# Neg Doc – Gonzaga MR v Indiana JL

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#### Interpretation - Prohibition is a law forbidding an action

Oxford Languages Dictionary No Date (https://languages.oup.com/google-dictionary-en/)

Prohibition n. forbidding an act or activity. A court order forbidding an act is a writ of prohibition, an injunction, or a writ of mandate (mandamus) if against a public official.

#### Expanding the scope” means to create new statutory claims 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.

#### And, The affirmative doesn’t prohibit a practice, they just use rules of reason to restrain the anticompetitive effects of an act, but only per se illegality prohibits a practice. They shift the burden of proof from the plaintiff to the defendant without explicitly banning a practice.

John Paul Stevens 90 (Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411. LN)

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### Ground ---key to link, uniqueness and CP competition ground. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### Limits – They explode the topic by allowing infinite variations to how they restrict specific practices creating an unfair research burden on the neg

### 1nc—CP

#### Text: The United States judiciary should maintain current antitrust laws regarding technology firms by increasing the burden of proof for violations of current FTC principles.

#### CP solves without expanding antitrust laws

Minhas 21 (Sabrina, graduated from Loyola-Chicago magna cum laude with a BBA in economics and a BA in political science, spent three years working in economic research at the Federal Reserve Bank of Kansas City, where she won the Performance Excellence Award from the bank for her commitment to conducting high-quality, policy-oriented research, “Antitrust Enforcement of Startup Acquisitions,” 8/4/21, The Regulatory Review, https://www.theregreview.org/2021/08/04/minhas-antitrust-enforcement-startup-acquisitions/)

First, antitrust officials should consider the buyer’s market share. As a firm gains more market share, that firm has greater incentive to exclude its rivals. After acquiring a startup, a dominant firm is unlikely to license the acquired technology to its rivals. Bryan and Hovenkamp recommend limiting enforcement of startup acquisitions to deals in which the buyer has a large market share. Second, courts can determine how much an acquisition will affect competition by considering the “commercial significance” of the startup’s technology. Sometimes, courts will easily recognize that the startup’s technology adds value to the market. When the value of the startup’s technology is unclear, a court should use the price of the acquisition or the market value of the startup as a proxy for the value of the startup’s technology. Finally, courts should examine whether a buyer previously acquired other technology startups. Courts may be able to determine that a firm has a “broader exclusionary strategy in which persistent acquisitions are used to restrain rivals’ access to new technologies,” Bryan and Hovenkamp note. They explain that a pattern of startup acquisitions may support an antitrust claim “under Section 2 of the Sherman Act,” which makes monopolization attempts a felony. Bryan and Hovenkamp recommend that, after the government succeeds in showing that a startup acquisition violated antitrust law, courts award a retrospective remedy, such as requiring a buyer to license newly acquired technology to its rivals. This remedy would address the concern of false negatives by allowing the acquisition to proceed while preventing competitive harm. The current lack of antitrust enforcement of startup acquisitions does not avoid errors. Rather, nonenforcement demonstrates that courts are failing to distinguish startup acquisitions from conventional mergers, Bryan and Hovenkamp argue. They recommend that courts acknowledge the potential competitive harms of startup acquisitions and “develop standards that strike a reasonable balance between administrability and the risk of judicial error.”

#### Aff kills innovation—Enforcing current law based around demonstrating anticompetitive behavior solves—overburdensome expansion of regulations kills innovation

Abbott 21 (Alden, International Center for Law and Economics,” A FIRST GLANCE AT THE BIDEN EXECUTIVE ORDER ON COMPETITION: THE GOOD AND THE BAD (INCLUDING MUCH THAT LOOKS UGLY),” 7/9/21, https://laweconcenter.org/resource/a-first-glance-at-the-biden-executive-order-on-competition-the-good-and-the-bad-including-much-that-looks-ugly/)

To be clear, this is not to say that “Big Tech” does not deserve close antitrust scrutiny, does not wield market power in certain segments, or has not potentially engaged in anticompetitive practices. The fundamental point is that assertions of market power and anticompetitive conduct must be demonstrated, rather than being assumed or “proved” based largely on suggestive anecdotes. Perhaps market power will be shown sufficiently in Facebook’s case if the FTC elects to respond to the court’s invitation to resubmit its brief with a plausible definition of the relevant market and indication of market power at this stage of the litigation. If that threshold is satisfied, then thorough consideration of the allegedly anticompetitive effect of Facebook’s WhatsApp and Instagram acquisitions may be merited. However, given the policy interest in preserving the market’s confidence in relying on the merger-review process under the Hart-Scott-Rodino Act, the burden of proof on the government should be appropriately enhanced to reflect the significant time that has elapsed since regulatory decisions not to intervene in those transactions. It would once have seemed mundane to reiterate that market power must be reasonably demonstrated to support a monopolization claim that could lead to a major divestiture remedy. Given the populist thinking that now leads much of the legislative and regulatory discussion on antitrust policy, it is imperative to reiterate the rationale behind this elementary principle. This principle reflects the fact that, outside collusion scenarios, antitrust law is typically engaged in a complex exercise to balance the advantages of scale against the risks of anticompetitive conduct. At its best, antitrust law weighs competing facts in a good faith effort to assess the net competitive harm posed by a particular practice. While this exercise can be challenging in digital markets that naturally converge upon a handful of leading platforms or multi-dimensional markets that can have offsetting pro- and anti-competitive effects, these are not reasons to treat such an exercise as an anachronistic nuisance. Antitrust cases are inherently challenging and proposed reforms to make them easier to win are likely to endanger, rather than preserve, competitive markets.

### 1nc— DA

#### Antitrust litigation is uniquely complex and resource-intensive---a spike in cases trades-off with judicial functioning in other key areas

Warren 15 (Daniel, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis)

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review is key to patent based innovation—that solves nuclear war

Rando 16 (Robert, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

### 1nc- DA

#### Voting rights top of the docket – Biden can get it done but will require PC

The Hill 1-10-22 (The Memo: Biden rolls the dice on voting rights. https://thehill.com/homenews/the-memo/589115-the-memo-biden-rolls-the-dice-on-voting-rights)

President Biden will ramp up his push for voting rights protections Tuesday when he and Vice President Harris travel to Atlanta to make the case for new federal legislation.

But the heightened focus on voting rights is a significant gamble for Biden.

The congressional math to pass either of the two bills that would strengthen voting protections is extraordinarily difficult.

Thanks to blanket Republican opposition — and the 50-50 split in the Senate — passing legislation in the regular fashion is out of the question, since doing so would require a 60-vote supermajority to defeat a GOP filibuster.

The only semirealistic alternative is reform of the filibuster.

Progressives have been clamoring for such a move since the start of the Biden presidency. But its chances are close to nonexistent so long as Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) hold to their stated positions opposing such a change.

Put it all together and it is easy to see how Biden could raise progressive expectations by talking up the need for voting rights legislation, only to disappoint those hopes if nothing actually happens.

This, in turn, could leave Democratic base voters disenchanted going into November’s midterm elections — just when Biden and his party need their supporters revved up if they are to stand any chance of rebuffing the GOP’s efforts to take back Congress.

The White House is not blind to the danger and clearly believes the risk is worth it. There is also an acknowledgment, from the Oval Office down, that doing nothing is not an option.

“There is nothing domestically more important,” Biden said last month.

But Biden and his aides are treading a fine line when it comes to the expectations game.

During Monday’s White House media briefing, press secretary Jen Psaki was asked by NBC’s Kelly O’Donnell whether Biden believed his involvement and political capital could create a “tipping point” on the issue.

