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#### Interpretation

#### Expanding the scope” means to create **new statutory claim**s that go beyond existing antitrust standards –

Richard Epstein 19 (Laurence A. Tisch Professor of Law, The New York University School of Law, the Peter and Kirsten Bedford Senior Fellow, The Hoover Institution, the James Parker Hall Distinguished Service Professor of Law Emeritus and Senior Lecturer, the University of Chicago. SYMPOSIUM: Judge Koh's Monopolization Mania: Her Novel Antitrust Assault Against Qualcomm Is an Abuse of Antitrust Theory, 98 Neb. L. Rev. 241. LN)

The question then arose whether the violation of the Telecommunications Act counted as a violation of the antitrust laws as well. The statutory framework contained two key provisions. The Telecommunications Act was not allowed to preempt the operation of the antitrust laws: "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." By the same token, the status quo was preserved because the Telecommunications Act also did nothing to expand the scope of the antitrust laws. It did not create new claims going beyond existing antitrust standards. The creation of any additional antitrust standards would be equally inconsistent with the saving clause's mandate that nothing in the Telecommunications Act would "modify, impair, or supersede the applicability" of existing law.

#### Anti-competitive business practices are those practices that do harm to businesses or consumers – the affirmative had to add something to the list

Gibbs Law Group No Date (Anticompetitive Practices. https://www.classlawgroup.com/antitrust/unlawful-practices/)

Federal and state antitrust laws prohibit anticompetitive behavior and unfair business practices that harm other businesses and consumers.

Examples of these unlawful, anticompetitive practices include:

Price Fixing – an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.

Pay-for-Delay – an agreement between a brand drug manufacturer and a would-be generic competitor to delay the release of a generic version of the branded drug, depriving consumers of lower-priced generics.

Bid-Rigging – competitors agree in advance who will submit the winning bid during a competitive bidding process. As with price fixing, it is not necessary that all bidders participate in the conspiracy.

Monopolization – one or more persons or companies totally dominates an economic market.

Unfair Competition – an attempt to gain unfair competitive advantage through false, fraudulent, or unethical commercial conduct.

Market Division – an agreement between competitors not to compete within each other’s geographic territories.

Group Boycotts – two or more competitors agree not to do business with a specific person or company.

Exclusive Dealing Arrangements – an agreement that a buyer will only buy exclusively from the supplier.

Price Discrimination – charging different prices to similarly situated buyers. Certain types of price discrimination may be illegal under the Robinson-Patman Act.

Tying – when a company makes the purchase of an item conditioned on buying a second item.

#### Violation – The rez requires the affirmative to substantively add to antitrust law, not just broaden enforcement of whats already on the books - Plan just applies existing antitrust law – that doesn’t increase prohibitions or expand the scope of core antitrust law

#### Vote negative: infinite standards mechanisms allows affs to run to the margins and use standard setting as advantage ground which makes the topic unmanageable. Not specifying prohibitions magnifies the offense.

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#### The United States federal government should adopt a remedial regulation that requires private sector actors participating in the platforms 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.

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#### New antitrust is applied globally which offends allies and causes backlash

**Hovenkamp 3**. (Herbert, Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003)

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, **there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered** to be purely local, **territorial**, or political. **This view is given considerable support by a** powerful **neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making**. 32 **Within this model antitrust law is a kind of background umpire** that does not make first instance choices about price, quantity, quality, new entry and the like, but **that does limit the anticompetitive exercise of market power**. Antitrust operates as **a kind of** "macro" version of **contract law. The common law of contracts is designed to facilitate** and protect the utility of individual **private bargains; antitrust is designed to do much the same thing**, but for markets as a whole. **Under this conception** a well defined set of **antitrust** principles **always operates in the background**, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, **widespread agreement exists** both inside and outside the United States **on a set of core principles** pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies. **In contrast, the power to regulate is different**. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, **regulatory design is much more specific** to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation. For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes. But **homogeneity in antitrust** policy also **begins to break down when antitrust law moves beyond its fundamental** neoclassical **concern** with cartels or well-defined exclusionary practices, **and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets**. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence. Increasingly, **American courts seem willing to apply antitrust law to** markets regulated by **foreign nations under circumstances where regulatory laws themselves would never reach**. For example, **neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But** both federal and state **courts have** done precisely that **under** the guise of **antitrust** enforcement.3 4 **Antitrust** policy **makes this thinkable as a result of** the confluence of two sets of doctrines. **First** is **the expansive reach of our antitrust laws** to practices that **have a substantial effect on United States commerce.** **Second** is **the** very **narrow conception of comity** that applies **in antitrust** cases. As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38 Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market. But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of **comity may no longer preclude a Sherman Act suit**. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42 But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified. IV. Extraterritorial antitrust and foreign deregulation **As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation** of their own highly regulated industries. **But** to a large extent modem **antitrust has inherited the regulatory attitude expressed** by the Western Union decision discussed **above**. For several reasons, **the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives**. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

**That expansion tanks the Japanese economic alliance which triggers diplomatic protest to new extraterritorial applications of antitrust law**

**Kojima 02** (Takaaki, Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

**We are witnessing** increasingly **widespread** and penetrating economic **globalization** today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and **trans-border business activities face less barrier**. At the same time, the role of trans-border business activities, especially those by so-called **multinational** or **global enterprises, have become increasingly important** and even **dominant** in some sectors. As far as the territorial scope of business activities are concerned, **state borders are** more or less **diminishing** to become almost borderless; as for legal regimes, **however, sovereign states retain** in principle **exclusive jurisdiction over their territories and nationals under international law**. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. **In** the field of **competition law,** such **an international regime is lacking** and the domestic laws of each state regulate private restraints of trade in the relevant markets. Serious **jurisdictional conflicts** have **transpired in** the last several decades between **the United States** and other states over the so-called extraterritorial **application of U.S. antitrust laws on anticompetitive conducts** abroad. **This** problem has also **caused diplomatic frictions** between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of **international conflicts caused by** the extraterritorial application of **competition law** and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation **with** other jurisdictions, mainly the European Union and **Japan**, considering the **grave implications** to competition law and policy as well as to the world economy. 2 II. Extraterritorial Application of U.S. Antitrust Laws Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied. In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3 An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them. This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine. **In response to excessive application of U.S. antitrust laws**, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of **states** have **issued diplomatic protests**. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983. Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9 In 1993, **the Supreme Court** decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) **reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct** that was meant to produce and did in fact produce some substantial effect in the United States. **The Court** then **took a restrictive view on** the test of **balancing** interests, stating that **the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist** because British law did not require defendants to act in a manner prohibited by U.S. law. 10 **Japan** maintains the territorial principle and **rejects the effects doctrine**, stating that the effects doctrine cannot be regarded as an established rule of international law. **In the view of** the Government of **Japan**, the **extraterritorial application of U.S.** domestic laws (including U.S. **antitrust laws**) based on the **effects doctrine is not allowed** under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 **Nonetheless, the U.S. Supreme Court affirmed** the Court of Appeal decision, which assumed **the extraterritorial application** of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### That alliance is key to mediating Indo-Pacific cyber security—coop is key to tech

**Cronin 21** (Patrick, Asia-Pacific Security Chair at the Hudson Institute, "U.S.-Japan Alliance in Full Bloom,” 4/15/21. https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom

