## 1AC

### Relations---1AC

#### Advantage 1: Relations

#### Relations are collapsing across the board---the plan uses mutual leverage to resolve tension

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It saddens me to see how Sino-US relations are heading towards divorce as tensions continue to escalate on a host of issues ranging from the trade imbalance between the two countries to passing the buck on the COVID-19 pandemic and the passage of the Hong Kong National Security Law. As an avid reader of both US and Chinese newspapers, I find their polar opposite stances quite unsettling. Neither side is listening to the other, and neither side is being heard.

Is it possible to salvage what is left of the Sino-US marriage? I firmly believe so, if the two sides are willing to gain a deeper appreciation of their differences and commonalities. As elaborated in this book, the sources of Chinese exceptionalism are deep-seated in the distinctness of Chinese institutions, which often reflect the weaknesses and inherent contradictions of the Chinese regime. Although Chinese institutions have been moving in the right direction towards more openness and transparency, changes occur very slowly. The institutional inertia that surfaced after the series of reform has largely contributed to discontent and anxiety over the way China regulates and is regulated. Yet these institutional problems have little to do with Chinese communist ideology. It is thus a serious mistake to perceive China as an existential threat that wants to overtake the West and completely subvert their existing governance framework. Above all, the current Sino-US strategic rivalry fundamentally lacks aspects of a pervading ideological conflict analogous to the Cold War.3 Moreover, given how deeply China is embedded in the global supply chain, any attempt to completely disentangle the US economy from China would seem unimaginable. It may also backfire. As I have repeatedly emphasized here, the Chinese state is hardly monolithic, and policy-making is often a pluralistic process involving government departments with overlapping and divergent missions. Furthermore, growing US hostilities against China and Chinese companies are stirring nationalistic fever, giving hardline officials an upper hand, as evident in China’s increasingly aggressive ‘wolf warrior’ foreign policy.4 This will have the unintended consequences of undermining efforts of the more progressive bureaucratic departments and unwinding some of China’s promising institutional reforms. Indubitably, the rising Sino-US geopolitical tensions have resulted in profound mistrust between the two countries. But I remain hopeful that future cooperation remains possible, as long as China and the United States stay patient and far-sighted and continue to maintain significant leverage against each other. The Sino-US marriage does not necessarily need to have a tragic ending.

#### Economic integration through conflictual cooperation is key---the alternative is a new cold war with China

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But is this really the best strategy? Clearly, the recent US measures to isolate China through restrictive deals with major US trading partners is damaging the global economy. The hefty US tariffs imposed on Chinese goods have dealt a blow to the Chinese economy and brought about significant harm to US consumers and exporters. The US government’s travel ban on Chinese nationals in its attempt to suppress the COVID-19 pandemic has proven futile as well. At the time of writing, the number of confirmed COVID-19 cases in the United States has far surpassed that of China. Just like many countries around the globe that have sought out advice and resources from China to combat the pandemic, the United States also needs to cooperate with China, which has the capacity to produce face masks as well as the other protective gear that America so desperately needs. The coronavirus has forced us to accept the reality that China is now deeply embedded in the highly interconnected global system and it is simply too costly and unrealistic to disengage China. In fact, the current degree of global interdependence is exactly what distinguishes the present Sino-US tensions from Soviet–US tensions during the Cold War.7 As Noah Feldman presciently observes, we are now entering a new global era of a ‘cool war’, where cooperation and conflict must simultaneously coexist.8

#### Containment and decoupling causes full blown war, the plan’s hostage-based interdependence prevents escalation

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The substantial exchange of hostages between the East and the West, which has the prospect of facilitating positive changes in the Chinese regime, should therefore give us hope for peace. It is precisely for this reason that I advocate greater economic integration. Economic interdependence raises the costs of conflict and increases the incentives for countries to cooperate.13 Indeed, a pre- ponderance of economic evidence has shown that trade can reduce conflict among countries.14 Tus, the expansion of Chinese firms into foreign markets should not be seen as something to be blocked but should be welcomed as an important step towards a more prosperous and peaceful relationship between China and the rest of the world.15 Conversely, if Chinese firms are discouraged from entering or even cut off from Western markets, as some politicians are calling for these days, then foreign governments will hold less leverage over China. In fact, the Western policy of decoupling the Chinese economy from Western economies, while a seemingly straightforward response to rising political tensions, is eroding trust and making conflict more likely.16 In recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war.

Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese infuence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases.

#### Extinction---competition based cooperation solves China rise from escalating to nuclear war

Yan 10 "The Instability of China–US Relations" Xuetong Yan - Professor and Dean of Institute of Modern International Relations, Tsinghua University The Chinese Journal of International Politics, Vol. 3, 2010, 263–292

Clarifying their political relationship as political competitors would avoid unexpected conflicts on bilateral or multilateral political matters. On the political level, China and the United States have more mutually unfavourable than favourable interests that disenable the two nations from being friends. To reduce unexpected conflicts, therefore, each should clearly define the other as political competitor. Most important is that they need to clarify their competitiveness as that between a rising super power and one with super power status. The United States aims to maintain its global dominance, and China to resume its world leading position. This structural conflict makes political competition between them inevitable. As long as the Chinese economy grows faster than that of the United States, the competition between them to offer the best development model is also inevitable. Clarifying their political relationship as competitors would stabilize China–US political relations in several respects. First, they could consider an agreement towards maintaining peaceful political competition. Second, each could get used to the other’s unfavourable policy and restrict any retaliation to within mutual expectations. Although this would not improve bilateral political relations, it would prevent any worsening of already unfriendly political relations. A stable unfriendly political relationship would be healthier than a fluctuating superficial friendship for both China and the United States during China’s rise.

Defining their security relationship as military adversaries would reduce the danger of military clashes between China and the United States and provide better conditions for preventative cooperation. China and the United States have more mutually unfavourable interests than favourable ones as regards military security. China is still under the sanction of the US arms embargo, a fact that signifies strong suspicions between the two countries. Defining the China–US military relationship as rivalry might be overstating the case, because Chinese military capability will be no match for that of the United States for the next 10 years. There is hence no substantial competition between them as regards military capability. But as their military interests are mutually confrontational, both would benefit in several respects from acknowledging their military relationship as adversarial. First, lower expectations of cooperation and good will would limit disappointments over one or the other’s unfavourable, or even unfriendly, security policy. Second, they could establish a crisis-management mechanism to prevent escalation of unforeseen military clashes arising from their differences. Third, taking as read one another’s military opacity and reconnaissance would mean fewer rhetoric wars between the two countries. Fourth, the military adversary identity would amplify the credibility of mutual military deterrence, which would help stabilize strategic relations and prevent them from deteriorating to the point of return.

Owing to the complicity of their relations, China and the United States should define their general strategic relationship as that of positive competition and preventative cooperation. The world would benefit from competition between China and the United States since competition is an engine for social progress. Competition between China and the United States could provide the world with two models of development, both constantly improving by virtue of each country’s efforts to provide a model more advanced than that of their competitor. Competing to present the best model of development would bring benefits to the peoples of both nations and to countries that learn from their expertise. China and the United States should compete to provide better world leadership. Expanding their international influence by expanding economic aid and taking international responsibilities could bring enormous global benefits, as could the two countries’ competitive scientific research towards technical advances. Competition between China and the United States for the higher moral ground on climate control would also motivate global reductions of CO2 emissions. When competition is peaceful it can be globally beneficial rather than detrimental. And as long neither of them can win a nuclear war, their competition will not escalate into war but a better world leadership.

Preventative security cooperation between China and the United States would help maintain world peace. As China is a rising power and the United States has super power status, their contrasting status makes it difficult to formulate strategic cooperation mainly founded on common threats or common interests. China needs to prevent war between itself and the United States in the interests of maintaining a durably peaceful environment in which to proceed with its economic construction. The United States also fears war against another nuclear power. Both sides, therefore, need to cooperate to keep conflicts and competition at a peaceful level. Although passive, this kind of cooperation is crucial to the world. As long as China and the United States do not go to war against each other, the world today is safe from outbreaks of major war, because other than China and Russia, all major powers are American military allies. China and Russia are semi-allies, but as Russia has neither the real nor potential capability that China possesses to challenge US hegemony, China is the only major power with the potentiality to challenge US global domination. World peace is thus guaranteed if the danger of war between China and the United States can be eliminated, and peoples of the world would benefit from the two countries’ preventative security cooperation.

#### US-China war goes nuclear---no constraints.

Joshua Rovner 17. John Goodwin Tower Distinguished Chair in International Politics and National Security, Southern Methodist University. “Two kinds of catastrophe: nuclear escalation and protracted war in Asia.” *Journal of Strategic Studies* 40(5): 696-730. Emory Libraries.

