americans' confidence. "Whether you have a Ph.D. or you're working, you know, in a restaurant, it's confusing. And so, people are understandably worried," he said. Economic concerns have helped fuel the tumble in Biden's approval ratings. He went from a very bad August, after the chaotic U.S. withdrawal from Afghanistan and the surge in COVID cases, to a not-much-better September, and slumped into October. But on Friday, in addition to the infrastructure bill passing, the jobs report showed a big jump with 531,000 jobs created in October, and the unemployment rate falling to 4.6%. And social media started filling with photos of children getting their COVID vaccines, after a CDC recommendation came through making it possible for kids ages 5-11 to get a shot. "I have one focus," Biden said on Saturday. "How do we give you some breathing room? How do we get you to the point where we take pressure off you so you can begin to get back to a degree of normality and we move to a different place?" The bill had been stalled by infighting between progressives, like Rep. Pramila Jayapal, D-Wash. (left), and Rep. Joe Neguse, D-Colo. (right), and moderates, like Rep. Josh Gottheimer, D-N.J. Biden worked the phones to get the bill passed As a senator in the 1990s, Biden boasted about his ability to find common ground and get big legislation passed. As president he has struggled to drag what he called the "once in a generation" infrastructure package over the finish line, wading through weeks of procedural wrangling and ugly congressional sausage-making. Biden and top aides worked the phones from the presidential residence late into the night on Friday, making sure wavering Democrats didn't balk. The progressive wing had wanted to use the infrastructure bill as leverage to ensure Biden's social spending package also passes. After the deal was already sealed, Biden even called the mother of a key House Democrat, Rep. Pramila Jayapal, a classic Biden move. He has also had conversations with moderates, who are concerned he is spending too much time shooting for transformational programs and not enough time on kitchen-table issues. That was the takeaway for some Democrats from the loss in Virginia's gubernatorial race on Tuesday. Rep. Abigail Spanberger, D-Va., told the New York Times that Biden was going too far, saying: "Nobody elected him to be F.D.R., they elected him to be normal and stop the chaos." Asked about Spanberger, Biden described her as a friend, and said they had joked about it afterward. But he stood resolute behind his strategy to go big when it comes to giving Americans relief through the social programs in his next big bill. "I don't intend to be anybody but Joe Biden. That's who I am. And what I'm trying to do is do the things that I ran on to do," he said. "Ordinary, hard-working Americans are really, really — been put through the wringer the last couple years, starting with COVID," he said. And he maintained that Democrats should see Tuesday's election loss as a call to forge ahead on his plans. "They want us to deliver," Biden said of voters. "Last night, we proved we can." The next bill may be tougher for Democrats to pass Former Obama aide Palmieri said this week's elections lit a fire under her party. "The losses had the necessary impact of focusing Democrats on getting the very popular bipartisan infrastructure bill done," she said. The next package would have benefits for Democrats facing reelection next November, Palmieri said, including tax credits that take effect immediately. "There will be benefits for Democrats to run on in 2022," Palmieri said. But first, Biden will need to knit together the progressive and moderate wings again. Republicans have already said they will not support the next package, which has tax increases on the wealthy to pay for extending the child tax credit, universal pre-K and elder care, and other Democratic wish-list items. Biden has faced questions about whether he was forceful enough in forging consensus — or too willing to accept compromise. On Saturday, he defended his approach of brokering deals. "You can't have all you want. It's a process," he said, explaining that it is taking time to build up trust. There is no guarantee the larger package will pass. Biden has been steadfastly mum on whether he has secured commitments from Senate moderates, who have raised concerns about the cost of the social safety net and climate package. But on Saturday, in the State dining room, Biden said he thinks it will happen. "I feel confident that we will have enough votes to pass the Build Back Better plan," Biden said. When a reporter asked what gave him that confidence, Biden responded with one word. "Me."

#### BBB will pass – Dems are unified behind Biden

PRAMUK 11/8 (Jacob; CNBC, “As the bipartisan infrastructure bill passes, here's what's next for Biden's economic plans,” <https://www.cnbc.com/2021/11/08/infrastructure-bill-passes-whats-next-for-biden-build-back-better-plan.html>, //pa-ww)

While many Democrats let out a sigh of relief when the House passed a bipartisan infrastructure bill, the party has a grueling few weeks ahead of it to enact the rest of its economic agenda. The more than $1 trillion package passed Friday that would refresh transportation, broadband and utilities fulfills one part of President Joe Biden's domestic vision. Democrats now have to clear multiple hurdles to enact the larger piece, a $1.75 trillion investment in the social safety net and climate policy. Senate Majority Leader Chuck Schumer has said Democrats aim to pass the social spending bill by Thanksgiving. Meeting the deadline will require both chambers of Congress to rush while keeping nearly every member of a diverse Democratic caucus united — a challenge that has led to repeated roadblocks as lawmakers advanced the bills this year. Biden on Saturday sounded sure that his party would line up behind a sprawling bill that it aims to sell on the midterm campaign trail next year. "I feel confident that we will have enough votes to pass the Build Back Better plan," he told reporters. Biden also signaled he could sign the infrastructure bill next week after lawmakers return to Washington. Asked Monday when the president would sign the bill, White House spokeswoman Karine Jean-Pierre said "I do not have a date, but it will be very soon." His administration plans to send key officials around the country to sell the benefits of the package, NBC News reported, citing a memo from a White House official. The House plans to take the next step in passing the social spending plan. The chamber will try to approve the bill during the week of Nov. 15 once it returns from a weeklong recess. With no Republican support expected, Democrats can lose no more than three votes for the package. It would then go to the Senate. To pass the bill under special budget rules, all 50 members of the Democratic caucus will have to support it. Schumer will have to win over conservative Democratic Sen. Joe Manchin of West Virginia, who has not yet blessed a framework agreement on the legislation. The House could also send the Senate a bill that includes four weeks of paid leave for most American workers — a provision Manchin has opposed. Once the Senate irons out any objections from Manchin or other Democrats, in addition to any constraints budget reconciliation rules put on the bill, it could approve a different version of the plan than the House does. The House would then need to vote on the Senate plan or go to a conference committee with the upper chamber to hash out disparities. All told, Democrats will have to navigate a series of obstacles to get the bill to Biden's desk in the coming weeks. Pulling it off will require cooperation and trust between centrists and progressives who have disparate views about how large of a role the government should play in boosting households and combating climate change. The infrastructure bill passed only after House progressives and centrists made a nonbinding pact to approve the social spending plan this month. Five centrist Democrats said they would vote for the larger bill if a coming Congressional Budget Office cost estimate projects it will not add to long-term budget deficits. On Sunday, House Speaker Nancy Pelosi — who has pulled off a range of legislative high-wire acts in her career — expressed confidence that the centrists will honor their side of the deal. "As has been agreed, when the House comes back into session the week of November 15th, we will act with a message that is clear and unified to produce results," she wrote to House Democrats. The nonpartisan CBO could take weeks to release a cost estimate for the sprawling plan. However, the centrist holdouts in a Friday statement committed to voting for the legislation "in no event later than the week of November 15th." If Democrats can push the bill through Congress this month, they will still have another big lift on their hands before the end of the year. Lawmakers need to raise or suspend the debt ceiling sometime in December — or risk the first-ever default on U.S. debt.

