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

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

C. A Core Definition

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

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

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

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

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

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

#### Violation – the Aff is limited to a single sector

#### Reasons to prefer

#### Limits – This topic is already massive and this deals the death blow to negative research burden – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each debate.

#### Ground – They avoid key debates about the broader role of antitrust in the economy. Justifies a race to the margin as Affs carve out insulated niches within antitrust law.

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#### Plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy—it’s impossible to distinguish specific industries because it’s enforced in generalist common law which dries up capital flows

Rogerson 20 (William, Professor of Economics at Northwestern University, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020)

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20 The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself. A. Case-by-Case, Fact-Specific Approach Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen. B. Slow, Usually Predictable Doctrinal Development A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26 Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts. C. Market-Driven Case Selection In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development. [\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below. D. Generalists versus Industry Experts Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39 As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges. E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics. [\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42 The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction. However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement. The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary. The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Overall growth is decked by the aff and unpredictable shifts ruin business confidence

Cambon 21 (Sarah Chaney Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800)

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery. Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook. Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak. Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show. “Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.” Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic. Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists. Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence. The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’” Businesses appear to be less risk-averse now, he said. After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital. Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit. Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first. “We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities. Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Economic decline causes nuclear war

Maavak 21 (Matthew, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8)

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals. Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset INTRODUCTION The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA). But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998). The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020). An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity. COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach. METHODOLOGY An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020): • Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006); • Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012); • Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and • Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources. ECONOMY According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity. The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak. The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020). As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007). Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit. According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019): “You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author). President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period. A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016). In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade. ENVIRONMENTAL What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation: The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs. Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated. Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity. Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021). Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications. On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008). The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section. Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade. GEOPOLITICAL The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic. Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

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#### The United States federal government should adopt a remedial regulation that requires private sector actors participating in the [insert industry] standard setting process to govern their licensing arrangements under a penalty default contract only until contracts are negotiated which are proven to create reasonable competition.

#### Punishment of an anticompetitive market’s existence solves and avoids every net benefit

Garcia 16 (Kristelia, Associate Professor at UC-Boulder Law School, “Facilitating Competition by Remedial Regulation,” 183-258, Berkeley Technology Law Journal, Vol. 31:1, 2016, Nexus)

There is a third option for checking anticompetitive behavior, maintaining competition, encouraging innovation, preventing technological lock-in, and ensuring payment to artists: regulation. The conventional view of regulation is as a system that works against competition; one that thwarts new entry and protects incumbents.23 8 Indeed, the Telecommunications Act of 1996-intended to mark the deregulation of the telecommunications industry-proclaims as its purpose: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 239 The goal of this Part is to challenge the conventional view and to present regulation as potentially procompetitive. Conventional thinking about how to approach the competition problem, or bargaining breakdown, in content generally falls into two divergent points of view: There are those who would reduce dependence upon (or in some cases do away with altogether) the current statutory licensing regime in favor of private ordering and/or other, preferable mechanisms such as fair use, patent pools, and collectives; 2 40 and those who favor compulsory licensing over private deal making for avoiding bottlenecks and for more robust information exchange. 241 The former view ignores the important role compulsory licenses play in ensuring access to content; the latter ignores the potential informational value derived from private rate setting. Both of these perspectives ignore the competitive market. This Article departs from both of these perspectives, proposing instead a new model for maintaining competition in the licensing of intellectual property rights. This proposal calls for adherence to a mandatory, compulsory license by default, but embraces private ordering where (and only when) real competition can be shown to exist between rival content licensors. This proposal, referred to herein as the "remedial regulation model," utilizes existing mechanisms-specifically, statutory licenses, a collective administrator, and existing regulatory authorities-to correct anticompetitive behavior at minimal cost. The current competition policy for the licensing of intellectual property assumes robust competition, and so allows for private ordering in the shadow of the statutory license. For example, § 114 of the Copyright Act allows copyright owners to either use the statutory license, or to negotiate their own royalty rates and license terms for the public performance of sound recordings.24 2 As a result, conventional antitrust mechanisms-like ASCAP's consent decree-are wholly ineffective against anticompetitive behavior perpetrated by individuals, who can merely opt-out. The remedial regulation model updates copyright's competition policy by reversing this assumption. Instead, it assumes monopolistic (or oligopolistic) market power, thereby converting the existing, circumventable statutory licenses into mandatory, compulsory licenses under which parties may petition for permission to deal privately. Requiring only minimal statutory amendment and utilizing existing regulatory agencies and collectives, the remedial regulation model offers licensors and licensees a compromise: Continued access to content for all at a predictable rate and the flexibility to negotiate private terms, so long as industry consolidation has not reached a point so as to call into question the arms-length nature of any such transactions. This proposal builds, in part, on the existing literature on penalty defaults and altering rules. After a brief review of default theory, this Part will show its application in the regulatory context and will detail a remedial regulatory solution to copyright's competition problem. A. PENALTY DEFAULTS, ALTERING RULES & COMPETITION 1. Default Theory A "penalty default" is an undesirable fall back option designed to penalize those who, through failure to do or to not do some thing (be it negotiate, or share information); do not otherwise negotiate around it. The concept of "penalty default rules" was first introduced by Professors Ian Ayres and Robert Gertner,2 4 who described them as unpalatable fallback options in contract law that kick in unless the parties negotiate their own terms. Such rules, they argue, induce more knowledgeable parties to "reveal information by contracting around the default penalty." 2 44 Prior work has extended this concept to licensing and demonstrates that "penalty default licenses encourage[] more efficient deal making among otherwise unequal parties by motivating them to circumvent an inefficient statutory license in favor of private ordering. "245 In other words, penalty defaults are a mechanism by which regulators can encourage or discourage a certain behavior without regulating that behavior directly. This is particularly useful where the behavior sought to be modified is not easily regulated, such as to encourage retirement savings, organ donation, and to curb pollution.2 46 The next section argues that penalty defaults might also prove especially useful for regulating behavior that is not readily ameliorated by existing legal regimes, such as the anticompetitive behavior of the individual music publishing companies whose tacit collusion and parallel pricing activities are not checked by antitrust. Altering rules establish the "necessary and sufficient conditions for altering default legal consequences.1"247 "Impeding" altering rules aim to "deter opt-out by artificially increasing its difficulty." 248 This is effectively what remedial regulation does: By requiring a showing of sufficient competition before private ordering is permitted, the statutory license is made "quasi-mandatory" or sticky.24 9 2. Application to Regulation In the regulatory context, the remedial concept behind impeding altering rules works to penalize an undesirable behavior in hopes of encouraging a different behavior. Here, it does so by mandating compliance with a statutory rate-thereby foreclosing private ordering with all of its potential benefits-unless and until sufficient competition can be shown in the relevant marketplace. There is precedent for this approach. In wholesale electricity, for example, the Federal Energy Regulatory Commission (FERC) sets the applicable rates for energy transmission. A utility company is allowed to charge a "market-based tariff only if [the company] demonstrates that it lacks or has adequately mitigated market power, lacks the capacity to erect other barriers to entry, and has avoided giving preferences to its affiliates."250 Varying in procedure, but similar in spirit, are patent pools, or the pooling of patents between two or more companies. Patent pooling is generally acceptable, even favored, unless "(1) excluded firms cannot effectively compete in the relevant market for the good incorporating the licensed technologies and (2) the pool participants collectively possess market power in the relevant market." 25 1 Where these conditions exist, the DOJ or the FTC will review the licensing arrangement for anticompetitive effect before determining whether the parties will be allowed to engage in the pooling activity. In both of these examples, a competitive marketplace is not assumed, but must first be shown. B. REMEDIAL REGULATION In lieu of antitrust, this Article advocates utilizing remedial regulation-or, regulation that discourages industry consolidation-in order to open the market and maintain competition. This model assumes a baseline that tends toward oligopoly, natural or otherwise, and so allows for private ordering only where sufficient competition can first be shown. Otherwise, regulation operates to ensure ongoing access to the relevant input(s) for all prospective consumers or licensees able and willing to meet the statutory requirements and to pay the statutory rate. Because this regulation does not necessarily represent a market rate-nor, indeed, as high a rate as private ordering might obtain-this Article labels it "remedial." It punishes the lack of a competitive marketplace. If a company wants to engage in private ordering to obtain a higher rate or better terms, it must first petition to show the existence of sufficient competition in the relevant market. While such "remedial regulation" cannot create a robust competitive market where none exists, it can prevent a few powerful firms from unilaterally controlling the price for an input, or from barring new entry to the market altogether to the detriment of both consumers and innovators in the space. As is the case with other highly regulated industries, the underlying assumption here is that the government has a greater responsibility for checking anticompetitive behavior in the music licensing space owing to its role in the granting of exclusive property rights via copyright. As with the wholesale electricity example, remedial regulation places the burden of proving a competitive marketplace on the party seeking to get out from under the statutory regime. This resets the baseline assumption and brings competition policy in line with positive market conditions, while at the same time establishing a "safe harbor" that allows for private ordering (and its concomitant advantages) when, and only when, sufficient competition can be shown. The next section outlines one possible path toward implementation of remedial regulation in the music licensing context.

### 1NC

#### Breaking up Big Ag disrupts innovation – ability to cooperate is the key internal link.

Wiederstein 17 (Ed Wiederstein is a former president of the Iowa Farm Bureau and an Audubon-area farmer, 4-10-17, Ag mergers could lead to new advancements for farmers, <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/04/10/ag-mergers-could-lead-new-advancements-farmers/100290696/>)

In a world where Twitter is becoming an accepted form of language, we are reminded daily of how advancements in technologies are driving our nation’s future. In Iowa, the agricultural community has long understood and embraced this fact. As an example, Iowa is one of the largest soybean producers in the U.S., and farming continues to evolve to maintain a key role in the global food supply chain. The demand for our nation’s soybeans is climbing, as diets around the world continue to improve and as soy is used for other products including plastics and biodiesel fuel. Every year we continue to face many of the same challenges in Iowa and across the nation. Unpredictable weather patterns make it difficult for farmers to forecast revenues. Protecting crops against pests while sustaining a healthy environment is a challenge. And as the global dietary demands change, farmers must be appropriately equipped and knowledgeable on how to evolve along with it. While farmers have been facing these challenges for centuries, recent advancements in **innovation have helped us take leaps and bounds** **towards** the most **protected high-quality crops** in history. With the development of more innovative pesticides and advanced sustainability measures for soil protection, we now have the ability to grow more robust crops even in less than ideal conditions. In fact, the USDA has reported U.S. farm output has increased steadily over the 20th century — with an increase of more than 170 percent from 1948 to the late 2000s. These advancements are enabling farmers and ranchers to increase their operation’s efficiency and produce a more sustainable harvest. This not only enables higher yields from less land, but also allows **for greater diversification in crop production**. We must remember the importance of supporting innovation and advancement in solving new challenges. When funding was more plentiful, land-grant universities and extension offices were able to dedicate more resources to fostering ag innovation. Now, private industry plays a greater role in this arena, and farmers have proven willing to invest in technologies companies are producing through private research and development. For private companies working on these advancements, staying ahead can be difficult. Innovative new technologies can require over a decade and hundreds of millions of dollars to develop and approve, and private companies are willing to take the risk for these advancements that may or may not yield a return. Job cuts at DuPont Pioneer are mounting as its parent works to cut costs and prepare to merge with Dow Chemical Co. However, it can be argued this amount of time and money can be significantly reduced when leaders in the industry **work together towards a common** goal. That may be one of the driving factors behind why several major ag companies like Bayer and Monsanto and Dow and DuPont are looking to collaborate more through merging operations. As ag companies, including those with significant presence in Iowa and around the Midwest, move towards merging operations, we should consider the challenges they now face in developing new tools to make our farms more productive. The costs and time to market for their products are getting greater and longer for a number of reasons. With their collective experience in crop protection and plant biology, we in the agricultural community may see the **next generation of innovative new solutions** sooner **should** these **companies come together.** With innovation as the foundation of our future, we will and should see change that can help quicken the pace of new solutions reaching farmers in the field. There is a great need for inventions in the agricultural world that will significantly impact the way we farm with results that will support our economy. Several of the ag companies looking to merge **are on the front lines** of these issues, **seeking impactful solutions** for our ever changing needs and challenges. As details of the mergers come forth, the industry and lawmakers will continue examining potential outcomes. It will be important for those in Iowa agriculture to not only consider those potential outcomes that give us pause, but also think critically on the **benefits** we could see **from greater collaboration between ag’s power players.**

#### Innovation solves china war—that turns the aff

Suchodolski et al. 20 (Jeanne, Attorney with the United States Navy Office of General Counsel—Patent and Intellectual Property Counsel for the Naval Undersea Warfare Center Division Keyport; Suzanne Harrison, Founder of Percipience, LLC, Bowman Heiden, co-director of the Center for Intellectual Property, visiting professor at University of California, Berkeley. "Innovation Warfare," December 2020, from North Carolina Journal of Law and Technology, Volume 22, Issue 2, Article 4, https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1416&context=ncjolt)

Innovation, in particular, technology-based innovation, is the key driver for both economic competitiveness and national security. Other nations, with interests adverse to the United States, recognize this fact. In an increasingly interconnected world, nation states seek to accumulate innovation prowess, and hence economic strength, as a key element of their geopolitical power. Especially savvy nation states also pursue such ends as a mechanism to influence or diminish the national security and geopolitical power of the United States. There is no need to inflict upon the world the carnage of war if one’s geopolitical aims can be achieved via alternative competitive means. Several authors suggest China’s long-term ambitions include unseating the United States as the world’s economic and political leader.1 More compelling than opinions, several United States (“U.S.”) government and private studies document a systematic and coordinated effort by China to achieve technical and economic dominance through misappropriation of U.S. technology.2 These efforts are additionally supported by a companion effort to weaken international economic institutions and norms designed to protect U.S. intellectual property and free trade.3 The Chinese tactics include illegal means, and sophisticated use of legal means, to misappropriate U.S. technology and weaken the U.S. innovation infrastructure including: a) Leveraging the open university and laboratory ecosystem via direct sponsorship and engagement of Chinese nationals;4 b) Devaluing U.S. positions in patents and technology platforms;5 and c) Accessing private sector U.S. technology through acquisitions and ownership stakes in existing firms, funding of high-tech start-ups, and forced joint ventures and other contractual agreements as a prerequisite for entering the Chinese market.6 This particular form of competitive strategy targeting the innovation ecosystem in the United States is labeled by the Authors as “Innovation Warfare,”7 and it is defined as an executable competitive strategy: a) Reflecting an innovation, intellectual property, and technology strategy articulated and executed by the state (e.g. China); b) Using illegal means, political means, and legal economic activities—of the type previously residing solely in the province of commercial enterprise, to achieve the state’s objectives; c) Employing these economic and innovation activities to achieve both economic geopolitical power and to enhance military capabilities; and d) Functioning as a military, national security, and defense doctrine not solely as a reflection of the state’s economic policy goals nor commercial competition in the ordinary course. Innovation Warfare does not just threaten American jobs and economic prosperity. By simultaneously co-opting and weakening the innovation capabilities of the United States, China seeks to advance its rise to world power. China’s prosecution of Innovation Warfare not only encompasses a rejection of a rules-based international order, but also poses an existential threat. A world where China dominates the technology landscape is not just about who earns the profits or prevails in an abstract geopolitical fight. According to the National Security Strategy of the United States of America (“National Security Strategy”), China pursues a world in which economies are less free, less fair, and less likely to respect human dignity and freedoms.8 China’s Innovation Warfare activities risk the type of economic and geopolitical aggressions that were a root cause of two World Wars.