But suppose that leaders have no intention of using nuclear weapons. It is one thing to develop impressive technologies, but quite another to use them, and policymakers may blanch at the real prospect of authorizing first use. Even in these cases, there are several theoretical pathways to escalation. The first is psychological. Cognitive biases may cause leaders to misperceive rival intentions, mistaking signals of restraint for signs of danger. Prewar expectations strongly influence how individuals interpret new information, and they will ignore or reframe dissonant information so it fits into their existing beliefs. Misperceptions intensify after the shooting starts, when information is ambiguous and incomplete. Carl von Clausewitz dwelt on the problem in the aftermath of the Napoleonic Wars, noting that intelligence reports were often contradictory and unreliable “in the thick of fighting.” Despite advances in intelligence and communications, the fog of war remains an enduring problem. Organized violence is an iterative process, and each side has incentives to hide its actions and deceive its adversary. Violence also unleashes intense emotions that obscure the material effects of battle. Commanders may not understand whether they are winning or losing, and in lieu of reliable intelligence they are likely to let passion overtake good judgment. “In short,” Clausewitz concluded, “most intelligence is false, and the effect of fear is to multiply lies and inaccuracies.” 9 Wartime leaders are prone to attribution bias, or the belief that their counterparts are inherently evil. Leaders in conflict are likely to assume the worst about their rivals or else they would not have picked a fight in the first place. Attribution bias causes them disregard the notion that their enemies have limited goals and are willing to accept partial victories. They are also prone to reject peace overtures as meaningless gestures at best, or as efforts to lull them into passivity before escalating the conflict.10 Finally, prospect theory tells us that individuals will fight harder to avoid losing a possession than they will to gain something new. If leaders equate settling with losing, then they will be tempted to risk escalation. All of these psychological pressures are exacerbated under stress and tight time constraints.11 Domestic pressures might lead to escalation if one or both governments fear that regime change will be the political penalty for battlefield failure. Escalation is also possible if the issues at stake are wrapped up in nationalism or ideologies that inflate the value of the object. Leaders will be hard pressed to accept defeat in such cases, especially if military outcome is particularly lopsided and humiliating. Leaders who depend on particularly hawkish constituencies to remain in power are especially likely to take new risks even against long odds. Rather than negotiating an end to the war, they might gamble for resurrection by escalating to the nuclear level.12 Such a move would not necessarily be irrational. Instead, resurrection succeeds by shifting the war towards the balance of interests rather than the balance of capabilities. A retreating combatant, battered in the early stages of a conflict, may still affect the enemy’s calculation by taking extraordinary risks. Escalation signals a willingness to fight to the finish and a reminder that it has powerful interests at stake. Such a strategy is admittedly risky, but it may be effective, especially if the escalating state is fighting to defend its own territory against a distant rival. Transforming a conflict into a test of resolve makes sense when a state is failing the test of arms.13 Finally, inadvertent escalation may occur when conventional attacks put the adversary’s nuclear force at risk. Under these conditions, the target state might reasonably worry that the attack is only the first phase of a larger war. There may be no way to offer credible reassurances that it is not. Fearing the destruction or incapacitation of its nuclear deterrent, the target state might face a “use it or lose it” dilemma. Inadvertent escalation is especially likely if key command and control nodes are vulnerable or if conventional and nuclear target sets are indistinguishable. The danger also increases if military organizations indulge organizational preferences for offensive action. This encourages planners to err on the side of attacking all available targets. While it might sense to allow the adversary to retain some capabilities in order to reduce the incentives for escalation, planners may bridle at the thought of consciously allowing the enemy to retain the capacity for attack.14 In recent years, China has invested heavily in capabilities that will complicate US maritime operations and threaten US bases in Japan and Guam. Equipped with a range of anti-access capabilities, China may be able to deter the United States from intervening in the case of a regional war. If it does intervene, China may attempt to damage or destroy US assets or force carrier groups to operate at prohibitively long distances from the mainland. Chinese doctrine for using these weapons has lagged behind acquisition.15 Nonetheless, the appearance of its new “anti-access/area denial” (A2AD) systems caused concern in Washington. US officials subsequently unveiled Air–Sea Battle (ASB), an operational concept for integrating naval and air assets in order to overcome the entire range of anti-access capabilities. The concept was announced in spring 2011 by the then Secretary of Defense Robert Gates, and responsibility for developing the concept fell to the Air–Sea Battle Office in the Pentagon. In January 2015, the Department of Defense changed the name of ASB to the Joint Concept for Access and Maneuver in the Global Commons, but there is no indication that the substance has changed.16 And because ASB has influenced the debate about a hypothetical US–China conflict, I will continue to use the term here. The Air–Sea Battle Office released some information about the concept, and leaders from the Navy and Air Force wrote about it in service publications. The most comprehensive treatment, however, came in the form of a monograph from the Center for Strategic and Budgetary Assessments (CSBA). Although it may be ahead of the Department of Defense (DOD) concept, the CSBA analysis is broadly consistent with official descriptions.17 ASB envisions two broad phases in a war against countries like China with advanced anti-access capabilities. The first is a blinding attack on key facilities, including long-range weapons that could target US bases and carrier groups, as well as the radar systems needed to cue them. Kinetic and electronic attacks would also target Chinese satellites and anti-satellite weapons. According to the CSBA report, attacks on Chinese space assets, along with land-based radars and other intelligence, surveillance, and reconnaissance (ISR) and communications platforms, would “severely limit China’s space-based situational awareness.” 18 China would struggle to organize forces after such an attack. Prompt strikes on Chinese missile launchers and C2 nodes would be equally important. “Countering or thinning the PLA offensive missile threat is a principle AirSea Battle line of operation,” the report continues. Not only would the United States regain the advantage, but ASB would also deny China any chance of a rapid and decisive victory. “Success is critical in preventing China from achieving a quick ‘knock-out blow.’”19 The second phase would seek to deny a Chinese naval breakout. Because of the vast distances involved in moving forces across the Indian and Pacific Oceans, these attacks would be required to allow time for US forces to arrive in theater.20 This is an appealing conventional approach, but it has never been tested against a great power with nuclear weapons. The danger is that ASB increases the risk that China will use them. In fact, it opens all three pathways to escalation. ASB deliberately seeks to create confusion at the start of the war, making it very hard for the adversary to understand signals of restraint and declarations of limited intent. Coercion requires not only threats but also credible assurances that the target will not be punished if it complies. There is little reason to comply absent such promises.21 In addition, all of the psychological problems described above would be activated if the United States implemented ASB. In addition to the danger of misperceptions in the confusing aftermath of a blinding attack, attribution bias would almost surely cause the Chinese leadership to suspect the worst about the United States. Prospect theory would also likely kick in because China would suddenly fear losing an object of great national value, especially if the war is fought over Taiwan and the result is independence and permanent separation from the mainland. ASB would exacerbate the domestic problem for the Chinese Communist Party, creating political incentives to use nuclear weapons. The Communist Party of China (CCP) long ago gave up its ideological mandate, replacing communism with a combination of nationalism and economic growth. In the event of an economic slowdown, the CCP will only have nationalism to fall back on. In these circumstances, the party might become more risk-acceptant, especially if it is fighting over a core national interest like Taiwan.22 If it stands on the edge of a monumentally humiliating loss, the CCP might well escalate the war rather than risking the end of its regime. ASB promises such a loss. It is hard to imagine a more humiliating outcome than being blinded and befuddled, forced to wait as the United States slowly husbands naval power offshore. Finally, ASB runs the risk of inadvertent escalation. China has been steadily moving towards a posture of assured retaliation. It seems to believe it can deter other powers with a relatively small number of nuclear weapons, but only if it can assure the survivability of its arsenal.23 ASB may remove that sense of security. The targets in the hypothetical first strike would include China’s ballistic missiles and launchers, as well as space- and ground-based facilities for targeting and guidance. This means that the United States would target elements of the People’s Liberation Army Rocket Force (PLARF), which oversees both nuclear armed and conventional missiles. It also means targeting China’s intelligence and C2 networks, making it harder for leaders to determine whether their nuclear force is at risk. China has not published a detailed and authoritative statement on its nuclear doctrine, though its defense white papers offer clues. Historically, it has chosen to enhance deterrence through ambiguity and mobile launchers in place of high numbers of warheads, obscuring its capabilities to guard what it calls a “lean and effective” force. While this might plant a seed of doubt in potential attackers, it also increases the danger of mistaken targeting, and some analysts believe the line between conventional and nuclear capabilities is getting fuzzier.24 Moreover, different variants of China’s land-based DF-21 are equipped with both conventional and nuclear warheads. In the words of a recent open-source assessment of China’s arsenal, “This potentially dangerous mix of nuclear and conventional missiles increases the risk of misunderstanding, miscalculation, and mistaken nuclear escalation in a crisis.” 25 Analysts disagree about the level of overlap, however, and there is evidence that China has taken steps to separate nuclear and conventional missiles while protecting its retaliatory force from preemptive attack. A recent survey of Chinese open sources finds that the majority of missiles are not co-located. Conventional and nuclear brigades answer to separate commands, and China has invested in more secure and redundant command and control. That said, both kinds of brigades may utilize the same C2 infrastructure, and the Central Military Commission, which commands nuclear forces, can take command of conventional forces “under special circumstances.” Finally, Chinese officials may view an attack on conventional missile brigades as proof that the United States has the capacity to destroy nuclear ones.26 The expansion of US missile defense capabilities may also affect China’s beliefs about the security of its deterrent force. The United States currently fields a modest national missile defense capability, with 30 interceptors deployed against intercontinental ballistic missile attacks. This offers some protection against small nuclear powers like North Korea but not against larger ones like Russia and China. Adding more advanced interceptors might make it harder to make this distinction. China has expressed particular concern about advances that blur the line between national and theater missile defenses, thus creating additional doubt about its second-strike capability.27 Despite these concerns, some US planners might have faith that China will continue to honor its long-standing no-first-use (NFU) nuclear declaratory policy, especially if they can conspicuously avoid certain targets as a way of reassuring Chinese leaders.28 Some launch brigades only fire nuclear missiles, and US leaders could make it clear that these are off-limits.29 Avoiding China’s emerging class of ballistic missile submarines might also signal US restraint.30 The problem is that Chinese officials might not understand the signal or believe US promises. They might not have the time to assess whether the United States is carefully discriminating conventional from nuclear forces, given its stated preference for rapid strikes against key enemy installations. Moreover, because initial strikes would also deliberately target China’s C4ISR networks, Beijing would not be able to do a quick damage assessment or communicate the results to deployed forces. Under these conditions, the US emphasis on blinding attacks, which are designed to slow down enemy operations, would actually speed up the decision to go nuclear.31

### Competition---1AC

#### Advantage 2: Competition

#### The presumption against extraterritoriality prevents any effective remedies to anti-competitive Chinese business practices

Fox 19 – Eleanor Fox is Walter J. Derenberg Professor of Trade Regulation, New York University School of Law, 2019, “ANTITRUST: UPDATING EXTRATERRITORIALITY” https://awards.concurrences.com/IMG/pdf/4.\_updating\_extraterritoriality.pdf?55787/361912bf66b468d8848477187d73628b861dbf86

Updating Extraterritoriality argues that a global economy requires extraterritorial reach, and that nations have been too timid in restraining themselves from condemning international cartels on grounds of indirectness of effects. The article poses five sets of reallife fact problems, analyzes what is or is not a legitimate outreach of national law, and proposes that, in cases of world consensus principles, notably hard core cartels, the national and world interest in a global economy free of restraints of competition (the world commons of competition) should be a factor in deciding whether jurisdiction lies. The article examines how to reflect world welfare more cautiously in other cases. 1. INTRODUCTION Markets are global but there is no global competition law or framework. Nations apply their own laws to conduct or transactions that hurt them, with different degrees of outreach and restraint. The dominant norm is a presumption against extraterritoriality, and jurisdictional restraint.2 But is this always the right norm in the age of a global economy when international cartels are rampant, global value chains are frequent, companies are bigger than nations, and nations and multinationals play strategic games to put themselves above the law?3 In areas of substantive conflict and no international consensus, restraint is needed.4 But a large portion of international antitrust litigation concerns hard core cartels, which are world-consensus wrongs, and strategic games to by-pass the importing country’s law Our norms of restraint are generally traceable to rules from a different era before global effects of routine transactions were the norm. What rules and conventions would we adopt if we start from the baseline of the world today? This essay reexamines appropriate reach and restraint of national law and enforcement in the age of a global economy.5 The principal contribution of this essay concerns the area of substantive consensus among nations – notably, for antitrust, hard core cartels. That is the category in which benefits of global vision can outweigh costs of nation-to-nation conflict. The essay argues that traditional analysis is outdated in five respects, and suggests a paradigm fitting for the 21st century. First, traditional analysis contains a presumption against extraterritorial reach of the law. This essay contends that, in the many areas in which the effects of acts are global, the presumption is anachronistic and unhelpful. Second, traditional analysis assigns to separate silos what is essentially the same problem – extraterritorial jurisdiction, foreign sovereign compulsion, and treatment of foreign firms. These are sister problems, and this essay applies the same analytical framework. Third, in many litigations, traditional analysis sees the private firms as the principal stakeholders whose interests are centrally invoked to determine the reach of the law. This essay argues that the proper vantage for considering reach-of-law issues is the state as opposed to private party defendants; that deference to the interests of private litigants may get in the way of reaching the wisest resolution. Fourth, traditional analysis invokes a laundry list of factors to balance in the case of conflict. Laundry lists fail to prioritize and they give undifferentiated weight to all factors, both critical and trivial. This paper jettisons the laundry list in favor of a structured rule. Fifth, traditional antitrust sees the sovereignty problem (disparate interests of sovereigns) as a two-player game. This paper identifies a super national concept—the “global commons of competition.” It treats the global commons as a player on issues of world consensus that certain conduct is wrong; notably, hard core cartels.6 From the earliest days, the extraterritorial problem was seen as involving a universe of two sovereign players; for example, Turkey and France (the Lotus),7 or the United States and the UK (British Airways/Laker).8 It is fitting at last to recognize the global commons of competition. The world has an interest in preserving the global commons, unclogged by undue public or private restraints. The old standby comity cases Timberlane9 and Mannington Mills10 both literally and figuratively miss the bigger picture;11perhaps understandably for they were decided before the modern reality of relatively open world trade and commerce as embedded in the rules of the World Trade Organization, and before the adoption of global governance in areas of law rife with externalities where solely national regulation is no longer efficient.12 My methodology is to work from ground up, looking closely at fact-sets and considering national interests and world interests, in order to assess the legitimacy of national enforcement against off–shore acts. Because the exercise needs a structure, I suggest standards for the analysis. I derive four standards from a common or evolving understanding (1) that nations have the right to protect themselves from economic harms to their citizens, and when other nations’ legitimate interests are at stake nations must apply their regulation proportionately so as not to intrude unreasonably on the other nations’ legitimate interests to regulate their own economies, and, (2) in a global economy and interdependent world with many possibilities for externalities, analysis at world community level is necessary to help maximize the common good of the nations. I pose five fact problems. I test each against my four standards. Based on the analysis, I suggest a new framework for assessing legitimacy of national enforcement of economic law in the presence of international impacts. Here are the four standards: (1) The law of a jurisdiction may appropriately reach conduct or transactions that emanate from abroad that harm its citizens. To prevent harm to other jurisdictions where there is a threat of jurisdictional clash, the conduct or transaction regulated must have a reasonably direct, not insubstantial, foreseeable effect on its territory or its citizens and residents. (2) The enforcement action and relief should not be disproportionate to the interests of the enforcing state.13 (3) When (1) and (2) are satisfied, the enforcement and relief are presumptively legitimate. A complaining nation has the burden to prove the contrary.14 (4) When the subject matter of the enforcement action is one in which there is a world common interest and there is consensus as to what is harmful to competition, as in commonly desired eradication of private firm world cartels, we should recognize a global commons of competition and a worldwelfare interest in its preservation. In such a case, any particular controversy before national courts is greater than the sum of the interests of the parties (or nations) in the dispute. The world welfare interest is appropriately considered as a referent in determining appropriate reach and limits of national law. I apply these four principles to the five following problem sets: potash, input cartels, the Chinese vitamin C export cartel, the European Intel case and its Lenovo/Acer incidents, and China’s enforcement: the Chinese AntiMonopoly litigation against Qualcomm and China’s merger clearance conditionalities. The values of business certainty and sovereigns’ interests in regulating their own commercial affairs are taken into account in the analysis. The potash fact set and the component-input fact set concern whether the anticompetitive cause is sufficiently close to the anticompetitive effect. This problem is commonly encapsulated by the word “direct” and the question what “direct” means. The Vitamin C problem concerns when foreign interests may be sufficiently strong to override domestic enforcement against conduct that has clear direct effects in the enforcing jurisdiction. In the European Union Intel problem, there is clear jurisdiction over a foreign firm that does multinational business and whose exclusionary strategies hurt European consumers, and the question is whether pieces of the picture that harm the European market derivatively from harming the world market must be shaved out of the case on grounds that the effects of that incident are not direct (or in the European terminology, immediate). The China problems ask whether industrial policy can justify extraterritorial antitrust remedies, and they raise issues of legitimacy based on alleged discrimination and lack of due process. In all of these analyses we are considering when and whether a nation oversteps its bounds by a particular extraterritorial reach, and whether there is a world welfare component that may support and even encourage a flexible reach of the law. Because this article is an exploration of what is good law and policy, it does not engage with existing legislation such as the United States’ Foreign Trade Antitrust Improvement Act of 1982.15

#### Chinese anticompetitive business practices uniquely undermine US 5G tech leadership---the plan is the best middle ground