#### Any major antitrust reform costs PC, even if it’s politically popular—especially given that key personnel are not yet in place

Folio, 21

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

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

#### Backlash from key GOP and dems mean the plan saps PC

Newton, 21

(Casey, Verge contributing editor. He is the founder and editor of Platformer, a daily newsletter about Big Tech and democracy "Why the Tech Antitrust Reform Bills are Struggling to Move Forward," June 24 2021 <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial> NL)

That’s why I like [this bill](https://www.congress.gov/bill/117th-congress/senate-bill/228/text), which would increase funding for antitrust enforcement by 30 percent. Rather than simply ban most mergers and acquisitions by default, as another bill in the package would do, this one empowers the Federal Trade Commission and the antitrust division of the Department of Justice to scrutinize M&A more carefully. The downside of such an approach is that absent other legislation, courts could strike down the agencies’ enforcement actions; the benefit is that agencies can make more informed, case-by-case decisions. I also like a bill [designed to make it easier for consumers to switch between platforms](https://www.congress.gov/bill/117th-congress/house-bill/3849/text), even if it raises real privacy concerns. (Are the phone numbers in my contacts app really mine to share, even if it makes consumer apps much more competitive?) I also like aspects of Rep. David Cicilline’s bill [American Choice and Innovation Online Act](https://www.congress.gov/bill/117th-congress/house-bill/3816/text?r=8&s=1), which would restrict platforms from indulging in some of their worst impulses: Amazon using third-party seller data to inform its own product development, for example, or Apple advertising its many subscriptions throughout the operating system. But at the risk of sounding incredibly naive about the political process, this is not really the debate we just had during a marathon bill markup session in the judiciary committee. II. The The House bills all have Republican co-sponsors, and appear to enjoy some support in that delegation. But key Republicans have so far refused to engage with any of these bills on a policy level, insisting instead that tech reform begin (and possibly end?) with prohibitions on “censorship.” Galled by [the removal of former President Trump](https://www.theverge.com/2021/6/4/22519073/facebook-trump-ban-2-year-oversight-board-decision-political-figures-newsworthiness) from Facebook, Twitter, and other platforms, and perhaps energized by Florida’s recent passage of a (likely unconstitutional) bill that would make such content moderation illegal, some Republicans want to throw out the entire process. Members of Congress in this camp include the House minority leader, Kevin McCarthy, and Rep. Jim Jordan, the ranking Republican on the Judiciary Committee. This piece from Politico this week [gives you some flavor of the discussion](https://www.politico.com/news/2021/06/23/gop-infighting-big-tech-crackdown-495605): Jordan has been [publicly pushing against the bills](https://www.foxnews.com/opinion/big-tech-big-government-democrat-bills-rep-jim-jordan-mark-meadows), while McCarthy has said he’s planning to unveil his own tech reform agenda. “We’ve got a beef with all Big Tech in the sense of the censorship they have of conservatives now,” Jordan told Fox Business on Tuesday. Jordan added, however, that the antitrust bills coming to a vote are sponsored by “four impeachment managers” — questioning top Democrats’ ability to write legislation that conservatives can favor. REPUBLIC OUTRAGE IS ROOTED IN THE IDEA THAT ANYONE ELSE MIGHT HAVE POWER OVER THEIR SPEECH Set aside for a moment the fact that Trump was removed from these platforms because he was using them in an effort to overturn the results of a fair election, the thing to highlight here is that Republican leadership’s concerns have nothing to do with “competition” per se. Instead, their outrage is rooted in the idea that anyone else might have power over their speech. We know what happens when elected officials are allowed to post whatever they want online — they attack minorities, they manufacture influence operations against their own citizens, they chip away at the foundations of democracy. (This has been [the story in India](https://www.platformer.news/p/india-censors-the-platforms) for the past year, and if you assume it is a preview of the next Republican administration here in the United States, as I do, it’s quite chilling.) For these Republicans, then, the goal is not actually to make platforms like Facebook and Twitter less powerful — it’s to ensure that they can use those platforms’ power to achieve their own ends, and to make it illegal for anyone to stop them. When Trump [shut down his blog](https://www.theverge.com/2021/6/2/22464930/donald-trump-blog-facebook-twitter-social-media-platform) 29 days after starting it, it wasn’t in protest of platforms’ power — it was out of the frustration that he no longer had access to it. The Politico story and other reporting on the subject suggests that Democrats will struggle to find 10 Republicans in the Senate to sign on to most of these bills, and perhaps to any but the one providing extra funding for antitrust enforcement. For as long as the parties have spent agreeing that somebody ought to do something about Big Tech, in important ways they are still talking past one another. III. IImean, the Democrats aren’t exactly all in agreement, either. There is a split between progressive and moderate Democrats in just how far these bills should go to reshape the economy. And some bills go quite far — Rep. Pramila Jayapal’s Ending Platform Monopolies Act would permit the government to sue big platforms to break them up — Amazon could be forced to divest itself of its logistics network and of Amazon Web Services, for example; Facebook could have to spin out Instagram and WhatsApp. That has made some Democrats uneasy, as [Leah Nylen and Cristiano Lima reported Wednesday in Politico](https://www.politico.com/news/2021/06/23/democrats-tech-antitrust-package-495644): A growing number of moderate Democrats are also voicing concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t. “My concern is that this legislation will essentially push away investment in this area, it will stifle the economics behind it, the job creation,” Correa, whose district includes parts of Orange County, said in an interview Tuesday. CONGRESS HAS LITTLE TO SAY ABOUT THE SPECIFICS I think these concerns are fair? It’s remarkable that, after years of deliberations, we still don’t know exactly how the government would proceed if these bills became law. Would they sue each platform simultaneously and force them to divest most of their acquisitions? Would they begin new, more targeted investigations of the platforms before they acted? And what would the platforms look like after they were through? A coalition of advocacy groups, [most supported by the big tech platforms](https://gizmodo.com/heres-who-funds-the-tech-think-tanks-asking-congress-to-1847142650), wrote in a letter to Congress that: “Rep. Cicilline’s bill would ban Google from displaying YouTube videos in search results; ban Alexa users from ordering goods from Amazon; block Apple from preinstalling ‘Find My Phone’ and iCloud on the iPhone; ban Xbox’s Games Store from coming with the Xbox; and ban Instagram stories from Facebook’s news feed.” Those would represent enormous changes to the economy, and yet Congress — which rarely discusses individual products when talking about these issues — has little to say about the specifics. Given that consumers generally do love all these products, that seems risky and ill advised. I am trying not to be a regulatory nihilist here. Like I said, I think aspects of these bills could do some good. I hope the FTC and DOC get more funding. I hope Apple enables [sideloading](https://www.fastcompany.com/90649203/apple-iphone-sideloading-safety-apps-tech) on iOS, whether or not Congress forces it to. I hope future mergers get more scrutiny, particularly those related to next-generation platforms, rather than last-generation ones. But two big concerns hang over everything else here. One is that in a Congress where a small handful of Republicans can derail almost anything, there are seemingly more than enough here to stop most of what has been presented in its tracks. And two is that as grateful as I am for the bipartisan group’s work here, it’s hard to shake the feeling that they both took too long to act and bit off more than they can chew.