Even if seldom mentioned by name, China is the unmistakable fulcrum around which alliance policy on all issues turns. **Competition with China is primarily economic** and technological, but **these issues** often **spill over into security** and human rights. Economically, **a rebounding U.S. economy and Japan will collaborate to strengthen the resilience of vital supply chains**. **Semiconductor chips are essential for all electronics, and Suga and Biden are determined to ensure their availability**. Equally, **the U.S. and Japan have an opportunity to leverage their** two-year-old digital **trade** agreement **to help negotiate a multilateral accord and establish high international standards for finance and commerce in the cyber age**. As a dominant player in semiconductor manufacturing and a member of APEC and the World Trade Organization, Taiwanshould play a part in both supply chain security and digital trading standards. Indeed, bolstering Taiwan’s place in the global economy of other democracies is a far better means of thwarting Beijing’s intimidation strategy against Taiwan than just sailing near the Taiwan Strait with an aircraft carrier. **The commanding heights of the 21st century economy center on technology**. So, while the United States and Japan retain a strong interest in economic cooperation with China, those relations become considerably sharper over leading-edge technologies such as 5G telecommunications, artificial intelligence and quantum computing. **Biden and Suga should showcase their commitment**, not against China, but **in favor of technological innovation and secure connectivity**. **An excellent way for the alliance to demonstrate a commitment to practical technology cooperation would be to work together to expand** investment in **5G** Open Radio Access Networks (**ORAN**). **Given the concerns surrounding allowing China to dominate fifth-generation telecommunications infrastructure, the United States and Japan need to scale up** a cloud-based software alternative. The good news is that **Japan’s** Rakuten is already **a leader** in demonstrating ORAN’s feasibility, **and there is bipartisan support in Congress for increasing U.S. investment** in modular 5G. **The alliance also requires deeper cooperation on cybersecurity**. Of five issues highlighted at the recent 2 + 2 meeting between U.S. and Japan defense and foreign ministers, cyberspace was the most traditional national security issue. **Japan is inching closer** toward becoming a de facto sixth member of the Five Eyes intelligence-sharing arrangement, and the Biden administration should encourage that trajectory**. A stronger digital alliance can**, in turn, **advance cyber resilience throughout the Indo-Pacific region**.

**That conflict goes nuclear and causes extinction**

Khan 20 (Ahyousha, Associate Researcher at the Strategic Vision Institute. "Artificial Intelligence without Cyber Resilience in South Asia" South Asia Journal. 7/16/20, http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/)

With increased dependence on information technology and rapid digitization of systems, term **cybersecurity** gained momentum. However, these systems not only need to be securitized but they **should be resilient against the threats. Cyber resilience is the ability of the system to operate during an attack** and achieve a minimum level of operationalization while responding to an attack. It also enables the system to develop a back-up system that works in case of attack. **Cyber resilience is a step forward from cybersecurity** because it not only ensures the security of the system, but also identifies the threats to it and then proposes the system that could work amidst such attacks. Most military systems are resilient against kinetic attacks because resilience and survivability go hand in hand. But, with modernizations in the military, it is necessary that the state’s cyber networks which are working on artificial intelligence must be resilient against kinetic and non-kinetic attack. Today **states are in a race to use the AI in their military systems** to achieve maximum military gains and denying their adversary the same. The situation is not so different **in South Asia** where two **nuclear rivals** of the region **are paving the way towards the use of artificial intelligence for military purposes**. India has developed the Center for Artificial Intelligence and Robotics (CAIR) in DRDO, with the aim to develop AI within the military systems to improve geographical information system technology, decision support systems, and object detection and mapping. Moreover, companies like Bharat Electronics Limited (BEL) are already in the process of developing and incorporating AI into military equipment. This includes an AI-enabled patrol robot developed by BEL built in the hope to be utilized by the Indian military. Moreover, in 2019 India’s Gen. Bipin Rawat said adversary in the north is spending a huge amount on AI and cyber warfare, so we cannot be left behind in this race. It is mostly projected by the Indian policymakers and many international scholars that India is facing adversaries at two fronts (China-Pakistan), to justify India’s military expenditure and modernization. However, recently, events like Galwan Valley clash evidently exposed that India’s military capabilities are mostly against Pakistan. Moreover, **South Asia’s security dynamics are heavily characterized by the action-reaction chain. To avoid the security dilemma vis-à-vis India, Pakistan would also invest in AI**. At the moment Pakistan has also started working towards achieving expertise in AI. In 2019 President of Pakistan launched PIAIC with a focus on the development of skills in AI to strengthen economy and defence systems. Moreover, there are centers like the National Center of Artificial Intelligence and the Department of Robotics and Intelligent Machine Learning in NUST, which are working to improve AI-based knowledge in Pakistan. Besides that Pakistan recently launched a program named “Digital Pakistan” to increase access and connectivity, digital infrastructure, e-government, digital killing, and training and introduce innovation and entrepreneurship. There are many studies done on the implications of AI on nuclear deterrence and strategic stability in South Asia. These studies highlight that **due to prevalent asymmetry in the conventional military build-up, the introduction of AI into military technology would worsen the already fragile deterrence stability of the region**. This assumption is based on the argument that due to AI in reconnaissance systems, **high-level intelligence collection would affect the survivability of nuclear weapons, which is based on diversification and concealment**. **However, AI would also enable both states to have more response options** in a short time **with the help of decision-making tools in** case of a **crisis**, especially in aerial battles. Moreover, **both states are moving towards the massive digitalization of their military systems and society without building cyber-resilient systems**. Resilience can be built against vulnerabilities like human factors, massive speed of the systems, protection, and storage of data and advanced persistent threats (ATPs). Artificial intelligence-based systems must be incorporated in societies and militaries along with mechanisms to strengthen the cybersecurity systems. A front runner in AI like **the US** has also **expressed concerns over the need for modern equipment to operate on “internet-like networks” and subsequently increased vulnerabilities due to their applicability**. Therefore, **military modernization can happen effectively through cyber resiliency in military systems**, network processes, and cyber architecture. **A cyber-resilient system would enable the state to develop a system that would remain functional during a phishing attack**. Steps like **cyber deception, agility, and clone defense could increase resilience** in the existing systems. **This is important to understand in already lacking strategic stability, military systems based on artificial intelligence would be an ideal target of AI advanced persistent threats in South Asia.** Therefore, **as** the process of **digitalization is increasing in the Pakistan-India equation, it is also becoming very important that both states should develop resilience in their cyber systems** so that the technologies could give them an advantage **rather than becoming a security peril** for them.

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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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#### 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

#### Competition is the glue that holds neoliberal capital together – it is the mechanism that bridges macroeconomic governmentality and micro-level technologies of the modern “autonomous” subject

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]

What is essential for this neoliberal art of government is competition. This is true in two respects: on the one hand, since the neoliberal market is known not to emerge and function naturally, it must be established and nurtured. This means that one cannot assume that free exchange will readily generate beneficial outcomes; on the contrary, as a building block of the system, the state or a political agency must work to create and sustain competition. From this perspective, the spread of competition law and related agencies for creating and sustaining competition provides striking evidence for Foucault's understanding of neoliberalism. The broad elective affinity between neoliberalism and the proliferation of regulatory agencies is clear: competition is neither a given nor natural; indeed the natural tendency in economic life is the rise of monopolies. Competition needs to be created, nurtured and continually, artificially maintained -- hence the regulatory agencies of various stripes. Just like in liberalism where an ever-intrusive raison d'etat should be prevented by law to infiltrate every nook of society, the neoliberal state must try and stop the tendency towards monopoly. On the other hand, competition does not remain a macro-systemic goal, but also becomes an individual ethic. If, as Lemke (2001: 191) states, '[Foucault's] history of governmentality [...] endeavors to show how the modern sovereign state and the modern autonomous individual co-determine each other's emergence', then there are implicit and explicit parallels between the broader system of governmentality and how individuals conduct themselves. Here, 'the homo economicus sought after [in neoliberalism] is not the man of exchange or man the consumer; he is the ~~man~~ [agent] of enterprise and production' (Foucault 2008: 147). As Read suggests, 'the two forms of liberalism, the "classical" and "neo" share [...] a general idea of "homo economicus", that is, the way in which they place a particular "anthropology" of man as an economic subject at the basis of politics. What changes is the emphasis from an anthropology of exchange to one of competition' (2009: 27-28). Neoliberalism and territoriality, then, are connected to one another in the sense that the former becomes possible and emerges as an art of government alongside a transformation of the latter. Nation-state territoriality loses its primacy to a new governmentality that takes the market as the model for all kinds of social relations, including sovereignty itself. The space and relations of sovereignty are no longer organised by recourse to raison d'etat , but are rather determined and organised through market rationality. Poignantly, this market rationality is itself keenly self-aware that markets are not the natural order, but rather something to be constructed and maintained. Aided by a science of economics, the state will become the organisation for accomplishing these tasks. In Davies' (2010: 65) words, '[w]here liberalism sought to rationalize sovereignty as a condition of the economy, the jump made by neo-liberalism was to bring sovereignty within the scientific purview of economics'. Competition is the bridge: the glue, so to speak, that brings together macroeconomic organization and exercises of sovereignty with micro-level mechanisms for governing individual conduct.