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\*yes the federalist society is sus but the authors are some of the most qualified individuals when it comes to effects of US antitrust law\*

Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15 Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21 Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23 Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world. The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27 This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### 5G capabilities are key for readiness in the 21st century – 5G implementation is zero sum with China

Borghard 19 – Erica D. Borghard is an Assistant Professor at the Army Cyber Institute at West Point. Shawn W. Lonergan is a U.S. Army Reserve officer assigned to 75th Innovation Command and a Research Scholar at the Army Cyber Institute, 4-25-2019, "The Overlooked Military Implications of the 5G Debate," Council on Foreign Relations, https://www.cfr.org/blog/overlooked-military-implications-5g-debate

Last week, the U.S. Defense Innovation Board released a report outlining the risks and opportunities for the United States in the global race to develop 5G. This followed a damning report published by the United Kingdom’s Huawei Cyber Security Centre Oversight Board detailing how the Chinese telecom giant’s 5G products, particularly its software, contained significant vulnerabilities and that the company had failed to remedy persistent poor security practices. 5G network architecture uses high frequency spectrum to enable significantly faster speeds to process larger amounts of data with lower latency and greater device connectivity. While much attention has been paid to economic and espionage implications of a potential Chinese lead in developing and operating 5G infrastructure, there are important military implications that remain largely overlooked. There are economic implications for which entities can secure the greatest global market share of 5G technology. Technological innovation drives economic growth, job creation, and global economic influence. Huawei may have a long-term market advantage over U.S and Western telecoms because the former has been able to offer 5G products at far cheaper rates than the latter. Furthermore, there are also concerns that Chinese-built 5G technology is likely to contain backdoors that could be used to enable Chinese economic or national security espionage. It is unlikely that Beijing would actively monitor all of the content of the data that comes across Huawei owned or operated infrastructure (although it may collect and analyze metadata). However, it is conceivable that Huawei would get a proverbial “tap on the shoulder” from Beijing to share pertinent information in specific instances. This may include individually targeting senior corporate executives, which is enabled by the millimeter wave frequency that 5G networks employ. The military applications of 5G technology have vital strategic and battlefield implications for the U.S. Historically, the U.S. military has reaped enormous advantages from employing cutting edge technology on the battlefield. 5G technology holds similar innovative potential. Perhaps most obviously, the next generation of telecommunications infrastructure will have a direct impact on improving military communications. However, it will also produce cascading effects on the development of other kinds of military technologies, such as robotics and artificial intelligence. For instance, artificial intelligence and machine learning capabilities, such as those used in the Department of Defense’s Project Maven, could be greatly enhanced when leveraging the data processing speeds made possible through 5G infrastructure. As an era of great power competition emerges between the United States and China, the United States has a compelling strategic interest in being at the forefront of these new technologies. The United States and its allies must also consider the tactical and operational implications on the battlefield of conducting conventional or counterinsurgency operations in an area with Chinese owned or operated 5G infrastructure. This concern stems from the nature of the relationship between Huawei, an ostensibly private company, and the Chinese Communist Party (CCP). While Huawei’s founder and CEO, Ren Zhengfei proclaimed in a February 2019 interview on CBS This Morning that the company never has and never would provide information to the Chinese government, many experts are skeptical. Under China’s 2017 National Intelligence Law, the CCP has the authority to monitor and investigate domestic and international companies as well as direct organizations to assist with government espionage efforts. As such, it is conceivable that Huawei will be required to hand over its data to the Chinese government for collection and analysis. Due to this reality, the United States must consider and be prepared to conduct overseas contingency or counterterrorism operations in areas where Chinese telecommunications infrastructure is widely proliferated, thus restricting the United States’ ability to rely on indigenous telecoms. As noted by US AFRICOM Commander General Thomas Waldhauser, this has already become an issue in Africa where Chinese telecommunications companies are poised to dominate. The integrity of U.S. military communications systems that rely on 5G networks could be undermined at key phases of an operation. For example, if the United States is conducting a military operation in an area of interest to China, it is plausible that the Chinese government could leverage Huawei to intercept or even deny military communications. Furthermore, Chinese telecom infrastructure dominance in a theater of operations may limit the U.S. military’s ability to conduct precision targeting that leverages signals intelligence collection on 5G telecommunications networks. The strategic and battlefield implications of who owns and operates 5G infrastructure around the world underscores the national security importance of 5G. The U.S. government and its allies should more systematically assess both the opportunities and risks associated with conducting future military operations in environments that rely on Chinese technology. To date, the U.S. government has devoted significant energy to persuading its allies and partners to follow the United States in prohibiting Chinese telecoms, particularly Huawei, from building and/or operating 5G infrastructure. However, its diplomatic approach has been met with varying degrees of success. While some countries such as Australia and Japan have fallen in line with the U.S. stance on Huawei, many others have not. The European Commission’s recent 5G recommendations for member states dismissed a ban on Chinese telecoms. British intelligence has reportedly maintained that the security risks associated with Huawei can be sufficiently managed, and New Zealand, after initially bandwagoning with the United States in December 2018, abruptly reversed course in February 2019. This is concerning for the United States because New Zealand and the UK are members of the Five Eyes intelligence-sharing alliance. Many allies have refused an outright ban of Huawei because of the company’s ability to offer 5G products at far cheaper rates than Western telecoms. It is clear that U.S. diplomatic efforts are not working. The reality is that the bottom line is largely driving decision-making. Therefore, rather than take a purely negative approach, the United States should consider using positive inducements to make its 5G products more appealing. While the United States should not strive to mirror China’s top-down approach to innovation, it should work with allies to use market incentives to make U.S.- and Western-developed 5G infrastructure and products more competitive. Furthermore, the U.S. military needs to anticipate that its use of native telecommunications infrastructure in a future operating environment may be compromised, limited, or denied. The U.S. military will inevitably need greater bandwidth on the tactical edge and this should be an imperative that drives investment in research and development to address this challenge. Technological innovation was at the crux of the United States’ comparative military and economic advantage in the twentieth century. In this contemporary great power competition, U.S. failure to innovate at the scientific and technological frontier will have direct (and deleterious) effects for the United States on the distribution of power in the international system over the long term.

#### Nuclear war

Dowd 15 – Alan Dowd, Senior Fellow at the Sagamore Institute for Policy Research, Contributing Editor for the American Legion Magazine, “Shield & Sword: The Case for Military Deterrence”, Providence Magazine, Fall, https://providencemag.com/2015/12/shield-sword-the-case-for-military-deterrence/

It’s a paradoxical truth that military readiness can keep the peace. The Romans had a phrase for it: Si vis pacem, para bellum. “If you wish for peace, prepare for war.” President George Washington put it more genteelly: “There is nothing so likely to produce peace as to be well prepared to meet an enemy.” Or, in the same way, “We infinitely desire peace,” President Theodore Roosevelt declared. “And the surest way of obtaining it is to show that we are not afraid of war.” After the West gambled civilization’s very existence in the 1920s and 1930s on hopes that war could somehow be outlawed, the men who crafted the blueprint for waging the Cold War returned to peace through strength. Winston Churchill proposed “defense through deterrents.” President Harry Truman called NATO “an integrated international force whose object is to maintain peace through strength…we devoutly pray that our present course of action will succeed and maintain peace without war.”[iii] President Dwight Eisenhower explained, “Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk its own destruction.” President John Kennedy vowed to “strengthen our military power to the point where no aggressor will dare attack.” And President Ronald Reagan steered the Cold War to a peaceful end by noting, “None of the four wars in my lifetime came about because we were too strong.” Reagan also argued, “Our military strength is a prerequisite for peace.”[iv]

Even so, arms alone aren’t enough to deter war. After all, the great powers were armed to the teeth in 1914. But since they weren’t clear about their intentions and treaty commitments, a small crisis on the fringes of Europe mushroomed into a global war. Neither is clarity alone enough to deter war. After all, President Woodrow Wilson’s admonitions to the Kaiser were clear, but America lacked the military strength at the onset of war to make those words matter and thus deter German aggression. In other words, America was unable to deter. “The purpose of a deterrence force is to create a set of conditions that would cause an adversary to conclude that the cost of any particular act against the United States of America or her allies is far higher than the potential benefit of that act,” explains Gen. Kevin Chilton, former commander of U.S. Strategic Command. It is a “cost-benefit calculus.”[v] So, given the anemic state of America’s military before 1917, the Kaiser calculated that the benefits of attacking U.S. ships and trying to lure Mexico into an alliance outweighed the costs. That proved to be a grave miscalculation.

In order for the adversary not to miscalculate, a few factors must hold.

First, consequences must be clear, which was not the case on the eve of World War I. Critics of deterrence often cite World War I to argue that arms races trigger wars. But if it were that simple, then a) there wouldn’t have been a World War II, since the Allies allowed their arsenals to atrophy after 1918, and b) there would have been a World War III, since Washington and Moscow engaged in an unprecedented arms race. The reality is that miscalculation lit the fuse of World War I. The antidote, as alluded to above, is strength plus clarity.

A second important factor to avoid miscalculation: The adversary must be rational, which means it can grasp and fear consequences. Fear is an essential ingredient of deterrence. It pays to recall that deterrence comes from the Latin dēterreō: “to frighten off.”[vi] Of course, as Churchill conceded, “The deterrent does not cover the case of lunatics.”[vii] Mass-murderers masquerading as holy men and death-wish dictators may be immune from deterrence. (The secondary benefit of the peace-through-strength model is that it equips those who embrace it with the capacity to defeat these sorts of enemies rapidly and return to the status quo ante.)

Third, the consequences of military confrontation must be credible and tangible, which was the case during most of the Cold War. Not only did Washington and Moscow construct vast military arsenals to deter one another; they were clear about their treaty commitments and about the consequences of any threat to those commitments. Recall how Eisenhower answered Soviet Premier Nikita Khrushchev’s boast about the Red Army’s overwhelming conventional advantage in Germany: “If you attack us in Germany,” the steely American commander-in-chief fired back, “there will be nothing conventional about our response.”[viii] Eisenhower’s words were unambiguously clear, and unlike Wilson, he wielded the military strength to give them credibility.

Discussing military deterrence in the context of Christianity may seem incongruent to some readers. But for a pair of reasons it is not.

First, deterrence is not just a matter of GDPs and geopolitics. In fact, scripture often uses the language of deterrence and preparedness. For example, in the first chapter of Numbers the Lord directs Moses and Aaron to count “all the men in Israel who are twenty years old or more and able to serve in the army.” This ancient selective-service system is a form of military readiness. Similarly, I Chronicles 27 provides detail about the Israelites’ massive standing army: twelve divisions of 24,000 men each. II Chronicles 17 explains the military preparations made by King Jehoshaphat of Judah, a king highly revered for his piety, who built forts, maintained armories in strategically located cities “with large supplies” and fielded an army of more than a million men “armed for battle.” Not surprisingly, “the fear of the Lord fell on all the kingdoms of the lands surrounding Judah, so that they did not go to war against Jehoshaphat.” In the New Testament, Paul writes in Romans 13 that “Rulers hold no terror for those who do right, but for those who do wrong…Rulers do not bear the sword for no reason.” Again, this is the language of deterrence. Those who follow the law within a country and who respect codes of conduct between countries have nothing to fear. Those who don’t have much to fear. Likewise, to explain the importance of calculating the costs of following Him, Jesus asks in Luke 14, “What king would go to war against another king without first sitting down to consider whether his 10,000 soldiers could go up against the 20,000 coming against him? And if he didn’t think he could win, he would send a representative to discuss terms of peace while his enemy was still a long way off.” In a sense, both kings are wise—one because he recognizes that he’s outnumbered; the other because he makes sure that he’s not. Put another way, both kings subscribe to peace through strength. Again, as with the Centurion earlier, Jesus could have rebuked the martial character of these kings, but he did not. This is not just description but commendation. We ignore their example at our peril.

Secondly, it is not incongruent if we understand military deterrence as a means to prevent great-power war—the kind that kills by the millions, the kind humanity has not endured for seven decades. We know we will not experience the biblical notion of peace—of shalom, peace with harmony and justice—until Christ returns to make all things new. In the interim, in a broken world, the alternatives to peace through strength leave much to be desired: peace through hope, peace through violence, or peace through submission. But these options are inadequate.

The sheer destructiveness and totality of great-power war testify that crossing our fingers and hoping for peace is not a Christian option. Wishful thinking, romanticizing reality, is the surest way to invite what Churchill called “temptations to a trial of strength.”

Moreover, the likelihood that the next great-power war would involve multiple nuclear-weapons states means that it could end civilization. Therefore, a posture that leaves peer adversaries doubting the West’s capabilities and resolve—thus inviting miscalculation—is not only unsound, but immoral and inhumane—unchristian. “Deterrence of war is more humanitarian than anything,” Gen. Park Yong Ok, a longtime South Korean military official, argues. “If we fail to deter war, a tremendous number of civilians will be killed.”[ix]

Peace through violence has been tried throughout history. Pharaoh, Caesar and Genghis Khan, Lenin, Hitler, Stalin and Mao, all attained a kind of peace by employing brutal forms of violence. However, this is not the kind of “peace” under which God’s crowning creation can flourish; neither would the world long tolerate such a scorched-earth “peace.” This option, too, the Christian rejects.