#### Key dems and GOP members backlash

Nyleh, 21

(Leah Nyleh & Cristiano Lima, reporters for Politico, "Progressives, moderate Democrats tussle over tech antitrust package," 6/23/21 <https://www.politico.com/news/2021/06/23/democrats-tech-antitrust-package-495644> NL)

A package of antitrust bills to rein in the biggest U.S. tech companies is proving divisive not just for Republican lawmakers, but also for Democrats who are split on whether the legislation goes too far. The six bills being marked up Wednesday by the House Judiciary Committee speak to an oft-repeated goal of many Democrats: curbing the power of Silicon Valley. Four of the bills would zero in on Apple, Amazon, Facebook, Google and Microsoft for greater regulation, limiting their ability to buy up promising startups that could grow into rivals and prohibiting them from using their platforms to discriminate against competitors. The push to crack down on those tech giants has drawn support from a broad coalition of lawmakers fed up with Silicon Valley, from progressive leaders like Reps. Pramila Jayapal (D-Wash.) and David Cicilline (D-R.I.) to outspoken allies of former President Donald Trump like Reps. Ken Buck (R-Colo.) and Matt Gaetz (R-Fla.). On the Republican side, it has also prompted public rebukes by party detractors who call the legislation an affront to conservative values. But a growing number of moderate Democrats are also voicing concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t. “My concern is that this legislation will essentially push away investment in this area, it will stifle the economics behind it, the job creation,” Correa, whose district includes parts of Orange County, said in an interview Tuesday. Correa said he plans to back one of the proposals under consideration Wednesday that would increase the amount of money federal regulators get from companies filing for mergers (H.R. 3843 (117)). But he said he has concerns about the other bills and has not yet decided how he’ll vote on them. Lofgren, whose district includes the San Jose area, has “major concerns” about the measures, a Democratic staffer said. While Lofgren agrees with the goals of bills to make it easier for users to switch between platforms (H.R. 3849 (117)) and prevent the tech giants from preferring their own products (H.R. 3816 (117)), she has some proposals to improve the legislation, said the staffer, who spoke on condition of anonymity to discuss internal deliberations. But the merger ban (H.R. 3826 (117)) and a measure that would force the companies to sell-off lines of business (H.R. 3825 (117)) would, in her view, “unnecessarily rip apart these companies, not responsibly regulate them,” the staffer said. “It is a concern within the California delegation,” Correa said. But Democratic apprehension isn’t limited to California, which is home to three of the five tech giants. Last week, Rep. Suzan DelBene (D-Wash.) and seven other moderate Democrats [urged House leaders and the panel to delay the markup](https://newdemocratcoalition.house.gov/imo/media/doc/2021-06-18_NDC%20Leadership%20Letter%20Requesting%20Legislative%20Hearings%20on%20Antitrust%20Bills_vF.pdf), warning that the legislation could weaken privacy protections, increase cybersecurity risks and further the spread of misinformation, as first reported by Bloomberg. “These issues don't exist in a silo,” DelBene, whose district includes Microsoft’s Redmond, Washington headquarters, said in an email. “They cross every aspect of our daily lives. We want to ensure lawmakers fully understand the intended and unintended consequences of these measures before advancing them." DelBene, a former senior Microsoft executive whose husband retired from the company this year, chairs the New Democrat Coalition, a caucus of center-left lawmakers whose membership is among the biggest of any on Capitol Hill. Correa echoed DelBene’s argument, saying it “would have helped” to delay the session. “We want to make sure you get it right,” he said. A senior Democratic aide dismissed the concerns raised by DelBene and the New Democrats, saying the letter “does not represent the broader views of the caucus.” The legislation was based on the House Judiciary’s 500-page report last year into competition in online markets, and the 10 hearings that took place as part of that investigation, said the aide. The bipartisan push to overhaul the country’s antitrust laws has driven a more public wedge among Republicans. Buck, the top Republican on Judiciary’s antitrust subcommittee, is a co-sponsor on every bill slated to be marked up this Wednesday. And he has pleaded publicly with his fellow Republicans to join the effort. “Big Government created Big Tech monopolies. Big Tech monopolies threaten free speech, innovation, and competition. Republicans should be committed to breaking up Big Tech’s monopoly power,” [Buck tweeted Saturday](https://twitter.com/RepKenBuck/status/1406405828924616704). But the pleas have thus far failed to convince some top Republican leaders. House Minority Leader Kevin McCarthy objected to the antitrust proposals through a spokesman, and suggested he planned to introduce an alternative plan to rein in the tech giants focused on claims they are biased against conservatives, [according to the Wall Street Journal](https://www.wsj.com/articles/house-gop-leader-criticizes-bipartisan-bills-targeting-big-tech-11623867814). Rep. Jim Jordan of Ohio, the top Republican on the full Judiciary Committee and an ally of Buck’s from the House Freedom Caucus, tore into the proposals in a Fox News op-ed on Tuesday as an effort by the "radical Left" to "wreak bureaucratic havoc on conservative values, speech and free enterprise.”

#### It's just bad policy

Subramanian 21 – White House correspondent at USA Today, citing William Howell – political scientist at the University of Chicago Harris School of Public Policy

Courtney, with Joey Garrison, 3/7. “'Dinner table' politics: Why Joe Biden ditched bipartisan dealmaking to pass his COVID-19 relief bill.” https://www.usatoday.com/story/news/politics/2021/03/07/covid-19-bill-biden-chooses-dinner-table-politics-over-bipartisanship/6892438002/

Despite the relief plan's popularity outside the Beltway, it is unlikely that momentum from its passage will hurtle Biden into future legislative wins, Howell said.

“The idea that a legislative win begets a subsequent legislative win in this environment is probably asking for too much,” he said, noting the prospect of passing COVID-19 relief was higher than more hot-button issues like immigration or health care.

A legislative defeat would have raised questions about Biden’s ability to pass any meaningful legislation, but its passage won’t be a “springboard to the production of all kinds of landmark legislation – far from it," Howell said.

“Sure, he can claim victory,” said Ari Fleischer, former press secretary for President George W. Bush. “Nobody will ultimately know whether it truly is a victory until we see the shape the economy is in a year or so.”