“Well, it’s a hard question to answer, because really what we’re talking about is whether we can get enough votes in Congress to get this done,” Psaki responded.

Democrats and progressives by and large support Biden’s new push on the issue, even though they acknowledge the challenges.

#### Antitrust reform requires significant investments of political capital and forces legislative tradeoffs

Carstensen 21 (Peter C. Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School. THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

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

#### Checks all global conflict, famine, poverty and terrorism

Kasparov 17 (Chair for the Human Rights Foundation, 2013 recipient of The Morris B. Abram Human Rights Award, UN Watch's annual human-rights prize). “Democracy and Human Rights: The Case for U.S. Leadership.” Testimony before the Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues. <https://www.foreign.senate.gov/imo/media/doc/021617_Kasparov_%20Testimony.pdf>.)

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail (bribery), and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat.

American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great.

The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news.

The fear of making things worse has ~~paralyzed~~ [prevented] the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last.

### 1nc—DA

#### The FTC has shifted from tech mergers to overconsolidation in gas—cartels in gas destroy the energy sector

Botts 17 [Baker Botts is an international law firm of approximately 700 lawyers practicing throughout a network of 13 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the technology, energy, and life sciences sectors. "FTC Chair Turns Antitrust Attention to Energy Industry." https://www.bakerbotts.com/thought-leadership/publications/2021/september/ftc-chair-turns-antitrust-attention-to-energy-industry]

For the energy sector, one silver lining of the increasingly aggressive rhetoric from antitrust regulators has been their singular focus on “big tech.” It seemed, for a time, that oil & gas had finally abdicated its long-held position as the industry most likely to be on the receiving end of heightened antitrust scrutiny. Any such hope evaporated last week, when Lina Khan, the new chair of the Federal Trade Commission, sent a letter to the White House, making clear that she has the energy industry squarely within her sights. This renewed focus on the energy industry comes at an already sensitive time. If gas prices rise in the wake of Ida, there will be loud calls for an investigation, as was the case after Hurricanes Katrina and Rita in 2005. Similar to those storms, Ida amounted to a direct hit on the industry, barreling through the Gulf Coast and Louisiana, leaving more than 1 million without power. While it remains to be seen what will ultimately happen with fuel prices, there were already calls for an investigation after prices rose through the summer, even before the hurricane was on the horizon. I. Ms. Khan’s Letter The letter, sent on August 25, came in response to a request from Brian Deese, Director of the National Economic Council, for the FTC to investigate elevated gas prices. In his August 11 letter, Deese noted, “During this summer driving season, there have been divergences between oil prices and the cost of gasoline at the pump.” He asked the FTC to investigate. Khan’s response went far beyond Deese’s straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry. First, Khan stated, she plans to “identify additional legal theories” to challenge retail fuel station mergers “where dominant players are buying up family-run businesses.” This remarkably specific initiative, possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations. Second, Khan indicated she would be “taking steps to deter unlawful mergers in the oil and gas industry.” While she again made clear that she is focused on retail fuel deals, she clearly left the door open for a broader industry focus. Specifically, Khan referred to a July decision to rescind a prior FTC policy that limited requirements for parties to any merger ultimately deemed unlawful to obtain prior approval from the agency for any future transactions. In her letter from last week, Khan stated: “we will impose ‘prior approval’ requirements to deter those who propose illegal mergers, including in retail gas markets.” Finally, Khan wrote that she “will be asking our staff to investigate abuses in the franchise market.” She hypothesized that “large national chains” might be forcing their “franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” Khan then signed off, stating, “I will continue to assess how the FTC can use its tools to police unlawful business practices in oil and gas markets.” All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct. II. Pricing Investigations Whether triggered by Hurricane Ida or by letters from concerned officials such as Mr. Deese, any FTC gas pricing investigation would bring significant discovery burdens for industry participants. The post-Katrina report, released in May 2006, explained: “Since August 2005, the Commission has expended substantial resources on this investigation, including the full-time commitment of a significant number of attorneys, economists, financial analysts, paralegals, research analysts, and other support personnel with specialized expertise in the petroleum industry.” Specifically, FTC staff conducted 65 interviews, issued 139 Civil Investigative Demands (similar to subpoenas), and 99 orders seeking profitability and tax expenditure information. Staff identified more than 105 retailers accused of price gouging. Despite the deep dive, the Commission uncovered very little evidence of wrongdoing. While finding that seven refiners, two wholesalers, and 24 single-location retailers had higher average gasoline prices that were not substantially attributable to higher costs during the relevant period, the report ultimately concluded: “additional analysis…showed that other factors, such as regional or local market trends, appeared to explain the pricing of these firms in nearly all cases.” This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation. Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden’s antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny.

#### Antitrust saps FTC resources –plan causes case cutting

Reinhart, et al. 21 (Tara , Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### US consolidation of energy causes extinction

Koranyi ’16 (David; 2016; Chief Advisor of City Diplomacy for the Mayor of Budapest, former Director of the Atlantic Council's Eurasian Energy Futures Initiative; Atlantic Council Strategy Paper, “A US Strategy for Sustainable Energy Security,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/AC_SP_Energy.pdf>]

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance. It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets. Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement. As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors. Conclusion The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60 Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

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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

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

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

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

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

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

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

## ADV 1

### 1NC – 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.

### 1NC- 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.

### 1NC Circumvention

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

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

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

## ADV 2

### AT: China

#### No US-China war

Abraham Denmark et al 20 is director of the Asia Program at the Woodrow Wilson International Center for Scholars and a former deputy assistant secretary of defense for East Asia, April 16, “SAME AS IT EVER WAS: CHINA’S PANDEMIC OPPORTUNISM ON ITS PERIPHERY”, <https://warontherocks.com/2020/04/same-as-it-ever-was-chinas-pandemic-opportunism-on-its-periphery/>