#### 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).

## Platforms

### Fintech UQ

#### Fintech innovation is high, and smaller firms are joining the industry

Beauchamp 20. Canadian journalist, researcher and content contributor covering topics ranging from the environment, business, and the economy at Valuer AI ( Lauren, ‘The Best Fintech Startups in the USA’, November 18 2020, <https://www.valuer.ai/blog/best-fintech-startups-in-usa>

Fintech, or financial technology has become one of the most successful global industries in the last decade. From mobile payment, trading, and cryptocurrency applications, FinTech has transformed the way finances are done. The hub of this technological trend is in the United States, where there is currently 1,491 startups and $58.5 billion investment in the industry, according to Digital Information World. Fintech is a global industry with startups having a presence in 6 continents. The USA is considered the global capital of Fintech with the largest investment in the industry, followed by China, The United Kingdom, and India. [graph omitted] With the fintech industry growing every subsequent year, the market is starting to fill up with fintech startups and innovative financial services trying to fulfill customers' needs that will ultimately shape the future of finance. [graph omitted] The last year has shown that startups are on the rise across all of America. In March 2019, there were 774,725 businesses that were less than 1 year old, according to Statista. These businesses had all started from scratch and were unrelated to existing corporations. These startups have generated $34.5 billion in revenue globally.

#### Consolidation isn’t bad

Alden Abbott 21. Senior research fellow at the Mercatus Center, focusing on antitrust issues. He previously served as the Federal Trade Commission’s General Counsel from 2018 to early 2021. 3/31/21. “Four Reasons to Reject Neo-Brandeisian Critiques of the Consumer Welfare Approach to Antitrust.”

First, the underlying assumptions of rising concentration and declining competition on which the neo-Brandeisian critique is largely based (and which are reflected in the introductory legislative findings of the Competition and Antitrust Law Enforcement Reform Act [of 2021, introduced by Senator Klobuchar on February 4, lack merit]. Chapter 6 of the 2020 Economic Report of the President, dealing with competition policy, summarizes research debunking those assumptions. To begin with, it shows that studies complaining that competition is in decline are fatally flawed. Studies such as one in 2016 by the Council of Economic Advisers rely on overbroad market definitions that say nothing about competition in specific markets, let alone across the entire economy. Indeed, in 2018, professor Carl Shapiro, chief DOJ antitrust economist in the Obama administration, admitted that a key summary chart in the 2016 study “is not informative regarding overall trends in concentration in well-defined relevant markets that are used by antitrust economists to assess market power, much less trends in concentration in the U.S. economy.” Furthermore, as the 2020 report points out, other literature claiming that competition is in decline rests on a problematic assumption that increases in concentration (even assuming such increases exist) beget softer competition. Problems with this assumption have been understood since at least the 1970s. The most fundamental problem is that there are alternative explanations (such as exploitation of scale economies) for why a market might demonstrate both high concentration and high markups—explanations that are still consistent with procompetitive behavior by firms. (In a related vein, research by other prominent economists has exposed flaws in studies that purport to show a weakening of merger enforcement standards in recent years.) Finally, the 2020 report notes that the real solution to perceived economic problems may be less government, not more: “As historic regulatory reform across American industries has shown, cutting government-imposed barriers to innovation leads to increased competition, strong economic growth, and a revitalized private sector.”

### AT: Dollar Heg

#### It's resilient – their authors have been fear mongering for 50 years

Tooze 21 (Adam Tooze, history professor and director of the European Institute at Columbia University, 1-15-2021, The Rise and Fall and Rise (and Fall) of the U.S. Financial Empire, Foreign Policy, https://foreignpolicy.com/2021/01/15/rise-fall-united-states-financial-empire-dollar-global-currency/)

If 2020 confirmed one thing, it was the centrality of the dollar to the global economy. U.S. hegemony may already have passed us in a political and strategic sense, but U.S. financial influence is proving more enduring. This is reassuring in the sense that the U.S. Federal Reserve has once again acted as a responsive and generous steward of the dollar-based financial system. But it is also a cause of puzzlement and frustration. While China and Russia experiment with alternatives to the dollar-based payment system, in Europe the buzzword of the day is “strategic autonomy.” Given the increasing aggression of Washington’s financial sanctions, compounded by the capriciousness of the presidency of Donald Trump, this is hardly surprising. It is an obvious reaction to the weaponization of interdependence. It is far from obvious to critics that dollar hegemony is an unalloyed blessing. Inequality, deindustrialization, and the loss of well-paid and secure blue-collar jobs can all be blamed on the dollar’s strength. In that sense, the dollar’s standing and Trumpian populism are not so much contradictions as functionally interconnected. One helped cause the other. Little wonder that visionary investors such as Ray Dalio of Bridgewater, the world’s largest hedge fund, advise anyone who will listen to prepare for a future beyond the dollar. In explaining his determination to back China, Dalio points to the rise and fall of other financial empires, a recurring cycle that stretches back over half a millennium. But are history’s lessons really that obvious? The dollar has been prominent in the world economy for just over a century, a period in which we have seen the largest explosion of population, economic activity, and state violence to date, a complete rupture on many metrics with any previous epoch in the history of our species. It’s fitting, therefore, that what we sometimes describe as a dollar system is not so much a well-defined and clearly delineated institution than a constantly evolving assemblage tracking the staggering transformations of the real economy and the international power system. Periods of coherence in which monetary and financial policy were neatly aligned with the grand strategic posture of the American empire were brief. Contradictions are the norm, and those of the current moment are by no means the most egregious. It is a history punctuated by crises. Talk about the end of dollar hegemony started half a century ago, in the 1970s, the period during which Foreign Policy was founded. Yet the dollar has continued to dominate the world economy.