## Food

### 1NC- Lachapelle

#### Resources are thin – expanding the scope of antitrust trades off with SQ efforts and makes the agencies look weak – creating a vicious cycle of more litigation and overstretch

Lachapelle 21 [Tara, opinion columnist for Bloomberg, “Wall Street Is Ready to Put Lina Khan’s FTC to the Test,” *Washington Post*, 08/26/21, <https://www.washingtonpost.com/business/wall-street-is-ready-to-put-lina-khans-ftc-to-the-test/2021/08/25/cb55d2c2-059c-11ec-b3c4-c462b1edcfc8_story.html>, accessed 09/01/21, JCR]

An overburdened U.S. Federal Trade Commission [FTC] is warning acquirers that if they get impatient and close any deals without the agency’s permission, it just might slap them with a lawsuit. Dealmakers won’t hold their breath. As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC. These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong. “To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.” Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process. For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years. In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too. The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.” Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) The Justice Department is pursuing its own case against Google. And what was initially seen as a narrow effort to reel in dominant technology companies has since expanded to other industries in light of a sweeping executive order from President Biden. Even more obscure areas such as ocean shipping are facing new scrutiny. M&A reviews had already become more of a slog in recent years. Dechert LLP’s Antitrust Merger Investigation Timing Tracker — aptly nicknamed the DAMITT report — shows how investigations that once took an average of eight months now stretch into a year or longer: Just because the FTC threatens a drawn-out legal process doesn’t mean a court will take its side in the end. Even as some politicians and antitrust officials look to toughen up M&A laws, judges still rely on precedent, which can be favorable to merging companies (it was for AT&T Inc. in its giant takeover of Time Warner, for instance). An ambitious agenda without the financial resources to match it will also be of less service to consumers than if regulators pick their battles. As it stands now, Khan’s FTC looks like it’s biting off more than it can chew, and its threats aren’t having the intended effect.

### 1NC Circumvention

#### Circumvention is inevitable – all levels of the system- 3 reasons.

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.190-3, JCR]

Focusing on antitrust laws and applying Marx’s theory on competition reveals three reasons for antitrust laws’ ineffectiveness in preventing the accumulation of power and the cannibalism of competition that can be extracted from the recent mega-mergers. First, antitrust law is a regulation imposed by government, and regulatory failure occurs when “regulators tend to be primarily concerned with the welfare of those they regulate”306 rather than carrying out the purpose of the regulation. In the process of regulating competitors and helping them remain competitive, antitrust law regulators have lost sight of the purpose behind antitrust laws, which is to protect consumers307 through the promotion of competition.308 The regulators cannot be fully blamed for such oversight, however, because the current antitrust provisions are pragmatically inadequate in the area of protecting consumer welfare. Consider, for example, the two main guides used in the recent bank mergers, the United States Merger Guidelines309 and Japan Form 9,310 the focus of which is on competitive effects and the possibility of concentration as a result of the merger. In practical effect, however, when analyzing the potential anticompetitive effects of the mergers, the regulators are able to exercise considerable discretion in weighing other factors that can possibly lessen the overall anticompetitive effects. In the Bank of Tokyo-Mitsubishi Bank merger, for example, the JFTC gave considerable weight to other factors that could increase competition, such as recent deregulation and international competition,311 even though the new bank resulted in domination in several relevant product areas. As a result, the JFTC redefined some of those product areas so that the new bank would fall under acceptable limits.312 Second, antitrust law is only one part of a bigger whole in a country’s economic policy.313 By virtue, “antitrust, when unsupported or nullified by other public policies which shape the economic structure, is a limited and ineffective weapon against the concentration of economic power.”314 Because of the increase in global competition, antitrust regulators, together with the policy makers of their country, have fostered an environment wherein national firms that compete internationally are given more opportunities for further expansion.315 Under this formulation, domestically focused companies face a clear disadvantage316 when seeking approval for a merger and when competing directly with the stronger bigger national firm. Consider, for example, the recent Chase Manhattan and Chemical merger, resulting in the new bank attaining substantial market share (corporate and mortgage products) in key regions of the United States, like New York, and the negative impact such concentration may have on the other smaller domestic banks around those areas. In achieving all the advantages to a merger (increased profitability through efficiency and job layoffs), the new bank enjoys dominance over those small banks and can potentially control price in order to oust the competitors. Part of the reason why antitrust regulators in the United States have allowed such a mega merger to occur, despite its substantial anticompetitive effects, is because the current economic policy in the United States supports it. For example, previous deregulation activities in United States banking have made it possible for big banks that provide a vast array of financial services to exist.317 Such openness to strengthening national banks to compete in the international arena can be traced to the policymakers’ recognition318 that the United States has lagged in this area and is now lifting the barriers it placed before. This phenomenon in the United States also explains how antitrust laws in Japan, in light of the Japanese openness to big firms, has not impeded Japanese firms from expanding. In some respects, therefore, the factors that have influenced United States policy makers before, such as the fear of the concentration of power have been mitigated by nationalism and global competition. Third, Marx was correct in theorizing that competition contains the seed of concentration in a capitalist society.319 The advantages that capitalism purports to promote such as innovation and efficiency, also promotes further expansion and accumulation of capital to stay in the game320 and to eliminate other competitors. 321 At first, consumers are able to benefit from the competition fervor through better and cheaper products, but as the competition lessens, the benefits slowly disappear. The very nature of competition creates a cycle where the acts of one firm will ultimately induce action by another firm, thus causing a domino effect. 322 Essentially, the very nature of competition does not promote camaraderie with other competitors because the goal is to attain as much power as possible,323 unless, of course, a consolidation or collusion is planned. Rather than preventing the concentration of power, the current antitrust laws allow for the concentration of power to occur in the hands of few firms. For example, it would only make practical sense in a capitalist system that the recent mega mergers of the two large banks will result in consequent mergers by competing banks, and as long as other competitors exist (even if few), current antitrust provisions allow such mergers to occur. Eventually, such high concentration of power in the hands of a few (oligopolies) will still result in the extinction of true competition, and consumers will no longer face the benefits that competition first brought.324

#### There’s no saving antitrust law from the economic system that overdetermines the horizon of its implementation

Curran 16 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Commitment and Betrayal: Contradictions in American Democracy, Capitalism, and Antitrust Laws,” *The Antitrust Bulletin* 61.2, p.247-53, JCR]

Since the minority draws its wealth through capitalism's substantial inequalities, it will likely not participate in their remediation, relinquishing its substantial political advantages. It will use its considerable wealth to keep America capitalistic, using capitalistic principles to build and maintain politically strategic wealth, supporting inequalities and corporate growth, and blocking democratic values and principles from legislative adoption. 128 Certainly, a repudiation of Bork's theory 129 would begin a democratically restorative process. But after fifty years of Bork, antitrust cannot be saved from him. The Supreme Court has ground his theory into binding precedent. 130 And no Court will likely overrule this body of precedent, even if a future one were to lose its procapitalistic attitude. 131 Today's blindly procapitalistic Congress is no more likely to arrest Bork's theory. 13 2 For America's citizens to become more democratically equal, they must elect officials who understand the necessity of balanced and prodemocratic laws and policies. 133 A reigning system of capitalism makes hope in conventional representational politics difficult, however. 134 Yet if capitalism has always generated substantial inequalities, how can members of Congress fail to understand? Actually, there is evidence that some do understand. 135 However, who has asked probing questions about the political, moral, and social consequences of extreme wealth inequality and capitalism's role? Penetrating questions rarely get asked in Washington. Some years ago a prescient Robert Dahl observed, For all the emphasis on equality in the American public ideology, the United States lags well behind a number of other democratic countries in reducing income inequality. It is a striking fact that the presence of large disparities in wealth and income, and so in political resources, has never become a salient issue in American politics, or, certainly, a persistent one. 136 Another keen observer has written, "escalating economic inequality ... [does] not prevent the adoption of major policy initiatives further advantaging the wealthy over the middle class and poor." 137 "The massive tax cuts of the Bush era ... are a dramatic case in point." 138 Questions about capitalism while rarely expressed politically are hardly new, however. Adam Smith and John Locke addressed them first, while Mary Wollstonecraft's in her 1790 A Vindication of the Rights of Man continued their skepticism. As Professors Blau and Moncada recently observed about her, [S]he was not the first to have pointed a finger at capitalism as ... [a] cause of unfair and unequal outcomes. Adam Smith recognized its insidious effects and ... John Locke had argued a century earlier that decent societies were equitable ones. Adding to Smith's and Locke's arguments for equity was Wollstonecraft's special insight that capitalism legitimizes the very inequalities that it produces. That has not changed. Inherent in capitalism is the self-justification for the creation of inequalities because these inequalities alone engender the competition that capitalism requires to be dynamic, while holding out the seductive promise of future success to those that fail in today's round of competitive struggle. 139 Wollstonecraft realized that capitalism must have extremes for its existence and survival. And although Adam Smith and John Locke knew this before her, ignorance about capitalism and its necessary inequalities survives some two hundred years later. Yet, today, it can be understood that if capitalism requires competition, and competition requires inequality, then antitrust laws by supporting capitalism will also contribute to the extremes in inequality to which capitalism leads. The questions most critical to reality based policies have already been asked here: "Is more wealth always better?" Assuredly, no. Then, "At what point will wealth obstruct a democratic society?" Most assuredly, now. When 20% owns almost 90% of the nation's wealth, 140 it is time for structural remediation. Significant wealth must stop flowing exclusively to the top 20% without the bottom 80% sharing proportionally. But can wealth be made proportional? Can wealth's exclusivity be reformed and made democratically compatible through statutory or constitutional reform? Must the nation's wealthiest 1% continue to accumulate riches at a rate and pace until it owns virtually all 14 1 of the nation's stocks, bonds, and mutual funds? Must the middle class and poor-stuck with their near zero wealth-maintain their de minimis share? The poor has made room for the middle class, splitting America into two estranged and isolated classes: the wealthy and everyone else.1 42 Of course, this is no democracy. How could it be? Today, however, some presidential candidates are more boldly attacking inequality, as well as the laws and constitutional decisions that threaten democracy.1 43 Change may be blowing in the wind, but it now blows on sheltered wealth. How shaming it is for America. Nations must institute laws that directly and immediately attack the causes and effects of inequality.144 Freed from conservative orthodoxies, nations may even install direct controls1 4 5 -a point missed by our current president. He concluded a recent speech 146 with a misguided warning: [R]ising inequality and declining mobility are bad for our democracy. Ordinary folks can't write massive campaign checks or hire high-priced lobbyists and lawyers to secure policies that tilt the playing field in their favor at everyone else's expense. And so people get the bad taste that the system is rigged, and that increases cynicism and polarization, and it decreases the political participation that is a requisite part of our system of self-government. 147 But, of course, the system is rigged. 14 Capitalism requires capitalists. And so Congress has rigged laws and the national economy to suit them, fitting their exacting specifications, and avoiding any meaningful controls. Does this make the president naive? Maybe he is somewhat. And then again, maybe he was just being his ultracautious self, hoping and silently praying that his speech's measured words escape strong exception and political opprobrium. If he were bolder and less politically cautious, he would have granted highest priorities to human need, wealth's proportionality, and, which is to say, to democracy itself. His words, as they were, neither upset the political right nor generated remedial legislative initiatives. Few politicians must have listened. 149 No one wondered why. 15 0 Then again, the president's take on inequality is transparently political. He pushed middle-class opportunities, not proportionally greater wealth equality for all Americans.15 1 America will never be more authentically democratic as long as its wealth-based and upper-class system predominates. 15 3 This should concern him far more. He should have committed fully to democracy, helping the nation understand how it must commit to more proportionate wealth and laws combatting wealth's exclusive distribution. Higher taxes and other legislation must remediate the more audacious wealth extremes, while enhanced revenues can help keep budgets balanced, infrastructure repaired, human needs funded, and public enterprises created to help counterbalance private corporate wealth. But, first, a president must be motivated. A transformational president comes along as often as a Woodstock generation. How supremely ironic it will be when the record high inequalities produced by the oligopolies and monopolies of this Borkean era are transformed by a future Woodstock generation predisposed to limit 154 corporate size, growth, and profits; to increase taxes; and to create public enterprises. Law professors inclined to use Woodstock15 5 as a negative signifier-signifying the presumed negative extremes of the 1960s-give Bork way too much glory. If Bork had killed antitrust outright, it would have saved society from the consequences of a botched execution. But since Bork failed, antitrust has continued to facilitate wealth for the richest Americans. No longer Sherman Act targets, corporations have risen to power through the Act's freedom to expand to immense size, with only relative market size controlling.15 6 With a small market share, a corporation like Exxon Mobil can still be one of the world's largest-larger than many of the world's economiesand one that in 2014 had assets of $347 billion, revenues of $408 billion, profits of $33 billion, and a market value of $422 billion.157 America's most expensive property, the Apple Corporation, 158 has been worth over $700 billion, 159 and it may become the world's first $1 trillion corporation. 160 All publicly traded corporations combined tip the scales at about $19 trillion.1 61 If corporate wealth distorts democracy, as Professor Lindblom knows, 162 then why has the public been so tolerant? Have procorporate policies won over the public with what propagandists-Hayek, 163 Friedman,1 64 and their followers, along with the more recent "Regan Revolutionaries"-have told it? Apparently, and for now the propagandists have won. And although Bork's theory has withstood dissent and remain preeminent, cracks in the facade do appear. Bork's theory contends that markets compel corporations to become increasingly efficient, perhaps efficient and large enough to satisfy a market's total demand. And even if a single corporation can satisfy total demand-and can do so without engaging in predatory or exclusionary conduct-no Sherman Act violation occurs. Demand has been satisfied through a rational and efficient response to the operation of impersonal market forces, or so Bork contends. While his theories rests on false assumptions about competition and markets, and how corporations perform within them, efficiency has won another battle in its ongoing war with equity. 165 Still, should not the size and wealth of corporations always matter in a democracy? Should not a democracy control the influence, power, and political access that tens of trillions of dollars in corporate assets and cash can command? Not surprisingly, "When money can buy political influence," 166 warns a Harvard economist, "concentrated wealth threatens the very fabric of democracy." 167 The nation's democracy requires a proportionate equality of citizen wealth. These are not new ideas. Wollstonecraft, Adam Smith, and John Locke understood the essential nature of equality. 168 The Supreme Court has not. The cause would seemingly be Bork. 169 He would not sacrifice efficiency to have less wealth inequality. Indeed, he would not even have society-or antitrust-move in that direction.17 0 Such obduracy helps explain today's policy ambivalence over huge wealth inequalities. 17 1 To be big, as the Court once decreed,1 7 2 is not bad. To be big does help explain the nation's $28 trillion corporate asset base1 7 3 and the trillions of corporate cash hoarded here and overseas. 1 7 4 American corporations are so big, in fact, that out of the hundred largest economies of the world, fifty-one are corporations and most are American.1 7 5 The economy's $17 trillion GDP in 2013 was only a little smaller than the world's next three largest economies combined.1 7 6 The nation has long accommodated corporate behemoths. The Apple Corporation has had a market value as high as $742 billion, 17 7 along with recent annual revenues of $170 billion, cash on hand of $40 billion, and total assets of $207 billion,178 but none of this matters under antitrust law. What matters is that Apple has been extraordinarily innovative and its extremely popular products have sold like wild. So why punish it? Why would the Federal Trade Commission or the Justice Department's Antitrust Division proceed to break up a successful firm like Apple? Its competitors and the market, under Bork's theory, will provide sufficient discipline and control. That fickle techies have no brand loyalty will discipline Apple. Techies will bolt from Apple products in a flash for the latest glitz of a rival's whiz-bang products. And, of course, techies already have. Apple's stock values have significantly declined as its innovative edge has slipped and its products' higher prices have dissipated its market shares. Its values will fluctuate as the stock market flips and flops. So goliaths like Apple and Exxon Mobil operate, as Bork's theory sees it, under a market's watchful control and discipline. It is, of course, a ridiculous little story of a theory, but it has hoodwinked the Court. Its Sherman Act interpretations promote both absolute size and immense financial power - the most prominent inevitabilities of capitalism - and citizens' vast wealth differences. Afflicted Americans will not be heard in Congress over a chorus of some $28 trillion strong. 8 0 Their muffled voices perpetuate the damage inflicted upon them. 8 1 Is the damage calculable? If every $100,000 in Exxon Mobil wealth were to provide wealth for one American household, 18 2 Exxon Mobil's total market wealth of $422 billion 8 3 would provide wealth for roughly 422,000 households or about 1.7 million people-equivalent to Pittsburgh, Minneapolis, and Baltimore combined. More staggering is that all corporate wealth equates to the wealth of 28 million households or about half the population of the United States. Such magnitude of wealth and power smothers democracy-reminiscent of "the robber baron era of U.S. capitalism over a hundred years ago .... 185 Americans are helpless, facing an onslaught of corporate dollars and the power politics of extreme wealth. From each American (rich and poor alike) must be extracted about $5,600 to cover America's $1.8 trillion in total corporate profits,1 86 almost all of which is then redistributed to the 20% in the form of interest, dividends, and capital gains. As profits increase, an efficient market theory will help increase and protect the 20%'s share even as extractions from unsuspecting Americans increase. What might seem encouraging is the number of Americans who own corporate stock, houses, and other tangible assets. However, this ownership is tiny. Almost 95% is owned by the 20%,187 while the top 1% own 40%.188 What is even more disturbing is that the top 10% of wage earners take in about half of the nation's income,1 89 while each of the top 1% of households earns close to $400,000190 and each of the bottom 25% earns about $22,500.191 These inequalities reflect deep structural defects. Since antitrust has aided in the creation of huge corporations, facilitated their accumulation of tens of trillions of dollars in assets and cash, and helped them distribute profits to billionaires and millionaires, it is safe to say that neither antitrust nor capitalism can remedy wealth's extreme inequality. "[A]ntitrust policy went into eclipse during the Reagan years," is what the spoiler Paul Krugman has written.1 9 2 And like Professor Stiglitz, Krugman criticizes the distortions that corporate wealth causes democracy, but neither he nor Stiglitz1 93 has gotten the remedy right. And they are not alone. Robert Reich acknowledges the damages of wealth's inequalities, and presumes antitrust enforcement will help.1 94 Antitrust laws that helped create the problem cannot help solve it.1951NC- Innovation