Finally, the civilized world could bring about peace simply by not resisting the enemies of civilization—by not blunting the Islamic State’s blitzkrieg of Iraq; by not defending the 38th Parallel; by not standing up to Beijing’s land-grab in the South China Sea or Moscow’s bullying of the Baltics or al-Qaeda’s death creed; by not having armies or, for that matter, police. As Reagan said, “There’s only one guaranteed way you can have peace—and you can have it in the next second—surrender.”[x]

The world has tried these alternatives to peace through strength, and the outcomes have been disastrous.

After World War I, Western powers disarmed and convinced themselves they had waged the war to end all wars. By 1938, as Churchill concluded after Munich, the Allies had been “reduced…from a position of security so overwhelming and so unchallengeable that we never cared to think about it.”[xi] Like predators in the wilderness, the Axis powers sensed weakness and attacked.

In October 1945—not three months after the Missouri steamed into Tokyo Bay—Gen. George Marshall decried the “disintegration not only of the Armed Forces, but apparently…all conception of world responsibility,” warily asking, “Are we already, at this early date, inviting that same international disrespect that prevailed before this war?”[xii] Stalin answered Marshall’s question by gobbling up half of Europe, blockading Berlin, and arming Kim Il-Sung in patient preparation for the invasion of South Korea.[xiii] The U.S. military had taken up positions in Korea in 1945, but withdrew all combat forces in 1949.[xiv] Then, in 1950, Secretary of State Dean Acheson announced that Japan, Alaska and the Philippines fell within America’s “defensive perimeter.”[xv] Korea didn’t. Stalin noticed. Without a U.S. deterrent in place, Stalin gave Kim a green light to invade. Washington then reversed course and rushed American forces back into Korea, and the Korean peninsula plunged into one of the most ferocious wars in history. The cost of miscalculation in Washington and Moscow: 38,000 Americans, 103,250 South Korean troops, 316,000 North Korean troops, 422,000 Chinese troops and 2 million civilian casualties.[xvi] The North Korean tyranny— now under command of Kim’s grandson—still dreams of conquering South Korea. The difference between 2015 and 1950 is that tens of thousands of battle-ready U.S. and ROK troops are stationed on the border. They’ve been there every day since 1953.

The lesson of history is that waging war is far more costly than maintaining a military capable of deterring war. As Washington observed, “Timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it.” Just compare military allocations, as a percentage of GDP, during times of war and times of peace:

In the eight years before entering World War I, the United States devoted an average of 0.7 percent of GDP to defense; during the war, U.S. defense spending spiked to 16.1 percent of GDP. In the decade before entering World War II, the United States spent an average of 1.1 percent of GDP on defense; during the war, the U.S. diverted an average of 27 percent of GDP to the military annually.

During the Cold War, Washington spent an average of 7 percent of GDP on defense to deter Moscow; it worked.

Yet it seems we have forgotten those hard-learned lessons. In his book The World America Made, Robert Kagan explains how “America’s most important role has been to dampen and deter the normal tendencies of other great powers to compete and jostle with one another in ways that historically have led to war.” This role has depended on America’s military might. “There is no better recipe for great-power peace,” Kagan concludes, “than certainty about who holds the upper hand.”[xvii]

### Comity---1AC

#### Advantage 3: Comity

#### The court has transformed the presumption against territoriality as a weapon to constrict congress

Gardner 16 “RJR Nabisco and the Runaway Canon” Maggie Gardner - Assistant Professor of Law at Cornell School of Law, OCT 22, 2016, 102 Va. L. Rev. Online 134, Volume 102, <https://www.virginialawreview.org/articles/rjr-nabisco-and-runaway-canon/>

In last term’s RJR Nabisco, Inc. v. European Community,[1] the U.S. Supreme Court held that the private remedy in the Racketeer Influenced and Corrupt Organizations Act (“RICO”)[2] does not extend to foreign injuries, even if those injuries were caused by a U.S. company operating within the United States.[3] In doing so, the Court finished transforming the presumption against extraterritoriality from a tool meant to effectuate congressional intent into a tool for keeping Congress in check. The presumption against extraterritoriality has become a means for judges (particularly Justices) to override Congress in defining the proper scope of litigation in U.S. courts.

The RJR Nabisco case, like many transnational cases, was both global and local in scope. The European Community and twenty-six of its member states had been investigating major tobacco companies for their role in cigarette trafficking and money laundering into and through Europe.[4] While other tobacco companies eventually reached settlements with the European Commission, RJR Nabisco did not and continued—according to the European Community’s complaint—to engage in illegal activity,[5] specifically by scheming “to sell cigarettes to and through criminal organizations and to accept criminal proceeds in payment for cigarettes.”[6] This conduct was causing harm in Europe, but the European Community believed it was “directed and controlled” by “[h]igh-level managers and employees” from RJR Nabisco’s headquarters in the United States.[7]

The Supreme Court threw out the lawsuit after invoking the presumption against extraterritoriality. That canon of statutory interpretation instructs judges to assume “that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.”[8] In applying the presumption in RJR Nabisco, however, a majority of four Justices[9] rejected multiple indications that Congress intended RICO’s private right of action to extend abroad[10] while raising the bar on what Congress must do to make its extraterritorial expectations clear.[11]

Besides the worrisome implications for separation of powers, the majority’s opinion was also disappointing on practical grounds. By applying the presumption too aggressively, the Court missed an opportunity to provide much-needed guidance to judges on how to interpret statutes that rebut the presumption. For despite the Court’s recent wariness of extraterritorial laws,[12] Congress does sometimes intend its statutes to apply abroad.[13] Those extraterritorial statutes nonetheless have limits—but the Court has not clearly explained how judges are to identify them.[14] Without such guidance, judges may be tempted to cling too tightly to the presumption in order to avoid the doctrinal black hole on the other side.

#### This relies on the court’s interpretation of comity that redefines respect for sovereign nations as respect for international markets---that erodes congressional will and separation of powers, while politicizing the court

Paul 8 “The Transformation of International Comity” Joel R. Paul - Professor, University of California Hastings College of the Law, 71 LAW & CONTEMP. PROBS. 19, 2008, <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1628&context=faculty_scholarship> \*language modified

In his dissenting opinion in Hartford Fire Insurance, Justice Scalia conceded that "it is now well established that the Sherman Act applies extraterritorially."" However, Scalia asserted that according to the Charming Betsy canon of statutory construction, an act of Congress should never be construed as violating international law if any other possible interpretation is available.' To ensure that international law is not violated, Scalia argued that extraterritorial jurisdiction must be tempered by considerations of international comity."n In other words, Justice Scalia treated comity as a binding rule of international law, and he equated the comity analysis with the requirement in the Restatement (Third) of Foreign Relations Law of the United States that the exercise of prescriptive jurisdiction must be "reasonable.' ' .. According to the Restatement, courts are obligated to consider the connections and degree of interests of all the affected states.' 2 Given that the relevant activities occurred in the United Kingdom, the defendants were British, and Britain has a comprehensive set of regulations for the reinsurance industry, he concluded that the United States clearly did not have a sufficient connection or interest in the transaction to warrant the exercise of legislative jurisdiction. 3

Justice Scalia's dissent carried the day in the Supreme Court's 2004 decision in F. Hoffman-La Roche, Ltd. v. Empagran, S.A.'' Foreign plaintiffs brought a class action suit under the Sherman Antitrust Act against foreign defendants who had conspicuously conspired to fix prices in the worldwide market for bulk vitamins. 5 Relying in part on the Charming Besty canon, the Court opined that the statute had to be read consistently with the principle of comity to avoid offending foreign sovereigns."° Accordingly, it held that the plaintiffs had no cause of action when the admittedly significant effect on U.S. commerce was independent of the effect on foreign commerce.' 7 Writing for the majority, Justice Kennedy asserted that this

rule of statutory construction cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws. It thereby helps the potentially conflicting laws of different nations work together in harmony-a harmony particularly needed in today's highly interdependent commercial world. 08

The Court read Congress's intention in light of the interests of the interdependent world market. Whereas Charming Betsy required courts to assume that Congress intended to legislate consistent with international law, the principle of international comity, at least as understood in the United States, was never a rule of international law. Comity as applied in U.S. courts was a uniquely American common-law doctrine reflecting our concerns about separation of powers and our particular historical experience. Foreign courts in both common-law and civil-law jurisdictions have not recognized comity as private international law."° Indeed, most foreign courts would agree with Cheshire and North that deciding when to apply foreign law according to the doctrine of comity "is incompatible with the judicial function, for comity is a matter for sovereigns, not for judges.."

Key to the Court's justificatory rhetoric is the image of the "highly interdependent" global market."' Similarly, the Court in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. enforced a choice-of-law provision out of "sensitivity to the need of the international commercial system for predictability." 2 Again, in The Bremen v. Zapata Off-Shore Co. the Court cautioned that "[w]e cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.. 3 And in Scherck v. Alberto-Culver Co. the Court stressed the damage that "a parochial refusal by the courts" to enforce a foreign arbitration agreement would do to "the fabric of international commerce and trade. ' "4 In each of these cases the Court sacrificed an important U.S. public policy embodied in U.S. statutes to the requirements of the global market. Similarly, in the Empagran decision, the Court failed to reinforce U.S. prohibitions against price fixing (by affording a remedy to the foreign plaintiffs) in deference to the global market."'

Those who appeal to a globalized market as a justification for limiting domestic jurisdiction assert that the United States depends on foreign commerce in a way that limits our autonomy. The Empagran decision assumes that we are no longer masters of our economic destiny; we are merely competitors in a global marketplace, and as such market forces require us to adjust our legal environment to encourage cross-border investment and commerce. Comity demands not merely respect for foreign sovereigns, the executive, or even for the autonomy of private parties; comity demands respect for the market itself. The Empagran judgment seems to treat the market as if it possesses its own autonomous will, much as courts once referred to the sovereign's will. In this globalized economy, courts serve a higher master and the sovereign's will must yield to the will of the market.

V

CONCLUSION

Over four centuries, the doctrine of international comity has proved to be remarkably elastic and adaptive. What began in nineteenth-century U.S. jurisprudence as an assertion of the primacy of the forum's own law morphed into an obligation to apply foreign law. In the shadow of the Cold War, comity broadened to become a general principle of deference and a justification for limiting domestic jurisdiction to prescribe, adjudicate, or enforce. Deference to foreign sovereigns became deference to the executive or to the power of contracting parties to select their own law and forum. As the threat of the Cold War receded, comity once again is adapting to the new realities of globalization. The Court's decision in Empagran suggests that comity may have found a new object of deference: the Market.

If Empagran signals the next incarnation of comity, it is a dangerous and ironic formulation. Deference to the Market has nothing to do with respect for foreign law or private parties. Treating the Market as if it were an autonomous being with a will of its own is ~~delusional~~ [misguided] .1'6 When courts sacrifice the forum's public policy to suit the market, they are substituting their own ideological preference for markets for the policy choices that legislators have exercised. In so doing courts are frustrating policies that are the product of a democratic process.

The mere possibility that the application of domestic jurisdiction may be burdensome or even hostile to international commerce hardly seems a basis for courts to refuse to exercise jurisdiction. Comity was conceived originally as mutual respect between sovereigns. The rule of Empagran disrespects sovereigns. It suggests that courts may arrogate to themselves the power that comity acknowledged rests exclusively in the hands of the sovereign. Courts, out of respect for the separation of powers, as well as respect for foreign sovereigns, should apply jurisdiction as the lawmakers intended it to be applied and leave the interest-balancing to the political process.

#### Specifically, extraterritorial congressional oversight solves effective foreign policy---including foreign assistance

Wright 18 (ANDREW MCCANSE WRIGHT, Associate Professor, Savannah Law School, EXTRATERRITORIAL CONGRESSIONAL OVERSIGHT, 64 Wayne L. Rev. 227, y2k)

Congress has a myriad of legitimate interests in oversight that transcend national boundaries and extend to U.S. interests all over the world. Such interests can even reach as far as a foreign sovereign's stewardship of U.S. resources. Extraterritorial congressional oversight and investigations present a number of practical, legal, and diplomatic challenges. In this Article, I consider those challenges and offer some practical reforms Congress could undertake to enhance its ability to project its power of inquiry overseas.

Text

[\*228] I. INTRODUCTION

Congress has conducted legislative oversight of American foreign policy and overseas military activities since its founding. 1 American emergence as a global superpower further increased congressional oversight interests in overseas activities. Now, amidst multinational corporate consolidation, transnational national security threats, and technological revolution, Congress finds itself investigating fraud, waste, and abuse of U.S. resources in foreign jurisdictions. This Article focuses on jurisdictional and diplomatic issues implicated by congressional investigations that are not purely domestic in character. 2

[\*229] Extraterritorial congressional investigations present a number of unique diplomatic, jurisdictional, and practical challenges. A congressional investigation of the activities of a multilateral international institution that has received federal funds will raise issues of domestic law, federal jurisdiction, foreign relations law, and diplomatic norms. Similarly, United States contractors operating overseas also surface a range of such issues.