#### Alt causes – COVID

Barton 1/7 (Susanne Barton, FX Rates Reporter at Bloomberg, 1-7-2021, Dollar Hegemony Is Under Fire From China’s Rapid Growth Recovery, Bloomberg, https://www.bloomberg.com/news/articles/2021-01-07/china-s-rapid-recovery-puts-global-dollar-hegemony-in-doubt)

China’s light-speed recovery from the pandemic has reignited the perennial debate about how long the dollar’s 50-year dominance of global markets can persist. The U.S.’s struggle to control the coronavirus and revive its economy contrasts sharply with the Asian nation, where growth has roared back. That divergence -- which saw the greenback’s worst performance since 2017 as the yuan advanced -- has bolstered China’s tilt at dollar hegemony, with investors flocking to onshore assets, trying out the renminbi for trade, and even giving it another look as a reserve currency. The greenback's popularity with foreign central banks has fallen The dollar’s demise as the world’s reserve currency has been idly speculated on and predicted for years, of course. Prior to the yuan, all the hype was about the euro as the dollar’s successor. Nothing, though, ever managed to dent the twin forces underpinning dollar supremacy: the U.S.’s role as both global growth engine and haven of first choice for investors during crises. So powerful were these two pillars that they were given a catchy nickname in trading circles years ago -- the “dollar smile.” But recently, that smile has looked more like a smirk, with the virus eroding both of the currency’s traditional supports. Instead, it’s the yuan that’s benefiting from demand for economic outperformance, and for assets insulated from the pandemic’s fallout, bringing the currency’s long-term prospects back into focus. “The center of the world’s economy is shifting from the Northern Atlantic, where it’s been for 500 years, to the Pacific,” said Marc Chandler, chief market strategist at Bannockburn Global Forex. “The currency markets are going to reflect that over time.” Yuan Smile It’s a somewhat ironic end to President Donald Trump’s pursuit of a weaker dollar. Despite frequently admonishing Beijing officials for keeping a lid on their currency to support Chinese exports at the expense of the U.S. -- and starting a full-blown trade war to force their hand -- it took a pandemic to change the tide. China is reaping the rewards. The world’s second-largest economy is now set to depose the U.S. as the leading engine of growth in 2028, five years earlier than expected just a year ago after better weathering the pandemic, the Centre for Economics and Business Research said last month. While American output is poised to rebound in 2021, growing 3.9%, China is on track to expand more than 8%. And its central bank is considering tightening monetary policy -- in stark contrast with a pledge from the Federal Reserve to remain accommodative, which has helped drag down the dollar. In fact, some see China’s economic success itself -- particularly in becoming a linchpin of the global supply chain -- reinforcing the trend for low interest rates elsewhere, and increasing the divergence. “The U.S. and other countries remain reliant on the Chinese supply chain to control the pandemic while vaccinations are rolled out,” said Ben Emons, the managing director of macro strategy at Medley Global Advisors. That advantage is what “keeps G-10 central banks highly accommodative.” Money Talks Investors have certainly taken notice, pumping $135 billion into Chinese bonds in the 12 months ended Sept. 30, data compiled by Bloomberg show. Equities have also proved popular, luring $155 billion over the same period. While recent New York Stock Exchange confusion around delisting several Chinese companies served as a reminder of the regulatory and trade-related risks surrounding the nation’s assets, investors were largely unfazed. Ultimately, it’s the record cache of negative-yielding assets elsewhere in the world that has made Chinese debt particularly appealing. China’s 10-year bonds yield more than 3%, versus just over 1% for similar-maturity Treasuries. With these securities also joining a growing number of international benchmarks that help investors set their return objectives, the renminbi is getting another look as a currency for both short- and long-term commitments. Greater Influence While more than 60% of the world’s currency reserves are denominated in dollars -- as they have been for over two decades -- holdings of the greenback fell to the lowest since 1996 at the end of the third quarter. The euro, pound and yen have gained from this decline, yet only the yuan has seen allocations increase -- to 2.1% -- for the last three quarters. That has some analysts rethinking their approach to the currency. HSBC Holdings Plc sees the yuan increasingly influencing weekly price changes in the pound and commodity-linked currencies, while strategists at Societe Generale SA see it affecting risk sentiment. The currency is now the fifth-most used currency for global payments, accounting for about 2% of transactions, according to data from the Society for Worldwide Interbank Financial Telecommunications, which handles cross-border payment messages for more than 11,000 financial institutions in 200 countries. While that’s still a small share, when Swift first started tracking currencies in this way in 2010, the renminbi was ranked 35th.

### AT: Iran

#### No Iran nuke acquisition----multiple checks

Mark Fitzpatrick 20. Associate Fellow at the International Institute for Strategic Studies. 1-17-2020. "Is Iran building the bomb?" The Article. https://www.thearticle.com/is-iran-building-the-bomb.

No, Iran has not restarted its nuclear weapons programme. Commentators such as the New York Times columnist Thomas Friedman blithely assume so, based on Iran’s decision on 5 January to retreat from the enrichment limits in the 2015 nuclear deal, known as the Joint Comprehensive Plan of Action (JCPOA). Others wrongly conclude that Tehran has abandoned the deal. Yet Iran is still keeping a foot in the accord, abiding by the crucial inspection requirements, while insisting it will resume full compliance if the US resumes its JCPOA obligations to loosen sanctions. What Iran has done is advance the timeline toward a nuclear weapons capability in line with its nuclear hedging strategy. How much so is a matter of conjecture among experts. Some say that if Iran decided to make an all-out dash for a bomb, and experienced no hiccups along the way — what its adversaries call a worst-case scenario — Iran could produce a bomb’s worth of highly enriched uranium (HEU) in as little as 4-5 months. But such assessments of the so-called break-out period are based on uncertain data and questionable assumptions. The Israeli Defense Force (IDF), which presumably has a clearer window into Iran’s program, assesses that Iran will be able to produce enough HEU by the end of the year and to assemble a weapon in less than two years. Alarming as this might sound, it is not significantly different than when the JCPOA went into effect in 2016. And it is a much better situation than when negotiations began in 2013, at which point the break-out period was judged to be only a couple of months. The IDF also assesses that Iran is currently not interested in developing an atomic bomb as quickly as possible. A key goal of Iran’s negotiating partners was to extend the break-out period to at least a year. The deal succeeded in doing so by eliminating 98 per cent of Iran’s stockpile of low-enriched uranium, all of its stockpile of 20 per cent enriched uranium, which is just below the threshold of being weapons-usable, and two-thirds of the centrifuges that do the enriching. Before those cuts, Iran’s stockpile was enough for up to ten weapons, if further enriched. Afterwards, it had less than a quarter of the feed stock for one bomb Now that Iran has removed restrictions, the stockpile of low-enriched uranium is growing, centrifuges are being reinstalled and more efficient centrifuges are being developed at a faster pace. We will know by how much each of these steps has advanced when the International Atomic Energy Agency (IAEA) releases its next quarterly report in the latter half of February. The enriched uranium feedstock will still be less than a bomb’s worth, but the pace of acceleration will be concerning. One question is whether Iran will resume 20 per cent enrichment, a level it first reached ten years ago, in an escalating stand-off with western states which were imposing ever-more biting sanctions. Today, Iran can again use the 20 per cent step as a bargaining chip in efforts to forestall the re-imposition of UN sanctions. Do not be spooked by the alarmist assessments that will surely follow when the next IAEA report comes out. Remember that worst-case assumptions assume that Iran would be able to get everything right the first time it attempts the tricky task of producing weapons-grade uranium without it exploding prematurely, and that assembling a warhead small enough to fit in the nosecone of Iran’s missiles would go like clockwork. Remember, too, that Iran would be [foolish] ~~suicidal~~ to try to rush to produce HEU at sites that are intrusively monitored.

### AT: Saudi Prolif

#### No Saudi prolif—multiple obstacles block

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The argument goes something like this: Once Iran gets the bomb, Saudi Arabia will have to get the bomb (or buy it from Pakistan). Once Saudi Arabia goes nuclear, the rest of the states in the Gulf Cooperation Council will follow suit. Egypt, Jordan and Turkey will be close behind.

This is a terrifying prospect. It’s also completely wrong.

Starting in the 1970s, states’ nuclear programs would trigger U.S. economic sanctions. These measures have been unable to compel states to reverse ongoing nuclear programs. However, they have been fairly effective deterrents for states contemplating going nuclear. For example, Japan and Taiwan were inhibited from pursuing nuclear programs for fear of losing access to global markets.