While Washington and Beijing’s overheated rhetoric and mutual recriminations amid the ongoing coronavirus pandemic are grabbing headlines, equally important is what has been playing out across China’s eastern and southern peripheries over the past several weeks. At a moment when the Chinese Communist Party has been touting the generosity of its approach to COVID-19, there has been a marked increase in the number of incidents between China and its neighbors. Beijing has used its naval and paramilitary forces as well as its increasingly sophisticated information operations to ratchet up tensions, probe responses, and see how much it can get away with. This raises the question of what exactly China is up to. Has Beijing truly embraced a new approach of cooperation with its neighbors? Is it trying to take advantage of the COVID-19 mess to assert its interests more aggressively? Or is this simply an extension — albeit an opportunistic one — of its pre-pandemic strategy? BECOME A MEMBER The novel coronavirus pandemic has not curtailed geopolitics — in fact, it seems to be intensifying preexisting tensions. Understanding if and how China’s foreign policy has shifted is critical for assessing what is happening along China’s periphery and what Beijing might do next. Answering these questions is necessary for the United States and its allies to fashion a proper response. This, in turn, demands understanding what Beijing was doing before the crisis and thinking through what might actually signal a significant shift toward a more confrontational foreign policy. How Did I Get Here? China’s Latest Moves Chinese ships and aircraft have been involved in a spate of recent incidents across China’s maritime periphery. While there have been no fatalities, lives were certainly put at risk. Considering these incidents have involved two of China’s primary regional rivals — Japan and Vietnam — as well as Taiwan, the possibility that Beijing may see the COVID-19 pandemic as an opportunity to press an advantage during a time of geopolitical distraction and uncertainty should be considered. In mid-March, a group of People’s Liberation Army (PLA) aircraft crossed the median line in the Taiwan Strait — an unofficial demarcation line between Taiwan and China — in an exercise intended to intimidate Taiwan by demonstrating China’s ability to conduct operations at night while also testing Taiwan’s ability to react. While PLA ships and aircraft have been operating within the vicinity of Taiwan for several years, the pace and assertiveness of these activities have noticeably increased in recent years: The latest incident was the fourth time in two months that PLA aircraft forced Taiwan’s air force to scramble and intercept. Considering the impending second inauguration of Taiwan’s leader, President Tsai Ing-wen, as well as dwindling levels of support in Taiwan for Beijing’s “One Country, Two Systems” formulation, these exercises are likely to grow even more common and assertive. In late March in the East China Sea, a Chinese fishing vessel collided with a Japanese destroyer. The collision ripped a hole in the destroyer, but the ship was able to move on its own, and its crew suffered no casualties. Beijing announced that one Chinese fisherman had been hurt and blamed the Japanese vessel for the incident, calling for Japan’s cooperation to prevent future incidents. It is unclear if the Chinese vessel was a part of China’s “maritime militia,” described by the U.S. Department of Defense as “an armed reserve force of civilians available for mobilization” that plays a “major role in coercive activities to achieve China’s political goals without fighting.” The South China Sea has also seen several recent incidents involving Chinese vessels. In early March, a Vietnamese fishing vessel was moored near a small island in the Paracel archipelago — islands claimed by both Vietnam and China, among others — when a Chinese vessel chased it and fired a water cannon, causing the boat to sink after hitting some rocks. The crew was rescued by another Vietnamese fishing boat, with Hanoi claiming that the fishing boat was rammed by the Chinese vessel. The U.S. State Department issued a statement in early April expressing its serious concerns about the incident and calling on China “to remain focused on supporting international efforts to combat the global pandemic, and to stop exploiting the distraction or vulnerability of other states to expand its unlawful claims in the South China Sea.” The State Department also noted that since the outbreak of the pandemic, “Beijing has also announced new ‘research stations’ on military bases it built on Fiery Cross Reef and Subi Reef, and landed special military aircraft on Fiery Cross Reef.” Most recently, a Chinese coast guard (CCG) ship — one of several Chinese ships that harassed a Philippine commercial vessel in September 2019 — was seen patrolling near the Scarborough Shoal, representing one of many CCG ships that have been patrolling nearly all of the disputed areas between China and the Philippines in the South China Sea. Are these incidents merely a coincidence? Are they a sign that Beijing is distracted by COVID-19 and the resulting historic economic slowdown, and aggressive local commanders are pushing the envelope of their own accord? Or is this merely the result of China fielding more ships and more aircraft, leading to a predictable increase in incidents and exercises? While these explanations are all plausible, a more likely driver of China’s actions is, in fact, continuity. These incidents are not unprecedented and likely do not indicate a new, post-pandemic Chinese strategy. Rather, these incidents are consistent with a Chinese approach to foreign affairs under CCP General Secretary Xi Jinping’s leadership that even before the outbreak of COVID-19 demonstrated flexibility, assertiveness, and a singular desire to exploit opportunities of external weakness and distraction in order to advance China’s interests. For more than a decade, Chinese leaders have come to see their external security environment as generally favorable, representing a “strategic window of opportunity” in which China could achieve its primary objective of national revitalization through economic and social development, military modernization, and the expansion of its regional and global influence. Since the 2008 to 2009 global financial crisis, Beijing has perceived an opportunity to expand its geopolitical power relative to the United States yet does not seek an explicit conflict with the United States or its allies. As a result, Beijing has intensified its use of “gray zone” tactics that seek to gradually advance Chinese interests using ambiguity and tactics that are tailored to not provoke a military retaliation. These activities also serve as “probing behavior” that tests how far China can go before encountering determined resistance. In recent years, Beijing has used this approach to increase pressure on Japan in the East China Sea and advance Beijing’s territorial claims in the South China Sea against the Philippines, Vietnam, Malaysia, and Indonesia. Throughout, Beijing’s approach to regional geopolitics has been adaptive to specific conditions, flexible to broader strategic trends, and opportunistic to perceptions of weakness or distraction in its adversaries. Chinese actions are not the reckless gambles they may initially appear to be. Rather, they are premeditated probes seeking to identify weakness and opportunity. Chinese pressure is carefully calibrated to fit, but not necessarily to exceed, a given situation. This approach reflects a maxim of Vladimir Lenin, whom the Chinese Communist Party continues to revere to this day: “Probe with a bayonet: if you meet steel, stop. If you meet mush, then push.” In multiple instances, Beijing has continued to push when it perceives that its actions are unlikely to cause a significant response. But when Chinese assertiveness has been met with resolute counterpressure, Beijing’s response has not been predictably escalatory.Beijing has demonstrated flexibility when confronted with determined opposition. Examples include Japan’s response to China’s rollout of an air defense identification zone in the East China Sea in 2013 and President Obama’s reported drawing of a red line around Scarborough Shoal to Xi Jinping in March 2016. Moreover, India’s response to Chinese activities in Doklam did not lead to war.

### AT: Slow Growth

#### No impact to slow growth.

Dr. Christopher J. Fettweis 17, Associate Professor of Political Science at Tulane University, PhD in Government and Politics from the University of Maryland, “Unipolarity, Hegemony, and the New Peace”, Security Studies, Vol. 26, No. 3, p. 434-442 [language modified]

Others are more skeptical of institutions’ potential to shape behavior, and believe instead that stability is dependent upon the active application of the hegemon’s military power.51

The second version of the hegemonic-stability explanation is based upon a different view of human nature than is the liberal, one less sanguine about the potential for voluntary cooperation. Actors respond to concrete incentives, according to this outlook, and will ignore rules or law if transgressions are not punished. The would-be hegemon must enforce stability, therefore, not merely establish it. Policing metaphors are common in this literature, with the United States playing the role of sheriff or globocop charged with keeping the peace.52

[FOOTNOTE]

52 Richard N. Haass, The Reluctant Sheriff: The United States after the Cold War (New York: Council on Foreign Relations Press, 1997); Colin S. Gray, The Sheriff: America's Defense of the New World Order (Lexington: University Press of Kentucky, 2004).

View all notes

[END FOOTNOTE]

Take away the police, or damage their credibility, and instability would soon return. “The present world order,” according to Robert Kagan, “is as fragile as it is unique,” and would collapse without sustained US efforts.53 “In many instances,” add Lawrence Kaplan and William Kristol, “all that stands between civility and genocide, order and mayhem, is American power.”54 Though this argument is commonly associated with neoconservatism55—and will be referred to as the neoconservative explanation from here on in—it is also accepted by a number of scholars and observers generally considered outside of that ideological approach.56

The two versions are united on this point: it is not unipolarity in general that accounts for the New Peace, but American unipolarity in particular. US hegemony is essentially benevolent, according to both liberals and neoconservatives. The United States has constructed an order that takes the interests of other states into account, which decreases revisionist impulses. At the very least, it is nonthreatening, and does not generate the kind of balancing behavior that might be expected to bring it to an end.57 In the liberal version, the order constructed by the United States is beneficial to all its members, who have a stake in its maintenance. Adherents of the more muscular version, whether neoconservative or not, assume that the default position of smaller states in a unipolar system is to bandwagon with the center.58 No one seems to suggest that there is an irenic structural logic of unipolarity independent of US behavior. The question is therefore not so much about the connection between unipolarity and the New Peace as much as it is whether US behavior, in one form or another, has brought it about.