In this article, I propose practical legislative provisions that would facilitate Congress's legitimate oversight interests abroad. Many articles address the extraterritorial reach and limitations on criminal and civil litigation. Others examine the diplomatic sensitivities and international law associated with cross-border litigation. This Article offers a systematic analysis of congressional investigative interests in overseas activities and actors. 3

II. EXAMPLES OF CONGRESS'S OVERSEAS OVERSIGHT INTERESTS

Congress's broad oversight power informs its legislative powers, which naturally lead its inquiries to foreign jurisdictions. This section offers some illustrative examples of U.S. government activities and other policy questions that give rise to congressional oversight and investigations.

A. Congressional Oversight Power and Scope

Congress's oversight power is grounded in its constitutional grant of "[a]ll legislative Powers." 4 In McGrain v. Daugherty, 5 the Supreme Court observed that "the power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function." 6 While not unlimited, the scope of congressional oversight power is extremely broad because it covers review of the efficacy and administration of previously enacted laws as well as information that could serve as the basis of future legislative action. 7 Congress formulates [\*230] legislative policy and provides appropriations for the military, intelligence community, diplomatic corps, and foreign aid officers. Congress naturally, then, has myriad legitimate oversight interests that run overseas.

B. U.S. Government Operations Overseas

The United States conducts operations supported by military, 8 diplomatic, 9 and other U.S. government facilities 10 all over the world. Executive Branch officials stationed in the United States regularly travel overseas, incurring costs and presenting policy questions. Fiscal integrity, physical plant, personnel, and substantive policy issues abound in the U.S. footprint in foreign countries. Congress has the same legitimate oversight interests in U.S. facilities and operations abroad as it does domestically. 11

[\*231] C. U.S. Foreign Assistance to Foreign Governments and Multilateral Organizations

The United States is the largest foreign assistance donor in the world. 12 Of the $ 48.57 billion in foreign assistance authority provided by Congress: 43% supported bilateral economic or political development programs, 35% for military and security assistance, 16% for humanitarian activities, and 6% funded multilateral organizations. 13 Assistance takes many forms, some of which operate at the program level and others at the national level. 14

#### Effective security assistance solves extinction---oversight solves miscalculated wars

Bergman 21 (Max Bergmann is a senior fellow at American Progress, A Plan To Reform U.S. Security Assistance, 3-9, <https://www.americanprogress.org/issues/security/reports/2021/03/09/496788/plan-reform-u-s-security-assistance/>, y2k)

A new security assistance system, centralized and coordinated within the State Department, would allow the United States to wield its security assistance more effectively and responsibly in today’s competitive geopolitical environment. Arms transfers, training, and support could also better support U.S. foreign policy goals, in particular bolstering democratic partners and emerging democracies, making them stronger U.S. partners to counter threats from authoritarian actors. Empowering the State Department to oversee and manage security assistance would also ensure that aid is used to advance a values-based foreign policy that respects and supports human rights.3 It would also give U.S. diplomats greater clout and leverage and potentially create greater coherence to the provision of foreign assistance overall. The result would be to strengthen a key tool in the U.S. foreign policy toolbox and increase the clout and authority of America’s diplomats, which is badly needed in this new era of geopolitical competition. The strategic case for security assistance reform Security assistance is foreign aid. Providing weapons, training, and support to a foreign country is, by law, a foreign policy responsibility and therefore has historically been directed by the secretary of state. This is for a simple reason: Providing arms to a partner nation is a foreign policy act, a responsibility codified into law through the 1961 Foreign Assistance Act.4 Nevertheless, the provision of arms to a partner is also a military act, and, following 9/11, with the onset of the so-called war on terror and the wars in Afghanistan and Iraq, an operational argument was made for the DOD to gain expanded authorities to provide military assistance to partners. But the DOD authorities soon expanded and grew such that the operational intent of DOD assistance faded, and the purpose of its assistance became indistinguishable from the purpose of State Department assistance. During this period, as the DOD gained authorities and resources, the State Department’s assistance programs remained stifled by lack of funding, excessive congressional earmarks, and legacy commitments. As a result, as the United States sought to provide more security assistance to partners, it did so through the DOD. This has created a bifurcated bureaucratic structure for administering security assistance that marginalizes the State Department. The current system is both inefficient and ill-suited for the present foreign policy environment. The new era of great power competition and today’s threats of climate change, pandemics, and other nontraditional challenges demand a new and more integrated, agile, and wholistic approach to U.S. assistance efforts. The foreign policy environment has shifted greatly over the last decade. Today’s security assistance system emerged in the 9/11 era and was built for counterterrorism and counterinsurgency, with a focus on confronting threats from nonstate actors.5 This was encapsulated in the “building partnership capacity” strategy, outlined by then-Secretary of Defense Robert Gates in 2010, which called for increasing the capabilities of developing states to better police and patrol their neighborhoods and to close off space for insurgent groups.6 U.S. aid was often provided to nondemocratic states or partners that violated human rights but were considered critical partners in the “war on terror.” Decisions were viewed as primarily operational, and aid was provided as needed to help partners tackle imminent terrorist or insurgent threats. Almost all U.S. security aid provided year over year is driven by a strategic rationale that is centered on building better counterterrorism partners. Today, U.S. decisions to provide weapons or support tie American officials to how that support is used—whether they like it or not—as the case of U.S. support to the Saudi-led coalition in Yemen demonstrates. Today, U.S. aid to build up a partner’s military should be viewed through the lens of competition between states, in addition to the ongoing counterterrorism concerns and state fragility challenges, with much higher stakes for U.S. foreign policy and national interests. This renewed geopolitical competition is at its core an ideological competition between states. China’s rise and Russia’s resurgence require the United States to realign its foreign policy toward strengthening relations and bolstering democratic states. Security assistance is a tool to do so: It strengthens America’s closest partners and fosters closer relationships with other states. When a country accepts U.S. military equipment or enters into a long-term procurement or acquisition of U.S. defense equipment, they are tying their country to the United States. The U.S. decision, for instance, to provide military aid to the United Kingdom through the lend-lease program in the 1940s was not a simple military consideration but a foreign policy consideration with enormous consequences.7 Today, U.S. decisions to provide weapons or support tie American officials to how that support is used—whether they like it or not—as the case of U.S. support to the Saudi-led coalition in Yemen demonstrates. Moreover, countries that receive U.S. military systems are not just buying equipment off the shelf; they are entering into a longer-term relationship with that country for training, maintenance, and sustainment. This is similar to when a consumer buys a smart phone, as they are not simply buying a piece of hardware; they are reliant on the company to access its broader ecosystem of apps and software and trusting the company to safeguard important data. Over time, a consumer becomes locked in and dependent on a particular provider. Similarly, when a state commits to expanding military-to-military ties—often the most sensitive area for a country—they are making a diplomatic bet on that country. As they base their military on U.S. equipment and U.S. training and engagement, they similarly become locked in to the United States. This sets the ground for more productive American partnerships to tackle a range of geopolitical challenges. For example, U.S. security assistance has been key to building ties with Vietnam after the war between the two countries. American assistance provided to clear unexploded ordnance has helped repair diplomatic relations between Hanoi and Washington, while the recent provision of a retired Coast Guard ship to the Vietnam military can help strengthen military ties and potentially open the door to more U.S. assistance and security cooperation, which will further strengthen bilateral relations.8 There are several reasons that today’s security assistance system must change: Current security policy decision-making perpetuates the status quo. The current system perpetuates an ineffective status quo, whereby the United States often fails to effectively exert significant diplomatic leverage that it has through security assistance because the bureaucratic structure to administer it—both within the State Department and between the State Department and the DOD—is not designed to advance diplomatic efforts but merely to administer appropriated funds.9 This makes it challenging to change security assistance programs given shifting foreign policy dynamics or changes in a partner’s behavior that may make them a less suitable recipient of U.S. security aid, such as democratic backsliding or a pattern of human rights abuses. U.S. engagement with partners could be dominated by military issues if foreign officials turn to DOD counterparts instead of diplomats for assistance resources. Because the DOD controls its own security assistance accounts, other foreign policy concerns may get trumped if partners go around the State Department to get aid from the Pentagon. Sen. Ben Cardin (D-MD) worried at a 2017 Senate Foreign Relations Committee hearing that the shift to increasing DOD authorities could “send a fundamental message that the United States considers security relationships over all other U.S. foreign policy objectives or concerns, including human rights or good governance.”10 Under the current framework, the State Department’s ability to put the brakes on security assistance or military cooperation under DOD authorities is highly limited because the State Department does not control implementation and can often only approve or disapprove of DOD proposals. While State Department officials and ambassadors can and sometimes do halt or temper problematic efforts, doing so requires exerting significant political capital that is in short supply.11 Centralizing control at the State Department would help to fix this bureaucratic imbalance between diplomacy and the Pentagon. Defense priorities often undervalue democratic and human rights concerns. Compared with the State Department, the DOD is less equipped to effectively weigh human rights concerns in its decision-making. This makes it harder to leverage U.S. military cooperation for economic or political concessions or changes that might bolster democratic goals. For example, U.S. military objectives to counter terrorist groups in Somalia called for continuously supplying Uganda with U.S. assistance despite growing human rights and democracy concerns.12 Putting the State Department in charge would make it easier to realign U.S. security assistance toward democratic states and effectively consider human rights issues in every security assistance decision. Security assistance in a tense era of great power competition is extremely sensitive and can increase tension and lead to miscalculation. The risk in today’s geopolitical environment is that providing sensitive and potentially provocative assistance will not receive the same scrutiny from policymakers and will become the norm for the administering agency, the DOD. In the last era of great power competition, the Cold War, security assistance often stoked tension between the United States and the Soviet Union and led to spiraling commitments. For instance, Soviet provision of nuclear missiles to Cuba led to a nuclear standoff, while U.S. military support for Vietnam led to deepening U.S. engagement. As competition with China and Russia increases, security assistance could once again prove a major source of tension and cause miscalculation. Providing aid in this environment is not a mere technical military matter, but ultimately a political and diplomatic concern that is highly sensitive. Yet today, it is the DOD that is driving assistance to countries such as Ukraine and regions such as Southeast Asia.13 When Russia invaded Ukraine in 2014, the National Security Council became significantly involved in policymaking and limited types of assistance that could be provided, including lethal aid.14 Such unique scrutiny was warranted because there was a crisis involving a U.S. partner and a nuclear-armed state. But the nature of White House intervention was necessary in large part because the security assistance process—for both decision-making and for providing assistance—was broken. A military-led response can overprioritize military engagement and could unintentionally steer American engagements into high-risk confrontations. Without careful calibration and understanding of broader political context, there is real concern that the DOD could get ahead of U.S. policy or drive it in a more military-centric direction. For example, China could interpret the DOD’s provision of some security assistance through the agency’s Southeast Asia Maritime Security Initiative as an act of aggression if it is not carefully and effectively calibrated against broader political concerns in the region.15 Given the political sensitivities of great power competition, responsibility and oversight for security assistance decisions should rest with the agency most in tune with broader U.S. foreign policy concerns and diplomatic developments: the State Department.

### Plan---1AC

**Plan: The United States federal government should expand the scope of its core antitrust laws by rescinding its presumption against extraterritoriality because of comity in antitrust cases involving anticompetitive business practices by the private sector in the People’s Republic of China.**

### Solvency---1AC

#### Solvency:

#### The Trade-War has caused the US and China to take economic hostages – using the plans antitrust enforcement the US influences the PRC into cooperating with competition norms