#### Aff collapses innovation—that undermines every financial sector

Shapiro 21 (Gary, Information Policy American Enterprise Institute Global Internet Strategy Advisory Board. ("Radical antitrust bills would be disastrous for consumers and innovation – Press Telegram," July 23, 2021, https://californianewstimes.com/radical-antitrust-bills-would-be-disastrous-for-consumers-and-innovation-press-telegram/452107/)

Consumers win when they can determine winners and losers so that Uber and Lyft can challenge the taxi monopoly. AirBnB provides an alternative to hotels, allowing working parents to save time and take advantage of next-day delivery from Amazon. Innovation is built on innovation. I used to have a rotating phone, so I have an iPhone. I once had a Model T, so I have a self-driving car (Note: these were all invented in the United States). The House of Representatives antitrust bill claims to protect the welfare of consumers, but in reality it is anti-consumer and anti-innovative. Initially, it meant that Amazon Prime’s free shipping, the pre-installed Find My iPhone app, and searching for YouTube videos in Google search results would end. Aside from the clear and unavoidable consumer backlash, who knows what other inventions will get in the way in the future? Why are our parliamentarians trying to dismantle the products and services that Americans love? Why don’t these policy makers allow businesses to create more? The bill targets “Big Tech,” but it actually hurt consumers, small businesses, and start-ups. Arbitrary rules contained in the drafted bill, such as merger and acquisition restrictions, will end opportunities for business growth. Today, SMEs looking to grow are usually considering two options. Either it’s bought by a big company and you get a lot of money, or you’re pursuing an IPO (which is much more difficult). What incentives or means do companies need to grow with these bills? Similarly, venture capitalists and investors hesitate to invest in new and promising businesses. Challenges to the entire system of our financial opportunities and the status quo of old businesses are restrained. What happens to the American dream if it gets bigger, hires more people, invests in more startups, and can’t get the money back into the economy? The spillover effect is devastating. If the bill is signed, the bill will also bring the United States a competitive disadvantage to China and other countries. The bill imposes obligations and restrictions on US companies and provides ammunition to the EU and other regulators targeting US companies. What does that mean for the average American? Loss of work for Americans. Little investment in American companies. The price of technology is high. The product you purchase will be less transparent. As soon as China becomes a technology superpower, it will also become a political superpower. As the Atlantic wrote in 2020, “China will not be a pacifist force.” “Export value” with the product. Finally, these bills are a threat to our cybersecurity. By requiring companies to expose the platform to all parties, this proposal eliminates the ability of services to monitor the site against hackers, terrorists, foreign governments, and other malicious individuals. These bills do not take into account the views of people across the country, especially consumers and small business owners, who will be most affected by them. To make matters worse, these bills are being tracked quickly throughout the process without hearing or testimony. We urge Congress to step out of the accelerator and take these complex issues into account. Thoughtful and careful. We work with innovators and consumers to protect America’s world-leading economy and those who are constantly striving to support it. Out of the most challenging years of the century, we don’t need any more disciplinary law. Instead, we need lawmakers to prioritize growth and success.

### 1NC- No Food !

#### Food insecurity doesn’t cause war

Vestby et al 18 [Jonas Vestby, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests. Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

## Sustainability

### 1NC – Turn – Ag

#### Only industrial agriculture can respond to global food demands and address rural inequality – alternatives are unsustainable and cement irreversible climate change.

Nordhaus and Blaustein-Rejto 21 (Ted Nordhaus, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, 4-18-2021, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>) MAM

In some ways, it is not surprising that many of the best fed, most food-secure people in the history of the human species are convinced that the food system is broken. Most have never set foot on a farm or, at least, not on the sort of farm that provides the vast majority of food that people in wealthy nations like the United States consume.

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed.

But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, **the food system could not be anything other than large-scale**, intensive, technological, **and industrialized.**

Not so long ago, farming was the principal occupation of most Americans. More than 70 percent labored in agriculture in 1800. As late as 1900, some 40 percent of the U.S. labor force still worked on farms. Today, that figure is less than 2 percent.

The consolidation of U.S. agriculture has been underway for more than 150 years. First came irrigation and ploughs, then better seeds and fertilizers, and then tractors and pesticides. With each innovation, farmers were able to produce **larger harvests with fewer people** and work larger plots of land. Better opportunities drew people to cities, where they could get jobs that provided higher wages and, thereby, produced greater economic surplus—that is, profits and ultimately societal wealth. The large-scale migration of labor from farms to cities pushed farmers to invest even more in **labor-saving and productivity-enhancing practices and tech**nologies in a virtuous cycle of urbanization, agricultural intensification, and economic growth that is **the hallmark of all affluent societies.**

It is not a stretch to say that the United States is wealthy today because most of its people work in manufacturing, services, technology, and other sectors of the economy. In this, the country is not alone. **No nation has ever succeeded in moving** most of its population **out of poverty without** most of that population **leaving agriculture work.**

That transition often isn’t easy. Millions of Black Americans made the difficult journey from tenant farming in the South to factory work in the North, where they faced new forms of racism even as they escaped the tyranny of sharecropping. More recently, small farmers have struggled to survive as increasingly high agricultural productivity and falling commodity prices tilted the playing field toward large farms. Rural communities have likewise suffered as dramatic improvements in labor productivity have shrunk employment in agriculture.

But **over the long term**, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved **vastly greater** than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize.

Modern life required not only liberating most Americans from agrarian labor but also the development of a food system capable of getting food from farms to the cities where increasing numbers of Americans lived and worked. A food system that lost much of its harvest to pests and spoilage needed to dramatically cut losses even as its bounty needed to travel farther and farther. For this reason, the rise of modern agriculture is as much a story of railways and highways as combines and tractors, refrigeration and grain elevators as pesticides and fertilizer.

The development and growth of feedlots followed a similar path. As the historian Maureen Ogle recounts in her magnificent history of the beef industry, In Meat We Trust, the first feedlots grew out of the stockyards of Chicago and Kansas City in the late 19th century. The most efficient way to get beef to burgeoning markets in America’s cities was to drive cattle to these new rail centers, where they were finished, slaughtered, and then shipped throughout the country by rail. After World War II, beef production and feedlots expanded massively, driven not so much by corporate greed as by rising demand for beef from the United States’ newly prosperous middle class and by a scarcity of labor as ranch hands returning from the battlefields of Europe and the Pacific chose to pursue better economic opportunities in the postwar economy.

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and **will not work in agriculture**. As a result, most food will need to be produced **by large farms, with little labor**, far away from the people who will consume it.

Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than **1 percent of total** U.S. agricultural **land use.** Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and **productivity** make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a **large-scale shift to organic farming would entail converting more** forest and other **land** to farming, **resulting in greater habitat loss and more** greenhouse gas **emissions.** And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s **largest agricultural exporter** as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### Farming is rapidly becoming sustainable---all environmental metrics are improving

Michael Shellenberger 20, Founder and President of Environmental Progress, Former President of the Breakthrough Institute, Apocalypse Never: Why Environmental Alarmism Hurts Us All, ISBN: 0063001705,9780063001701

As farms become more productive, grasslands, forests, and wildlife are returning. Globally, the rate of reforestation is catching up to a slowing rate of deforestation.19

Humankind’s use of wood has peaked and could soon decline significantly.20 And humankind’s use of land for agriculture is likely near its peak and capable of declining soon.21 All of this is wonderful news for everyone who cares about achieving universal prosperity and environmental protection.

The key is producing more food on less land. While the amount of land used for agriculture has increased by 8 percent since 1961, the amount of food produced has grown by an astonishing 300 percent.22

Though pastureland and cropland expanded 5 and 16 percent, between 1961 and 2017, the maximum extent of total agriculture land occurred in the 1990s, and declined significantly since then, led by a 4.5 percent drop in pastureland since 2000.23 Between 2000 and 2017, the production of beef and cow’s milk increased by 19 and 38 percent, respectively, even as total land used globally for pasture shrank.24

The replacement of farm animals with machines massively reduced land required for food production. By moving from horses and mules to tractors and combine harvesters, the United States slashed the amount of land required to produce animal feed by an area the size of California. That land savings constituted an astonishing one-quarter of total U.S. land used for agriculture.25

Today, hundreds of millions of horses, cattle, oxen, and other animals are still being used as draft animals for farming in Asia, Africa, and Latin America. Not having to grow food to feed them could free up significant amounts of land for endangered species, just as it did in Europe and North America.

As technology becomes more available, crop yields will continue to rise, even under higher temperatures. Modernized agricultural techniques and inputs could increase rice, wheat, and corn yields five-fold in sub-Saharan Africa, India, and developing nations.26 Experts say sub-Saharan African farms can increase yields by nearly 100 percent by 2050 simply through access to fertilizer, irrigation, and farm machinery.27

If every nation raised its agricultural productivity to the levels of its most successful farmers, global food yields would rise as much as 70 percent.28 If every nation increased the number of crops per year to its full potential, food crop yields could rise another 50 percent.29

Things are headed in the right direction regarding other environmental measures. Water pollution is declining in relative terms, per unit of production, and in absolute terms in some nations. The use of water per unit of agricultural production has been declining as farmers have become more precise in irrigation methods.

High-yield farming produces far less nitrogen pollution run-off than lowyield farming. While rich nations produce 70 percent higher yields than poor nations, they use just 54 percent more nitrogen.30 Nations get better at using nitrogen fertilizer over time. Since the early 1960s, the Netherlands has doubled its yields while using the same amount of fertilizer.31

High-yield farming is also better for soils. Eighty percent of all degraded soils are in poor and developing nations of Asia, Latin America, and Africa. The rate of soil loss is twice as high in developing nations as in developed ones. Thanks to the use of fertilizer, wealthy European nations and the United States have adopted soil conservation and no-till methods, which prevent erosion. In the United States, soil erosion declined 40 percent in just fifteen years, between 1982 and 1997, while yields rose.32

#### Vertical integration incentivizes innovation and contributes to widespread investment in technology – big agriculture is inevitable.

Nordhaus and Blaustein-Rejto 21 (Ted Nordhaus, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, 4-18-2021, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, “Big Agriculture Is Best”, Foreign Policy, <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>) MAM

Much of the criticism of big agriculture focuses on the monopolistic power of food processors like Archer-Daniels-Midland and Tyson Foods. But the bigger problem is arguably that there is **too little vertical integration** of food processors with food producers and landowners. Today, big food processors are able to take an outsized share of the profits from the food system while pushing the economic risk onto those further down the supply chain. Many large farmers, meanwhile, lease rather than own much of the land they farm, with much of America’s farmland owned by absentee landowners.

The resulting economic arrangements are rife with what economists call principal-agent problems. Many farmers don’t have incentives to invest in the long-term productivity of the land they farm because they don’t own it nor do they have the means to invest in cutting-edge capital equipment and technology.

These problems are exacerbated by the fact that many farms are family-owned but have no prospect for generational succession, as children continue to choose to pursue greener non-pastures off the farm. So for farmers who don’t own the land they farm, don’t have heirs to pass the farm on to, or both, investing time and money in technology and practices to improve land productivity over the long term does not make sense.

The prospect that a few large corporations could ultimately not only process but own much of America’s farmland and grow much of its food will strike many as fundamentally wrong. But it is likely where we are heading one way or another, as farming has always been a tough business to stay in, much less get into, and fewer and fewer Americans have any interest in doing so.

Vertical integration might bring significant benefits. Big agricultural corporations would have significantly greater incentive to invest resources into the long-term improvement of the land they own and farm, implement evidence-based farming practices, and spend on capital-intensive technology.

Large companies are also, counterintuitively, more responsive to demands for social responsibility, not less so. It is large, multinational corporations, not smaller regional operators, for instance, that have been willing to make zero-deforestation commitments in places like Brazil. That’s because, even though they can leverage their size and economic power to thwart reform, they are also easier to target, pressure, and regulate than more decentralized industries.

For these reasons, a food system that is bigger, more consolidated, and more vertically integrated might actually deliver better social and environmental outcomes than the one we have today. Either way, **big farms and big agriculture are here to stay**. They are a fundamental feature of global modernity, not a conspiracy by capitalists and corporations to poison people or the land.

Ultimately, improving the U.S. food system will require, first, appreciating it for the social, economic, and technological marvel that it is. It feeds 330 million Americans and many millions more around the world. It has liberated almost all of us from lives of hard agricultural labor and deep agrarian poverty. It has allowed forests to return across much of the United States while also sparing forests in many other parts of the world. It does all this while being extraordinarily efficient environmentally. A better food system will build on these blessings, not abandon them.

### 1NC- Turn - Disease

#### Turn- organic farming causes zoonotic disease outbreaks

Alex Smith 20, Food and Agriculture Analyst at the Breakthrough Institute, MA/MSc in International and World History from Columbia University and the London School of Economics and Political Science, “To Combat Pandemics, Intensify Agriculture”, The Breakthrough Institute, 4/13/2020, https://thebreakthrough.org/issues/food/zoonosis

There is broad agreement in the epidemiological and virological studies of zoonoses that the most important factor in the development of new zoonotic diseases is land-use change. The development of wild lands, whether caused by agricultural extensification, mining, or other factors, simultaneously shrinks the habitat of wildlife and brings that wildlife in close proximity to human settlements. The combination of shrinking habitats, human-wildlife interactions, and food insecurity is a recipe for zoonosis. In West Africa, these three factors combined were responsible for HIV/AIDS and the slew of recent Ebola outbreaks.

Even when food insecurity and the consumption of wildlife are taken out of the equation, land-use change is a powerful driver of zoonotic disease, and has resulted in outbreaks of zoonotic diseases like malaria, yellow fever, dengue fever, Nipah virus, West Nile virus, Zika virus, and Lyme disease. Often, these diseases are transmitted from animals to humans through an intermediary, sometimes an insect (mosquitoes or ticks) and sometimes through livestock that live too close to wildlife populations, as was the case with Nipah.

Because the biggest driver of land-use change is agriculture, “intensive” high-yield agriculture often takes the blame, but the alternative — extensive, low-yield farming — would be worse. To prevent further pandemics, we must do as much as we can to stop land-use change while improving food security. We must, in other words, improve agricultural yields, allowing us to grow more food on less land. So, contrary to what many have asserted, a vital lever for limiting land-use change and providing cheap food for all is not to abandon intensive agriculture, but to intensify it further, especially in the developing world where food insecurity is greatest and where growing populations means rising food demand.

It is thanks to rising yields that farmers, globally, produce about three times the amount of crops while only using 13% more land than in 1950. For example, if yields from cereal production hadn’t increased since 1961, the global agricultural footprint would be 24% larger than it is today — increasing from roughly 50% at current levels to 62% of total habitable land — and would likely have resulted in even deadlier zoonotic outbreaks.