## Trade

#### Doesn’t solve conflict-- no empirical data and it’s fallacious

Sapir, 17

(Jacques Sapir, professor at the Paris and Moscow School of Economics, “President Trump and free trade”, real-world economics review, issue no. 79 March 2017 NL)

Globalization is not, and never was, “happy” whatever various ideologues said. The idea that “sweet commerce”, was to be substituted for warlike conflicts, was much propagated. But, in truth, it was only a myth. Still, the warship preceded the merchant ship. The dominant powers have constantly used their strength to open up by force markets and modify the terms of trade as they see fit. The globalization that we have witnessed for nearly 40 years has been in combination with financial globalization, which has taken place with the unraveling of the system inherited from the Bretton Woods agreements in 1973. We are seeing today the result: a generalized march to regression, both economic and social, which strikes first the socalled “rich” countries but also those designated as “emerging” countries. It has led to the overexploitation of natural resources, plunging more than one and a half billion human beings into ecological crises that are getting worse every day. It has caused the destruction of social ties in a large number of countries, and there are also countless masses in the specter of the war of all against all, to the shock of an exaggerated individualism that suggests other regressions. 2 The great reversal At the root of this reversal we see the decline in incomes of the lower middle classes and the working class. And this drop is largely due to globalization. 3 The gap between the highest 1% and the lowest 90% has greatly increased since the 1980s as shown in Thomas Piketty’s work. 4 This discontinuation was confirmed by another study dating from 2015. 5 This discrepancy is also reflected in the drop-off between the rate of increase in labor productivity and the rate of hourly wages. While the two curves appear almost parallel between 1946 and 1973, which implies that productivity gains have also benefited wage earners and capitalists alike, it is no longer the case after 1973. Since then, wages have increased significantly more slowly than labor productivity, implying that productivity gains have now mainly benefited business and shareholder profits. This situation worsened in the 1990s, obviously as a result of globalization and open borders. 6 This trend, already perceptible before the 2007–2010 crisis, 7 was not reversed by the implementation on anti-crisis policies, to the contrary. This had been one of the major failing of the Obama administration, one that fostered anger among the middle-class and would explain Donald Trump success in the Presidential race. The attack against NAFTA is here both symbolical and quite accurate. NAFTA was (and still is) a quite typical agreement that was thought to help regional integration. It turned out to be a mass-destruction weapon, as far workers incomes are concerned, both in the United States and in Mexico. A recent paper by the director of the CEPR, Mark Weisbrot, clearly establishes NAFTA’s cost for Mexico. 8 In the United States, this evolution was psychologically fundamental, because it meant the “end” of the American dream for a vast majority of the population. This was marked by the very clear difference between the rates of change in average income, which continued to rise, and the median income9 . But the United States was not the only country where this situation manifested itself. It should be noted that it is also present in Great Britain, which is not politically without consequences if we look to the BREXIT in this context. 10 Whatever figures we are given about the sharp drop in the unemployment rate under President Obama, the awful truth is that the labor market is still very weak by many measures. The employment rate for workers aging 25–54 is still 2.0% points below the prerecession level and 4.0% below the 2000 level. 11 This corresponds to a mass of around 2.5 to 5.0 million missing jobs. Such figures explain clearly the angriness in the lower middle-class, and angriness that was instrumental in Donald Trump’s victory. It is therefore clear that free trade has not had the beneficial consequences predicted by mainstream economic theory on the economies and on the workers who live in these economies. Is free trade the future of humanity? It is true that the various subsidies and barriers to competition, which are the essence of protectionist policies, have a very bad press today. On both the right and the liberal left, they are taboo. The former French Minister of Economy and now candidate to the French presidential election, M. Emmanuel Macron, speaks loudly of “freeing” the French economy, which is equivalent to saying that we need more competition. The law attached to his name and that he pushed forward when he was minister was about de-regulating some activities. This was done, but results have so far been less than successful. It should also be pointed out that Mr. Macron distinguished himself by his support for the very contested treaty between the European Union and Canada, the so-called CETA treaty, a treaty that has been adopted very recently by the European parliament12 after what could only be described as a nasty joke of a debate. The same viewpoints are expressed by the European Commission, which has reacted vigorously to the statements of Donald Trump. There is obviously a point of consensus here. But this point is built on self-proclaimed evidence. Prescriptive discourses that seek to extend free trade are based on extremely questionable normative bases13. The assumption that competition is ever and everywhere beneficial for all is neither theoretically nor in practice grounded. The first demonstration against this belief in competition came from agricultural economics, through the Hog-cycle theory. But as shown by a careful reading of the founding article written by Mordecai Ezekiel in 1938, 14 we are faced with a problem that goes far beyond the phenomena that allowed its initial identification, the fluctuation of agricultural prices. The analysis of the conditions giving rise to the cobwebmechanism shows a major flaw in the theory of competitive equilibrium. This analysis contains a radical criticism of the normative role accorded to so-called “pure and perfect” competition. It leads to restoring legitimacy to measures restricting the exercise of competition, whether subsidies or limits on entry into certain markets through the presence of quotas or customs duties. It is not without reason that the compilers of an extremely important work on the theory of economic cycles introduced Ezekiel's article into the collection of texts they edited. 15 Indeed, the term “cobweb” was proposed by Nicholas Kaldor. It should be emphasized that Kaldor was thinking that it was necessary and even mandatory to extract the dynamics of the cobweb from its unique agricultural environment, since we are faced with a general problem affecting the theory of competitive equilibrium as soon as one is in presence of a situation where “... the adjustments are completely discontinuous”. 16 The late Wassili Leontief made quite a similar reflection at the same time. Leontief demonstrated the impossibility of determining a spontaneous mechanism of price and production equilibrium by “pure” competition as soon as supply and demand curves did not correspond precisely to the specifications of the Leon Walras model17. Equilibrium then appears as a special case and not as a general case, which was confirmed by more recent work by Sonnensheim and Mantel. 18 Moreover, if the objective is to avoid or to limit fluctuations, because these can have shortand long-term negative effects on both producers and applicants (in particular for the investment process),19 the conclusion that can be drawn is that measures suspending competition such as subsidies, quotas or customs duties become useful and legitimate. Gilbert Abraham-Frois and Edmond Berrebi have shown that the introduction of realistic clauses into reasoning (for example, by accepting that the economic agent has a choice between not two but three options) leads to the generalization of situations of instability as long as competition is maintained. 20 Yet while theoretical work since the early 1970s confirms and extends Ezekiel's conclusions about a radical critique of the normative scope of the competitive equilibrium model, one tends to forget the general lesson of his work. Donald Trump’s twitter diplomacy Donald Trump’s recent statements, as well as pressures he exerted on large industrial groups with twitter messages, though they may seem somewhat exotic, have revived the question of modern forms of protectionism. In fact, this debate has already taken place. In the 1930s, as a result of the great economic crisis, a number of economists shifted from traditional “free trade” positions to a more protectionist one. John Maynard Keynes was one of those, and certainly the one who exerted the most considerable influence. The text of J.M. Keynes on the necessity of national self-sufficiency was published in June 1933 in the Yale Review. 21 It’s quite an important paper, as Keynes was in the early 1920s a long-standing supporter of free trade. Today, as in 1933, the reasons for doubting the value of Free Trade are accumulating. World Bank experts brutally revised downwards their estimates of “gains” from international trade liberalization, 22 even though they were computed without any reference to possible costs. A UNCTAD study showed a few years ago that the WTO “Doha Round” could cost developing countries up to $60 billion when it would bring them only $16 billion. 23 Far from fostering development, the WTO could well have contributed to global poverty. Even foreign direct investment, long regarded as the miracle solution to development, is now under attack. 24 In many countries competition to attract direct foreign investment as clearly negative effects in the social and environmental fields. 25 Very clearly, this is not taken into account in Donald Trump’s “America First” logic and was not even present in his reasoning. But its overall consequences for the protection of the environment could prove to be very positive indeed, which, it must be emphasized, would be an amusing paradox.