U.S. security guarantees have also dampened states’ incentives to pursue the bomb. U.S. policymakers feared that China’s acquisition of the bomb would set off a cascade of nuclear proliferation in East Asia. So they promised to protect South Korea in the event of an attack. That guarantee deterred the country from acquiring its own atomic arsenals. Similarly, Israel’s acquisition of a nuclear weapon circa 1967 failed to bring about a nuclear arms race in the Middle East. Egypt explored a nuclear program of its own, but ultimately abandoned it under Anwar Sadat’s leadership.

It is also incredibly difficult to acquire the necessary materials to build a bomb. And politicians in some authoritarian regimes inadvertently undermine their own aspirations. As Jacques E.C. Hymans of University of Southern California points out in his book “Achieving Nuclear Ambitions,” since 1970, half of the nuclear projects that states have undertaken have been abject failures; the rare successes have taken far longer than necessary. While it took China roughly 10 years to get the bomb, it took Pakistan 20. This is largely because rulers in weak or authoritarian states have a tendency to intervene and interfere in scientists’ efforts to develop nuclear weapons, undermining their professional ethos. A greater barrier exists between politicians and scientists in strong states, making it easier for their states to obtain the bomb and join the nuclear club.

The Gulf States argue that with Iran, it’s different. These countries have had long-standing tensions with the country. After the British withdrew from the region and granted independence to the United Arab Emirates, Qatar and Bahrain, in 1971 the Iranian Shah asserted control of the Tunb Islands as well as the strategically critical Abu Musa. These regimes remain suspicious of Iran’s intentions with respect to their oil installations as well. Some, such as Saudi Arabia and Bahrain, have complained of Iranian influence and interference among their disgruntled Shia populations. Their fears have grown since the outbreak of the Arab Spring in December 2010. They say that a nuclear Iran will become increasingly aggressive, making it more prone to engaging in coercive diplomacy. They fear that the Obama administration’s overtures to Iran will amount to the U.S. pivoting toward Tehran – and abandoning them. Acquiring nuclear weapons, they argue, is the only way to stay protected.

While nuclear dominoes rarely fall, one cannot completely dismiss the possibility of Riyadh pursuing a nuclear option. However, several obstacles stand in its way.

It has long been rumored that the Saudis expect the Pakistanis will help them to acquire an arsenal. However, Pakistan has of late asserted its independence from Saudi Arabia, as evidenced by their refusal to aid Saudi Arabia’s war in Yemen. Such a move would exacerbate tensions not only between Islamabad and Washington, but Riyadh and Washington as well. If Pakistan is not willing to provide sensitive nuclear assistance to Saudi Arabia, Riyadh will have to pursue it on its own.

The Kingdom of Saudi Arabia has an extremely limited nuclear infrastructure. It does not even possess a research reactor and only obtained small quantities of nuclear material through the IAEA. It has plans for building up to 16 reactors, but the first will not go online until (at least) 2022. The Saudis have also signed an agreement to purchase American-designed reactors from South Korea. The U.S. maintains that if such reactors were to be sold, KSA would have to sign what is known as a “123 agreement” that would shut down domestic enrichment and reprocessing. Given its weight in international oil markets, the Saudis could call the Americans’ bluff and enrich anyway. However, this would be a tremendous gamble that would likely jeopardize U.S. security guarantees.

### AT: Sanctions

#### Reliance on sanctions cements U.S. imperialism and economic control over other countries – the aff uniquely limits U.S. influence

Davis et al. 20 (Robin Davis, Onyesonwu Chatoyer, and Nancy Wright, writers for Hood Communist journal, 4-9-2020, Sanctions Kill: The Devastating Human Cost of Sanctions, Wear Your Voice, https://www.wearyourvoicemag.com/sanctions-kill-the-devastating-human-cost-of-sanctions/

Economic sanctions are a tactic of war that target a particular nation for pressure by leveraging US dominance over the global financial and trade system. Sanctions work by essentially strangling the economy of the targeted nation. Because the system of global capitalism largely uses the US dollar, all international transactions are routed through US banks. This allows US banks to block or freeze individual transactions – or all transactions initiated by or for a particular nation – and also confiscate billions of dollars held by a targeted government upon demand. US global financial dominance also means that the US government can demand banks owned by completely uninvolved countries comply by threatening them with sanctions as well. A recent example of this is when Citibank (a US bank) and Deutsche Bank (a German bank) seized $1.4 billion in Venezuelan gold after the US government applied economic sanctions on the Venezuelan Central Bank. The way the US is able to control who can give and receive money from who and who can do business with who is not dissimilar to how US political and military dominance has allowed them to control the globe in the post World War 2 modern age. The US military is able to drone bomb nearly any person in any colonized country at any time without any consequence – see the illegal assassination of Qasem Soleimani. The US Navy is able to intercept ships (and thus interrupt trade) in nearly any waters at any time – see when they seized a ship headed for Venezuela with food in the Panama Canal. The permanent US seat on the UN security council alongside two other Western imperialist powers with tightly aligned agendas allows it to force global consensus toward regime change again and again and again. Economic sanctions are typically imposed through bills that glide easily through the US House and Representatives and Senate. They can also be imposed through executive order directly from the US president or authorized by a particular US government agency like the Department of the Treasury, State, or Defense – bypassing the system of so-called “checks and balances” entirely. If the US empire desires international support for a particular round of sanctions – as they might if they’re using them as part of broader escalation to war with a particular country – they pursue the support of the European Union, the UN security council, or assorted neo-colonial bodies like the Organization of American States or the African Union. Although rhetoric around sanctions typically holds them up as a kinder, gentler means of bringing nations who do not submit to the will of Western imperialism to heel, the reality of economic sanctions **is starvation and devastation** for the masses of people on the ground in the targeted country. Economic sanctions often indiscriminately target import and export sectors of a given economy, drastically restricting a nation’s ability to generate revenue through trade while also drastically restricting the sorts of goods that a nation can import. The day to day consequences for a sanctioned country are a massive inflation of the national currency, a ruined credit rating that makes it extremely difficult to obtain international loans, huge shortages and high prices for goods like food, medicine, fuel, industrial equipment, and crumbling infrastructure that can not be repaired or replaced because the materials required to do so can not be imported. US economic sanctions are essentially part of a strategy of **compliance through collective punishment**. By design, US sanctions are not targeted in scope and impact at the government of a particular country but rather at the civilian population of that country. The inevitable consequence of restricting a nation’s ability to import and export goods and generate the revenue it needs to function day to day is a collapse in that nation’s economy and thus its ability to provide for the basic needs of its own people. We can look to the African world for a clear example of what this looks like. After the September 1991 coup that deposed President Jean-Bertrand Aristide, the US imposed a round of economic sanctions in Haiti that had a devastating impact on the day to day lives of poor and working class Africans on the island. According to one report released by international public health experts at Harvard University, up to 1000 Haitian children were dying every month after a US trade embargo drastically restricted the nation’s ability to import food, medicine, and vaccines. When questioned on the impact sanctions were having on Haiti’s vulnerable and defenseless children, a US State Department representative, David Johnson, said: “Sanctions are by their very nature a blunt instrument, but they remain the best tool we have at our disposal to bring about the return of democracy in Haiti.” Think about which people in our society are most affected when access to basic necessities is cut off. When the day to day reality is soaring unemployment, high food and fuel prices, greatly limited access to medicine and antibiotics, and underdeveloped housing and medical care – all the most common consequences of economic sanctions. When a nation’s economy has collapsed and it’s state is no longer able to provide for the basic survival of its citizens, the result is a new reality of **instability, shortages, famine, and death** that devastatingly impacts an entire population but which most acutely targets the most vulnerable sectors of our people. Sectors like the elderly, the chronically ill & disabled, the very young, caretakers, and women, queer, trans, and gender variant people – **groups that are already facing constant attack** under patriarchy, capitalism, and colonialism **seeing those attacks heightened** as scarcity ripples through the broader society.