### 1NC- Turn- Climate

#### Small farms contribute to increased emissions and deforestation while failing to meet global food demands

Nordhaus and Blaustein-Rejto 21 (Ted Nordhaus, Founder and Executive Director of the Breakthrough Institute and Co-Author of An Ecomodernist Manifesto, and Dan Blaustein-Rejto, Director of Food and Agriculture at the Breakthrough Institute, Conducted Research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, 6-2-2021, Small Farms, Big Pollution, Foreign Policy, <https://foreignpolicy.com/2021/06/02/big-agriculture-pollution-small-farms-inefficient/>) MAM

A reader could be excused for concluding from Matthew R. Sanderson and Stan Cox’s criticism of our recent essay, “Big Agriculture Is Best,” that virtually all environmental impacts associated with the production of food in the United States and globally can be laid at the feet of “industrial agriculture.” But it is a definitional sleight of hand, not “empirical evidence,” as they claim, that does most of the work here. Sanderson and Cox define “industrial agriculture” so capaciously as to be basically synonymous with “agriculture.”

In the United States, that is arguably true. Most agricultural output—and hence environmental impacts—comes from large-scale, industrial production. Globally, it is not true. In both cases, there is no free lunch. Agriculture, unavoidably, has environmental impacts for the simple reason that growing food requires the conversion of forests, grasslands, and other ecosystems into fields whose biocapacity is then monopolized to produce food for people.

**As human populations have grown enormously over the last two centuries,** from about a billion people globally in 1800 to nearly 8 billion today, and as those populations have become wealthier and able to eat higher on the food chain, the impacts associated with food production have grown as well. But that **has little to do with** the prevalence of **industrial versus nonindustrial ag**riculture. Instead, it reflects the basic realities associated with **scaling agriculture globally to meet** those **enormous** new **demands.**

Consider the negative impacts that nitrogen pollution from the American corn belt has had on the Gulf of Mexico. Most of that runoff comes from industrial farms for the simple reason that large-scale, intensive production is the dominant form of agriculture across the region. Shifting production to organic practices, though, wouldn’t much change the situation. Organic farms are typically associated with higher rates of runoff per calorie of food produced, even as they require more land. So unless total production were very substantially scaled back, a corn belt dominated by organic farms rather than conventional ones would require more land while having similar or even greater impacts on waterways and biodiversity.

Sanderson and Cox blame industrial agricultural in the corn belt not only for the dead zone in the Gulf of Mexico but for rendering “entire landscapes uninhabitable” across the region. Millions of Americans still comfortably living in such places would beg to differ. Yes, as Sanderson and Cox note, there are more hogs in the state of Iowa than people. So what? Insofar as the claim is relevant at all, it regards the question of why Iowa has so few people, not why it has so many hogs. And while the expansion of hog farming in the state in recent decades is attributable to industrial production methods, the decline of the human population is not, as large-scale rural outmigration has been underway in Iowa for over a century. As we note in our essay, rural depopulation has been much more the cause of the consolidation and industrialization of American agriculture than it is the result of those farming practices.

Sanderson and Cox similarly attribute the loss of topsoil across the region to industrial farming. But while it is true that a recent study found that lots of topsoil across the Midwest has been lost, that study compared present-day levels against a baseline that estimated the levels of topsoil in the region prior to its conversion to agriculture. The study did not estimate the contribution of current industrial systems versus earlier, less intensive farming practices across the region. Anyone even slightly familiar with the history of the Dust Bowl, though, can figure out that much of the region’s topsoil was lost long before highly intensive, mechanized agriculture became the norm.

Questionable claims keep coming. Sanderson and Cox attribute the 14.5 percent of global greenhouse gas emissions that result from animal agriculture to the scaling up of industrial agriculture. But a significant majority of greenhouse gas emissions associated with animal agriculture result from beef and dairy production. Around the world, only 15 percent of beef production is produced intensively. Moreover, most studies find that industrial animal production is less greenhouse gas intensive than alternative production systems.

Sanderson and Cox claim that industrial agriculture is responsible for choking air pollution in India. But insofar as agriculture is a major contributor to terrible air quality in Indian cities, it is due to small farmers who burn their fields after harvest, in part because they lack the assets and economies of scale to afford machinery that would eliminate the need to burn crop residues. They similarly claim that industrial farming is responsible for an increase in tropical deforestation in Brazil. In fact, deforestation rates in Brazil have fallen dramatically since the turn of the century thanks to both stronger forestry laws and more intensive and technological farming. The **uptick in deforestation** in the region in more recent years, on the other hand, **appears to be driven more by smallholder farmers** and ranchers **who lack land tenure and access** to fertilizer, seeds, and machinery.

### 1NC- No Enviro !

#### No environmental extinction, and intervening actors solve.

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While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species number declines locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al 2017; Vellend et al., 2013). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

What about the remaining eight planetary boundaries? Stratospheric ozone depletion is one—but thanks to the Montreal Protocol ozone depletion is being reversed (Hand, 2016). Disruptions of the nitrogen cycle and of the phosphorous cycle have also been proposed as representing potential planetary boundaries (one boundary for nitrogen and one boundary for phosphorous). There are compelling data linking excesses in these nutrients to environmental damage. For example, over-application of fertilizer in Midwestern USA has led to dead zones in the Gulf of Mexico. Similarly, excessive nitrogen has polluted groundwater in California to such an extent that it is unsuitable for drinking and some rural communities are forced to drink bottled water. However, these impacts are local. At the same time that there is too much N loading in the US, there is a need for more N in Africa as a way of increasing agricultural yields (Mueller et al., 2012). While the disruption of nitrogen and phosphorous cycles clearly perturb local ecosystems, end-of-the-world scenarios seem a bit far-fetched.

Another hypothesized planetary boundary entails the conversion of natural habitats to agricultural land. The mechanism by which too much agricultural land could cause a crisis is unclear—unless it is because land conversion causes so much biodiversity loss that is species extinctions that are the proximate cause of an eco-catastrophe. Excessive chemical pollution and excessive atmospheric aerosol loading have each been suggested as planetary boundaries as well. In the case of these pollution boundaries, there are well-documented mechanisms by which surpassing some concentration of a pollutant inflicts severe human health hazards. There is abundant evidence linking chemical and aerosol pollution to higher mortality and lower reproductive success in humans, which in turn could cause a major die-off. It is perhaps appropriate then that when Hollywood envisions an unlivable world, it often invokes a story of humans poisoning themselves. That said, it is doubtful that we will poison ourselves towards extinction. Data show that as nations develop and increase their wealth, they tend to clean up their air and water and reduce environmental pollution (Flörke et al., 2013; Hao & Wang, 2005). In addition, as economies become more circular (see Mathews & Tan, 2016), environmental damage due to waste products is likely to decline. The key point is that the pollutants associated with the planetary boundaries are so widely recognized, and the consequences of local toxic events are so immediate, that it is reasonable to expect national governments to act before we suffer a planetary ecocatastrophe.

## If Time

### 1NC – K

#### Capitalism controls all the impacts

Foster 19 [John, Prof of Sociology at the Univ of Oregon, “Capitalism Has Failed – What Next?” *Monthly Review*, 02/01/19, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, accessed 08/22/21, JCR]

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war. To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3 Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7 The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13 Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15 In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18 At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21 More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet. Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23 The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers. Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27 War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29 Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30 More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35 The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38 If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40 Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity. Capitalism is best understood as a competitive class-based mode of production and exchange geared to the accumulation of capital through the exploitation of workers’ labor power and the private appropriation of surplus value (value generated beyond the costs of the workers’ own reproduction). The mode of economic accounting intrinsic to capitalism designates as a value-generating good or service anything that passes through the market and therefore produces income. It follows that the greater part of the social and environmental costs of production outside the market are excluded in this form of valuation and are treated as mere negative “externalities,” unrelated to the capitalist economy itself—whether in terms of the shortening and degradation of human life or the destruction of the natural environment. As environmental economist K. William Kapp stated, “capitalism must be regarded as an economy of unpaid costs.”42 We have now reached a point in the twenty-first century in which the externalities of this irrational system, such as the costs of war, the depletion of natural resources, the waste of human lives, and the disruption of the planetary environment, now far exceed any future economic benefits that capitalism offers to society as a whole. The accumulation of capital and the amassing of wealth are increasingly occurring at the expense of an irrevocable rift in the social and environmental conditions governing human life on earth.43

#### Antitrust is the foundation of neoliberal institution formation – it re-organizes global political space around the fiction of “the market.”

Türem 16 [Z. Umut, Assoc Prof at the Ataturk Institute for Modern Turkish History at Bogazici Univ, “‘The market’ unbound: neoliberalism, competition laws and post territoriality,” *Journal of International Relations and Development* 19.2, proquest, JCR]

The post-1980 worldwide market reforms have created a massive wave of legal production. Competition and antitrust legislation -- as well as agencies to oversee such laws -- have been among the most important vestiges of this wave of neoliberal institutional formation. Today, over 100 countries have competition laws to regulate markets, the vast majority of which have been passed since 1980 -- many, notably, after the dissolution of the Soviet Union (Gerber 2010: 79).2 Not only have laws been passed in innumerable national contexts, but new economic techniques such as 'market analysis' (Indig and Gal 2013) and 'forensic economics' (Lianos 2012), as well as administrative innovations such as competition advocacy (Zywicki and Cooper 2007), have begun to circulate globally. What, if anything, does this institutional and technical proliferation tell us about the significance of territoriality and its ongoing transformation in today's world? This article seeks to answer this question by pursuing two avenues of exploration. First, I read the spread of competition law and economics in light of the historico-theoretical framework of neoliberalism advanced by Michel Foucault in his 1978/79 College de France lectures. This reading constitutes a broad background explaining how neoliberalism brings about a transformation of territoriality as we know it, and how the concepts and practices of competition and the market are at the heart of the art of government that is neoliberalism. Two points make Foucault's work especially relevant to the present inquiry: first, his discussion of neoliberalism essentially as a transformation of state spatiality and the broader system of territoriality, and second, his discussion of competition as the most important building block of neoliberalism. These twin emphases, which are developed below, constitute the intellectual foundation for the discussion of the question of territoriality in this article. Neoliberalism brings about a momentous transformation of nation-state territoriality and it re-organises political space around the notion and practices of 'the market'. Just like exchange and circulation were the building blocks of liberalism, competition is the building block of neoliberalism. The second avenue consists of analysing the conceptualisation and operationalisation of 'the market' in competition law and economics. I take competition laws and the technical instruments that accompany them as both reflecting and constituting global neoliberalism, and I focus on one of those instruments in particular, 'the market definition', as a route to understanding the contemporary state of territoriality. Building on Foucault's theorisation of neoliberalism, I trace how 'the market' begins to constitute a significant conceptual tool to think about globalising relationships, and organise legal interventions in an environment in which territoriality is an insufficient basis for legal and sovereign action. Competition laws are a set of legal and economic rules devised to keep market competition at desired levels and inhibit anti-competitive conduct.3 According to Gerber (2010: 4), 'competition laws are intended to protect the process of competition from restraints that can impair its functioning and reduce its benefits'. While increasing economic efficiency is considered by many to be the ultimate objective (Gürkaynak 2003), particularly post-1980 (Davies 2010: 65), many secondary benefits, such as decreasing consumer prices and fostering innovation, are believed to come about as a result of the implementation of competition laws and policies. In practice, inquiries into potential or actual competition violations and actual mergers and acquisitions among corporations -- two of the most fundamental activities that competition law is designed to oversee -- require, first and foremost, the delineation of the boundaries of the relevant markets to which a specific inquiry applies. Such demarcations concern both the geographic boundaries of the market and the conceptual nature of the product in question. As Kauper puts it, 'market definition is [...] an essential element in a broad range of [competition law] cases, and thus in most cases, relevant markets must be defined in product and geographic terms' (1996: 1683). For the purposes of competition law, a market may be defined as local, sub-national, national, regional or even global in scope. Determinations are made using the tools and techniques of [industrial] economics, often utilising complex algorithms advanced within this discipline. A wealth of information concerning supply and demand dynamics and the conditions of the transportability of the product is fed into the definition of the market. In the contemporary orthodoxy of neoliberal competition law, the goal in such a determination is to actualise maximum economic efficiency by carefully 'setting' the borders of the market (Fox et al. 2004: 189, 196-98). The operation to establish the boundaries of the 'relevant market' presumes a logic that would intervene -- with the force of legality -- into economic relations and geographies. Such a logic in its ideal form does not prioritise territoriality at all. Rather, every time a competition law decision must be made, a rich ensemble of factors is taken into account to determine what the scale of the intervention should be. The market, as elastic, fluid and undetermined as it is, constitutes the basic unit of legal intervention, and efficiency is the measure of its success. Building upon Foucault's historico-theoretical framework of neoliberalism, I argue that the mobilisation of market definition practices within competition law has generated a de-territorialised network concept of sovereignty that is fundamentally at odds with nation-state territoriality and traditional notions of sovereignty. The way the market is designated in competition law as an arena of legal regulation subject to a sovereign gaze, as well as the fact that markets are defined non-territorially, through a fluid, network logic, points to this transformed state of sovereignty and territoriality. Following from the practice of defining market boundaries within competition law, I argue that 'the market' is emerging as a conceptual grid for organising the fluid network of relations that characterise neoliberal globalisation, rendering them governable via legal intervention. More importantly still, the fact that the market and its de-territorialised depiction is becoming an institutionalised practice via the spread of competition laws and agencies suggests that this practice is now becoming a technology that constitutes and enhances further the institutional mechanisms that enabled such practice in the first place.

#### The kritik is a prefigurative politics of resistance that imagines alternate modes of social organization. This is key to foster sustained mobilization

Wigger 18 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “From dissent to resistance: Locating patterns of horizontalist self-management crisis responses in Spain,” *Comparative European Politics* 16.1, p.35, JCR]

The concepts ‘prefiguration’ and ‘propaganda by the deed’, mostly developed and deployed in anarchist literatures to capture a broad range of subversive tactics and activities (Day, 2005), are well suited to understand transformative agency beyond expressions of dissent and protest that is not merely reactive or defensive but that involves an actual material reorganization of social relations in everyday life. Prefiguration implies that the way in which on-going transformative praxis is organized already entails a presentiment of the envisaged future society, while propaganda by the deed refers to exemplary political actions and interventions in the prevailing system that provide a positive example and stimulate solidarity activities and imitation. As a philosophy of praxis, prefiguration entails moreover that the means, strategies and tactics ought to be commensurable with the envisaged future. Social imaginaries or utopian visions are hence a prerequisite for prefiguration. At the same time, such imaginaries should never be understood as definite blueprints for how the future should look. Prefigurative politics often contains only an incomplete glance of the anticipated future because present tense experiments are always unfinished and imperfect, and thus in process (see also Maeckelbergh, 2013). Prefiguration is thus both a lived radical praxis and a goal for the future. The alternative organization of the social relations of (re-)production can therefore be understood as a prefigurative politics of resistance that operates at the same time as propaganda by the deed. Locations of prefiguration can become ‘infrastructures of dissent’ that enable collective capacities for memory (reflection on past struggles), analysis (theoretical discussion and debate), communication, knowledge transfer and shared learning and can thereby foster sustained mobilization by creating networks of mutual support and spread alternative practices (Sears, 2014: 6; see also Dauvergne and LeBaron, 2014).

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#### Collapse causes terrorism, civil wars, and diversion that go global—outweighs the aff

Liu 18 (Quian, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11/13/2018, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict. The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates. But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies. Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment. The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008. In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929. As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy. If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war. For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun. To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict. According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels. This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis. Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen. Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

### LINK DEBATE-

#### antitrust applies to all industries, so there’s no way to limit the plan’s scope AND firms and lawyers are risk-averse and think this is true---the result is fear of liability that scales back investment

Nachbar 19 (Thomas, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis)

Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay. [FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

### AT- No Spillover

#### Abrupt expansion of antitrust common-law generates major uncertainty that disrupts business planning

Abbott 21 (Alden, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en)

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms. 13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

### AT- Consolidation collapse rural econ

#### The plan will not solve deaths of despair, and their practices will take 40 years to increase yields

Nordhaus & Blaustein-Rejto, Breakthrough Institute researchers, ’21

[Ted Nordhaus, Executive Director, Breakthrough Institute and Dan Blaustein-Rejto, Director, Food and Agriculture, Breakthrough Institute, “Small Farms, Big Pollution,” FOREIGN POLICY, 6—2—21, https://foreignpolicy.com/2021/06/02/big-agriculture-pollution-small-farms-inefficient/, accessed 6-8-21]

In the United States, moreover, the decline of rural economies and the consolidation and intensification of agriculture are the result of the long-term shift of the U.S. economy away from resource extraction and agriculture and toward the manufacturing, knowledge, and service sectors. “Deaths of despair” across rural America are tragic, but insofar as there is a solution, it almost certainly does not involve putting millions of Americans back to work in the fields.