Hegemonic stability is in some ways more theoretically elegant than the other possible explanations for the New Peace. For one thing, it does not suffer from questions regarding its causal direction. While it may be reasonable to suggest that peace produced the expansion of democracy and/or economic development rather than the other way around, peace did not produce unipolarity. In fact, if the United States is indeed supplying the global public good of security, it might be able to take credit for a number of these positive trends. Not just peace but democracy, economic stability, and development all might be beneficial side effects of unipolarity. 59 “A world without U.S. primacy,” argued Samuel P. Huntington, “would be a world with more violence and disorder and less democracy and economic growth.”60

There is a great deal at stake here, for both scholarship and practice. If hegemony is responsible for the New Peace, then its peaceful trends are unlikely to last much beyond the unipolar moment. The other proposed explanations described above are essentially irreversible: nuclear weapons cannot be uninvented, and no defense against their use is ever going to be completely foolproof; the pace of globalization and economic interdependence shows no sign of slowing; democracy seems to be firmly embedded in the cultural fabric of many of the places it currently exists, and may well be in the process of spreading to the few places where it does not. The UN, while oft criticized, shows no signs of disappearing. And finally, history contains precious few examples of the return of institutions deemed by society to be outmoded, barbaric, and/or futile.61 In other words, liberal normative evolution is typically unidirectional. Few would argue, for instance, that either slavery or dueling is likely to reappear in this century; illiberal normative recidivism is exceptionally rare.62 If the neoconservatives are correct and US hard power is primarily responsible for the New Peace, however, then it cannot be expected to last long after US hegemonic decline, or adjustment in its grand strategy toward retrenchment. If liberal internationalists are right and the New Peace is largely a product of the world order that the United States has forged, then it may have a bit more staying power beyond unipolarity, but not necessarily much.

Determining the relationship between hegemony and the New Peace has importance that goes beyond the academy. Whether or not decline is on the immediate horizon, unipolarity is unlikely to last forever. If the New Peace is essentially an American creation, that post-unipolar future is likely to be quite a bit more violent than the present.

Evidence for and against Pax Americana

Since the world had never experienced system-wide unipolarity prior to the end of the Cold War, judgments about its relative stability and likely duration are necessarily speculative.63 Extrapolations can be made from regional unipolar systems, like the Roman Mediterranean, but definitive system-wide statements cannot be made from one case. Still, if US power were primarily responsible for the New Peace, one would expect that it would leave some clues about its effects. This section reviews three kinds of evidence regarding Pax Americana in order to determine whether an empirical relationship can be said to exist between various kinds of US activity and global stability.

Conflict and Hegemony by Region

Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic- stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany’s nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear.

Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions.

If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1.

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful

**[CUT HERE.]**

while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

It is possible that absolute military spending might not be as important to explain the phenomenon as relative. Although Washington cut back on spending during the 1990s, its relative advantage never wavered. The United States has accounted for between 35 and 41 percent of global military spending every year since the collapse of the Soviet Union.70 The perception of relative US power might be the decisive factor in decisions made in other capitals. One cannot rule out the possibility that it is the perception of US power—and its willingness to use it—that keeps the peace. In other words, perhaps it is the grand strategy of the United States, rather than its absolute capability, that is decisive in maintaining stability. It is that to which we now turn.

Conflict and US Grand Strategy

The perception of US power, and the strength of its hegemony, is to some degree a function of grand strategy. If indeed US strategic choices are responsible for the New Peace, then variation in those choices ought to have consequences for the level of international conflict. A restrained United States is much less likely to play the role of sheriff than one following a more activist approach. Were the unipole to follow such a path, hegemonic-stability theorists warn, disaster would follow. Former National Security Advisor Zbigniew Brzezinski spoke for many when he warned that “outright chaos” could be expected to follow a loss of hegemony, including a string of quite specific issues, including new or renewed attempts to build regional empires (by China, Turkey, Russia, and Brazil) and the collapse of the US relationship with Mexico, as emboldened nationalists south of the border reassert 150-year-old territorial claims. Overall, without US dominance, today’s relatively peaceful world would turn “violent and bloodthirsty.”71 Niall Ferguson foresees a post-hegemonic “Dark Age” in which “plunderers and pirates” target the big coastal cities like New York and Rotterdam, terrorists attack cruise liners and aircraft carriers alike, and the “wretchedly poor citizens” of Latin America are unable to resist the Protestantism brought to them by US evangelicals. Following the multiple (regional, fortunately) nuclear wars and plagues, the few remaining airlines would be forced to suspend service to all but the very richest cities.72 These are somewhat extreme versions of a

central assumption of all hegemonic-stability theorists: a restrained United States would be accompanied by utter disaster. The “present danger” of which Kristol, Kagan, and their fellow travelers warn is that the United States “will shrink its responsibilities and—in a fit of absentmindedness, or parsimony, or indifference— allow the international order that it created and sustains to collapse.”73 Liberals fear restraint as well, and also warn that a militarized version of primacy would be counterproductive in the long run. Although they believe that the rule-based order established by United States is more durable than the relatively fragile order discussed by the neoconservatives, liberals argue that Washington can undermine its creation over time through thoughtless unilateral actions that violate those rules. Many predicted that the invasion of Iraq and its general contempt for international institutions and law would call the legitimacy of the order into question. G. John Ikenberry worried that Bush’s “geostrategic wrecking ball” would lead to a more hostile, divided, and dangerous world.74 Thus while all hegemonicstability theorists expect a rise of chaos during a restrained presidency, liberals also have grave concerns regarding primacy.

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability. Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.”77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence. Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem.

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global police~~man~~. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.‘

### AT: Warming

#### Warming won’t be catastrophic.

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

# 2NC

## T

### They Say: “C/I” SCOPE

#### Core antitrust laws refer to statutory laws – the increased prohibitions must be reflected IN Clayton, Sherman and FTC

Kuntz 2-23-21 (Kendall. MARYLAND CAREY SCHOOL OF LAW. Can the Courts and New Antitrust Laws Break Up Big Tech? https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/)

There are three core antitrust laws in effect today: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. These three antitrust laws attempt to protect market competition for the benefit of consumers. The Sherman Act outlaws monopolies and contracts that unreasonably restrain trade. The Clayton Act prohibits mergers and acquisitions that substantially lessen competition or create a monopoly. Lastly, the Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Antitrust laws are not established to punish success, but are focused on preventing anticompetitive effects, exclusionary practices, reduced consumer choice, and hindered innovation.

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

### AT: Overlimiting

#### The central controversy in antitrust now is whether or not to return to per se prohibitions---there’s plenty of AFF ground but dividing the topic in this way is the only way we get link uniqueness and avoid bidirectionality.