## Acquisition

### Overstretch

#### 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.

### 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.195

### Turn

#### 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.

#### 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.

### AT: AI

#### No emerging tech impact

Todd S. Sechser 19, the Pamela Feinour Edmonds and Franklin S. Edmonds, Jr. Discovery Professor of Politics and Public Policy at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs, Neil Narang is an Associate Professor of Political Science at the University of California, Santa Barbara, Caitlin Talmadge is Associate Professor of Security Studies in the School of Foreign at Georgetown University, “Emerging technologies and strategic stability in peacetime, crisis, and war”, Journal of Strategic Studies, 42:6; pg. 728-729

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

### AT: Cyber Attacks

#### No cyber impact---non state actors lack capability, Russia and China don’t have an incentive.

Lewis 20 – (James A., PhD, a senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies (CSIS), Before joining CSIS, Lewis worked at the Departments of State and Commerce as a foreign service officer and as a member of the Senior Executive Service, a political advisor to the U.S. Southern Command for Operation Just Cause, the U.S. Central Command for Operation Desert Shield, and the Central American Task Force. Lewis served on the U.S. delegations to the Cambodian peace process and the Permanent Five talks on arms transfers and nonproliferation, and he negotiated bilateral agreements on transsfers of military technology to Asia and the Middle East. He led the U.S. delegation to the Wassenaar Arrangement Experts Group on advanced civilian and military technologies. Lewis led a long-running Track 2 dialogue on cybersecurity with the China Institutes of Contemporary International Relations. He has served as a member of the Commerce Spectrum Management Advisory Committee, the Advisory Committee on International Communications and Information Policy, and the Advisory Committee on Commercial Remote Sensing and as an advisor to government agencies on the security and intelligence implications of foreign investment in the United States, 2020, “Dismissing Cyber Catastrophe,” [accessed 8/30/20], <https://www.csis.org/analysis/dismissing-cyber-catastrophe>, see)

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. **There has never been a catastrophic cyberattack.** To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. **To** **achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it.** **The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid.** **No one died in this blackout, and services were restored in a few days**. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, **there are powerful strategic constraints on those who have the ability to launch catastrophe attacks**. **We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions.** We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: **Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe**. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. **The monetary return is negligible, which dissuades the skilled cybercriminals** (mostly Russian speaking) **who might have the necessary skills.** One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. **There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack.** (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) **No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons.** Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, **but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation**. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. **Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.** The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but **neither Russia nor China would be well served by a similar attack on the United States.** **Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States.** Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. **North Korea has not yet developed this kind of capability.** **One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies.** These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and **experience shows that people compensate for damage and quickly repair or rebuild.** This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. **Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning**. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

# 2NC

## Reg 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.

### AT- Cant Solve

#### No, this links way more to the aff—expanding the scope of antitrust causes regulatory capture.

Schrepel 20 (Thibault, Assistant Professor at Utrecht University School of Law, Associate Researcher at University of Paris 1 Pantheon-Sorbonne and Invited Professor at Sciences Po Paris, “Antitrust Without Romance,” 13 NYU J.L. & Liberty 326, Lexus)

Private and Pseudo-State Interests. Antitrust authorities can be captured by various outside groups that lead antitrust employees to please them so as to maximize their own future interest. 59 Public choice theorists have pointed out that special interest groups may capture regulatory authorities. 60 This issue cannot be overlooked and [\*344] a precise risk map should be drawn in this area as antitrust authorities' employees may please these groups for personal benefit, to the detriment of consumers. 61 The importance of this issue is growing as the scope of antitrust authorities is expanding, which increases the risk of regulatory capture by interest groups. 62 See, e.g., Bundeskartellamt prohibits Facebook from combining user data from different sources (Bundeskartellamt, Feb. 7, 2019), archived at https://perma.cc/B9S2-9659. For more on this extension of antitrust authorities' power, see Directive (EU) 2019/1/EU of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, 2019 O.J. L11 3 (Jan. 14, 2019). For risks this creates in terms of regulatory capture, see Michael E. DeBow, Social Costs of Populist Antitrust: A Public Choice Perspective, 14 Harv. J. L. & Pub. Pol. 205, 220 (1991) (explaining that as the government expands the scope and aims of antitrust enforcement, private parties invest more significant sums in manipulating this greater government intervention in the economy).

### 2nc antitrust bad

#### Antitrust is developed by adjudication which inherently sucks --that creates an ineffective, unpredictable, and unenforceable patchwork

Chopra 20 (Rohit, Commissioner of the Federal Trade Commission, and Lina M. Khan, Academic Fellow at Columbia Law School, Counsel to the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary and Former Legal Fellow at the Federal Trade Commission, “The Case for "Unfair Methods of Competition" Rulemaking”, University of Chicago Law Review, 87 U. Chi. L. Rev. 357, March 2020, Lexis

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process. One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the "rule of reason" standard. The "rule of reason" involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for "speculative, possibly labyrinthine, and unnecessary" analysis and appears to exceed the abilities of even the most capable institutional actors. 1 Generalist judges struggle to identify anticompetitive behavior 2 and to apply complex economic criteria in consistent ways. 3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer. 4 And if a standard isn't administrable, it won't yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms [\*360] into their business decisions. 5Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process--a fundamental principle in our legal system. 6 Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication "may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies." 7Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades. 8

#### Antitrust ‘signaling’ is fake

Gerber 12, (David, Distinguished Professor of Law at Chicago-Kent College of Law, B.A. from Trinity College, M.A. from Yale University, and J.D. from the University of Chicago, Awarded the Degree of Honorary Doctor of Laws by the University of Zurich, Former Visiting Professor at the Law Schools of the University of Pennsylvania, Northwestern University, and Washington University, Global Competition: Law, Markets, and Globalization, p. 150

f. International implications

These fundamental changes in the aims, methods and dynamics of US antitrust have important transnational implications. One set of implications involves foreign perceptions of US antitrust law. As we have seen, the changes are easily overlooked or misunderstood. They have not been signaled by a new statute or by new institutions or procedures. They are buried in the language of cases and in the actual operations of the legal system. As a result, observers often simply do not perceive the changes or recognize their implications. For example, non-US supporters of an economics-based system have often claimed that it would reduce uncertainty, simplify antitrust law and reduce costs. At a conceptual level it does. In practice, however, the picture has been more complicated.

## Biz Con

### 2nc impact ov

#### 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.

### 2nc 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]

### 2nc 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.)

#### 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 sanctions fail

**Iran sanctions fail---empirics, circumvention, and allies.**

Suzanne **Maloney 18**. Deputy Director - Foreign Policy, Brookings; Senior Fellow - Center for Middle East Policy, Energy Security and Climate Initiative; doctorate from the Fletcher School of Law and Diplomacy at Tufts University. “’Sanctions are coming’— but Trump has no achievable end game for Iran.” Brookings. 11/7/2018. https://www.lawfareblog.com/sanctions-are-coming-trump-has-no-achievable-end-game-iran

Tehran has **many tools at its disposal** to manage financial constraints, and **considerable experience** in **enduring epic crises**. After all, the Islamic Republic has faced various forms of economic pressure throughout its 40-year existence, beginning with the disruption caused by the 1979 revolution. The first round of U.S. sanctions were imposed later that year after Iranians seized the U.S. Embassy in Tehran and held its personnel hostage for 15 months. In the decades that followed, the Iranian leadership has had to contend with profound economic constraints—those generated by sanctions as well as a succession of regional conflicts and the recurrent volatility in oil markets.