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Aside from the strategy of disengaging and containing China, are there any feasible solutions to diffuse the conflict between China and Western liberal democracies? I hope this book provides evidence that a peaceful resolution remains possible. The answer, counterintuitively, lies in the use of hostages. The hostages here are not chained men or women but rather businesses such as the multinationals topping the Fortune Global 500 List. They are not just leading household names in America and Europe but also massive Chinese SOEs with high market capitalizations. After earning enormous profits in the Chinese market, the bargaining power of foreign firms has gradually declined over the years. China’s antitrust enforcement provides an excellent opportunity to scrutinize the hardships foreign companies face as they adapt to an increasingly hostile regulatory environment in China. Foreign companies have, inadvertently, become ‘hostages’ of the Chinese government. But globalization is not a one-way street, and Chinese companies, venturing overseas, have also been held hostage by Western regulators. These Chinese behemoths, developed and nurtured in a state-led economy, lack the independent decision-making power of those operating in free market economies. Hence, the lingering thought in the back of every foreign policy-maker’s mind is that all Chinese firms, regardless of formal ownership, are ultimately controlled by the Chinese Communist Party. As such, Chinese companies have been especially vulnerable to Western regulatory attacks; the antitrust challenges I discussed in this book are some of their latest struggles in acclimatizing to Western regulatory compliance. No-one wants to be held hostage, of course. Hostages, however, have played a vital role in peace-making for centuries. In the absence of centralized law enforcement mechanisms, ancient powers, warlords, and gangsters frequently took hostages to ensure cooperation.9 From the Egyptian Pharaohs who abducted the heirs to the throne of the areas they conquered, to Julius Caesar who seized a massive number of hostages from defeated tribes, to the Italian Mafia that has swapped family members during negotiations, the practice of hostagetaking to make peace continues to be a frequent practice to this day.10 Giving hostages signals the willingness to commit to a promise while simultaneously curbing opportunism, given that the life of the hostage is at stake.11 Indeed, when the Chinese government tried to circumvent international trade rules by leveraging its administrative discretion to put pressure on foreign firms to lower their prices and impose technology transfer, it received great backlash from Washington. The trade war launched by the Trump Administration is a reminder to the Chinese government that deviating from global trade rules and norms carries great risks, even if executed under the pretence of administrative law enforcement. Meanwhile, Chinese state-backed firms, ranging from sovereign wealth funds such as China Investment Corporation to leading telecom makers like Huawei, need to adapt to the foreign rules and regulations as they venture overseas. On their path to becoming global industry leaders, these Chinese companies have come to realize that one of the biggest impediments they face is their Chinese identity. Although these national champions hold good prospects of thriving in foreign markets, they must accept that a degree of their success depends on the evolving political landscape and the shifting relationship between China and Western countries. TikTok, a widely popular social media app owned by ByteDance, a Chinese company, is the latest company caught in the middle of escalating Sino-US tensions. Soon after President Trump’s vocal threat to ban TikTok and other Chinese social media apps on national security grounds, Chinese technology entrepreneurs began lobbying the Chinese government to remove the great firewalls of Internet control in China. As James Liang, the founder of Ctrip argues, this bold move would improve China’s global image and delegitimatize the US restrictions on Chinese social media firms.12 Viewed in this light, China’s greater integration with the global economy could become an endogenous force prompting China to reform and change. Of course, the Chinese government is unlikely to tear down the great firewall overnight, but for Chinese tech giants to be welcomed overseas the Chinese government needs to do more at home by levelling the playing field between domestic and foreign firms operating in the country. In 2019, China passed a Foreign Investment Law aimed at improving the legal protection for foreign investors in China. Simply improving the laws on paper, however, is not enough. China has made remarkable law-making progress and Chinese laws have grown considerably more sophisticated over the years, but even with these laudable legislative achievements Chinese law enforcement still lags behind. The recent administrative law reform is a case in point. The amendment of the Administrative Litigation Law in 2015 has made it significantly easier for plaintiffs to appeal administrative decisions, with Chinese courts experiencing a surge of administrative appeals. But despite these encouraging improvements, few corresponding changes have been observed in antitrust enforcement. Businesses are still very reluctant to sue for fear of agency reprisal and the potential reputational sanction that might be inflicted by the administration. The amendments to the administrative law therefore have little relevance to many businesses as they do not really bargain in the shadow of the law. A more ambitious institutional reform is thus needed to inject more transparency into the administrative approval process, while ensuring there is due process in decision-making. In addition, the curbing of agency discretion is essential to prevent agency retaliation, and strict measures must be imposed to bar antitrust agencies from strategically using media disclosure to shame firms under investigation. As I illustrate in this book, public shaming has become a powerful deterrent on firms, making them subservient to government agencies The substantial exchange of hostages between the East and the West, which has the prospect of facilitating positive changes in the Chinese regime, should therefore give us hope for peace. It is precisely for this reason that I advocate greater economic integration. Economic interdependence raises the costs of conflict and increases the incentives for countries to cooperate.13 Indeed, a preponderance of economic evidence has shown that trade can reduce conflict among countries.14 Thus, the expansion of Chinese firms into foreign markets should not be seen as something to be blocked but should be welcomed as an important step towards a more prosperous and peaceful relationship between China and the rest of the world.15 Conversely, if Chinese firms are discouraged from entering or even cut off from Western markets, as some politicians are calling for these days, then foreign governments will hold less leverage over China. In fact, the Western policy of decoupling the Chinese economy from Western economies, while a seemingly straightforward response to rising political tensions, is eroding trust and making conflict more likely.16 In recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war. Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese influence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases. For sure, some external pressure on China to reduce state interference in the economy is beneficial. However, there is a danger that the current Western trend of politicizing antitrust enforcement, if carried too far, can evolve into a double-standard used against Chinese firms. The appearance of this hypocrisy would then severely undercut the ability of EU and US enforcers to convince their Chinese counterparts that antitrust analysis should be grounded in legal and economic analysis, free of political considerations. The trend may even backfire if China retaliates against foreign firms Such an outcome would be quite ironic. With the SAMR assuming a leadership role over the new antitrust bureau, Chinese antitrust enforcement is expected to become more legalized and professional. Yet as China is moving towards the law, the rest of the world seems to be moving away from it. As the Trump Administration continues to launch aggressive legal assaults on Chinese technology companies, China has fallen back on its vast market access by wielding its antitrust law against US technology giants. The emerging transatlantic consensus against China and the ensuing nationalist fury are drowning the voices of progressive Chinese reformists advocating for a freer and more equitable China. In fact, Western efforts to contain China will have the unintended consequences of regressing Chinese legal reforms to the detriment of foreign firms operating in China.

#### Applying China specific game theory proves that China will acquiesce in the face of US pressure

Shih and Huang 20 – Chih-yu Shih Department of Political Science, National Taiwan University, and Chiung-chiu Huang National Cheng-chi University. 2020. “Competing for a Better Role Relation: International Relations, Sino-US Rivalry and Game of Weiqi.” Journal of Chinese Political Science 25 (1): 1–19. doi:10.1007/s11366-019-09638-7

Conclusion In fact, the chess player has role relations in mind at all times, despite the fact that their immediate responses are always confrontational, containing, and even militarily prepared for escalation. Consider, for example, the delight of the US to see smaller South China Sea claimants looking to the US for security support. This attests a pursuit of good role relations. Equally noticeable has been the warning that China's foot in Africa and Latin America is exploitative and neo-colonialist. This warning is designed to sabotage China's role relations. The metaphor of weiqi is a particularly useful heuristic device because simultaneous engagements and mutual invasion are typical characteristics of the second stage of weiqi. The second stage begins roughly at a point when the alternative ways in which the board will be divided begin to surface, after the earlier arranged stones show their potentials for further connection. The players at this stage will begin to plan where and how to defend and invade in more detail. During such an invasion, it is more challenging to decide where else and how to start another event, such that subsequent events can later merge into a macro-force that either consolidates one's initial advantage or reverses a disadvantage. In the process, some events can turn into a burden, and the player faces the difficult decision as to whether to rescue their stones or cut their losses. The twenty-first century almost exactly resembles the second stage of weiqi in the following sense. China's early engagement in Africa, South Asia, Central Asia, and Latin America shows a macro-force that may establish China as the most welcome (read: least threatening) player on the world stage. The US' rebalance to Asia is an invasion in the weiqi perspectives. Vietnam, India, Australia, Taiwan, and Japan all line up. Two weiqi strategies ensue. First, in typical weiqi fashion, when neither side aims towards confrontation, China cycles through phases of defense, squeezing, and disengagement on the South China Sea. The timing of each strategy is contingent on how China evaluates the space it already considers taken, however. Specifically, it is dictated by how secure China perceives its hold on that space to be. Secondly, disengagement becomes China's main theme once the country perceives that rivalry will prevail over friendship. Disengagement allows China to focus on competing for acceptance elsewhere, instead of satisfying the expectations of a friend. An increasingly popular quote by Mao — "you fight in your way and I fight in mine" — reflects this lack of mutual expectations, or what we might call a "thin" role relation between China and the US. The same applies to the US presence in Taiwan. The principle is to squeeze the opponent and crowd the space just enough to leave no room for them to build two eyes. China's behavior in its role as a rival contradicts the assumptions of mainstream IR, namely that rivals will oppose each other. Instead, China will focus on its own bidding for an enhanced role relation on the world stage. After all, acceptance elsewhere is the way to enact rivalry in the long run. Instead of confronting US power directly, weiqi advises that China move into areas where the US does not have any investment. For a weiqi player, these seemingly marginal spaces on the board can become valuable in the future, even though IR analysts would not recognize such spaces as having any natural appeal. However, one also needs to make sense of China's alternation between disengagement and engagement, and the strategic cycles of assertiveness and harmonious behavior in tenser regions, such as East Asia and Southeast Asia, where the US pivots. As the role of the rival is discursively inaccessible in a culture of harmony, China's strategic wisdom remains hidden. That wisdom suggests that this strategy involves striving for acceptance and harmony elsewhere through gift-giving, while allowing the opponent to enjoy perceived victories in local battles through disengagement. The expectation that the US has of a rival is that this rival will come to square with its rules, and will try to reduce the rivalry through shared commitment to global governance. If this does not happen with China, then the US will immediately frame China as a typical chess rival. The cliché of the China threat is so intuitively plausible because China reluctantly cooperates in, and even sabotages, many global governance issues through its bilateral efforts. These include collaborations with different failing states, but also China's uncompromising military expansion, which allegedly bullies its neighbors. In the eyes of the US, China's squeezing on the sea against the US is too cyclical and inconsistent to engender the image of a weak power. This is why the US will continue to stress the ultimate importance of military strength, even though this is only part of the truth: a weiqi player does not try to force a solution where none is apparent. Defense of the status quo is already sufficient for the purpose of preserving energy for exploration elsewhere. In faraway lands, China enhances its connections by showing good will. On the one hand, and somewhat ironically, China does not aim to replace the US, even as the latter expects an upcoming, vehement competition. On the other hand, China is not militarily unready, even though it avoids escalation, but the US may mistake this reluctance for weakness. A final note on the notion of space is in order. Space in the current literature is exclusively territorial. In practice, though, space is open for influence and can be constructed and reconstructed. Therefore, in the same territory, there can be multiple orders, such that politics and security do not dominate the agenda of a seemingly fixed population. Schools, families, and companies thus provide access points that allow actors to make nuanced future connections in academia, society, and finance, allowing them to sporadically influence governmentality in those spheres. The same dynamic can be said to take place in other fields, like culture, religion, transportation, migration, technology, law, etc. Stylistically, the quest for influence can be achieved through either sophisticated maneuvering or annoying interference. Consequently, all actors have direct and indirect stakes in all matters that concern China, making up for China's initial disadvantages with regard to a few noticeable agendas. The liberal order, which is based upon individualized rationality, revealed preference, and multiple parallel modes of governmentality, was once considered to need no further management. In practice, China may continue participating in this liberal order, except that China's encircling of previously safe areas has already reconstituted this rationality, and the preferences of the population everywhere.

#### Tit for tat negotiation is the perfect middle ground for US-China relations---soft and hardline stances make dispute resolution impossible---prefer game theory to empirical analysis

Zhang 21 (a different Zhang) “How Game Theory Impact International Relations” Hongji Zhang - Beijing Normal University-Hong Kong Baptist University United International College, Advances in Social Science, Education and Humanities Research, volume 569

3. CHINA'S INTERNATIONAL RELATIONS UNDER THE "PRISONER'S DILEMMA" OF THE ROLE OF GAME THEORY

Taking into account the above arguments on how game theory plays its role, the value of game theory in the field of international relations should be affirmed. The following is an example of the classical game theory model applied to the decision-making of China's foreign policies, the whole process illustrates the usefulness of game theory for the study of China's international relations [6].

3.1. Analysis of the Role of the “Prisoner's Dilemma”

A political scientist at the University of Michigan (Robert Axelrod) proposed a strategy scenario in which he designed a two-person prisoner's dilemma game tournament. Game theorists from around the world submitted their strategies in the form of a computer program. Two people were paired in one group and played the Prisoner's Dilemma game 150 times over. All participants have their total score. The winner was Anatol Rapoport, a mathematics professor at the University of Toronto, whose winning strategy was a "tit for tat", which surprised Axelrod, who conducted another tournament, this time with more scholars. Rapoport continued to use his "tit for tat" strategy and won the highest scores again.

The idea of the competition is very simple: anyone who wants to participate in this computer competition plays the role of a prisoner in the Prisoner's Dilemma case, and they start playing the Prisoner's Dilemma game, each having to choose between cooperation and betrayal. The key issue is that they do not just play the game once, but hundreds of times over, in what is the so-called "repeated prisoner's dilemma," It is more realistically reflects the relational interaction between the two. This is another noteworthy condition; the simplest model of the prisoner's dilemma is a one-time game, and this is what exacerbates the prisoner's determination to come clean [7].

The results of the test surprised Axelrod, because the strategy adopted by the winner of the competition was not difficult at all: it was also called tit for tat. The Chinese call it "beat someone at their own game". In fact, the so-called tit for tat strategy is the principle of the carrot and stick approach. It insists on never betraying the other side in the first place, and believing everyone is well-intentioned. It will reciprocate its opponent's previous cooperation in the next round (even if this opponent had betrayed it before). In this sense it is forgiving. But it will take a betrayal action to punish the opponent for the previous betrayal, and in this sense it is tough. As the saying goes, "We will not attack unless we are attacked ". Therefore, the analysis shows that the country that has the following characteristics will always win: 1. goodwill; 2. tolerance; 3. toughness; 4.having simple and clear intentions. Another explanation is that modern diplomacy differs from the traditional old-style diplomacy, which relied on the sophisticated and complex manipulations of politicians, so that in the game of modern diplomacy, clear intentions often bring the hoped-for results.

3.2. The "Prisoner's Dilemma" in China's International Relations Game

Just as classical realists argue that it is difficult to build trust between countries, due to it is a one-time game. As in the case of China and the United States relations, the game is generally repeated, and extensive cooperation on various international issues has been conducted after mutual exchange. And then their trust in each other will increase to varying degrees, because they have the opportunity to repeat the game, and there are countless opportunities to do "beat someone at their own game"[8].