Abbott B. Lipsky Jr. 21, Adjunct Professor, Antonin Scalia Law School, George Mason University. "Biden Administration Antitrust" <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#nh243>

Given these historic economic and technical achievements, the consensus U.S. approach to antitrust that has prevailed since the time of General Dynamics and Sylvania deserves a victory lap. Paradoxically, however, the long-standing and solid consensus in favor of the post-Sylvania approach to antitrust now finds itself subject to hostile challenge on several fronts. Toward the end of the Obama administration, a Report of the Council of Economic Advisers [242] suggested that U.S. competition was in decline. In June 2019 the House Judiciary Committee began an “Investigation of Competition in Digital Markets,” which resulted (inter alia) in the issuance of a Majority Staff Report and Recommendations (“MSRR”) on October 6, 2020. [243] Although the Committee took no official action on any of the MSRR’s long list of specific legislative proposals, the MSRR is essentially a Cassandra-style assessment of the present state of U.S. competition policy, bemoaning the allegedly weak and declining state of U.S. competition, attributing this to unsound judicial reasoning and failures of prosecutorial conviction at the federal antitrust agencies, and concluding with a long list of suggestions for action that would essentially return U.S. antitrust enforcement to its pre-1974 status, with heavy use of per se rules, structural presumptions, and a long list of specific prohibitions on the activities of the digital technology leaders (e.g., structural separation of distinct platform activities, line-of-business restrictions). Unsurprisingly, the thrust of the MSRR was echoed by a Democrat think tank report authored by veterans of the Clinton and Obama administration antitrust agencies. The latter report, Restoring Competition in the United States: A Vision for Antitrust Enforcement for the Next Administration and Congress, [244] begins with the bold but unsupported and largely immaterial assertion that, “Excessive market power plagues the U.S. economy.” (Unsupported because the analysis cited is notably unpersuasive, and because whether such power is “excessive” can only be judged in relation to the competitive merits of the underlying conduct. Immaterial because market power resulting from breakthrough innovation that meets immense competitive success based on rapid and widespread consumer acceptance should not be reprehended under any responsible understanding of sound antitrust doctrine.) Broadly speaking, “Restoring Competition” echoes the analysis and many of the prescribed remedies offered by the MSRR.

8. The antitrust record of the Biden administration should be judged primarily on the strength and success of its resistance to the unsupported analysis and generally inappropriate recommendations of these two reports. Given the obvious current tension between radical and moderate elements of the Democrat Party, it is anyone’s guess as to how the White House will perceive and deal with these proposals to reject the unmistakable lessons of more than a century of antitrust enforcement history. The most promising course would be for the incoming administration to make agency leadership appointments and adopt policies reinforcing the clear and basic lessons of the ill-starred mid-century experiment (1943–1973) with structural presumptions, per se rules and willful ignorance of economic analysis. The worst-case scenario would be for the administration to create—by act or omission—any opening for a return to the primitive antitrust aggression that grew out of the New Deal. Finally, the Biden administration should recognize that many elements of the discredited formalistic antitrust approaches of the mid-20th century U.S. are now being promoted by antitrust authorities around the world. To ensure the integrity and success of the legal and regulatory environment for continuing U.S. innovation leadership, the Biden administration should encourage and assist foreign antitrust regimes in avoiding the same misguided enforcement instincts that overcame the U.S. antitrust system during the days of the per se/structuralist craze.

#### Current proposals disagree on this issue, with some advocating prohibitions, and others advocating altered standards---that proves this is a real debate.

Brumfield et al. 21, Kevin C. Adam, Jaclyn Phillips & Chenuan Fu, 7/30/21. Antitrust Division, White & Case, LLP. "Technology Industry Should Watch Closely as the Executive Branch and Lawmakers Set Their Sights on Antitrust" https://www.whitecase.com/publications/alert/technology-industry-should-watch-closely-executive-branch-and-lawmakers-set

Separately, federal lawmakers were already taking aim at similar 'initiatives' through proposed legislation. On June 11, 2021, lawmakers from both parties in the House Judiciary Committee, led by Antitrust Subcommittee Chair David Cicilline (D-RI) and Ranking Member Ken Buck (R-CO), introduced five bills calling for substantial changes to existing antitrust law, such as: introducing new forms of prohibited conduct (i.e., self-preferencing); targeting acquisitions by technology companies that meet a defined size threshold; shifting burdens of proof; and mandating data portability and interoperability.

Our impact outweighs. AFF’s have structural advantages and the topic is thematically huge.

## CC

### 2nc impact overview

#### Strong global IP creates solutions for sustainability, climate change, and disease which all outweigh and turn case – that’s Rando – produces incentives for global innovation and reduces incentives for conflict – we control their impact because it is guided by tech that is able to be produced

#### tech leadership---global war---turns every impact

Kramer 16 (Franklin, Distinguished Fellow and Board Member at the Atlantic Council and Former Assistant Secretary of Defense, and James A. Wrightson, Jr., Former Aerospace Executive, Most Recently with Lockheed Martin Corporation, “INNOVATION, LEADERSHIP, AND NATIONAL SECURITY”, 4/11/2016, p. 3-4

Innovation will be a crucial requirement for US leadership and national security in the twenty-first century. The United States faces an era of global competition across all elements of national power. In the economic arena, American domination has necessarily been comparatively receding as the world continues to develop. Militarily, challenges have expanded geographically and qualitatively as multi-polarity and diffusion of power increases the number of capable state and nonstate actors. Diplomacy has become more complex as information capabilities are available throughout the world, populaces are more engaged, and there are strong ideological challenges to the Western, liberal rules-based model. The United States is still the most powerful nation, but maintaining successful leadership and strong national security will require the United States to build on and enhance its existing strengths. A crucial element of that requirement will be the capacity to innovate regularly and effectively. Innovation will be a prerequisite to leadership across all elements of national power.

This report proposes that both the US government and the American private sector take significant steps to encourage innovation beyond what the United States, already an innovative society, has successfully accomplished. The key elements will be enhanced development of the “cluster model” for innovation, which engages the public, private, and nonprofit sectors jointly; greater government focus on innovation; increased support for innovation by corporations; expanding the spectrum of entrepreneurs; and maintaining the diversity of ideas and approaches necessary for innovation while expanding the synergies between and among the multiple elements of the innovation landscape, including increasing the permeability between the national security agencies and the private sector.

I. THE INNOVATION IMPERATIVE— LEADERSHIP AND NATIONAL SECURITY

“[R]esearch has become central; it also becomes more formalized, complex, and costly,” President Dwight D. Eisenhower, Military-Industrial Complex Speech, 1961

“Whether it’s improving our health or harnessing clean energy, protecting our security or succeeding in the global economy, our future depends on reaffirming America’s role as the world’s engine of scientific discovery and technological innovation. “ Remarks by President Barack Obama on the “Educate to Innovate” Campaign and Science Teaching and Mentoring Awards, January 6, 2010

The United States has long been the world’s most innovative society, and that innovation has been a key element undergirding America’s international leadership and strength. The national security strategy states that “Scientific discovery and technological innovation empower American leadership with a competitive edge that secures our military advantage, propels our economy, and improves the human condition.”1 This requirement for innovation has become increasingly critical as America’s overwhelming dominance in other arenas—a key factor in the twentieth century—has been comparatively reduced.

• Economically: While the United States remains the world’s largest economy, there are expectations that it will be overtaken in gross size by China.2 Per capita income in the United States is below multiple countries3 while median real income has actually fallen since 1999.4

• Militarily: While United States forces have unparalleled capabilities, the challenges posed by Iraq, Afghanistan, ISIS, the worldwide demands of counterterrorism, Russian actions in Ukraine and elsewhere, and the confrontations in the East and South China Seas all demonstrate the multiple and diverse demands that the military faces. Without innovation in defense capabilities, the United States will face technological parity, losing the advantage it has maintained for over half a century.