In the end, Sanderson and Cox argue that we, like Pangloss in Voltaire’s Candide, believe we “live in the best of all worlds.” It is a well-trod trope of those who would offer millenarian solutions to the world’s problems. And it is almost always deployed not against those who oppose efforts to ameliorate the world’s ills but rather against those who would take the world as it is and improve it. The irony is that Voltaire was a progressive and a reformer, not a revolutionary—an agricultural modernizer, early industrialist, defender of workers’ rights, and opponent of feudal land relations and the clerical establishment.

By contrast, Sanderson and Cox, like the clerics whom Voltaire railed against, offer a magical vision of a better future not in this world but the next, calling for a “50-year farm bill” that would remake U.S. agriculture around perennial, as opposed to annual, crops. This has been the work of the Land Institute, Cox’s employer, for over 40 years. By the institute’s own acknowledgement, achieving yields remotely comparable to annual crops will require at least another 40 years of plant breeding.

Perhaps that will come to pass. In the meantime, making agriculture better, in this world, will require continuing to do what we have been up to for a very long time as humans—innovating to raise the labor and resource efficiency of the food system we have in order to produce more food with less land, less labor, and less environmental impact.

### AT- No War

#### Defense doesn’t assume the post-COVID landscape---the globe’s a tinderbox, primed for conflict

Labott 21 (Denise, Adjunct Professor at American University’s School of International Service, Columnist at Foreign Policy, MA in Media Studies, New School for Social Research, BA in International Relations from the University of Wisconsin-Madison, “Get Ready for a Spike in Global Unrest”, Foreign Policy, 7/22/2021, https://foreignpolicy.com/2021/07/22/covid-global-unrest-political-upheaval/)

To call 2021 the summer of discontent would be a severe understatement. From Cuba to South Africa to Colombia to Haiti, often violent protests are sweeping every corner of the globe as angry citizens are taking to the streets. Each country has different histories and realities on the ground, particularly in Haiti, where years of violence and government corruption culminated two weeks ago in the assassination of President Jovenel Moïse. But they all faced a perfect storm of preexisting social, economic, and political hardships, which fallout from the COVID-19 pandemic only inflamed further. And they are merely a foreshadowing of the post-coronavirus global tinderbox that’s looming as existing tensions in countries across the world morph into broader civil unrest and uprisings against economic hardships and inequality deepened by the pandemic. The coronavirus pandemic was a once-in-a-century crisis that not only shocked countries’ existing health systems but also demanded a response that impacted—and was itself shaped by—economic, political, and security considerations. The efforts to contain it may have curbed fatalities in the short term but have inadvertently deepened vulnerabilities that laid the groundwork for longer-term violence, conflict, and political upheaval and should serve as a danger sign to world leaders as countries reopen—including in the United States. History is full of examples of pandemics being incubators of social unrest, from the Black Death to the Spanish flu to the great cholera outbreak in Paris, immortalized in Victor Hugo’s Les Miserables. Underlying it all this time around is a pervasive inequality. COVID-19 has ripped open economic divides and made life harder for already vulnerable groups, including women and girls and minority communities. It has also exposed weaknesses in food security and dramatically increased the number of people affected by chronic hunger. The United Nations estimates around one-tenth of the global population—between 720 million people and 811 million—were undernourished last year. The impacts of climate change and environmental degradation have only compounded the despair. Take the Sahel, where, due to a toxic cocktail of conflict, COVID-19 lockdowns, and climate change, the scale and severity of food insecurity continues to rise. Countries such as Ethiopia and Sudan are among the world’s worst humanitarian crises, with catastrophic levels of hunger. Droughts and locusts are coming at a critical time for farmers ready to plant crops and are stopping herders in their tracks from driving their livestock to greener pastures. The global vaccine shortage is fueling the instability. A majority of Africa is lagging far behind the world in vaccinations, meaning COVID-19 will continue to constrain national economies and, in turn, become a source of potential political instability. The same is true for much of Latin America and Asia, where countries don’t have enough vaccines to protect their populations and simmering sources of protest—such as rising living costs and deepening inequalities—are more likely to boil over. The global risk firm Verisk Maplecroft has warned that as many as 37 countries could face large protest movements for up to three years. A new study by Mercy Corps examining the intersection of COVID-19 and conflict found concerning trends that warn of potential for new conflict, deepening existing conflict, and worsening insecurity and instability shaped by the pandemic response. The group found a collapse of public confidence in governments and institutions was a key driver of instability. People in fragile states, already suffering from diminished trust in their government, have felt further abandoned as they face disruptions in public services, rising food prices, and massive economic hardships, such as unemployment and reduced wages. Supply chains disrupted during the pandemic have seen food prices skyrocket, while in the global recession humanitarian aid budgets are being slashed, bringing many countries to the brink of famine. For the first time in 22 years, extreme poverty—people living on less than $1.90 a day—was on the rise last year. Oxfam International estimates that “it could take more than a decade for the world’s poorest to recover from the economic impacts of the pandemic.” The shocks caused by the pandemic have also eroded social cohesion, further fraying relations between communities and deepening polarization. That is especially true in the United States, where social and political pressures both deepened the health crisis and were themselves worsened by it. All of this should serve as a clarion call to countries that they can’t prepare for, or respond to, future health crises in a vacuum—but must anticipate an economic, political, and social crisis. This is true for any severe shock, which brings the potential for a breakdown in public order.

## Case

### 2NC- Circumvention

#### Antitrust law incapable of preventing consolidation

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.145-8, JCR]

Analogous to the poker player who commands a disproportionate financial advantage over his opponents and has the capacity to bankrupt his rivals, a monopoly, according to Karl Marx, interferes with the normal expression of value.2 Marx theorized that capitalism amidst its competitive3 splendor and glory4 has a natural tendency to become a global monopoly.5 For Marx, “the overwhelming drive for capital accumulation” is a basic tenet of capitalism.6 Additionally, “competition [contains] the seed of future centralization,”7 or rather, competition contains the seed for future capital accumulation that is achieved through “mergers and acquisitions.”8 This capital accumulation then results in the demise “of many small firms,” the cannibalism of other competitors, and the ultimate “evolution of monopoly power.”9 During Marx’s time,10 however, antitrust laws did not exist,11and his theory was not premised upon the existence of government regulation that attempted to hamper the formation of monopolies.12 Considering this, it is tempting to hastily conclude that Marx’s theory is, therefore, no longer applicable to countries that have antitrust laws. Marx’s basic premise is that competition results in the “growing accumulation of capital.”13 The inevitable formation of monopolies cannot be discounted, however, and is still applicable even with the existence of antitrust laws. The existence of antitrust laws merely creates a slight twist in Marx’s formulation. To put it more precisely, although antitrust laws can curb the formation of monopolies, they are insufficient in preventing the accumulation of power in the hands of a few, or rather, the formation of oligopolies.14 Antitrust laws fail to prevent competition from cannibalizing itself, because antitrust laws preserve, rather than completely extinguish the competitive process.15 The increase in mergers and acquisitions16 activities around the world in various sectors illustrates this phenomenon.17 A firm’s drive to attain a competitive edge in a capitalist society, which initially fueled the increase in competition, has led it to combine forces with competitors.18 Antitrust laws have been inadequate in preventing such consolidation of large firms leading to the concentration of capital in the hands of a few and, eventually, extinguishing competition.

#### Antitrust is an ideological trap – enforcement is impossible and circumvention is inevitable

Curran 16 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Commitment and Betrayal: Contradictions in American Democracy, Capitalism, and Antitrust Laws,” *The Antitrust Bulletin* 61.2, p.242-7, JCR]

Over the last thirty-five years, Congress and both Democratic and Republican administrations have installed policies that favor individual wealth creation and preservation.59 And the policies have worked-obviously. 60 Less obvious, perhaps, is what we have just learned here-that the design of the interpretation and enforcement of Sherman and Clayton Acts promotes wealth's maldistribution. 61

\*\*\*Insert Footnote 61\*\*\*

See STIGLITZ, supra note 6, at 47 ("Of course, even when laws that prohibit monopolistic practices are on the books, these have to be enforced. Particularly given the narrative created by the Chicago school of economics, there is a tendency not to interfere with the 'free' workings of the market, even when the outcome is anti-competitive. And there are good political reasons for not taking too strong a position: after all, it's anti-business-and not good for campaign contributions-to be too tough on, say, Microsoft.").

\*\*\*Return to Main Text\*\*\*

Of course, then, the antitrust laws are antidemocratic. 62 The Sherman Act was thought to be a check against monopolizations, against corporations growing into monopolies through monopolistic practices, while the Clayton Act was believed to check corporate acquisitions and mergers that tended to lessen competition or create a monopoly.6 3 Now it is wealth that matters most. It is antitrust's goal. 64 And it remains its goal even as wealth's gross maldistribution ranks America with some of the world's most unequal societies65 -a very grim but rarely spoken about truth.66 But was antitrust ever important to America's democracy? 67 Antitrust enforcement has long been a charade-isolated and irrelevant. 68 Monopolization and merger cases are filed infrequently. 69 Neither the Sherman nor Clayton Acts has controlled corporate size. 70 Clayton Act enforcement sanctions global mergers,71 while Sherman Act enforcement accommodates large corporations. Antitrust enforcement proceeds in the limited instances that market competition has been injured.73 Markets are geographic areas within which corporations engage in head-to-head competition,74 such as the street comers where a hypothetically merging BP and Exxon Mobil would compete against each other in selling petroleum, or where an alleged monopolist may have acquired a substantial market share. If a corporation lacked market power-to raise prices or reduce production-it was incapable of monopolizing or acquiring or merging with another corporation illegally. Of course, the focus on prices and quantities would always be in markets, where anticompetitive and possibly illegal conduct might occur-like the street comers where BP's and Exxon Mobil's service stations compete head-to-head. That these two petroleum titans operate globally, not just on comers serving motorists, would be minimized. Enforcement agency approval of past significant mergers between large petroleum producers-such as Exxon's merger with Mobil75 illustrates the absurdity of localizing antitrust enforcement while putting pieces of Standard Oil's 1911 busted trust together again.76 Corporations and the 20-percenters must surely give their daily gratitude to Professor (and Supreme Court nominee) Robert Bork.77 Democracy has been effectively traded for wealth-as Bork's consumer welfare designed it.7 8 Why doesn't America's wealth extremes-approaching that of dictatorships and democratically failed nations7 9 -arouse more democratic passion? The 2016 Democratic presidential campaign has taken aim at several antidemocratic targets. s Large corporations are one. They have grown mightily.81 Their size, power, and trillions in wealth have made some Americans very rich. The top 20% now owns 90% of the nation's financial wealth. 2 They enjoy an exclusive corporate wealth distribution. And although Bork's design remains antitrust's principal concept, it is pure fantasy-competitive markets, as economists would define them, do not really exist.8 3 Wealth's inequality has become a reality,8 4 persistent and dangerous, 5 while antitrust enforcement has become that charade of isolated and irrelevant democratic importance. Yes, large corporations and the 20% are fortunate to have had Bork-as are the law professors who keep his vigil.8 6 Bork, according to one law professor, has had the single most lasting influence on antitrust law and policy of anyone in the past 50 years. To read the 1978 Antitrust Paradox today, one is struck by how closely contemporary case law tracks Bork's policy prescriptions.... Bork created a unified goal for antitrust based on a "consumer welfare prescription" to shape the development of the case law.... [M]any of Bork's ideas are mainstream now.... 87 One professor visualized Bork nearly killing antitrust as the populism of the Warren Court threatened to turn into Woodstock antitrust in the 1970s, with Congress contemplating legislation to deconcentrate oligopolies and put caps on corporate growth, and with the federal enforcement agencies getting expansive "fairness" authority, pursuing shared monopoly theories, and bringing monopolization litigation against major high technology firms, [while] Bork was honing the case against antitrust.... 88 Bork emerged victorious. The hugely unequal wealth of oligopolies, monopolies, and those fortunate 20-percenters who own and invest in them, won with him. A democratically shared wealth lost. Bork would have been unmoved. He disdained ethical questions. 89 Who or what was to prosper was not for him to answer or antitrust laws to resolve. Antitrust, in his view, has nothing to say about the way prosperity is distributed. 90 That it is for other laws, was his indulgent ethical stance. 91 And if Bork had nothing for antitrust to say, the already wealthy have ended up with most of the nation's riches. Coincidence? No. Bork wanted the nation to preserve opportunities for even more wealth. 92 He wanted wealth protected from any attempts at egalitarianism, 93 finding "no prospect either in antitrust or in society generally that ... [egalitarianism] will be achieved." 94 So the nation should avoid the investment, is what he would likely have held. If his mind was fixed, his investment choices were false. A democratic nation need not choose between all-out wealth with its huge disparities and full-scale egalitarianism with its significant losses in efficiency. Bork was never nuanced. One always knew where he stood and what he wanted. So his failure to search the accommodating middle between polar extremes was conspicuous. He never liked democracy, its plausible outcomes, or its search to accommodate societal needs. He would not likely give an inch. Wealth remained Bork's first and principal interest. 95 Consequently, he avoided nuance to protect wealth. But against what threat must be asked. It was against any compromise by society that might inch toward equality. He should not have worried. Compromise would not result in miles frighteningly lost in efficiency. 96 A few inches will only begin the backtrack of miles necessary to help compensate for the inequities of maldistributed wealth and the wealth that Bork designed antitrust to create and that he defaulted to capitalism for distribution, top to bottom. Piketty's work97 emphasizes wealth's inequities and more fundamental ones-the losses to equality and democracy. Bork deplored any societal egalitarianism in outcomes. 98 Moving in inches hardly constitutes a threat. Bork exaggerated the worries-they were all a red herring. Will wealth and Bork's passion for it ever be matched by a fervor for a more equitably apportioned society? For now, no. Courts understand neither how wealth's disproportionate generation is destructive of democracy, 99 nor how Bork's consumer welfare concept promotes wealth with absolute disregard of democracy.1 00 It is not "objective economic analysis,"1 01 obviously. It promotes corporate bigness, industrial concentration, and economic power. 102 And as firms inevitably increase in size, their owners and investors become wealthier while their wealth increases gross inequalities. Bork's consumer welfare has terribly mis-served millions-the vast majority of America's citizens-adding to the burdens they carry. 103 Laws that promote wealth's inequality-whether by design or designed default-are, consequently, incompatible with democracy. Simply stated, wealth has not been built objectively; it gravitates to the wealthiest. This we know from Piketty-that wealth even if built without distributional design or purpose will flow to the top. If wealth were physical matter, it would be flowing in reverse gravitational order. How? That is how it has been designed. That is how capitalism has been designed-to get wealth to the wealthy-producing significant antidemocratic results through a top-heavy distribution. Courts continue to exploit wealth maximization.10 4 Then again, are not courts doing exactly what Bork criticized Learned Hand and other "anti-democratic elitists" O for doing? Are not courts using a "legislative warrant" as Hand advocated, 10 6 whenever they deploy the consumer welfare prescription? Did not Congress authorize that warrant for judges "to appraise and balance the value of opposed interests and to enforce their preference." 1 07 If Hand used First Amendment values in Associated Press, why would judges not be inclined to use other constitutional values, like democracy? And what if judges actually used them? Bork anticipated that apostasy, finding First Amendment values-if not democracy itself-to be in philosophic opposition with antitrust laws. 108 So he rejected Hand's "dissemination of news from as many sources, and with as many different facets and colors as is possible ..... 109 Such a plurality of sources, facets, and colors strikes a resounding democratic chord that Bork would likely have called "preposterous," as he would brashly label any rules to have evolved from social and political values. 110 Scholars now link antitrust with distributional values. 11 Professor Anthony B. Atkinson wants antitrust to value the individual,1 12 recognizing as Hand did in Alcoa1 13 that "among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them." 1 14 And it is the individual-rich and poor, but especially the poor-whom Atkinson wants to protect from the inequities of the marketplace.115 Atkinson sees as Senator John Sherman did in 1890 that the "problems that may disturb [the] social order ... none is more threatening than the inequality of condition of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade to break down competition." 11 6 Sherman's and Hand's worries were certainly not Bork's. Hand said it best in Alcoa, "[W]e have been speaking only of the economic reasons which forbid monopoly ... [but] there are others, based upon the belief that great industrial consolidations are inherently undesirable, regardless of their economic results.",1 1 7 Bork-regardless of destructive results to democracy-would never find efficient economic results inherently undesirable. Bork would likely find democracy a "cornucopia of social values, all rather vague and undefined but infinitely attractive."iiS A definition that was surely meant to disparage, fails. What makes democracy attractive is its socially related values. 11 9 What makes it infinitely attractive are its regenerative capacities and potential for self-definition. 120 Bork blocked democracy's values so as not to tempt liberal judges. He worried needlessly. An antitrust solution to wealth's severe inequality is simply not plausible. 121 Antitrust has always been the heart of capitalism's ideology. 122 In truth, antitrust's distribution of wealth for the wealthy is more than ideology-it is heartless reality. So was Bork right? Are the fates of capitalism and antitrust intertwined? 123 And if antitrust were repealed?