#### Resiliency means there can’t be collapse and countries adapt instead of resorting to shooting wars

Bergeijk, 17

(Peter A.G. van Bergeijk, prof at the international institute of social studies of Erasmus university, Steven Brakman, professor at the University of Groningen, Charles van Marrewijk, professor at Xi’an Jiaotong-Liverpool University, “Heterogeneous economic resilience and the great recession's world trade collapse”, Papers in Regional Science Vol 96 Issue 1 NL)

1 Introduction Global shocks affect regions differently. Some regions are hit particularly hard by a global shock, others to a smaller extent, and yet some other regions appear not to be affected at all. The recovery from a global shock also differs by region, such that it is by now a well‐established stylized fact that regions differ in their shock sensitivity: some regions are more resilient than others. Why global economic shocks affect regions and their recovery differently is the topic of a growing body of literature, see for examples and recent surveys: (i) the 2010 special issue of the Cambridge Journal of Regions, Economy, and Society on ‘The Resilient Region’; (ii) the 2014 special issue of Raumforschung und Raumordnung on ‘Regional Economic Resilience: Policy Experiences and Issues in Europe’; and (iii) the 2016 special issue of Regional Studies on ‘Resilience Revisited’. The motivation for this special section is that the international economic dimension of resilience and its characteristics, while frequently being recognized qualitatively in the literature, has hardly been taken up in empirical research. Empirical researchers have recognized the importance of inter‐regional and international linkages, but have so far paid little empirical attention to the international dimension. Modica and Reggianni ([2015](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0025)), for example, review the indicators used in a sample of the spatial economics resilience literature and report no factors related to foreign direct investment or international trade. Studies often refer explicitly to globalization, linkages, trade, and investment, but do not consider these as explanatory variables in the econometric analysis (an example is Davies [2011](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0012)). Although the lack of attention for the international dimension in spatial economics in resilience research is remarkable, we should also point out that in environmental studies resilience is a neglected issue, as such studies tend to under‐investigate openness. As an example, Figure [1](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0001) reports the inclusion of resilience factors in the meta‐analysis of Lazzaroni and van Bergeijk ([2014](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0022)) that covers 64 primary studies published in 2000–2013 on the macroeconomic impact of natural disasters (a total of direct costs – damages directly due to the disaster, 1858 regressions and indirect costs – business interruptions and effects on the overall performance of the economy, 1991 regressions). Only 9 per cent (direct costs) and 40 per cent (indirect costs) of the primary studies consider openness as an explanatory variable. A key question is of course: does the international dimension matter? A first answer is that many studies that do not empirically address the international dimension pay qualitative attention to globalization and international linkages A second answer is provided by the findings of regional science resilience studies that do take international aspects into account (Groot et al. [2011](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0015); Crescenzi et al. [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0011)) as they consistently report the significance of current account imbalances for regional resilience. This special section aims to fill this gap in the literature, to motivate that the international dimension is important, and to argue and show that the great trade collapse of 2008/9 offers a unique natural experiment for resilience research, and would like to stimulate future spatial studies of resilience to include the international dimension in the empirical analysis. 2 What do we mean by resilience? The concept of (regional) resilience both has an intuitive appeal, especially for policy‐makers who are confronted with increasing numbers of man‐made and natural disasters, and has stimulated academic debate. [2](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-note-0002) The conceptualization of resilience, however, is not without problems. Martin and Sunley ([2015](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0023)) note not only that defining resilience is difficult, but also that a well‐defined methodology to study resilience is lacking (see also Martin et al. [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0024)). Defining resilience is challenging as the concept can refer to different aspects. For example, does resilience imply that regions are not affected in the first place by a shock, or that they quickly return to the original (growth) path before the shock, or that they adapt to a new – possibly higher – trajectory than before the shock? Also, national economies constantly change, which raises the question of how to separate resilience from other reactions to a shock and how to separate shocks from changes that constantly occur in an economy. From a policy perspective, vulnerability, prevention, and mitigation are important aspects that determine the impact of and recovery from shocks and thus of resilience. As the concept of resilience is not fully transparent, a well‐defined or accepted methodology to study resilience is also missing. The fact that a concept is still difficult to define or apply, however, does not mean that it is useless. In the editorial of the special issue on resilience in Regional Studies, Bailey and Turok ([2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0002), p. 557) not only observe the problems related to the concept of resilience as described above, but also that the research on resilience has: made several important contributions to long‐running regional research into the performance and adaptability of territories in the wake of damaging events and extreme pressure. A major concern has been how and why local communities and regional economies respond to major disturbances. We are convinced that a meaningful and rewarding empirical analysis in the field of resilience is possible and worthwhile, provided the researcher limits herself with respect to the research aim, selects an appropriate shock to study, and uses proper metrics. This is a truism, but it is worth keeping in mind because the major methodological problems in the literature are: (i) that the concept of resilience by bringing in new multi‐disciplinary and evolutionary elements broadened the conceptual framework complexifying regional resilience beyond the limits of what can be meaningfully analysed empirically; (ii) that selected shocks had a relatively high frequency, implying that pre‐shock trajectories aimed at prevention and reduction of vulnerability needed to be included; and (iii) that no consensus exists on what, how and when to measure. We do not deny the usefulness of the evolving conceptualization of resilience in regional science, but we question the validity of the evolutionary approach where it argues that: it is wrong to see resilience in terms of an ability, following an economic shock, to return to the previous equilibrium growth path. Christopherson et al. ([2010](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0008), p. 6) Instead, we find Rose's ([2004](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0027), [2007](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0028)) definition of economic resilience a useful starting point for empirical research (as the contributions to this special section will demonstrate). Rose sees economic resilience as the ability to reduce losses from shocks. Economic resilience occurs at the micro level, (firms and individuals), at the meso level (groups, sectors and clusters) and at the macro level (regions, countries). Rose distinguishes static economic resilience (the ability to maintain functioning without repair and reconstruction) and dynamic economic resilience, which is the speed with which recovery occurs after the shock towards some desired state of affairs (often the desired state is interpreted as an equilibrium, but we note that this is not necessary). It is possible to increase resilience before a shock occurs by investment in education, training and reductions of vulnerability (for example by stockpiling and structural reforms, see Duval and Vogel ([2008](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0013)). Often this requires specific investments and this is only possible when disasters occur with some frequency (floods in the Netherlands – our home country – are an example) or can be foreseen otherwise (global warming is an example). This brings us to the kind of shock that is being studied. 3 The great trade collapse This special section focuses on the great trade collapse that occurred in 2008/9. The relevance of resilience is illustrated by this global shock. The reasons to focus on this shock are: (i) its unexpected character; (ii) the limitations to meet the trade shock with national or regional policy instruments; (iii) the pattern of trade evolution, especially its slowdown after full recovery; and (iv) the heterogeneity of impact that suggests differences in resilience between countries or regions. In short, the great trade collapse is a natural experiment that provides a unique testing ground for investigating resilience to global shocks. First, we note that over the period 1880–2010 global trade contracted in some 12 per cent of the years, while the overall trend of global trade (with the exception of the 1930s) was positive. Moreover, a shock of this size had not been seen since the 1930s (van Bergeijk [2010](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0033); Irwin [2012](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0020)). [3](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-note-0003) Indeed, the 2008/9 trade collapse occurred as a complete surprise, as illustrated by Figure [2](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0002) which summarizes how the OECD changed its prediction for 2009 from +8 per cent to –16 per cent. This is an unprecedented 24 percentage points revision (other national and international institutions did not do a better job). It is therefore safe to assume that no pre‐crisis investments in resilience had been made and by implication this natural experiment thus helps us to focus on the pure shock itself and post‐shock effects. Second, we note that hardly any national instruments were available to avoid or respond to the collapse of international trade. Unlike financial and economic crises, where automatic stabilizers are in place and fiscal and monetary policies can be used, no direct coping mechanism existed for the global trade shock. Hence, for the initial phase this particular case provides a much clearer and more direct picture of shock impact per se. During the upturn, existing instruments were scaled up, such as trade credit (following a G20 decision in April 2009) and export promotion services (Konings et al. [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0021)) but arguably the contribution of policy instruments was minor. Probably the most important policy contribution was the avoidance of the policy error of the 1930s to resort to protectionism. Third, we point out that the World Trade Collapse and its aftermath provide a post shock pattern that differs from the financial and economic crises and natural disasters that have been studied in regional science studies of resilience. Indeed, using monthly trade data from the World Trade Monitor of the Netherlands Bureau for Economic Analysis CPB (CPB [2013](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0010)), Figure [3](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0003) suggest that an additional element needs to be introduced into the typology on stylized responses of regional economies to major shocks developed by Simmie and Martin (2009, Figure [1](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0001); see also Martin 2012, Figures [1](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0001) to [3](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-fig-0003)). For Emerging Asia the resilience pattern comprises of a shock followed by a recovery to trend level (so above the pre‐crisis peak level) and then a phase of slowdown. For world trade, recovery occurs to previous peak and then the growth rate of trade decreases again. The latter has recently been termed the Global Trade Slowdown. The issue whether this is a ‘new normal’ and if so why are issues for ongoing debate (Hoekman [2015](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0018); World Bank [2015](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0039); Constantinescu et al. [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0009); IMF [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0019); Haugh et al. [2016](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0017); van Bergeijk 2017; van Marrewijk [2017](https://onlinelibrary.wiley.com/doi/full/10.1111/pirs.12279#pirs12279-bib-0036))..