### 2nc uq wall—litigation

#### Cases are limited – [finish 1nc extension]

* Specifically, the plaintiff doesn’t have presumption bc it’s normally dismissed on summary judgement - not trying to bring cases rn bc presumption lies with the business - either dismissed when brought or not brought at all

#### Litigation is controlled

Emily S. Taylor Poppe 21, Assistant Professor of Law at the University of California, Irvine School of Law, “Institutional Design for Access- to Justice”, UC Irvine Law Review, 11 U.C. Irvine L. Rev. 781, February 2021, Lexis

This law-centric orientation is strikingly different from that of most Americans, despite popular claims about their litigiousness. Most individuals never even identify the civil legal problems they experience as "legal." Only a tiny minority will ever seek legal advice in response to a problem, and most are more likely to do nothing than to file a lawsuit. Decades of empirical scholarship have confirmed that despite the prevalence of civil legal problems in everyday life, there is remarkably little recourse to formal law. [FOOTNOTE BEGINS] DAVID M. ENGEL, THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE 3 (2016) (noting that "specious claims of a litigation explosion have been made so often that they have rooted themselves in the national psyche"). [FOOTNOTE ENDS]

#### Prefer long term trends instead of snapshots---a “rough couple of months” doesn’t doom litigation.

#### Filing data proves

Joanna C. Schwartz 20, Professor of Law at the UCLA School of Law, “Qualified Immunity and Federalism All the Way Down”, Georgetown Law Journal, 109 Geo. L.J. 305, December 2020, Lexis

Concerns about increased government liability were in the air during the 1970s and 1980s. During that period, the "dominant articulated perception of constitutional tort litigation" was that § 1983 "cases flood the federal courts." The Supreme Court first recognized a cause of action against state and local government officials under § 1983 in 1961, and the number of civil rights filings increased from several hundred to tens of thousands in the years between 1961 and 1979. This expansion in federal civil rights filings and liability corresponded with a collapse of the insurance market for municipal liability coverage. As John Rappaport has described, municipal liability insurance was widely available from the 1960s to the mid-1970s. Then the market contracted, with [\*323] premiums doubling between 1974 and 1976, and many jurisdictions were left uninsured by 1977. After a few years of improvement, there was another decline in the early 1980s. [FOOTNOTE BEGINS] Theodore Eisenberg & Stewart Schwab, The Reality of Constitutional Tort Litigation, 72 CORNELL L. REV. 641, 645 (1987); see also Maine v. Thiboutot, 448 U.S. 1, 24 (1980) (Powell, J., dissenting) ("There is some evidence that § 1983 claims already are being appended to complaints solely for the purpose of obtaining fees in actions where 'civil rights' of any kind are at best an afterthought."); Federalism and the Federal Judiciary: Hearings Before the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary, 98th Cong. 5-13 (1984) (statement of John D. Ashcroft, Att'y Gen. of Missouri) (explaining that § 1983 filings against police officers "skyrocket[ed]" from the mid-1960s to the mid-1970s, growing "in the thousands of percentage increase[s]"); Ruggero J. Aldisert, Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload, 1973 LAW & SOC. ORD. 557, 563, 567 (arguing that the "deluge" of § 1983 cases from 1960 to 1971 and the Court's decisions that "substantially expand[ed] section 1983's subject matter jurisdiction" have "placed additional burdens on federal courts"). Note, however, that Eisenberg and Schwab, after examining the evidence, concluded that "[n]ational filing data refute the myth of a recent civil rights litigation explosion." Eisenberg & Schwab, supra, at 695. [FOOTNOTE ENDS]

### 2nc at no link

#### XTD Warren- Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. Involving large organizations magnifies the costs and draws more resources due to the scope- happens longer because more is at stake.

#### 2. Antitrust is slower than other law because the plaintiff always has an advantage over the defendant- regardless of presumption- because of discovery costs. Means that the only thing that gets antitrust through now is summary judgement that the aff necessarily precludes because it FORCES the companies to go to court since presumption is flipped against them. doj can prosecute every one of these firms bc now they have the burden of proof - no proof, just assertion that a practice is anticompetitive

#### They are the BIGGEST possible link---Pivoting from CWS increases the costs of antitrust.

Timothy J. Brennan 18, Professor of Public Policy and Economics at the University of Maryland, Baltimore County and a Senior Fellow at Resources for the Future, “Should Antitrust Go Beyond ‘Antitrust’?,” The Antitrust Bulletin, vol. 63, no. 1, SAGE Publications Inc, 03/01/2018, pp. 49–64

If one takes the view that antitrust may already be erring on the side of complexity rather than simplicity, that error becomes only worse if one incorporated additions goals for antitrust courts, since that will make the decision process even more intricate. Along with balancing an ever more complicated set of benefits and costs, those now will have to be balanced against other objectives that may well be difficult to measure in comparable terms. Rather than have antitrust enforcement pursue multiple goals, one should consider having a “division of policy labor” akin to the “division of labor” in the workplace and economy that Adam Smith proposed almost two-and-a-half centuries ago.32 Unless one is not adding other objectives to static efficiency and competition but replacing them, these objectives will increase the complexity and thus the cost of antitrust enforcement. Such a replacement, however, makes vivid the proposition that if we do not have antitrust enforcement on which to rely as a tool to promote efficiency through competition, there will be no other legal or policy framework to do so.

#### Strengthening antitrust law encourages frivolous litigation---crushes the courts

R. Hewitt Pate & Paul S. Hates 6, R. Hewitt Pate, Counsel of Record, Paul S. Hayes, Hunton & Williams LLP, “Brief of Amici Curiae Economists in Support of Petitioners,” BELL ATLANTIC CORPORATION, et al., Petitioners, v. William TWOMBLY, et al., Individually and on behalf of all others similarly situated, Respondents, 2006 WL 2506633, WestLaw

Economists have long recognized that conspiracies to restrain trade can cause significant economic losses through higher prices and reduced output.7 Although agreements among competitors may promote economic efficiency, conspiracies, in which the members have suppressed the existence of an agreement among themselves, seldom, if ever, serve any competitive and efficiency-enhancing purpose. Conspiracies can also impose significant costs on society and are, by design, secret and hard to detect. Hence, there are sound economic reasons to impose substantial penalties to discourage firms from conspiring to restrain trade. The undersigned believe that antitrust law - and the courts - should be tough on cartels.

Economists have also recognized, however, that the legal system can impose significant costs on businesses, reduce economic efficiency, and ultimately harm consumers through higher prices and poorer products.8 Unfortunately, some lawyers - or the plaintiffs they represent - abuse the legal system by filing cases that ultimately lack merit but impose significant costs and risks on business defendants.9 Research \*12 indicates that private antitrust enforcement efforts already involve many claims that appear to be without merit.10 This underscores the problem noted by the Second Circuit. See Twombly, 425 F.3d at 114-17. Some plaintiffs’ lawyers use litigation to extract money from businesses that find it is cheaper and less risky to settle than to litigate.11 Class certification litigation is sometimes used to extort companies into writing large checks that often inure to the benefit of the lawyers.

In determining the appropriate standard for dismissal of a claim of conspiracy to restrain trade, society faces a tradeoff, as do the courts. On the one hand, making it easier for plaintiffs to pursue claims and obtain discovery will increase the likelihood that plaintiffs will uncover conspiracies in restraint of trade. An easier standard will, more importantly, discourage conspiracies in the first place because they are more likely to be detected and punished. On the other hand, making it easier for plaintiffs to file claims and pursue discovery will encourage plaintiffs to bring cases that lack merit in the hope of a settlement or verdict and, in the process, consume judicial and business resources. Moreover, firms would face a disincentive to engage in parallel behavior \*13 with their rivals because that behavior will make it more likely that they will be embroiled in litigation. Therefore, they will engage in less parallel behavior even when this behavior is efficient.

IV. THE “PARALLEL BEHAVIOR IS ENOUGH” STANDARD WOULD RESULT IN GREATER EXPENDITURE OF JUDICIAL AND BUSINESS RESOURCES

The “parallel behavior is enough” standard would encourage plaintiffs to file and pursue claims that companies have engaged in restraints of trade in violation of Section 1 of the Sherman Act. This likely would include plaintiffs adding gratuitous conspiracy charges to complaints in unrelated matters (breach of contract cases for example) to increase the costs of the litigation to defendants and put additional pressure on the defendants to settle. The direct cost of this standard and the behavior it would encourage includes costs to the judiciary as well as to businesses.