#### No court enforcement of the plan – the Court is in the pocket of corporate capitalism

Curran 11 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Democracy or Dagher? What liberals would want,” *Antitrust Bulletin* 56.4, p.884-919, JCR]

Liberals have much to learn about the Court's history of subverting a democratic economy by privileging principles of corporate capitalism. 26 That history, contrary to what liberals might wish, would show that Sherman Act principles have never played a significant democratic role beyond wrapping corporate capitalism in a transparent packaging of political respectability.27 Recent antitrust decisions' like Dagher, upon dispensing with the historical trappings and rhetorical necessity of an antitrust for our democracy, have supplanted antitrust with corporate capitalism. That liberals have traditionally equivocated over corporate capitalism, and whether to advocate its democratic control through strict antitrust enforcement, are also subjects for this article's discussion. Texaco and Shell, as part of an industrial consolidation movement, began maneuvering in the mid-1990s to secure strategically competitive positions.29 Their final strategic response, ironically, was to abandon competition through discussions beginning in 1996 of alternatives to competition that would enhance efficiency, and, as a result, they formed a cartel in 1998 that eliminated significant portions of their nationwide and global competition. 0 Through their cartel, they formed those two joint ventures, Motiva (with Saudi Refining) and Equilon, and agreed that neither Texaco nor Shell would compete with either Equilon or Motiva, or manufacture or market certain products in certain defined nationwide areas," but that they would consolidate and unify the pricing of their branded gasoline with Equilon and Motiva.32 These incriminatory facts, even though they clearly appear in the court of appeals' opinion," are absent from Dagher. The Supreme Court could then ignore Dagher's most consequential if implicit legal point, namely, that the rule of reason should never be used to analyze a conspiracy with global implications between direct competitors, like Texaco and Shell, which divided the United States into competitive and noncompetitive zones through their cartel, and then used their cartel to create twin joint ventures in order to facilitate their customer, territory, product, production, and price agreements and secure for themselves the United States and global competition that these agreements eliminated. Such agreements have long been held to be per se anticompetitive and strictly illegal; indeed, "[i]f Equilon's price unification policy is anti-competitive,"" as the Supreme Court in Dagher speculated, then it should have at least occurred to the Court not to have made Equilon and its price fixing per se lawful. But, by characterizing Equilon as a lawful joint venture, the Court condoned what antitrust precedent never would have. That is, that a joint venture - especially one with its supporting conspiracies, which enabled it to price fix, and which was created by a cartel specifically to help eliminate nationwide and global competition - would be per se lawful. So by ignoring the hugely consequential cartel and its conspiratorial mapping, the Court could then focus exclusively on the duplicitous issue of whether Equilon, which was, of course, neither a solitary joint venture, nor a single, independent entity, could legally fix Texaco and Shell branded products' prices for sale in the western United States." This issue was, of course, duplicitous not only because Equilon, as the instrument of a conspiracy that masterminded partitioning of the United States and global sectors, could never be solitary, but also because Equilon, as that cartel's instrument, was neither single nor independent. It was dependent upon both Texaco and Shell, and they did not disagree. Equilon could not be "a discrete entity"' because, as Texaco and Shell correctly argued elsewhere,-" they both owned and controlled Equilon.4" The Court, however, presumed to know better. So after Dagher, Texaco and Shell could legally establish uniform, higher prices through Equilon because the Court, with its sleight of mind and scant supporting reasons, made Equilon, an "economically integrated joint venture,"' into a single and independent per se lawful price fixing entity. Corporate capitalism was now protected and Texaco and Shell's Sherman Act risks were evaded. Democracy's vulnerability to corporate capitalism did not, regrettably, concern the Court. The Court, consequently, will no longer subject a venture like Equilon to per se analysis, with fixed joint venture pricing likewise closed to per se review. Only the rule of reason is now open to plaintiffs contesting joint ventures or contesting them for selling products at fixed prices," making the free markets essential for a democratic capitalism even more vulnerable.' The facts surrounding Dagher, as we now know, involved many more than those of a purported single entity." The Supreme Court, after presumptively finding this nationwide Texaco-Shell conspiracy lawful, then gratuitously found joint ventures generally to be "important and increasingly popular"4 6 -more popular now because of Dagher. But joint ventures are also "important" because the Court listens to and believes what corporate America says about their importance." But in order to observe and apply principles of corporate capitalism, the Court had to violate precedent and contort logic, as well as engage in contradictions, deceptions, and critical factual omissions, to give its constituencies what they wanted and what they have wanted in other decisions.' This is how the Court defended big oil's strategic initiatives and how the Court conducted its analysis. But were there critical facts that the Court did not omit from Dagher? The Court found (1) that Texaco and Shell "collaborated in a joint venture, Equilon ... to refine and sell gasoline in the western United States under . . . Texaco and Shell . . . brand names"4 9 ; (2) that "[h]istorically, Texaco and Shell ... have competed with one another in the national and international oil and gasoline markets""; (3) that "[tiheir business activities include refining crude oil into gasoline, as well as marketing gasoline to downstream purchasers, such as service stations . . . ."1 ; (4) that "[in 1998, Texaco and Shell ... formed a joint venture, Equilon, to consolidate their operations in the western United States, thereby ending competition between the two ... in the domestic refining and marketing of gasoline" 2; (5) that "[u]nder the joint venture agreement . .. [they] agreed to pool their resources and share the risks . . . and profits"13 ; and (6) that their joint venture's "pricing policy amount[ed] to price setting . . . ."I There were a few other noted facts, but the Court ignored many more critical ones-like the cartel, obviously an important and especially incriminatory fact 5 -and like Texaco and Shell's deliberate, purposeful, and coordinated elimination of nationwide competition through it.' But even from these few Dagher facts, the Court could still have concluded (1) that Texaco and Shell were direct competitors; (2) that they were direct competitors because they competed with one another in "national and international oil and gasoline markets," 7 (3) that they were conspirators- through Equilon, the multi-interested joint venture that they jointly managed and through which they jointly sold and refined petroleum under their agreed-upon brands at fixed prices to agreed-upon service stations in their agreed-upon Western states territory but avoiding the East; (4) that these conspiracies ended significant competition between them in the domestic refining, marketing, and selling of gasoline; and (5) that they were, therefore, involved in multiple per se violations. But, no, it was a joint venture that was presumed to be "economically integrated"" as a "single entity"' that could fix prices "per se" legally"1 that saved Texaco and Shell. The Court's reasoning was predictably simplistic. All it apparently meant was that Equilon was integrated because Texaco and Shell combined and integrated their management into and through EquiIon, not that through Equilon some recombination of Shell and Texaco assets became economically efficient.' Indeed, how could substantial fixed assets of oil refining, production, and distribution be combined or "pooled"' (to use the Court's term) in Equilon, then be made efficient? To be sure, costs and expenditures might well have been reduced or eliminated," but they certainly could have been financially adjusted unilaterally through either company's independent assessment of its own strategic needs.65 But financial adjustments do not constitute enhanced efficiencies. To the Court, unfortunately, Equilon's joint operations by and under Texaco and Shell's managerial control constituted efficient economic integration. Deceptive? More importantly, conspiracies between Texaco and Shell, whether in or through Equilon or Motiva, would be fully integrated-and fully concealed as well-through the "economically integrated" and "single entity" labels, including conspiracies essential to the cartel, so that petroleum could be refined in eastern and western territories, and sales and marketing could be restricted to customers within these two territories, under agreed-upon brands and prices.66 Of course, Equilon would have had to have been grounded and integrated in one more conspiracy; neither Texaco nor Shell would likely have combined their respective managerial interests in Equilon without a conspiracy that either could sell out its interest to the other at possibly appreciated values.6 ' Texaco and Shell used Equilon" as part of their cartel so they could more easily coordinate their conspiratorial elimination of competition. As we now understand, Equilon was unintegrated and under the control of Texaco and Shell over its short three-year existence until Texaco sold out to Shell in 2001, making Equilon a peculiarly inefficient, redundant, and non-joint venture, but one through which Shell has inexplicably continued to sell exclusively and inefficiently over the last ten years. In 2006, the Court used those labels in Dagher as if Equilon had remained a joint venture and had not become Shell's exclusive but redundant sales conduit five years earlier. Deceptions such as these must surely compromise liberalism's belief in the possibilities of a democratic capitalism through antitrust. The Equilon LLC joint venture would also have had to have been a multifirm entity in order to accommodate Texaco and Shell and the multiple rights, interests, and controls required of their legalized LLC structure.' Such rights and interests were required because an LLC is legally dependent upon members, like Texaco and Shell, and upon their legal obligations to operate and control it, which Texaco and Shell did. They also apparently agreed "to pool" their interests in Equilon, to reap profits through the venture, and to have it managed by a board of directors that consisting of Texaco and Shell representatives," all in order to sell gasoline "to downstream purchasers under the ... [two firms'] original brand names.""' The Court saw "no reason to treat ... [Equilon] differently just because it chose to sell its gasoline under two distinct brands at a single price."' But since Texaco and Shell remained separate and distinct within Equilon through those segregated and dual rights, interests, and controls, and used Equilon as a sales conduit, the Court had significant reasons to treat Equilon "differently" and as a per se pricing violation. The Court is blind to democracy and to antitrust laws interpreted to protect democratic free market institutions, while it perversely opens itself to corporate capitalism's cartels and their price fixing as if they were the institutions worthy of antitrust's protection. Would not liberals want more from antitrust? Why is there silence from this usually noisy crowd? So neither Texaco nor Shell disappeared; both could be found within, and under, their contractually created but ephemeral EquiIon LLC structure. And additional facts about the LLC, including relevant details about Equilon's management by Texaco and Shell, their management of the fixed pricing, as well as their jointly managed allocation of national sales, customers, and production, and their inefficient and redundant short-term operations through Equilon, should have convinced the Court of an even broader antitrust violation. But they did not. Certiorari was granted on a record' that the Court had to distort to make new law for Big Oil and corporate America. Certainly, contradictions, omissions, and distortions make Dagher remarkable, and it is especially remarkable for all the other joint ventures and price fixing that may now be sanitized, for all the markets that may now be cartelized, and for all the corporate efficiencies that may now be exaggerated.74 Texaco and Shell, unimpeded by Dagher, would likely have continued with their own remarkable strategic plans' with a likely and clear understanding of the obvious. That is, that the Court will facilitate competitors' joint strategic plans to eliminate competition, even if the plans eliminate price competition, as long as the plans complement the principles that corporate capitalism wants. Since democracy and corporate capitalism are not complements, however," democracy can no longer be an explicit Supreme Court goal. But was it ever?' Moreover, was it ever liberalism's goal? Had Equilon actually listed what it had owned as including "all of [Texaco and Shell's] . . . production, transportation, research, storage, sales and distribution facilities,"' would Equilon then have had the absolute right to set "a price for. . . goods and services"?' But "goods and services" are notably absent from the list. Furthermore, the Court must have realized that Equilon did not have unequivocal title to Texaco and Shell's "goods" because they both legally maintained and protected their respective brands' ownership." Nonetheless, the Court presumed mistakenly that "the goods" were Equilon's. "What could be more integral to the running of a business,"" was asked, then answered presumptively, "than setting a price for [those] goods ... ?"82 How illogical. As a result, pricing, when cooperatively established and calculated through a joint venture, when that venture is outwardly owned, controlled, and managed by the corporations that fixed their own products' prices, and even when the products' brands and the "goods" themselves are owned by the corporations whose products are sold through that conduit of a joint venture, matters not legally. But it must be asked-why? The Court rushed to find Equilon lawful and to make all joint ventures and their fixed prices presumptively and per se lawful for corporate America. It promoted joint ventures because of their alleged "synergies"" and "cost effectiveness and found them to be per se lawful. But were these particularly significant or particularly effective cost savings? Nothing in Dagher, as we have seen, identifies or explains the "synergies" or the enhanced "cost effectiveness." Yet if costs decrease, will they be "effective" (to use the Court's term) if only duplicative or ephemeral ones are eliminated? Simply put, Equilon did not achieve efficiencies sufficient to support the Court's sweeping per se legality for all joint ventures. Yet the Court kowtowed to Texaco and Shell's claim that Equilon was efficient because for three years it had "up to" $800 million in nationwide annual cost savings." But, of course, Texaco and Shell's short-term and incidental costs will have decreased because they were no longer forced to operate unilaterally or to manage independently, that is, forced to compete. How extraordinary Dagher is-a spectacle of antitrust deception and intellectual dishonesty. Or is that too harsh an assessment? Some day the Court will perhaps find an Equilon-like venture to be what it is, a ruse,' and not a single and fully integrated venture, but an easy conspiratorial mechanism for fixing prices and for allocating customers, sales territories, production, and products, especially if joint ventures like Texaco and Shell's are inefficient." After Shell's 2001 purchase of Texaco's interests, Equilon and Motiva finally became "streamlined"' and able "to act quicker and to operate more efficiently."" Previously, both Texaco and Shell had been "disappointed in . . . [Equilon and Motiva's] performance"" because both of their joint ventures had been "hampered by organizational redundancy."91 After 2001, however, the exclusive Shell entities would have had "simplified structures [that] will ... lead to a significant improvement in ... performance in the U.S. and ... [in their] global competitive position .. . ."92 Certainly, these Texaco and Shell self-assessments sharply contradict their Dagher efficiency allegations. Was the Court's presumed acceptance of them simply naive? Or was the Court again being deceptive in its service of corporate capitalism? Such contradictions abound in Dagher and substantiate this article's criticism that the Court will risk accommodating corporate strategies as long as they promote contrived cost efficiencies, even if the strategies concern a per se illegal cartel that coordinates and fixes prices. Democratically secure and protected markets and competitive prices are now vestiges of liberalism's past. What is more, there was no way to test the judicially proclaimed Equilon efficiencies because Texaco and Shell agreed to allocate customers, as well as never to compete independently with that "single entity," and never to re-enter Western states' markets as Texaco and Shell. Consequently, it can never be known whether these cost efficiencies were real or whether they reflected artificial savings limited to trivial administrative costs, to arbitrary budget items, to dispensable future expenditures, or to dispensable assets, with their associated operational costs.3 Those cost reductions and eliminations could easily have been achieved by Texaco and Shell unilaterally, but that did not matter to the Court. Nor did it matter to the Court that the purported efficiencies were neither factually attributable to Equilon nor linked to exact Equilon cost reductions.94 Not only was the $800 million an unsubstantiated allegation, it was an allegation of nationwide savings that was indiscriminately attributed to both Equilon and Motiva in indeterminate proportions. A perceived "integration" of Equilon should not have determined its absolute per se legality, any more than the likely achievement of purported efficiencies should have been the reason for that absolutism. Efficiency is not a legal concept and is not the sole economic determinant of an entity's competitiveness. Mere allegations of efficiency should not suffice." Although assets were not efficiently enhanced in Dagher, corporations like Texaco and Shell may now form cartels to create joint ventures to eliminate the type of direct competition that the Court recognized in Dagher, but did not protect, and that the Court should have fostered if it were to protect democratic capitalism. Courts have equivocated over democracy when facing corporate claims of efficiency. Indeed, markets free of cartels and fixed pricing are no longer deemed essential to antitrust, much less to democracy, with no more than an allegedly efficient corporate capitalism becoming the Court's paramount antitrust goal. If the idea of Big Oil conjures up images of billions of dollars in mammoth ocean tankers and huge, sprawling coastal refineries, then it is not difficult to see that saving millions of dollars in mostly administrative duplications matters little. True efficiencies would eliminate considerable costs from crude oil and its refinement, but no facts were before the Court about Equilon advancing production savings or developing new products.9 The Court, as we know, merely presumed efficiencies." The Court's motivation could simply have been to give Texaco and Shell want they wanted-the elimination of competition'-by giving them the authority and power to control their production and marketing jointly and to fix the prices of the petroleum products they sold nationwide.' Texaco and Shell flaunted Sherman Act proscriptions, with the Court now motivating other competitors in their likely post-Dagher rush to meet, to discuss, to plan, and to agree, whether provisionally, preliminarily, or finally to form and execute Dagher-like joint ventures, but with greater assurances of legality and considerably less fear of indictment.100 Prospective joint venturers will expose to each other their respective future strategies and strive to reach agreement as to a joint management strategy, and as to what they will jointly arrange and control, in anticipation of what they will conspiratorially masquerade as a joint venture with built in Dagher-like controls. Extensive meetings, discussions, and agreements will be conducted throughout the venturing process in an atmosphere of accommodating mutuality and solicitous agreement-with cartels likely formed to manage a broad array of products. Could this be what the Court wanted? Apparently so. And it is the conduct that Dagher invites for corporate America. But it should have been otherwise. The Court in Dagher should have bucked the trend toward this industry's advancing cartelization, should have staunchly backed per se prohibitions and price fixing disincentives, and applied fact to law without the distortions and the deception. But now, through Dagher, the Court has developed new principles of permissible cooperation and agreement, abandoning past prohibitions against competitors' reaching agreement through shared business details, strategic plans, trade secrets, and operational specifics, and then memorializing conspiratorial agreement through a contract like a malleable LLC. Competitors will likely stampede toward Dagher's per se excuses and what Texaco, Shell, and the Court accomplished for them. Unfortunately, they will also rampage across a democracy left exposed by the Court. Texaco and Shell also got from Dagher, and its presumed lawful LLC, the power and authority to manage Equilon and to manage it with flexible authority.102 Consequently, Texaco and Shell had the power to establish all of Equilon's goals, directions, and objectives," without intrusions from outside directors or meddling shareholders. Assuredly, an LLC has infinitely more flexibility than any publicly traded corporation. And, if facts in some future litigation emerge about an LLC's dual ownership, operation, and control, the Court might find a facilitating limited liability company like Equilon and its operations illegal. For now, corporations wishing to collaborate need only establish an LLC agreement through which they can manage conspiratorially, all under indulgent state law." Any Texaco and Shell interests shifted to Equilon would have been managed by Texaco and Shell corporate