#### COVID thumps

Kampf, 20

(David, Kampf 20, senior PhD fellow at the Center for Strategic Studies at The Fletcher School. 6/16/20, “How COVID-19 Could Increase the Risk of War”, World Politics Review, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war)

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade. This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945. Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

#### Strategic self-restraint solves protectionism

Davis, 17

(Christina L. Davis, Government Professor at Harvard and Politics Professor at Princeton, & Krzysztof J. Pelc, Political Science Professor at McGill University. [Cooperation in Hard Times: Self-Restraint of Trade Protection, Journal of Conflict Resolution, 61(2), 398–429])

Strategic self-restraint. There are two ways in which a pervasive crisis raises the stakes for any single decision to protect domestic industries. First, the presence of common economic hardship in trade partners increases the likelihood of retaliation. These other states facing hard times all come up against the same factors that render them ex ante more likely to impose a remedy measure because their industries suffer injury in a legal sense and mobilize for protection. As all actors are credibly on the brink of imposing remedies, any nudge may push them to respond in kind. Second, the consequences of a trade conflict, were it to arise and reduce trade volume, grow more dire during crisis. As domestic demand declines, states often turn to export markets to restore growth. When markets close, this strategy will fail. To the extent that the remedies imposed by trade partners affect other industries, the trade war will spread the economic hardship from the declining industry that sought the remedy to adversely impact the most productive firms engaging in exports. Without any outlet for growth, production levels and confidence further decline. As a result, states have an incentive to temper their response to domestic troubles if those hard times are shared by others. Altruism plays no role here: a self-interested state can recognize that the odds of retaliation are a function of pressure for relief in other countries that also experience an economic downturn. What we refer to as ''strategic self-restraint" occurs when the home country preference to impose import relief during crisis is offset by the fear that hard times abroad will trigger foreign country retaliation. This resembles patterns of behavior when creditors may resist increasing the risk premia of a troubled debtor in order to avoid pushing the debtor into default (Akemann and Kanczuk 2005; Chapman and Reinhardt 2013). In normal times, trade remedies or rate hikes play an important role to punish those that dump cheap goods or engage in poor management. But when balance sheets are in the red, an actor may decide they cannot afford to risk the possible trade war or default that could result from such actions. Our emphasis on the sensitivity of trade policy to for¬eign country economic conditions augments studies that have largely seen probabil¬ity of retaliation as function of trade dependence and market size (Blonigen and Bown 2003). Further, it is not simply a bilateral fear of tit-for-tat retaliation that motivates restraint. Governments in a network of trading partners with cross-cutting dependencies on trade are closely connected to know what other states are doing and anticipate future repercussions. The tariff raised by country A against country B impacts third countries that fear trade diversion effects flooding their own markets and future policies that will target their own exports. Once protectionism becomes the default response to hard times, other states will not wait to get caught as the last open market and will instead preemptively move to raise barriers. This is the specter haunting governments during the double crisis of economic downturn at home and abroad—their own decision to increase protection could be the tipping point leading to widespread actions by other governments to close markets.