Additional judicial resources would be spent handling cases with conspiracy claims that meet the “parallel behavior is enough” standard. These include expenditures for personnel and other judicial resources. They also include the opportunity cost of the federal judiciary’s time. Assuming the federal courts (and their facilities and staff’) cannot expand to meet the additional litigation that would result under the “parallel behavior is enough” standard, the federal court dockets would become more congested. Other matters would receive less attention from the courts. The litigants in these other matters, and ultimately society, would suffer from the diversion of judicial resources to unmeritorious conspiracy claims. Businesses would also spend resources defending unfounded conspiracy claims. These costs would include direct litigation expenses such as hiring lawyers and handling document production. More importantly, they would include \*14 the opportunity cost of management and staff time spent on litigation rather than on business matters.12

#### Ambiguous antitrust rules discourage settling case---that increases judicial congestion.

Jesse W. Markham Jr. 12, Marshall P. Madison Professor of Law, University of San Francisco School of Law, “SAILING A SEA OF DOUBT: A CRITIQUE OF THE RULE OF REASON IN U.S. ANTITRUST LAW,” 17 Fordham J. Corp. & Fin. L. 591, WestLaw

5. Impairment of Settlements

Settlement is more difficult under uncertainty about what “enquiry is meet for the case.” The substantive law of antitrust should facilitate reasonable settlements because they avoid the high costs of litigation, through trial and appeal, while vindicating the objectives of antitrust law. Most antitrust cases settle,211 but that does not mean that they settle early, or that the terms of settlement are reasonable. Indeed, the Supreme Court has expressed frustration that the huge exposures defendants face in antitrust cases can force them to pay extortionate amounts to settle weak cases just to keep them from heading into the unpredictable waters of a jury trial.212

However, what the Supreme Court has not addressed are the reasons why defendants might regard those waters as riddled with reefs and shoals.213 The unpredictability of antitrust litigation under the rule of reason is at least a contributor to this phenomenon.214 In rule of reason cases counsel for each side have only a relatively weak basis for predicting how elaborate and costly the litigation will be and what outcome is most likely -- both of which are much clearer in per se cases. Although plaintiffs may only rarely win rule of reason cases, that is cold \*627 comfort to a defendant faced with a small but unpredictable risk of enormous liability exposure. So the defendant-friendly rule of reason is in tension with one of its very objectives, leaving defendants with unpredictable outcomes and large exposures and thus actually promoting so-called extortionate settlements and prolonging litigation.

#### Judges quit

Alicia Bannon 14, Brennan Center’s Democracy Program counsel, “The Impact of Judicial Vacancies on Federal Trial Courts,” https://www.brennancenter.org/sites/default/files/publications/Impact%20of%20Judicial%20Vacancies%20072114.pdf

These heavy workloads can take a toll on judges; in four districts, interviewees explicitly raised the concern of burn-out due to the burdens of compensating for long-term vacancies (E.D. Cal., S.D. Fla., D. Nev., E.D. Tex.).59 Chief Judge Davis in the Eastern District of Texas, for example, described the “long-term tolling effect on the judges” from his district’s two vacancies, citing an impact on “morale.”60 He added, “I sense a weariness and a tiredness on behalf of our district judges, especially ones that have to travel long distances [because of vacancies].”61 Judge Davis speculated that this long-term toll was encouraging judges in his district to retire, noting that the number of senior judges in his district has declined as more judges chose to leave the bench altogether when they reached retirement age.62 Chief Judge Federico Moreno in the Southern District of Florida likewise highlighted the toll that vacancies in his district placed on judges, despite observing that he did not think the vacancies were impacting the administration of justice.63 “It’s like an emergency room in a hospital,” he observed. “The judges are used to it and people come in and out and get good treatment. But the question is, can you sustain it? Eventually you burn out.”64

In two districts, interviewees also highlighted the burdens on senior judges who had retired from active service while continuing to carry full or close-to-full caseloads,65 arguing that it “wears [them] down.”66 The Clerk of Court in the Western District of Wisconsin commended the district’s senior judge as “working as hard or harder than before she retired.”67

Several attorneys raised similar concerns, describing “wear and tear” on their districts’ judges,68 along with “overwork,”69 a “lower level of morale,”70 and a “very heavy burden”71 on judges. These observations suggest that high and sustained levels of judicial vacancies raise concerns not just for their impact on current cases but for the long-term health and vitality of our courts.

## ADV 1

### AT: Biden XO/Kahn Thumpers

#### Stress over implementation of broad anti-trust reform is already raising concerns- the plan would be the first binding expansion guaranteeing the tradeoff

Swartz 21

(Jon Swartz. Senior reporter for MarketWatch. FTC votes to rescind merger policy in a possible blow to Big Tech. <https://www.marketwatch.com/story/ftc-votes-to-rescind-merger-policy-in-a-possible-blow-to-big-tech-11626896833>. July 21, 21. Accessed 9/13/2021. AR😊)

At least one antitrust expert questioned whether the FTC vote was ceremonial with little bite. “We have to remember that **the FTC is horrendously under-resourced,”** Bhaskar Chakravorti, dean of global business at The Fletcher School, Tufts University, told MarketWatch. “**How is it even practical to carry out an Executive Order this broad and across so many different industries from app stores to hearing aids without new resources or new laws that make it easier for the regulators to do their jobs, and not get over-stretched or outpaced by the far better resourced big companies that are also more nimble and have more lawyers and investment bankers on call?”**

## ADV 2

### 2NC- Slow Growth

#### ‘Slow growth’ is inevitable AND is proof of a strong economy.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

Chart, line chart

Description automatically generated

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

Chart, line chart

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This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

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#### That guarantees 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.""

### 1NR: 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).

### 1NR: Alt

#### Challenging neoliberal capital requires removing activities from the sphere of competition and bringing them into spheres of cooperation and mutual aid

Wigger & Buch-Hansen 13 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, Hubert, Assoc Prof of International Political Economy at the Copenhagen Business School, “Competition, the Global Crisis, and Alternatives to Neoliberal Capitalism: A Critical Engagement with Anarchism,” *New Political Science* 35.4, p.622, JCR]

What would it take for such a post-neoliberal non-capitalist competition order to emerge? To begin with, the vast terrain of neoliberal definition power has to be reclaimed. Critique is an important first step in the deconstruction and delegitimization of the one-dimensional atomistic and reductionist social scientific precepts that have come to underpin the current (over-)competition order. Eventually, the assertion of a Homo economicus as an always rationally calculating and utility maximizing and egoistic individual detached from society and nature and competing in a Hobbesian dog-eat-dog world, is not only mistaken with regard to human nature but also dogs. Critique should be followed by the dialectics of formulating alternatives and action instigated to move toward a post-neoliberal order. The question is what type of action and by whom? Like capitalism developed in the interstices of feudal society, anarchists would argue that the transformation toward a post-neoliberal and non-capitalist society can only evolve cumulatively by progressively enlarging social spaces with alternative organizational forms rather than awaiting some mass revolutionary moment. Building a post-neoliberal competition order would thus entail DIY in the form of strategic and direct action by individuals and small communities at the micro level—action directed at removing activities from the sphere of competition and bringing them into the spheres of cooperation and mutual aid. The idea then would be to build the new society within the shell of the old, or as Chomsky put it, the roots of a successor project of capitalism and its neoliberal organization will have to be constructed in the existing economy. 89

### 1NR: Link

#### Heightened competition puts downward pressure on profits, causing shift of capital to financial markets and leading to a bubble that will have to burst