appointees,"os who would likely have retained their Texaco and Shell allegiances,0 6 who would have reported both to the entity, and its managing director, and who would have exercised authority bestowed by a board, a convenient and useful figurehead, that Texaco and Shell would have controlled. Upon termination, retirement, or death, new managers could be appointed by the conspirators."' Outsider interests never intrude; outside oversight never occurs. The entity is conveniently closed except to the conspirators, making an LLC an ideally suited legal form, through which collaborators can finagle and finesse, through the flexibility it offers like a partnership' and the cover and veneer it offers like a corporation.'"' Without the oversight of either outside directors or shareholders, there is no public much less democratic oversight. The Court in Dagher never analyzed Equilon's actual operations as a closed, and tightly controlled, entity,"0 facilitating Texaco and Shell's price fixing and their agreements to allocate customers, sales territories, production, and products. Any single such agreement, much less all of them, would violate section 1 of the Sherman Act,"' and all have been held to be per se illegal" 2 -but presumably no longer. They have now become per se lawful, that is, as long as corporations form joint ventures that they manage jointly, even if corporations agree to end competition through them and to unify their prices."' Is not this, however, what any illegal conspiracy would entail: discussions would be conducted as to the extent of the agreed upon collaboration, as to the managerial operations involved, and the goals to be achieved, and, finally, as to the embodiment of these collaborations into a conspiratorially effective structure out of which to operate. The Court, although acknowledging the "ending" of competition between Texaco and Shell,"4 simply ignored Equilon as an instrumental part of an allencompassing cartel and its conspiracies formed, organized, and perpetuated to end that competition. The Court's amazing accommodations even included the labeling of Texaco and Shell's Equilon interests as "investments,"" although Texaco and Shell were no ordinary financial stakeholders; these "investors" could significantly manipulate their interests through their direct control of operational rights in their LLC "investment." Such direct rights and controls are what LLC law not only permits but requires."' Texaco and Shell were not, therefore, the equivalents of public shareholders, but the Court appears to have made the assumption that they were, ignoring that Texaco and Shell controlled Equilon and that it functioned by means of multiple anticompetitive agreements."' Such agreements also included reciprocal ones, which ended competition between them in certain specified products and in certain geographic areas, and which ended any possibility that Equilon would compete with their other businesses."' These numerous agree- ments identify Equilon and its operations as per se illegal and as a part of an illegal cartel. In these reciprocal noncompetition agreements," the two collaborators specifically agreed to stay out of the way of Equilon and the cartel - and each other's way as well - in a range of products, in specific territorial and product markets, and in equity product investments.12 0 Thus, competition was further eliminated by the agreement of Texaco, Shell, and Equilon in numerous products and markets through these reciprocal agreements that also cushioned them from competitive risk. Additionally, Texaco and Shell isolated themselves from still other risks and burdens by restricting Equilon from some global competition with Texaco and Shell.121 These many customer, sales, production, and product restraints were all to be enforced by the cartel through the Equilon mechanism. These incriminatory facts should have constrained the Court from the per se sanctioning of Equilon and its price fixing. But they did not. Corporate capitalism rules antitrust. Dagher also reveals how the Court distorts the law when it portrays Equilon's pricing restraint as per se legal, while at the same time suggesting it might be illegal under the rule of reason,'22 and while suggesting still further that this price fixing between direct competitors that might be unreasonable would not be per se illegal." But, as we have seen, Dagher is replete with distortions and intellectual deceits. To mention one more, the FTC did not in its consent decree 24 sanction the price fixing challenged by the Dagher plaintiffs as the Court believes; the decree focused upon formation issues, not the pricing issues that the Dagher plaintiffs challenged.1 2 ' False characterizations such as these, and the others already identified here, plague Dagher. Moreover, once Shell and Texaco created Equilon, and identified themselves as Equilon, then, according to the Court, Equilon could fix prices. Their identity as Equilon determined the legal outcome of their conduct-form will now always conquer substance.2 6 It is not what the two have done, but it is how they have identified themselves in what they have done that matters most. Self-asserted (and self-serving) identity matters more than behavior. Corporations have asserted, and the Court has followed, the principles of their capitalism with its preference for a superficial analysis of appearances. The Court must have believed that, upon the singularly defining moment of Equilon's creation,12 7 competition spontaneously ended between Texaco and Shell 2' in the production, marketing, sales, and pricing of their respective brands to their customers located in western statesl2 9-and, of course, ended for them sales across their artificially created western barrier into eastern states. Competition ended not spontaneously, however, but because Texaco and Shell previously planned it to end,' so their conspiracies to manage jointly in and through Equilon would become effective.13 ' Its cessation, therefore, was not the inevitable result of Equilon, no matter how the Court might wish to neutralize the facts. And if Texaco and Shell could thereafter have their products sold at uniformly higher prices, this again reflected what they previously agreed.13 2 To claim as the Court did, however, that with the formation of Equilon competition spontaneously stopped 3 and that Equilon could then fix their products' prices per se legally missed the obvious logical point that this specific competition between them in the western enclave ended only because of the previously created and coordinating conspiracies that ended it. The Court falsely portrayed Equilon as a unitary or single entity when it was a part of Texaco and Shell's comprehensive territorial, product, production, and customer conspiracies and a transparent but useful subterfuge for their fixing of higher nationwide prices. Texaco and Shell upon selling through Equilon need not, however, have ceased competing between themselves or with Equilon, 5 but could have produced, distributed, and sold independently and unilaterally wherever and whatever each might have independently decided.'" And what about sales in those eastern states? That other Texaco and Shell conspiracy, namely Motiva, disposed of that competitive probability-yet it was a reality the Court ignored. It had to ignore the cartel and Motiva, because had it not, it would have disclosed a greater conspiratorial basis for fixing prices' and coordinating conspiracies, and would have revealed the global implications of a co-conspiring Saudi Refining. Was the Court simply naive or deceptive? The question does recur. The Court, then, not only failed to apply the per se rule of prior "liberal" decisions'8 to these Equilon facts that were per se anticompetitive, it also refused to take even a "quick look" at the incriminating facts.' By ignoring such clear anticompetitive facts and implications of conspiracy, and with its mislabeling of Equilon as a "single entity," the Court mangled per se antitrust logic. The Court is not about to wait for another set of facts to declare a price fixing LLC joint venture violative under a rule of reason assessment. Its hostility toward antitrust and its per se rule will make it very impatient. Since the Court reasoned neither through fact nor principle but through a simplistic logic of corporate capitalism, it has threatened a liberally democratic capitalism. How facts are characterized, as either per se lawful or per se illegal, thus matters greatly."' That is, a per se lawful characterization conceals factual substance that otherwise might be revealed, and that would be revealed through a per se analysis. The only logical principle should be that it "simply depends," not upon identities, however-whether by other per se lawful characterizations like "single entity," "joint venture," or "economically integrated"-but upon underlying fact and, at that, upon legitimate democratic principles and not on the per se lawful privileges conferred by the Court and its corporate capitalism." Antitrust analysis should depend upon how competitors, such as a Texaco and a Shell, have collectively arranged their interests, whether through a cartel, a joint venture, or a merger, while recognizing that a term, such as "economic integration," is not only a presumptive one, but a privileged term of distinction, yet one that is devoid of coherent legal meaning, as to whether joint ownership and managerial controls are integrated, how partial or complete that joint control is, how it would be exercised, or how long the arrangement is to survive with all interests intact. This special conference of privilege does not include a like conference of democratic privilege, however. And the Court's focus on the principles of corporate capitalism is worse than empty of democratic content; its focus is innately biased against democracy. Democracy can never be compatible with corporate capitalism."' Thus, to name Equilon an "economically integrated joint venture"" should not be to validate it; validation through naming is as an illogic that elevates form over function, and ignores that such a joint venture may be jointly controlled and managed by and through "venturing" competitors. Before Dagher, then, the phrase "economically integrated" would likely not have been used, and had it been used at all, it would not have had the legal significance Dagher attached to it so that prices could be fixed. A controlling logic of corporate capitalism and its accommodation led the Court to ignore Texaco and Shell's dual interests and management rights preserved in Equilon, as well as to ignore their customers, sales territories, production, and products allocated through it, along with the cartel through which they masterminded their entire scheme. If antitrust legality should not turn on privileged characterizations, the Supreme Court in a future opinion will nonetheless likely exclude other facts and democratic principles for the privileges of capitalism and a further broadening of the rule of reason, while shrinking or even eliminating the per se rule.1 45 What if the Dagher plaintiffs had litigated under a rule of reason theory of liability, especially given Dagher's facts, the state of current law, and the Court's corporate agenda? Yet, had the Court in Dagher analyzed facts of record regarding the multiple conspiracies-Equilon's conspiratorial creation, its conspiratorial management and operation, or the cartel, or the two nonunitary joint ventures through which Texaco and Shell governed prices and allocated customers, sales territories, production, and products across the United States and globally with Saudi Refining-would a rule of reason attack have even been necessary? Actually no, since sufficient facts were developed through the Dagher plaintiffs' per se theory of liability for the Court to have recognized that Equilon and its uniform pricing would have been illegal whether under a per se or rule of reason attack,'4 1 leaving the Court with no excuse for not allowing a trial on the price fixing issue. This was Big Oil's cartel implementing an anti-competitive global strategy. And it is how the Court's allowance of a corporate strategy threatens democratic capitalism and leaves antitrust plaintiffs to the vicissitudes of a mandated rule of transformed rationality.14 7 In an earlier rule of reason transformation, the Indiana Federation of Dentists decisionm the Court would not allow dentists, under the rule of reason, to agree to withhold patients' x-rays from their insurance companies because the dentists' policy constituted a horizontal agreement. According to the Court, "no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement," 4 9 explaining that a "refusal to compete with respect to the price term of an agreement [.. .. impairs the ability of the market to advance social welfare . . . ." " Application of the rule of reason, the Court confidently asserted, is not "a matter of great difficulty."'' It was such a simple matter for the Court that it found that agreements "limiting consumer choice by impeding the 'ordinary give and take of the market place,' .. . cannot be sustained under the Rule of Reason.""52 Actually, even if Indiana Federation of Dentists sounds more like a per se application, it was a constriction of it because of the Court's examination of defendant dentists' "credible argument""' that not providing x-rays needed by insurance companies to evaluate diagnoses was cost justified. And, although the Court did not find the dentists' defense "credible,"" even a rationalized cost justification defense will still require a court's scrutiny. Under such a rule, excuses are invited even though no excuse could justify the dentists' blatantly illegal agreement. If the Court in Indiana Federation of Dentists tried to make its rule of rationalized excuses seem simple, direct, and not of "great difficulty,"' a per se rule would have been far easier and more logical. No detailed, or even simple, analysis would have been required. And, certainly, no excuses would be allowed. Yet, even though the dentists were not allowed to "[plre-empt the working of the market by deciding for . . . [themselves] . . . that [their] customers do not need [the x-rays] that .. . they demand,""' the Court still found it necessary to allow and then to dispense with the dentists' excuse. Still it seems very simple, does it not? If so very simple, however, why did the Court even bother with the Indiana Federation of Dentists' appeal? Did it see an opportunity for another rule of reason transformation despite the fact that the Federal Trade Commission never even challenged the dentists under the rule?" Perhaps it did see in Indiana Federation of Dentists-as it may have in Dagher-that opportunity to convert the rule into an even broader rule of corporate rationality as it continued making antitrust a corollary of corporate capitalism. For plaintiffs to argue in a future case that fixed pricing was illegally achieved through a joint venture, they must show that the joint venture was not only a price fixing ruse, but that it was one that defendants could not rationalize. But, of course, the Court will not under another decision of transformed rationality, California Dental,'" permit plaintiffs to rationalize-actually "assume,"' to use the Court's term-the anticompetitive effects of the restraint they challenge if the effects have but a "theoretical basis."" Not surprisingly, corporations, on the other hand, are free to use any rationalized theory of efficient capitalism in their defense. For example, in California Dental the defendant dentists' price advertising agreements were found not to be per se illegal although the Court asked whether they tended "obviously" 6 1 to limit total dental services delivered.162 Despite the anticompetitive consequence, the Court did not in effect find that these horizontal agreements had "intuitively obvious" consequences that were anticompetitive.' 63 Thus, even with evidence of anticompetitive consequence, the Court was not to be satisfied. It will want more, and it will require a more thorough examination of circumstances, details, and logic. That is, in the Court's defense of capitalism's interests, it will want for corporations a rule that accommodates them, but for plaintiffs a rule that their claims survive a thorough examination of circumstances, details, and logic." Any Dagher-like plaintiffs, therefore, would first have to assert facts detailing how defendants' joint venture is a ruse for their price fixing. In other words, details and circumstances would have to show how a joint venture like Equilon, with ownership, management, and unified pricing controlled by corporations like Texaco and Shell, is not integrated, and is not a single entity, along with details and circumstances showing how it logically could have and actually did behave with clear anticompetitive consequence. Corporate interests will be well protected by this rule of transformed rationality that insulates them both from the per se rule and from those plaintiffs that might in the eyes of the Court challenge corporate capitalism. Consider, also, how the Court in the NCAA decision' further secured and protected corporate interests first by focusing the rule of reason and the per se rule on a consideration of impact on competitive conditions,16 6 and then by intensifying the per se rule's focus on whether "surrounding circumstances mak[e] the likelihood of anti-competitive conduct so great as to render unjustified further examination of the challenged conduct."' With such reasoning, the Court has simply reduced the per se rule to that rule of rationality that would then likely require answers to such questions as: What would be those "surrounding circumstances"? What would be "so great" an anticompetitive conduct that it would nullify further examination? How likely must a "likelihood" of anticompetitive conduct be? Such questions may have caused the Court to observe that "there is often no bright line separating per se from rule of reason analysis."1" What nonsense. Antitrust jurisprudence of the last seventy-five years established sufficiently illuminating lines. But the Court apparently wanted a newer, shinier version that "may require""9 for corporate violations a per se rule that conducted a "considerable inquiry into market conditions before the evidence justifies a presumption of anticompetitive conduct."" "May require"? "Considerable inquiry"? "Market conditions"? "Evidence"? These multiple, nebulous questions show how the Court would again protect corporate interests. And they show how the Court would protect those interests as it best understands: that is, by reducing the per se rule to a rationalizing and accommodating rule for corporate capitalism. The Court would want from the per se rule a result that its framers never intended."' NCAA rhetoric, or rather its imprecision in the articulation of rules-whether per se or rule of reason-led the Court to a "quick look."1 ' However, that "look" can lead to paradoxical results, especially when it is "too quick" and an alleged illegal price restraint passes a superficial and presumptive Dagher-type exam, or when it is "too slow" and a price restraint passes a superfluous and rationalizing rule of reason. Regardless of that "look," then, the rationalized rules can lead to identical and accommodating views of a restraint. Corporate behavior once settled and established as per se illegal was opened by the Court to its accommodating and rationalizing disposition. The Court in the NCAA decision was, indeed, very accommodating, concluding that, although the NCAA television plan "on its face constitutes a restraint upon the operation of a free market ... [since] it ... raise[d] prices and reduce[d] output,"" these were not sufficient findings to invoke the per se rule. The Court under the rule of reason instead shifted this rule's "heavy burden"" to the NCAA to establish a "defense which competitively justifies this apparent deviation from the operations of a free market.""' But why an "apparent" deviation when the Court first found that the NCAA's television restraint raised prices and reduced output? So not only is any shifted burden actually not "heavy," as the Court labeled it, the Court has given corporations additional chances for further market exploitation through the principles of a naturally and inevitably exploiting capitalism. Accordingly, the Court in NCAA found that "a certain degree of cooperation is necessary if the type of competition that . .. [the NCAA and its members] seek to market is to be preserved."" Although such exploitative cooperation among competitors to create a scarce and then more valuable TV product violates the per se rule, the Court again saved corporate America from a per se violation. Exactly how much competitor cooperation the Court will allow has long been decided under the per se rule, but the Court now prefers instead that rationalizing and accommodating rule of rationality, displaying an antipathy toward the per se rule and its potential for strict corporate control, through that rule's restructured and contradictory directions and confusing instructions. Although corporate capitalism is not compatible with democracy, the present Supreme Court would favor capitalism with no regard or thought to the damage that its decisions inflict upon democracy. The recent Dagher decision illustrates how a logic of corporate capitalism, which does not objectively analyze relevant antitrust fact, resulted in the antidemocratic accommodation of two competing corporations so they could legally conspire through their cartel to eliminate competition. It was through their cartel that the corporations created two joint ventures, with interests and rights they retained for themselves, that equipped them jointly to manage them and to fix prices, production, and marketing of their respective product brands for their nationwide sales. Through Dagher, the Court threatens a liberally conceived democratic marketplace of competitive prices, as it will continue its assault on the antitrust laws and the per se rule in particular. A liberal democracy will likely not survive the onslaught. But where is the liberal outcry? Although with Dagher the Court had another chance to slice away at per se precedents, it was a chance contaminated by facts of conspiracy and monopoly, which then tortured Dagher's precedent and twisted its logic in order to conceal the contamination. Whatever else corporations will want, the Court will likely hand it to them stealthily if with per se lawful presumptiveness, just as the fixing of prices in Dagher had been handed to them with per se legality. It is Big Oil's turn again-just as it always seems to be corporate capitalism's turn. How dispiriting the thought. But not as dispiriting as the thought that the per se rule-the one protective rule against corporate capitalism will likely soon be cut from antitrust. That Dagher was wrongly decided is not the most immediately dispiriting thought, however. As Professor Dworkin has warned: "The worst is yet to come.""