As a result, Iranian leaders have nearly **perfected the playbook** for surviving tough times by **any means necessary**. The regime’s very survival during the eight-year war with Iraq, when U.S. measures prevented the replenishment of its military equipment, depended on mobilizing domestic production and tapping into alternative supply networks, and both remain essential tools in the arsenal of **I**ran’s **R**evolutionary **G**uard **C**orps. Tehran has developed its own fleet of **supertankers** as a backstop to store excess crude production, and—once the transponders are **deactivated**—to export it semi-covertly. With oil prices hovering near $80 per barrel, **Iran will find buyers** for whatever volumes it can export.

Based on prior experience, Iran has expanded its external crude storage capacity in China and will be doubling down on opportunities to amplify opportunities for non-oil trade with its neighbors. Its officials and businesses are **adept** at various means of **circumventing U.S. measures** that target financial flows, whether that involves working via **front companies**, conducting **barter trade**, funneling crude exports via neighbors, or utilizing or even more **unconventional tender** such as **cryptocurrency**.

All these contrivances will surely enable Tehran to **muddle through** with a combination of **mitigation**, **improvisation**, and **greater institutional capacity** than outside analysts typically presume, just as its leadership has during even more severe episodes of financial constraints and externally-imposed pressure. And today the Islamic Republic benefits from more meaningful international support than at any other point in the past 40 years: a burgeoning if mutually suspicious strategic **partnership with Russia**, the economic and **strategic opportunism of Beijing**, and full-throated (if still operationally impeded) assistance from Europe. All this enables Iranian leaders to **put up a good front** at home and **stiffens its spine in responding to Washington**.

#### Unilateral sanctions have a less than 13% chance of success

David Cortright 18, (Director of Policy Studies, Kroc Institute for International Peace Studies, University of Notre Dame) "Why sanctions on Iran and Russia probably won't work," Business Insider, <https://www.businessinsider.com/us-sanctions-on-iran-and-russia-probably-wont-work-2018-8>

Allies supporting and reinforcing sanctions are usually pivotal to making them stick. Unilateral sanctions such as the proposed measures against Russia and Iran are seldom successful. Although the European Union has placed sanctions on Russia because of its actions in Ukraine, the latest legislative measures proposed in Congress would be unilateral. In an increasingly globalized world, unilateral sanctions face huge obstacles — even when imposed by the largest economy. A landmark study published in the 1990s by the Peterson Institute for International Economics found that unilateral US sanctions achieved their foreign policy goals only 13% of the time. The rare instances when unilateral sanctions work involve countries that have extensive trade relations with the US, clearly not the case with Russia or Iran. Russia is low on the list of US trading partners, and Iran has had virtually no economic or commercial relations with the US Neither country is dependent on US trade or likely to submit to American economic pressure. In addition, when a country faces sanctions, it can often seek commercial ties elsewhere. This was the case with Cuba. When the US imposed sanctions on its former trading partner after Fidel Castro came to power, Havana turned to Moscow for help and became a part of the communist bloc.

### 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.").

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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.""

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### 2nc - fw

#### Focus on policy agenda influence ignores the concrete material praxis needed for broad social transformation

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.34-5, JCR]

A historical materialist approach gives ontological primacy to historically specific socio-economic realities constituted by the social relations of production and the collective class agency emanating from it. It allows for systematically analysing clusters of class action in a historical context of broader ideational and material structures of power and counterpower. As an emancipatory project, changing the social relations of production is considered the groundwork for a wider social transformation. Analyses in the historical materialist tradition however often suffer from an elitist bias by focusing overwhelmingly on the role and internal fractionation of capital (Wigger and Horn, 2014). Social struggles consequently tend to be reduced to top-down institutional arrangements securing domination within the state apparatus, while dissent, disruption, protest and resistance outside the remit of the state institutional realm, such as demonstrations, strikes, square occupations, as well as more concrete material economic practices, remain analytically and theoretically marginalized (Huke et al, 2015). Emerging forms of resistance are consequently often perceived as limited or as reactive only (Featherstone, 2015). Social movement literatures in contrast clearly give primacy to bottom-up political struggles but often suffer from a similar state-centric bias by focusing predominantly on political demands by social movements vis-a-vis the established state institutional arena, and henceforth, their successes in influencing the policy agenda (McAdam et al, 2001; Tarrow, 2012; Della Porta, 2013). Tarrow (2011: 9), for example, conceptualizes social movements as ‘collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities’. Such a state-centric institutional reductionism is problematic insofar as it tends to ignore forms of concrete material radical praxis that takes place outside the realm of state institutional pressure politics of political parties, trade unions, interest groups, advocacy networks or NGOs and that challenges the very status quo of how the (re-)production of everyday life through work is organized. As a result, the traditional social movement literature has paid little attention to forms of resistance in the form of alternative social relations of (re-)production and the redistribution of material resources. Collective action is moreover frequently portrayed as classless. Certainly, not all forms of collective action are necessarily rooted in class or class awareness; yet, such agency may nonetheless have ‘conjuncturally determined’ class relevance (Jessop, 2002: 32).

### 2nc- PDB

#### Green capitalism is the primary driver of modern accumulation – the aff appropriates ecological crisis to serve the ideological framework of capital

Nikula 17 [Ilari, PhD Researcher in Social and Economic Geography at the University of Lapland; "Neoliberal Environmentalism," 08/06/17, <http://web.isanet.org/Web/Conferences/HKU2017-s/Archive/ceb6c473-5cb9-4308-9e23-efe6157f7785.pdf>, JCR]

Mueller and Passadakis (2009; 2010) have argued that the ecological crisis has been placed at the heart of the growth strategy of the present neoliberal regime. They point that green capitalism is now the main driver of a new round of capitalist accumulation. This is seen, for example, in initiatives like The Green New Deal (GND) that was announced by the United Nations Environmental Programme (UNEP) in 2008. It is a proposed set of policy proposals that aim to address global warming and financial crisis. They include schemes for reducing incentives to invest in ‘dirty’ over ‘clean’ industries, creating systematic measurements for ecosystem valuations, like consistent global carbon, emissions and water charges (UNEP 2011, 9, 14, 29). These proposals also strive for trade liberalization, safeguarding market access of individuals, credit availability and microcredit programmes (ibid., 9-10, 31, 34). Green parties that are pushing the GND policies are hailed as a “market-friendly engine of innovation” and the GND is described as a “stimulus package for the ecological technologies of the future” (Mueller and Passadakis 2009, 55). The director of UNEP summed it up when announcing UNEP’s two-year GND project in 2008: “The new, green economy would provide a new engine of growth, putting the world on the road to prosperity again” (quoted in Mueller and Passadakis 2010, 560). Indeed, UNEP (2011, 38) further defines that the so-called “trade-off” between economic progress and environmental sustainability is a myth. GND proposals have been criticized, especially in the developing countries, in that they undermine national sovereignty, set a green "normative straightjacket" for developing countries, and that they signal a "privatization and commodification of nature” (Vedeld 2011, 28). Critics also refer that these global prescriptions consider too little the local consequences of such solutions, saying that local solutions might have much more potential in terms of their sustainability (ibid., 16). Mueller and Passadakis (2010, 555) suggest that the ecological threat has given global institutions like World Bank, IMF, WTO and G8 a way to overcome the legitimation problem they have been having. If there ever was a real antagonism between environmental reason and neoliberal capitalism, it has now been internalized by both.2 In addition to the policies of global institutions, this has also happened in our everyday lives, inasmuch as “sustainability [has become] a political attitude of the multitude” (Parr 2009, 4). Slavoj Žižek (2009) notes that consuming has now become ecologically ethical. Consuming has become an act for the environment as ‘green’ and ‘socially responsible’ companies claim to sell an ethical framework as well as a product, thus freeing buyers from the distasteful role of being merely consumers. In products labeled e.g. “environmentally friendly” one doesn’t buy just a product, one buys, in the very consumerist act, a “redemption from being only a consumerist.” One act of egotist consumerism, but within it one pairs for being redeemed for it as the “act of egotist consumption already includes the price for its ethical opposite.” Save the planet by shopping.