In the relations between China and other countries, especially the United States, for example, according to Robert Axelrod's experiments, the victory also always goes to countries that are well-meaning, tolerant, tough, and simple and clear. Conversely, malicious, caustic, weak, and complex countries are doom to lose. Therefore, the principle of gaining diplomatic victory game should be:

First, treat other countries with kindness rather than malice. This truth is simple and obvious. Second, treating other countries with tolerance rather than harshness. Each country pursues its own national interests to the greatest extent possible, so the key to managing relations with other countries is to be able to tolerate each other, and even to tolerate their occasional, not very serious injuries. Countries that treat others harshly and refuse to accommodate occasional harm, like the United States, tend to make too many enemies, which will eventually lead to a much higher threat to domestic security, several times panic, and eventually suffer serious harm. For major countries who carry significant weight in the world economy, it is all the more necessary for them to take into full consideration the impact of their macroeconomic policies on others and increase the transparency of their policy-making process. Third, treating other countries toughly rather than softly should be done on the premise of being kind or beating someone at their own game. This, of course, requires people to do it appropriate manner. Sometimes it requires extremely strong sensitivity and quick feedback, for example, what China has done on the Taiwan problem makes people feel the Chinese government is just talking the talk, but never walking the talk. The problem in the past is that they talk too often but make little progress, all this make Taiwan and the US take those for a grant. The key to retaliation is that you must make the other side believe that you really want to take strong action and not just talk about it. Fourthly, the bottom line of your side in diplomatic issues should be clearly and simply stated. Axelrod's experiment proves that in the game process, overly complex strategies make it difficult for the opponent to understand and don’t know what to do, thus making it difficult to establish a stable cooperative relationship. In fact, in the complex non-zero-sum game environment of international relations, "deep and rigid" and "not tired of deception" are definitely not the best strategy. On the contrary, a clear personality, concise style, and honesty hold the key to victory [9]. To let the other side understand what you are talking about, do not let the other side guess your intention, due to it is very easy to cause misunderstandings. The reason why there is a "China threat theory" is that, in the face of China's rise, the outside world does not see clearly what kind of role China will become in the future? What does China want? Because we have been adhering to Deng Xiaoping's principle of keeping a low profile and honoring our promises, with less empty talk in the international arena. However, the lack of simplicity and clarity eventually led to the misunderstanding of the outside world, which is why we later had to propose our own "peaceful rise" to regain the right to speak. The above example is a good illustration of the usefulness of game theory. We can see that game theory as a basic research tool is indeed beneficial for the study of international relations and foreign policy, and ensures its rationality [10].

4. CONCLUSION

In terms of China's international relations and foreign policy-making research, policy continuity, political culture, leaders' will, and ideological influence undoubtedly provide explanations form the view of the traditional research methods; however, from a scientific point of view, the possibility of strategic action provides another more intuitive and objective explanation. Game theory has been widely applied to the analysis of international politics and foreign policy decisions in the United States. But in China, given the different ideological characteristics and research processes in the study of international relations, the application of game theory to the analysis of international relations and foreign policy decisions is still relatively rare. For example, most of the existing studies on China's foreign policy decisions are empirical studies and post-verification analyses. Such analysis can be learned from historical lessons, but it is difficult to propose scientific countermeasures in the face of urgent real-world problems. Then, on the one hand, we should pay attention to the instrumental value of game theory, apply the theory with rigorous logical reasoning to foreign policy-making, and provide another way of thinking for foreign policy-making, so that China's foreign policy-making can be more scientific. On the other hand, trying not to fall into the deep terminology and complicated arithmetic of game theory, it is important to start from the basic principle of game theory, especially strategic thinking. It is worthwhile to combine the quantitative research method of behavioral science and the traditional qualitative research method of social science. This is how we can better promote the integration of game theory and Chinese international relations research.

#### Studies conclude aff – extraterritorial antitrust enforcement through the courts is effective

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In maintaining a legal and institutional capacity to apply U.S. law extraterritorially on the basis of U.S. effects, U.S. courts have prompted a broad spectrum of private entities – American and foreign – to give U.S. rules substantial weight in their transnational operations. Of course, foreign governments can block their own domestic institutions from enforcing unwelcome U.S. court judgments, which restricts the efficacy of U.S. courts to situations where the United States has independent enforcement power. Foreign governments also retain the option to engineer legal grounds for defendants in U.S. litigation to claim “sovereign compulsion” by enacting laws expressly requiring private entities inside their territories to take actions that violate U.S. law. In many instances, however, taking such steps would narrow options for private actors in foreign jurisdictions in ways that would have large commercial and economic downsides (as, for example, if the Swiss government had changed its laws to require, rather than merely to permit, domestic watchmakers to restrict the production and sale of watch parts). In sum, the ability and willingness of U.S. courts to apply U.S. antitrust laws extraterritorially has shaped not only the incentives of private entities but also the menu of domestic legal options available to foreign governments whose citizens have U.S. ties. In contrast, the legal and administrative tools for effects-based extraterritoriality have existed in German, British, and EEC law since the 1950s and have been used at a modest but growing rate since the late 1960s. Over this period, European competition rules and practices, particularly with respect to anti-cartel policies, have increasingly come to resemble those of the United States.200 Economic integration achieved through the EEC, and now the EU, correspondingly, has given European regulators and courts an enforcement capacity analogous to that of the United States. However, this equality of capacity has not yet translated into extraterritorial regulatory claim-making on a scale approaching that of the United States. A key reason why is that the power to initiate competition enforcement in Europe remains, in many practical respects, under the near-exclusive control of EU and member state regulators. The hypothesis that U.S. extraterritoriality influences private strategic behavior in the antitrust realm is further confirmed by other empirical work that focuses on firm behavior. One study, by Julian Clarke and Simon Evenett (2003), examines the effects of international anti-cartel enforcement on the decisions of private entities about whether and on what level to engage in legally prohibited activities in particular settings. Their approach uses a gravity trade model and data from the World Trade Analyzer database to measure actual trade flows for a specific commodity (vitamins) for nine countries on three continents. They then compare those results with estimated benchmarks in the absence of a cartel constructed from OECD budget and enforcement records. Overall Clarke and Evenett find that robust enforcement of antitrust rules has deterrent effects on international cartel activity. Another study by John M. Connor (2007) compares the effectiveness of U.S., Canadian, and EU anti-cartel enforcement in the period between 1990 and 2008 along two dimensions. The first is the likelihood of detecting illegal behavior. The second concerns the harshness of penalties. Connor finds the U.S. system both more likely to detect wrongdoing and more likely to produce a swift and harsh response when wrongdoing is identified, for example, by imposing large corporate fines or individual criminal penalties. Among the observable ways in which this affects private strategic behavior is in the selection of locations for cartel meetings. Connor finds that conspirators generally avoid U.S. territory, preferring instead to meet “in Switzerland, Mexico, Japan, Hong Kong, and several EU cities that were regarded as less risky.” 201 Still more to the point, he finds that, although the U.S. and EU economies have become roughly equal in terms of GDP, 62 percent of the enterprises that were the target of criminal antitrust enforcement during his study were headquartered in Europe, and only 16 percent were headquartered in the United States. This implies a high degree of awareness among U.S. enterprises about the outer limits of U.S. antitrust rules and a healthy respect for U.S. enforcement power. To summarize, U.S. government regulators and many key private constituencies inside the United States stand to gain little from a more internationally centralized approach to antitrust enforcement. As Europeans have edged ever closer to U.S.-style antitrust rules and practices, EU regulators and those in Europe’s larger states have learned to wield the effects doctrine to their advantage. At the same time, the integration of European markets has given those regulators increasing leverage to use it effectively. European extraterritorial enforcement, however, has been, with few exceptions, limited in comparison to U.S. practice. If this were to change substantially in the future with the growth of private enforcement in Europe, the result could be an increase in clashes over the authority and appropriateness of extraterritorial regulation and the erosion of the long-standing U.S. preference for unilateralism in international antitrust enforcement.

## 2AC

### 2AC – Solvency

#### Limited impact---doesn’t stop compliance

Zhang 21 – “The dangerous legal war posing a new threat to China-US relations” Angela Huyue Zhang is an associate professor at the Faculty of Law at the University of Hong Kong. An expert in Chinese law, Angela has written extensively on Chinese regulatory issues. Angela is a four-time recipient of the Concurrence Antitrust Writing Award, which selects the best articles published globally in the field of antitrust law each year. Angela frequently speaks at prestigious antitrust conferences in the United States, Europe, and Asia. And she regularly contributes commentaries to popular press including Project Syndicate, Nikkei Asia Review and Bloomberg. Angela has broad research interests in the areas of law and economics, particularly in transnational legal issues bearing on businesses. She is currently working on a few projects pertaining to platform governance and regulation, trade and investment, as well as the Chinese political economy. Angela also serves as the Director of the Centre for Chinese Law at the University of Hong Kong, which promotes legal scholarship with the aim to develop a deeper understanding of China and facilitate dialogue between East and West. Before joining the University of Hong Kong, Angela taught at King’s College London and practiced law for six years in the United States, Europe, and Asia. She worked as a bankruptcy lawyer at Debevoise & Plimpton in New York and as an antitrust attorney at Cleary Gottlieb Steen & Hamilton in Brussels. Angela was admitted to the New York Bar in 2009. Angela received her LLB from Peking University, and her LLM, JD and JSD from the University of Chicago Law School. She wrote her doctoral dissertation under the supervision of former Judge Richard A. Posner, February 1, 2021, https://asia.nikkei.com/Opinion/The-dangerous-legal-war-posing-a-new-threat-to-China-US-relations

For one thing, these types of countermeasures have severe limitations. Take the example of the blocking statute. China can only invalidate the effects of U.S. law within its domestic jurisdiction. And although businesses are promised protection in China, they are still subject to penalties for noncompliance with U.S. sanctions in other overseas jurisdictions.

More importantly, the penalty for violating U.S. sanctions not only includes hefty fines and restricted access to the U.S. market, but also potential criminal liability for business executives. Thus, for many global companies, succumbing to U.S. pressure -- no matter how difficult -- is probably the only rational choice of action.

This was what happened to European businesses when the European Union amended its blocking statute in response to the U.S. reimposing sanctions on Iran in 2019. Having no choice but to quietly concede, many European companies complied with the U.S. sanctions law by winding down operations in Iran without explicit reference to the U.S. sanctions. This will likely be the approach that foreign multinationals with a significant presence in China will adopt in trying to fulfill demands under both U.S. and Chinese sanction rules.

#### Suit avoidance---The threat of extraterritorial application spurs compliance---slew of empirics

Goldsmith 19 “Sovereign Difference and Sovereign Deference on the Internet” Jack Goldsmith - Henry L. Shattuck Professor of Law at Harvard Law School, THE YALE LAW JOURNAL FORUM, MARCH 18, 2019, https://www.yalelawjournal.org/pdf/Goldsmith\_1mjtvg2i.pdf

Courts can, of course, do things that cause the political branches of sovereign governments—the usual entities that work out international cooperation—to negotiate, and thus affect foreign sovereign behavior with respect to digital issues abroad in this indirect manner. But in prominent cases, it was not comity, but rather aggressive extraterritoriality (or the threat of it), that brought about the change. This is what happened with the CLOUD Act.34 U.S. litigation over foreign data requests, including the threat of a noncomity ruling by the Supreme Court, induced the political branches to enact a foreign data request scheme that embodied principles of comity and mutual accommodation Woods favors, and that authorized the executive branch to negotiate agreements with foreign countries to further deepen cooperation in this area. Another example is the complicated (and fragile) cooperative arrangement known as EU-U.S. Privacy Shield, which emerged from a political negotiation that responded to a decision of the European Court of Justice with a sharp extraterritorial impact on U.S. firms.35

These examples suggest, contra Woods, that in some circumstances, courts might best promote sovereign accommodation of regulatory interests related to the cloud not through comity, but by sparking international conflict and inducing governments to act. This point is akin to the idea of preference-eliciting default rules in statutory interpretation, where courts interpret statutes contrary to the probable preferences of the legislature in order to elicit a response by the legislature that is in the best position to decide or clarify the correct rule.36

#### Global Influence---Companies have no choice

Hagemejer et al 20 “Extraterritorial sanctions on trade and investments and European responses” Jan Hagemejer - University of Warsaw, Chair of Macroeconomics and International Trade Theory Phd, Tobias Stoll, Steven Blockmans - University of Amsterdam, Christopher Hartwell - Zurich University of Applied Sciences, November 2020, https://www.researchgate.net/publication/346626455\_Extraterritorial\_sanctions\_on\_trade\_and\_investments\_and\_European\_responses

The US has gone furthest in the use of extraterritorial law. Its most important weapon is one available to no other state — the dollar’s status as the global reserve currency. The rationale rests on the premise that foreigners often use the American financial system and so become vulnerable to prosecution under US law. Concomitantly the US can threaten foreign companies and individuals with financial sanctions, wherever they are.