#### Absolutely zero chance of a global trade collapse---the multilateral system’s incredibly resilient

Shiro Armstrong 14, economist and Fellow at the Crawford School of Public Policy, Australian National University, Co-Director, Australia-Japan Research Centre, Editor of the East Asia Forum, Director of the East Asian Bureau of Economic Research and Research Associate at the Center on Japanese Economy and Business at the Columbia Business School, September 2014, “Economic Cooperation in the Asia-Pacific and the Global Trading System,” Asia & the Pacific Policy Studies, Vol. 1, No. 3, p. 513-521

The WTO and the global trading system faced a major test during the GFC[global financial crisis]. Although advanced economies went into recession on a scale that matched the Great Depression in terms of output and financial losses, and trade flows collapsed globally (by 12 per cent in 2009), there was no significant rise in tariffs and other trade barriers. 4

In the wake of the GFC, ‘murky’, non-tariff-based protectionist measures were introduced by some governments. Some estimates of these measures suggest that they accounted for more than half of all protectionist measures in the post-crisis period (Aggarwal & Evernett 2013). Policies like local content provisions and industrial policies that restrict global trade were introduced. But after the GFC, most countries actually continued to liberalise tariffs, and changes in trade policy (via raising tariffs or taking anti-dumping action) contributed only about 2 percent of the observed drop in world trade in 2008–2009 (Kee et al. 2013). That is in major contrast to the effects of the Smoot-Hawley tariff wars during the Great Depression.

Of the 4,144 trade measures recorded by Global Trade Alert from the start of the crisis to early 2014, 22.2 per cent have been coded ‘green’ (that is, they represent, in the opinion of GTA, liberalising policy), with 57.4 per cent coded ‘red’ (policy considered protectionist). 5 One reason why some developing countries in fact dropped tariffs and other trade barriers in the aftermath of the GFC may be the rise in global supply chain trade: when it is necessary to import in order to export, the risks of retaliation are larger and there are domestic producers that demand low import barriers (Gawande et al. 2014). But the role of the WTO in this should not be understated. Indeed, the rise of global supply chains is a consequence of the rules-based trading system that GATT/WTO underwrites.

This was a significant achievement given the acute protectionist pressures. Leadership at the G20 had much to do with the ‘standstill’ on protection, but the shock of the GFC did not weaken the WTO or undermine the confidence that countries placed in it. The slow recovery of the advanced economies meant that protectionist forces put significant pressure on governments to close markets, but the global trading system has proved robust to these pressures.

The robustness of the global trading system throughout the GFC and its aftermath has meant that recession and collapsed trade in some countries have not generated conflict between countries.

#### No resource wars

Baryamov, 18

(Agha; PhD candidate and lecturer in the department of International Relations and International Organization @ University of Groningen; “Review: Dubious nexus between natural resources and conflict,” *Journal of Eurasian Studies* 9(1): 72-81)

First, function of natural resources in conflict is narrowly explained. Less research has been devoted to non-resource factors of conflicts and their connection with resources. Conflict is composed of multiple dimensions (political, economic, historical, cultural, ethnic and geographical etc.) rather than single factor. It is not clear how non-resource dimensions o1f conflict interact with natural resources, namely poor performance of state institutions or scarcity of state capacity One may understand how natural resources influence non-resource dimensions but one may not find how and whether non-resource dimensions affect scarcity or abundancy of natural resources. In this regard, it is not sufficient to simply propose scarcity or abundancy of natural resources as the fundamental reason for conflicts. Second, less research has scrutinized political and economic costs of resources wars, namely occupation cost, international cost and investment costs (e.g. Meierding, 2016). The existing works give a misleading impression that resource incomes can cover easily invasion, investment and international costs of wars.

#### Ev to the contrary relies on fallacies

Tertrais, 12

(Bruno, Senior Research Fellow at the Fondation pour la Recherche Strat gique (FRS) The Demise of Ares: The End of War as We Know It? The Washington Quarterly 35:3 pp. 722, AWP)

**Future resource wars are unlikely.** **There are fewer and fewer conquest wars.** Between the Westphalia peace and the end of World War II, nearly half of conflicts were fought over territory. Since the end of the Cold War, it has been less than 30 percent. 61 The invasion of Kuwaita nationwide bank robberymay go down in history as being the last great resource war. The U.S.-led intervention of 1991 was partly driven by the need to maintain the free flow of oil, but not by the temptation to capture it. (Nor was the 2003 war against Iraq motivated by oil.) As for the current tensions between the two Sudans over oil, they are the remnants of a civil war and an offshoot of a botched secession process, not a desire to control new resources. China’s and India’s energy needs are sometimes seen with apprehension: in light of growing oil and gas scarcity, is there not a risk of military clashes over the control of such resources? **This** seemingly consensual **idea rests on two** fallacies**. One is that there is** such a thing as oil and gas **scarcity, a notion** challenged by many energy experts. 62 As prices rise, previously untapped reserves and non-conventional hydrocarbons become economically attractive. **The other is that spilling blood is a rational way to access resources**. As shown by the work of historians and political scientists such as Quincy Wright, **the economic rationale for war has always been overstated. And because of globalization,** it has become cheaper to buy than to steal**.** We no longer live in the world of 1941, when fear of lacking oil and raw materials was a key motivation for Japan’s decision to go to war. In an era of liberalizing trade, many natural resources are fungible goods. (Here, Beijing behaves as any other actor: 90 percent of the oil its companies produce outside of China goes to the global market, not to the domestic one.) 63 There may be clashes or conflicts in regions in maritime resource-rich areas such as the South China and East China seas or the Mediterranean, but they will be driven by nationalist passions, not the desperate hunger for hydrocarbons. Only in civil wars does the question of resources such as oil, diamonds, minerals, and the like play a significant role; this was especially true as Cold War superpowers stopped their financial patronage of local actors. 64 Indeed, as Mueller puts it in his appropriately titled The Remnants of War, ‘‘Many [existing wars] have been labeled ‘new war,’ ‘ethnic conflict,’ or, most grandly ‘clashes of civilization.’ But in fact, most. . .are more nearly opportunistic predation by packs, often remarkably small ones, of criminals, bandits, and thugs.’’ 65 **It is the abundance of resources, not their scarcity, which fuels such conflicts.** The risk is particularly high when the export of natural resources represents at least a third of the country’s GDP. 66

#### Tech solves

Nyquist, 16

(Scott Nyquist, MBA from Harvard Business School, senior partner at McKinsey and Company, Matt Rogers is a senior partner in the San Francisco office, and [Jonathan Woetzel](http://www.mckinsey.com/our-people/jonathan-woetzel) is a senior partner in the Shanghai office, "The future is now: How to win the resource revolution", 10/14/16, [www.mckinsey.com/business-functions/sustainability-and-resource-productivity/our-insights/the-future-is-now-how-to-win-the-resource-revolution](http://www.mckinsey.com/business-functions/sustainability-and-resource-productivity/our-insights/the-future-is-now-how-to-win-the-resource-revolution) NL)