#### 2. Pragmatism DA – the perm keeps its foot in the door of neoliberalism as a pragmatic move in the face of neoliberal subject formation – that’s a fatalistic move that captures the alt

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Petrified Futurity Capitalist Realism indexes not only our economic condition, but more pervasively, the 'atmosphere' of political resignation which denies the possibility for any other socio-economic structural scenario. This 'atmosphere' permeates both conscious and unconscious life, including the arena of cultural production (music, art, film, etc.) where instead of seeing boundless innovation (a capitalist premise), we seem caught in retroparalysis: loops of re-makes and pop-cultural revivalism,5 where substantial technological development devolves into trivial consumer gadgetry.' Within such an atmosphere, mental distress and illness has also proliferated as a debilitating symp- tom of the behavioral imperatives this naturalization entails. This is in the way one is compelled to 'govern from within' to adapt to the world successfully in full, entrepre- neurial self-reliance. Such naturalization is internalized as the only system compat- ible with 'innate' humanness, where this picture of 'innateness' is both self-referential and self-reinforcing, coercing the human into a narrow mold wherein the incentive of accumulation through competition is isomorphic with our 'intrinsic' selfishness and self-interest (those very social biases buttressing neoclassical economics, upon which neoliberalism is built). In this framing, capitalism is upheld as the only system com- mensurate with the 'nature' of the human; to suggest otherwise is to fall prey to folly, almost as nonsensical as fighting the fact of gravity on earth. The diagnosis Fisher puts forth, quite pointedly, is that Capitalist Realism petrifies politics because it stifles our imaginative and perspectival horizons. The axiom then gets extrapolated: if futurity is always a political project and politics is dead-locked, our future, as such, has become cancelled - a point to which we will return.

#### 3.

### 2nc alt- prefiguration

### 2nc at perm solves bc contingent markets

### 2nc at tech and adaption solves

**Infinite growth crowds out environmental health**

**Magdoff ’12** Fred Magdoff, Professor emeritus of plant and soil science at the Unviersity of Vermont, “Harmony and Ecological Civilization,” Monthly Review, June 2012, Vol. 64, Issue 2, p. 1-9

The growth imperative of capitalism deserves special attention because it is one of the major stumbling blocks with respect to harmony between humans and the environment. Accumulation without end means using ever greater quantities of resources—without end—even as we find ways to use resources more efficiently. An economy growing at the very meager rate of 1 percent a year will double in about seventy-two years, but one growing at 2 percent a year, still a low rate, will double in size in thirty-six years. And when growing at 3 and 4 percent, economies will double in twenty-four and eighteen years respectively. China recently has seen recorded growth rates of up to 10 percent, meaning economic output doubles at a rate of approximately every seven years! Yet, we are already using up resources far too fast from the one planet we have—depleting the stocks of nonrenewable resources rapidly and misusing and overusing resources that are theoretically “renewable.” If the world’s economy doubles within the next twenty to thirty years this can only hasten the descent into ecological, and probably societal, chaos and destruction. Thus capitalism promotes the processes, relationships, and outcomes that are precisely the opposite of those needed for an ecologically sound, just, harmonious society. In the alienated ideology and practice of bourgeois society, Marx and Engels noted in The German Ideology, “the relation of man to nature is excluded from history and hence the antithesis of man to nature is created.” Proletarians thus had the historical task of bringing their “‘existence’ into harmony with their ‘essence’ in a practical way, by means of a revolution” (italics added).3 Only in this way could they reestablish a harmonious connection to nature and to their own production. That Marx and Engels were referring directly to the early stages of what we now call the ecological crisis is indicated by the following: “The ‘essence’ of the fish is its ‘being,’ water—to go no further than this one proposition. The ‘essence’ of the freshwater fish is the water of a river. But the latter ceases to be the ‘essence’ of the fish and is no longer a suitable medium of existence as soon as the river is made to serve industry, as soon as it is polluted by dyes and other waste products and navigated by steamboats, or as soon as its water is diverted into canals where simple drainage can deprive the fish of its medium of existence.”4

**The system is crisis-prone—collapse is inevitable**

**Li ’13** Minqi Li, “The 21st Century: Is There An Alternative (to Socialism)?” Science & Society: Vol. 77, January 2013, No. 1, pp. 10-43, doi: 10.1521/siso.2013.77.1.10

Over the past one and a half century, the long-term tendency towards rising wage, taxation, and environmental costs seem to have accelerated. The rising wage and taxation costs have reflected the long-term challenges from the “anti-systemic movements” (social democracy, national liberation movements, and “communism”), which forced the system’s ruling elites to make major concessions in the mid-20th century. The rising environmental costs have resulted from the relentless capital accumulation, which has greatly accelerated the depletion of the natural resources and the degradation of the global environment (Wallerstein, 2003, 57-66). As a result, the capitalist world system has been under great pressure to accelerate the pace of global industrial relocation. This has led to the dramatic expansion of the geographic zone of semi-periphery over the past quarter of a century. Most importantly, China and India, by serving as the centers of the latest round of global industrial relocation, have joined the rank of the semi-periphery. China’s per capita GDP has by now risen to about one-seventh of the US level and India could reach a similar relative level in about a decade. Given the enormous size of the Chinese and Indian population, then by around 2020, the world semi-periphery (defined as the geographical areas with per capita GDP around one-fifth of the level in the most advanced capitalist state) would have expanded to include about 60 percent of the world population. Can the capitalist world system survive such a massive expansion of the semi-periphery? With the massive expansion of the semi-periphery, there will inevitably be a major redistribution of the world surplus value. As less of the world surplus value is concentrated in the core, it will become increasingly difficult for the core states to finance capital accumulation in the leading industries. The core states will also have growing difficulty to maintain a large pool of “cadres”, the system’s skilled and managerial labor force or the “middle class”. Already, virtually all core capitalist countries are now confronted with insurmountable fiscal crises. Fiscal crisis, in essence, is the sign that capitalism in the core zone can no longer simultaneously provide favorable conditions of capitalist accumulation while maintaining “social peace” (that is, to secure the political loyalty of the middle classes) at home. It is widely recognized that the US hegemonic power is in irreversible decline, both in the sense that the relative economic position of the United States has been falling in the capitalist world system and in the more important sense that the United States is less willing and less able to regulate the system for the system’s long-term, common interest. The current expansion of the semi-periphery has obviously accelerated the decline of the US hegemonic power. More ominously for the capitalist world system, the great expansion of the semi-periphery has also made it much less likely and even impossible for a new hegemonic power to emerge by dramatically increasing the number of states that is relevant in the system-wide politics. This is shown by the expansion of the most high-profiled global policy making body from the so-called “G7” group to the so-called “G20” group. The capitalist world system is an inter-state system. The arrangement of the inter-state system is necessary for maintaining a balance of power between the state and capital in terms that are favorable for capital accumulation. However, the system also has a fatal flaw. As the system does not have a “world government”, there is no effective mechanism to secure and promote the system’s long-term, common interest (such as global peace, global macroeconomic management, construction of global social compromise, and global environmental management) and unrestrained inter-state competition could lead to the system’s self-destruction. Historically, the capitalist world system has relied upon the periodic hegemonic powers (the Netherlands in the 17th century, the United Kingdom in the 19th century, and the United States in the 20th century) as a proxy for the world government to regulate the system’s long-term, common interest. With the massive expansion of the semi-periphery, this historical mechanism required for the normal functioning of the capitalist world system begins to break down (Li 2008, 113-138).