### 2NC - Sustainability

#### Industrial ag is becoming more sustainable – alternatives trade off with yields as demand increases.

AgDaily 20 (Agdaily Reporters, 4-20-2020, High-yield farming may be key to returning more land back to nature, AGDAILY, <https://www.agdaily.com/crops/high-yield-farming-key-land-nature>, MAM)

The expansion of farmlands to meet the growing food demand of the world’s ever expanding population places a heavy burden on natural ecosystems. A new study from the International Institute for Applied Systems Analysis, however, shows that about half the land currently needed to grow food crops could be spared if attainable crop yields were achieved globally and crops were grown where they are most productive. The land-sparing debate, which was sparked around 2005 by conservation biologists, recognized that there is usually a limit to the extent to which farmland can be made “wildlife friendly” **without compromising yields**, while most threatened species only profit from the sparing or restoration of their natural habitats. Interest in this topic recently gained new momentum through the Half-Earth Project, which aims to return half the area of land currently being used for other purposes to natural land cover to restrict biodiversity loss and address other impacts of land use such as greenhouse gas emissions. According to the authors of the study published in Nature Sustainability, the need for this type of strategy is urgent, **given the increasing global demand for agricultural products**. The study is the first to provide insight into the amount of cropland that would be required to fulfill present crop demands at high land use efficiency without exacerbating major agricultural impacts globally. “The main questions we wanted to address were how much cropland could be spared if attainable crop yields were achieved globally and crops were grown where they are most productive. In addition, we wanted to determine what the implications would be for other factors related to the agricultural sector, including fertilizer and irrigation water requirements, greenhouse gas emissions, carbon sequestration potential, and wildlife habitat available for threatened species,” explains study lead author Christian Folberth, a researcher in the IIASA Ecosystems Services and Management Program. The study results indicate that with high nutrient inputs and reallocation of crops on present cropland, only about half the present cropland would be required to produce the same amounts of major crops. The other half could then, in principle, be used to restore natural habitats or other landscape elements. The findings also show that land use is currently somewhat inefficient and not primarily due to the upper limits to crop yields as determined by climate in many parts of the world, rather, it is strongly subject to management decisions. It is difficult to say exactly how much biodiversity is impacted as a direct result of agricultural activities, but it is estimated to exceed safe boundaries, primarily due to habitat loss. In this regard, the researchers evaluated two scenarios: the first proposes maximum land sparing without constraints, except for the present cropland extent, while the second scenario puts forward targeted land sparing that abandons cropland in biodiversity hotspots and uniformly releases 20 percent of cropland globally. There were only marginal differences between the two scenarios in most aspects, except for wildlife habitat, which only increased significantly with targeted land sparing. This however still enabled reducing the cropland requirement by almost 40%. Furthermore, the researchers found that greenhouse gas emissions and irrigation water requirements are likely to decrease with a reduced area of cultivated land, while global fertilizer input requirements would remain unchanged. Spared cropland could also provide space for substantial carbon sequestration in restored natural vegetation. Yet, potentially adverse local impacts of intensive farming and land sparing such as nutrient pollution or loss of income in rural areas will need to be studied further. “The results of our study can help policymakers and the wider public to benchmark results of integrated land use scenarios. It also shows that cropland expansion is not inevitable and that there is significant potential for improving present land use efficiency. If the right policies are implemented, measures such as improved production technologies can be just as effective as demand-side measures like dietary changes,” says project lead and former IIASA Ecosystems Services and Management Program Director Michael Obersteiner. “However, in all cases such a process would need to be steered by policies to avoid unwanted outcomes.”

#### Organic agriculture requires more land use – turns emissions

Lepisto 21 (Christine Lepisto is a chemist and writer from Berlin, 2-19-2021, High Yield Farming May Be Better for Biodiversity, Treehugger, <https://www.treehugger.com/high-yield-farming-may-be-better-biodiversity-4851546>, MAM)

But common lore in the green community still holds that modern agricultural techniques increase pollution run-off, greenhouse gas emissions, and soil loss. Now researchers are turning common sense about the sustainability of traditional farming methods versus high-yield farming on its head. Existing studies may have **overstated the benefits of traditional methods** by evaluating the impact relative to the acreage in use rather than to the unit of food produced. A team of researchers led by Andrew Balmford of the University of Cambridge - and including scientists from 17 organisations in the UK, Poland, Brazil, Australia, Mexico and Colombia - analyzed key environmental aspects of farming methods. A co-author from the University of Sheffield, Dr David Edwards, notes: “Organic systems are often considered to be far more environmentally friendly than conventional farming, but our work suggested the opposite. **By using more land** to produce the same yield, organic may ultimately accrue larger environmental costs."

#### Conversion causes zoonotic disease outbreaks

Alex Smith 20, Food and Agriculture Analyst at the Breakthrough Institute, MA/MSc in International and World History from Columbia University and the London School of Economics and Political Science, “To Combat Pandemics, Intensify Agriculture”, The Breakthrough Institute, 4/13/2020, https://thebreakthrough.org/issues/food/zoonosis

There is broad agreement in the epidemiological and virological studies of zoonoses that the most important factor in the development of new zoonotic diseases is land-use change. The development of wild lands, whether caused by agricultural extensification, mining, or other factors, simultaneously shrinks the habitat of wildlife and brings that wildlife in close proximity to human settlements. The combination of shrinking habitats, human-wildlife interactions, and food insecurity is a recipe for zoonosis. In West Africa, these three factors combined were responsible for HIV/AIDS and the slew of recent Ebola outbreaks.

Even when food insecurity and the consumption of wildlife are taken out of the equation, land-use change is a powerful driver of zoonotic disease, and has resulted in outbreaks of zoonotic diseases like malaria, yellow fever, dengue fever, Nipah virus, West Nile virus, Zika virus, and Lyme disease. Often, these diseases are transmitted from animals to humans through an intermediary, sometimes an insect (mosquitoes or ticks) and sometimes through livestock that live too close to wildlife populations, as was the case with Nipah.

Because the biggest driver of land-use change is agriculture, “intensive” high-yield agriculture often takes the blame, but the alternative — extensive, low-yield farming — would be worse. To prevent further pandemics, we must do as much as we can to stop land-use change while improving food security. We must, in other words, improve agricultural yields, allowing us to grow more food on less land. So, contrary to what many have asserted, a vital lever for limiting land-use change and providing cheap food for all is not to abandon intensive agriculture, but to intensify it further, especially in the developing world where food insecurity is greatest and where growing populations means rising food demand.

It is thanks to rising yields that farmers, globally, produce about three times the amount of crops while only using 13% more land than in 1950. For example, if yields from cereal production hadn’t increased since 1961, the global agricultural footprint would be 24% larger than it is today — increasing from roughly 50% at current levels to 62% of total habitable land — and would likely have resulted in even deadlier zoonotic outbreaks.

# 1NR

## Case

### Sustainability – Land Use – Turns

#### It turns the environment

Dr. Christian Folberth 20, Researcher at the Ecosystem Services and Management Program at the International Institute for Applied Systems Analysis, PhD from the Swiss Federal Institute of Aquatic Science and Technology (EAWAG) and ETH Zurich, BSc in Horticultural Sciences and MSc in Environmental Planning and Engineering Ecology from Technical University of Munich, et al., “The Global Cropland-Sparing Potential of High-Yield Farming”, Nature Sustainability, Volume 3, https://www.nature.com/articles/s41893-020-0505-x

The global expansion of cropland exerts substantial pressure on natural ecosystems and is expected to continue with population growth and affluent demand. Yet earlier studies indicated that crop production could be more than doubled if attainable crop yields were achieved on present cropland. Here we show on the basis of crop modelling that closing current yield gaps by spatially optimizing fertilizer inputs and allocating 16 major crops across global cropland would allow reduction of the cropland area required to maintain present production volumes by nearly 50% of its current extent. Enforcing a scenario abandoning cropland in biodiversity hotspots and uniformly releasing 20% of cropland area for other landscape elements would still enable reducing the cropland requirement by almost 40%. As a co-benefit, greenhouse gas emissions from fertilizer and paddy rice, as well as irrigation water requirements, are likely to decrease with a reduced area of cultivated land, while global fertilizer input requirements remain unchanged. Spared cropland would provide space for substantial carbon sequestration in restored natural vegetation. Only targeted sparing of biodiversity hotspots supports species with small-range habitats, while biodiversity would hardly profit from a maximum land-sparing approach.

## CP

### 2nc at perm do both

#### The permutation is impossible—Antitrust cannot be regulation.

Boliek 11 (Babette, Associate Professor of Law at Pepperdine University School of Law, “FCC Regulation versus Antitrust: How Net Neutrality is Defining the Boundaries,” Boston College Law Review, Vol. 52, 2011, pg 1627-86, Lexis)

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times. 2 But it is the current iteration of the FCC's "net neutrality" regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service. 4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry. Although the two regimes share a commonality of purpose-to protect consumers and to promote allocative efficiencies in production-the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws "typically aim at similar goals-i.e., low and economically efficient prices, innovation, and efficient production methods" -regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about."5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6 Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive marketsregulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly. Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

### 2nc at regs don’t deter

#### The CP encourages efficiency in any industry—means the counterplan solves all of their deterrence solvency deficits

García 14 (Kristelia, Associate Professor, University of Colorado Law School, “Penalty Default Licenses: A Case for Uncertainty,” NYU Law Review, Vol. 89, No. 4, October 2014, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1071&context=articles

Companies, like individuals, are risk averse. The existence of a fallback option, even a poor one, allows them to take a chance on private negotiation. This is the case because the parties know they have an alternative should the deal not work out. Moreover, the fallback allows them the freedom of dabbling in individual deals with only one partner or a handful of them, affording valuable feedback on which terms work and which ones do not without committing the time and effort required to negotiate individually with all comers. If the private terms prove functional and an industry norm begins to take shape-as in the case of the Clear Channel-Big Machine deal-it can then be extended to the larger, more comprehensive partners and eventually reflected in the underlying legal regime. CONCLUSION When coupled with a penalty default, uncertainty can bring greater efficiency to the marketplace by encouraging private ordering, which allows for tailored terms and responsiveness to rapid technological change. This is great news in the music sampling context, where for years scholars, legislators, and industry players have been debating a statutory license. 271 This Article suggests that a penalty default license for samples, coupled with existing uncertainty about the future state of protections for derivative works, might alleviate efficiency concerns by encouraging more and better private negotiation. 272 This prescription is particularly timely given the imminent rewrite of "the next great copyright act," 273 and may find application outside the United States as well. In the European Union, for example, there has been a recent push for single-market licensing of intellectual property rights. 274 Copyright territoriality has largely thwarted this initiative, 275 whereas private ordering has resolved it. In November 2012, for example, Google accomplished something the European Union has thus far been unable to: The company struck a private, multiterritory agreement with thirty-five European countries. 276 Acknowledgment of the role uncertainty and penalty defaults play in increasing effectiveness in the market for statutory licensing and in copyright enforcement is only the beginning. A better understanding of uncertainty as a tool for efficiency has application in any industry facing change as a result of rapid technological growth, evolving consumer preferences, or ambiguity about the future state of the law.

### 2nc at ftc fails

#### Regulation solves without ‘antitrust’ or FTC involvement

Shelanski 18 (Howard, Professor of Law at Georgetown University, “Antitrust and Deregulation”, The Yale Law Journal, May 2018, Volume 127, Issue 7, 127 Yale L.J., https://digitalcommons.law.yale.edu/ylj/vol127/iss7/5/)

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9 Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15 Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22 In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party. Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28