A few years ago, resource strains were everywhere: prices of oil, gas, coal, copper, iron ore, and other commodities had risen sharply on the back of high and rising demand from China. For only the second time in a century, in 2008, spending on mineral resources rose above 6 percent of global GDP, more than triple the long-term average. [When we looked forward in 2011](http://www.mckinsey.com/business-functions/sustainability-and-resource-productivity/our-insights/mobilizing-for-a-resource-revolution), we saw a need for more efficient resource use and dramatic increases in supply, with little room for slippage on either side of the equation, as three billion more people were poised to enter the consumer economy. While our estimates of energy-efficiency opportunities were more or less on target, the overall picture looks quite different today. Technological breakthroughs such as hydraulic fracturing for natural gas have eased resource strains, and slowing growth in China and elsewhere has dampened demand. Since mid-2014, oil and other commodity prices have fallen dramatically, and global spending on many commodities dropped by 50 percent in 2015 alone. Even though the hurricane-like “supercycle” of double-digit annual price increases that prevailed from the early 2000s until recently has hit land and abated, companies in all sectors need to brace for [a new gale of disruption](http://www.mckinsey.com/business-functions/sustainability-and-resource-productivity/our-insights/are-you-ready-for-the-resource-revolution). This time, the forces at work are often less visible and may seem smaller-scale than vertiginous cyclical adjustments or discovery breakthroughs. Taken together, though, they are far-reaching in their impact. Technologies, many having little on the surface to do with resources, are combining in new ways to transform the supply-and-demand equation for commodities. Autonomous vehicles, new-generation batteries, drones and sensors that can carry out predictive maintenance, Internet of Things (IoT) connectivity, increased automation, and the growing use of data analytics throughout the corporate world all have significant implications for the future of commodities. At the same time, developed economies, in particular, are becoming ever more oriented toward services that have less need for resources; and in general, the global economy is using resources less intensively. These trends will not have an impact overnight, and some will take longer than others. But understanding the forces at work can help executives seize emerging opportunities and avoid being blindsided. Our aim in this article is to explain these new dynamics, and to suggest how business leaders can create new strategies that will help them not only adapt but profit.

## Harm

#### Liberal order resilient—assumes the internal link.

Mousseau, 19

(Michael, PhD, Professor @ the University of Central Florida. 7/29/19, “The End of War: How a Robust Marketplace and Liberal Hegemony Are Leading to Perpetual World Peace”, International Security, Volume 44, Issue 1, <https://www.mitpressjournals.org/doi/full/10.1162/isec_a_00352?mobileUi=0&amp>) \*Contractualist societies = system in which individuals normally obtain securities, including incomes and financial securities, through contracts with strangers in a market; i.e. liberalism

Reports of the demise of the liberal order, however, are greatly exaggerated. First, Hungary and Poland are newly contractualist states. The sociological nature of economic norms theory means that contractualist values should be more firmly rooted in older contractualist societies than in newer ones. This is corroborated with the natural experiment of Germany: in 1962 West Germany embraced contractualism (see table 1), but it was only after 1991 that East Germany could have become contractualist, when massive investments from the Federal Republic caused incomes in the marketplace to become higher than incomes obtainable from status relationships. Today, Germany’s populist movement is concentrated in the eastern part of the country and is largely nonexistent in the western part,83 which corroborates the expectation that some newly contractualist societies retain some of their status values even after a generation of robust opportunity in the marketplace. Deeper changes in values may not occur until generational cohorts initially socialized into status or axial economies have passed on. Second, the electorates in most of the thirty-five contractualist states listed in table 1 in 2010 have not experienced substantial increases in populist sentiment. Italy’s Five Star movement is often called populist but largely because of its anti-immigrant stance. Although an embrace of immigrants would seem consistent with contractualist values, opposition to large numbers of immigrants is arguably a rational response to what is essentially a huge external shock that has intensified in recent years. Britons voted to leave the European Union, but largely because they believed they were being treated unfairly in it. The rejection of unfair terms of trade, whether perceived correctly or not, is consistent with contractualist values. Third, the strength of institutions far exceeds that of any one person, including the president of the United States. Liberal values and institutions are rooted in contractualist economic norms and will not disappear simply because some leaders choose not to abide by them. For instance, although Trump may want the United States to withdraw from the North Atlantic alliance, this is not a view shared by Congress and the American people. Even members of Trump’s administration have often restrained him in ways consistent with contractualist values and institutions.84 In economic norms theory, the only way the United States’ contractualist values could shift to status or axial values would be through radical economic change. As mentioned above, economics is ultimately at the mercy of politics, as an influential coalition of rent-seekers could potentially collapse a contractualist economy by failing to sustain the highly inclusive marketplace or uphold the state’s credibility in enforcing of contracts. In recent years, the U.S. economy has begun tilting toward rent-seekers, given the growing role of private money in electoral campaigns and the increasing sophistication of rent-seekers in masking their activities though the manipulation of public opinion, including through their concentrated ownership of media outlets. Such rentierism could precipitate a change in U.S. values if it results in a retraction of the market substantial enough that newer generations began to obtain higher wages in newfound status networks than in the marketplace. In this way, the Trump phenomenon may reflect a pathology in U.S. governing institutions; but at least so far, it arguably has not extended to the American people. Most of Trump’s supporters seem to be drawn to him not for his expressions of status values, but for his pledges to fight a “rigged” system and create well-paying jobs. Whether or not Trump means what he says, many of his supporters saw a vote for him as an act of protest against the increasing corruption occurring in the United States, a clear contractualist expression.85 Although a collapse of the U.S. economy and transition to an axial or a status economy is always possible, the feedback loop of popular insistence on economic growth and a highly inclusive marketplace makes this unlikely. Aside from an external shock (such as nuclear war or climate devastation), such a transition could happen only if the rentiers somehow manage to remain in power long enough to institutionalize a permanently underemployed underclass. Fourth, even if the U.S. economy were to collapse and the United States became an axial or a status power, the combined economic might of all the other contractualist countries in the world is nearly twice that of the United States. The soft power of the United States in world politics lies not in its power to persuade, but in it being the largest of the contractualist states, and in its willingness to provide the public good of global security since the collapse of the pound sterling in late 1946. If the United States withdrew from its leadership role, the remaining contractualist powers would fill the vacuum. None of them has an economy relatively large enough to enable it to act as a natural leader and principal provider of global security, but it is the temperament of these states that they can easily form an international organization to coordinate and act on their shared security interests, even if some may choose to free ride. Fifth, current events need to be viewed within a larger context. Fernand Braudel pinpoints the rise of the modern world economy as starting around the year 1450 in northwestern Europe.86 The first contractualist economy emerged more than two centuries ago. Since then, contractualist states have confronted numerous shocks and threats to their systems, including the American Civil War, the Great Depression, two world wars, and the Cold War. The present populist mini-wave and pathologies in U.S. democracy are mere trifling episodes in a larger historical frame.