Wigger 17 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “Understanding the Competition-Crisis Nexus: Revisiting U.S. Capitalist Crises,” *Rethinking Marxism: A Journal of Economics, Culture & Society* 29.4, p.565-70, JCR]

In the United States, where consumption accounts for two-thirds of GDP, debt-led accumulation patterns offered a temporary solution for insufficient aggregate demand. Consumer and mortgage debt increased massively. The ratio of household debt to GDP more than doubled from 45 percent in 1970 to 95 percent in 2007 (Mosely 2013), which triggered relatively high GDP growth rates in the late 1990s through the early 2000s, but without leading to significant job creation (Lippit 2014; see also Kotz 2009). Alongside the deregulation of financial markets and the relaxation of lending rules in the 1970s and 1980s, a whole array of banks, hedge funds, private equity funds, nondepository investment banks, and insurers emerged, eager to provide easy credit to ever more U.S. households. Wall Street, as one of the world’s main financial centers, attracted almost 70 percent of global profits, mainly from leading surplus economies such as Germany, Japan, and China (Varoufakis 2011, 23). Through a system of financial arbitrage, exploiting the maturity mismatch between short-term deposits and long-term investments, the U.S. Federal Reserve could finance public deficits and keep interest rates low, leading to concomitantly low mortgage rates (Schwartz 2010, 305). Moreover, the abolishment of the Glass-Steagall Act in 1999 rendered the distinction between banks and nonbank financial institutions arbitrary. New financial instruments, including complex bonds and derivatives such as credit default swaps and structured investment vehicles providing loans without underlying assets, proliferated. With almost every conceivable risk associated with illiquid public, corporate, or consumer debt able to be repackaged into financial assets to be bought and sold on financial markets, profits in financial markets increased. Figure 3, reproduced from the work of Duménil and Levy (2011, 67, fig. 4.6), shows the profitability of nonfinancial vis-à-vis financial corporations (after taxes, interest payments, and inflation corrections and with capital gains smoothed out). Prior to the outbreak of the financial crisis in 2007, profit rates were generally lower in the nonfinancial part of the economy than in the financial part, which indicates an inverted hierarchy compared to the post–World War II SSA, in which nonfinancial profit rates exceeded financial profits and in which financial capital had a subordinate role vis-à-vis industrial capital. Financial markets grew out of proportion with the real economy through the provision of credit as well as nonproductive forms of capital valorization, producing fictitious paper claims to future wealth that had not yet been realized. Even the most conservative estimates suggest more than a threefold expansion of the ratio of global financial assets to global GDP in the thirty years of neoliberal reign; in the United States, financial assets relative to GDP grew from just under 200 percent in 1980 to 424 percent in 2006 (Farrell et al. 2008, 9–10). Banking itself became more indebted than any other sector by making use of leverage, increasing debt-to-deposit ratios as high as 30 to 1 and lending between financial institutions through complex shadow banking structures (Harvey 2010, 30). This was possible also because the U.S. banking industry is massively concentrated. From the 1980s to 1990s, the total number of banks was reduced by a third through more than 6,300 mergers (Pryor 2001, 315). From 1994 to 2003, another 3,500 mergers in the financial sector were concluded, giving birth to troubled giants such as Bank of America (Rethel and Sinclair 2012, 63). Today, the five largest U.S. banks (JPMorgan Chase, Bank of America, Citibank, Wells Fargo, and U.S. Bank) control almost half of the U.S. banking sector. Compared to the real economy, the competitive accumulation of capital was comparatively less fierce in the financial sector, because financial capital not only extracts and accumulates surplus created in the real economy but also attains value by mere circulation, particularly through leveraging and speculation. Not unimportant, the expansion of the financial sector very much depended on state regulatory institutions creating the conditions for people to absorb ever more debt. Intense capitalist competition and decreasing profitability in the real production economy helps to explain why profits accrued predominantly through financial channels rather than through trade and commodity production

#### Antitrust sustains capitalism by checking its self-destructive drive for accumulation

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.150-2, JCR]

Although “adherence to free enterprise envisages the goal of a self-adjusting, self-regulating market on the principle of choice and competitive rivalries,”28 the free enterprise system is not perfect, however, and the self-regulation of competition can sometimes fail.29 This is so because “an expansive tendency of capitalism is that it will reveal an aspect of fiercer and fiercer competition,”30 and the accumulation of capital becomes a necessary step in order for the company to remain competitive.31 Failure to participate in this expansion and accumulation process “means quitting the competitive struggle [or] economic death.”32 The accumulation of capital is achieved through mergers and acquisitions,33 and the “growing accumulation of capital implies its concentration”34 and the eventual formation of monopolies.35 Government intervention becomes necessary,36 because the existence of monopolies37 contradicts the essence of free enterprise by “[threatening] the efficiency of markets, [reducing] innovation . . . [slowing] economic growth,”38 and subjecting society to the will of a “small handful of dominant firms.”39 The government can prevent companies from gaining a monopoly over certain enterprises by creating and enforcing antitrust laws.

### 1NR: AT Solves War

**This best explains present social and international conflicts**

**Everest ’12** Larry Everest, “WAR AND GLOBAL CAPITALISM: “Money for Jobs Not for War”: American Chauvinism and Reformist Illusions,” Global Research, 5/24/2012, http://www.globalresearch.ca/index.php?context=va&aid=31024

The slogan also promotes the idea that the political powers-that-be—if pressured by enough people—could scale back their military, stop attacking other countries, and instead use the money for jobs, education, and other social welfare programs at home. But that’s not how the system actually operates! Wars, invasions, and occupations are not policies of one set of politicians or another, or arbitrary choices made by this or that president. At this stage in history, capitalism is a global system, with the U.S. the world’s most dominant capitalist-imperialist power, presiding over a worldwide empire of exploitation. This empire rests on the domination of the oppressed countries where the vast majority of humanity lives, and on control of labor, markets, and resources. This entails the violent suppression of the masses of people in the dominated areas—and also entails fighting off challenges from other imperialists as well as rising forces in those countries that stand in the way. This requires a monstrously huge military that is deployed worldwide, with bases in over 100 countries, and wars when necessary. The wars for domination in the Middle East, Central Asia, and elsewhere don’t “interfere” with the functioning of U.S. capital—they’re absolutely essential to it, and to the U.S.’s overall global dominance. This is why the U.S. rulers are compelled—and willing to—spend trillions on the military, including during periods of severe economic and fiscal stress, no matter who happens to sit in the White House or Congress. This system of global capitalism-imperialism headed by the U.S. is the main source of the horrors that torment so many across the globe—from the ethnic cleansing and slow genocide of the Palestinian people by the U.S. and Israel, to the mass incarceration and slow genocide of Black people in the U.S.; from the rape of the planet to the systematic degradation and violence against women—here and around the world; from the extreme deprivation and starvation faced by billions across the planet to the growing poverty and desperation faced by millions in the U.S. The rulers in these imperial metropoles distribute some of the spoils of empire to provide a higher standard of living than in the oppressed countries and buy social peace and loyalty at home (which “Money for Jobs, Not For War” encourages). People in the U.S. should reject that foul pact! The vast majority in the U.S. have a profound interest in making common cause with oppressed people worldwide, not in siding with “their” rulers. That means fostering a morality that declares: “American lives are not more important than other people’s lives!”—not pandering to American chauvinism, which strengthens the system responsible for so much misery. It means people shouldn’t appeal to those on the top to “spend more on jobs,” but to clearly and unequivocally demand a STOP to the horrors the U.S. is committing around the world.

### 1NR: AT Sustainability

**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).