#### The PRC encourages legal compliance

Hagemejer et al 20 “Extraterritorial sanctions on trade and investments and European responses” Jan Hagemejer - University of Warsaw, Chair of Macroeconomics and International Trade Theory Phd, Tobias Stoll, Steven Blockmans - University of Amsterdam, Christopher Hartwell - Zurich University of Applied Sciences, November 2020, https://www.researchgate.net/publication/346626455\_Extraterritorial\_sanctions\_on\_trade\_and\_investments\_and\_European\_responses

When confronted with extraterritorial jurisdiction, the tactic of non-compliance with evidence collection and the recognition and enforcement of judgments has been used on the grounds of violations of China’s sovereignty and public order. But Chinese state agencies may consider participating in litigation in individual anti-trust or human rights cases. Even though their arguments may not be admitted in foreign courts’ deliberations, courts will still listen and become acquainted with Chinese laws, procedures and business contexts.23 China does not use the argument that its stateowned enterprises (SOEs) would benefit from immunity to America’s extraterritorial jurisdiction, in antidumping investigations and civil litigation. But China’s claim that its SOEs are not public bodies has been dismissed by US courts, some of which have voluntarily granted immunity from prosecution in civil litigation to companies directly controlled by the Chinese central and local governments that are not operating in the United States (Li, 2019). Chinese companies are generally advised to actively participate in litigation and use US legislation to protect their rights. TikTok/ByteDance, for instance, has counter-sued the US Commerce Department to confront the implementation of Executive Order 13942, prohibiting transactions with the Chinese company for “any provision of services (…) to distribute or maintain the TikTok mobile application, constituent code, or application updates through an online mobile application store.”24

### 2AC – T Private Sector

#### The allows specification

Random House 6 (Unabridged Dictionary, <http://dictionary.reference.com/browse/the>)

(used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an): the book you gave me; Come into the house.

#### Kansas cut literally the last definition of “the” – the other definitions go neg

**Merriam Webster ND** https://www.merriam-webster.com/dictionary/the

**Full Definition of the (Entry 1 of 4)**

1a—used as a function word to indicate that a following noun or noun equivalent is **definite** or has been previously specified by context or by circumstance

put the cat out

b—used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class

the President

the Lord

c—used as a function word before nouns that designate natural phenomena or points of the compass

the night is cold

d—used as a function word before a noun denoting time to indicate reference to what is present or immediate or is under consideration

in the future

e—used as a function word before names of some parts of the body or of the clothing as an equivalent of a possessive adjective

how's the arm today

f—used as a function word before the name of a branch of human endeavor or proficiency

the law

g—used as a function word in prepositional phrases to indicate that the noun in the phrase serves as a basis for computation

sold by the dozen

h—used as a function word before a proper name (as of a ship or a well-known building)

the Mayflower

i—used as a function word before a proper name to indicate the distinctive characteristics of a person or thing

the John Doe that we know wouldn't lie

j—used as a function word before the plural form of a surname to indicate all the members of a family

the Johnsons

k—used as a function word before the plural form of a numeral that is a multiple of ten to denote a particular decade of a century or of a person's life

life in the twenties

l—used as a function word before the name of a commodity or any familiar appurtenance of daily life to indicate reference to the individual thing, part, or supply thought of as at hand

talked on the telephone

m—used as a function word to designate one of a class as the best, most typical, best known, or most worth singling out

this is the life

the pill

—sometimes used before a personal name to denote the most prominent bearer of that name

2a(1)—used as a function word with a noun modified by an adjective or by an attributive noun to limit the application of the modified noun to that specified by the adjective or by the attributive noun

the right answer

Peter the Great

(2)—used as a function word before an absolute adjective or an ordinal number

nothing but the best

due on the first

b(1)—used as a function word before a noun to limit its application to that specified by a succeeding element in the sentence

the poet Wordsworth

the days of our youth

didn't have the time to write

(2)—used as a function word after a person's name to indicate a characteristic trait or notorious activity specified by the succeeding noun

Jack the Ripper

3a—used as a function word before a singular noun to indicate that the noun is to be understood generically

the dog is a domestic animal

b—used as a function word before a singular substantivized adjective to indicate an abstract idea

an essay on the sublime

**\*\*KANSAS’s card Starts\*\*\***

4—used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

the elite

#### The private sector includes the Chinese private sector

Chandrasekhar 17 – C. P. Chandrasekhar is currently Professor at the Centre for Economic Studies and Planning, Jawaharlal Nehru University, New Delhi. He has published widely in academic journals. August 2017, “How Large is China’s Private Sector?” https://www.networkideas.org/wp-content/uploads/2017/08/China\_Private\_Sector.pdf

It is a truism that economic reform in China has meant a substantial expansion in the role of private initiative in economic activity. The dismantling of communes and collectives, the encouragement of foreign investment, the recognition of the private sector initially as a “supplement to the state-owned economy” and subsequently as an “important component of the socialist market economy”, the closure, restructuring and disinvestment of shares of enterprises in the state-owned sector, the opening of Communist Party of China (CPC) membership to entrepreneurs and businesspersons, the sale of equity in leading state-owned banks and most recently the decision to make all state-held shares in the1,300 listed companies publicly traded, have all contributed to a substantial expansion in the role of the private sector, and continue to do so.

#### Chinese SOEs are counterintuitively part of the Chinese private sector – and to the extent that there is an artificial difference there is no ground loss because ownership has no relation to function in the Chinese economy

Emmerich 17 – Brandon Emmerich is a Data Analyst at Suvretta Capital Management. Brandon writes for Financial Times, Seeking Alpha, and Global Finance about Chinese business practices, 2-17-2017, "Parsing State Ownership In China More private companies compete with China’s state-owned enterprises, but government influence continues to run deep," Global Finance Magazine, <https://www.gfmag.com/topics/blogs/identifying-soes>

\*graphs omitted\*

How does China define company registration? For the government, the identity of the controlling shareholder—that is, the legal entity with the power to appoint and remove board members—sufficiently designates a company as either state or private sector. In the case of private sector companies, the controlling shareholder is a person, or often a family. SOEs, on the other hand, are controlled by either a cabinet-level ministry or a state holding company responsible for preserving and managing state-owned assets, called a SASAC. Although the official taxonomy is quite straightforward, there are two reasons why this first-order approximation needs significant refinement if we are to truly understand the reach of the state. In fact, not only is the state more involved in the economy than China’s company registration statistics imply, the state vs private sector distinction poorly describes the relationship of any given company to the state. Mixed ownership, in particular, muddies China’s company registration taxonomy. Of the 1,600 private sector listed companies in China, 23% count either Huijin or the CSF as one of their top shareholders. Note, Huijin is owned by China Investment Corporation, which is owned by the ministry of Finance, which reports to the State Council. The CSF is owned collectively by China’s stock, commodities and futures exchanges, which are all regulated by the CSRC, which is a cabinet-level ministry directly under, you guessed it, the State Council. Whew. In other words, minority owners of nearly a quarter of Chinese private sector listed companies report at least indirectly to the State Council—that is, President Xi. Mixed ownership permeates the state sector as well. In fact, nearly 60% of China’s 980 listed SOEs count an individual as one of their top 10 shareholders. Additionally, while ownership presents a convenient methodology for classifying companies into either the state or private sector, it has very little to do with the functional definition of state control. In a paper on Chinese state capitalism, Beyond Ownership, Curtis Milhaupt of the Columbia Law School and Wentong Zheng of the University of Florida explain: Functionally, SOEs and large POEs in China share many similarities in the areas commonly thought to distinguish state-owned firms from privately owned firms: market access, receipt of state subsidies, proximity to state power, and execution of the government’s policy objectives. Which is to say, the ownership of state-owned or private sector companies fails to define sufficiently the scope of state involvement. To understand the blurred lines between China’s state and private sectors, let’s consider three dimensions of state intervention: management control, financial control and extra-legal control.

### 2AC – Cap K

#### Capitalism is inevitable – near universal acceptance of profit incentives reinforce its expansion and crowd out alternatives

Branko Milanovic, 2019, [The author is a Serbian-American economist. He is most known for his work on income distribution and inequality. Since January 2014, he has been a visiting presidential professor at the Graduate Center of the City University of New York and an affiliated senior scholar at the Luxembourg Income Study (LIS). He also teaches at the London School of Economics and the Barcelona Institute for International Studies.[6] In 2019 he has been appointed the honorary Maddison Chair at the University of Groningen. Milanović formerly was the lead economist in the World Bank's research department, visiting professor at University of Maryland and Johns Hopkins University.], "Capitalism, Alone: The Future of the System that Rules the World." P. 2-5., mm

There are two epochal changes the world is living through. One is the establishment of capitalism as not only the dominant, but the sole socioeconomic system in the world. The second is the rebalancing of economic power between Europe and North America on the one hand and Asia on the other, owing to the rise of Asia. For the first time since the Industrial Revolution, incomes on the three continents are edging closer to each other, returning to roughly the same relative levels they had before the Industrial Revolution (now, of course, at a much higher absolute level of income). In world-historical terms, the sole rule of capitalism and the economic renaissance of Asia are remarkable developments—which may be related. The fact that the entire globe now operates according to the same economic principles— production organized for profit using legally free wage labor and mostly privately-owned capital, with decentralized coordination— is without historical precedent. In the past, capitalism, whether in the Roman Empire, sixth-century Mesopotamia, medieval Italian city states, or the Low Countries in the modern era, always had to coexist—at times within the same political unit—with other ways of organizing production. These included hunting and gathering, slavery of various kinds, serfdom (with workers legally tied to the land and banned from offering their labor to others), and petty-commodity production carried out by independent craftspeople or small-scale farmers. Even as recently as one hundred years ago, when the first incarnation of globalized capitalism appeared, the world still included all of these modes of production. Following the Russian Revolution, capitalism shared the world with communism, which reigned in countries that contained about one-third of the human population. None but capitalism remain today, except in very marginal areas with no influence on global developments. Capitalism facilitates—and when foreign profits are higher than domestic, even craves—the cross-border exchange of goods, the movement of capital, and in some cases the movement of labor. It is thus not an accident that globalization developed the most in the period between the Napoleonic Wars and World War I, when capitalism largely held sway. And it is no accident that today’s globalization coincides with the even more absolute triumph of capitalism. Had communism triumphed over capitalism, there is little doubt that despite the internationalist creed professed by its founders, it would not have led to globalization. Communist societies were overwhelmingly autarkic and nationalistic, and there was minimal movement of goods, capital, and labor across borders. Even within the Soviet bloc, trade was carried out only to sell surplus goods or according to mercantilist principles of bilateral bargaining. This is entirely different from capitalism, which has an inherent tendency to expand. The uncontested dominion of the capitalist mode of production has its counterpart in the similarly uncontested ideological view that money-making not only is respectable but is the most important objective in people’s lives, an incentive understood by people from all parts of the world and all classes. It may be difficult to convince a person who differs from us in life experience, gender, race, or background of some of our beliefs, concerns, and motivations. But that same person will easily understand the language of money and profit; if we explain that our objective is to get the best possible deal, they will be able to readily figure out whether cooperation or competition is the best economic strategy to pursue. The fact that (to use Marxist terms) the infrastructure (the economic base) and superstructure (political and judicial institutions) are so well aligned in today’s world not only helps global capitalism maintain its dominion but also makes people’s objectives more compatible and their communication clearer and easier, since they all know what the other side is after. We live in a world where everybody follows the same rules and understands the same language of profit-making. Such a sweeping statement does need some qualification. There are indeed some small communities scattered around the world that shun money-making, and there are some individuals who disdain it. But they do not influence the shape of things and the movement of history. The claim that individual beliefs and value systems are aligned with capitalism’s objectives should not be taken to imply that all of our actions are entirely and always driven by profit. People sometimes perform actions that are genuinely altruistic or are driven by other objectives. But for most of us, if we assess these actions by time spent or money forgone, they play only a small role in our lives. Just as it is wrong to call billionaires “philanthropists” if they acquire an enormous fortune through unsavory practices and then give away a small fraction of their wealth, so it is wrong to zero in on a small subset of our altruistic actions and ignore the fact that perhaps 90 percent of our waking lives is spent in purposeful activities whose objective is improving our standard of living, chiefly through money-making. This alignment of individual and systemic objectives is a major success achieved by capitalism. Unconditional supporters of capitalism explain this success as resulting from capitalism’s “naturalness,” that is, the alleged fact that it perfectly reflects our innate selves—our desire to trade, to gain, to strive for better economic conditions and a more pleasant life. But I do not think that, beyond some primary functions, it is accurate to speak of innate desires as if they existed independently of the societies we live in. Many of these desires are the product of socialization within the societies where we live—and in this case within capitalist societies, which are the only ones that exist. It is an old idea, argued by writers as distinguished as Plato, Aristotle, and Montesquieu, that a political or economic system stands in harmonious relation with a society’s prevailing values and behaviors. This is certainly true of present-day capitalism. Capitalism has been remarkably successful in imparting its objectives to people, prompting or persuading them to adopt its goals and thus achieving an extraordinary concordance between what capitalism requires for its expansion and people’s ideas, desires, and values. Capitalism has been much more successful than its competitors in creating the conditions that, according to the political philosopher John Rawls, are necessary for the stability of any system: namely, that individuals in their daily actions manifest and thus reinforce the broader values upon which the social system is based.

#### The impact is backwards – market forces increase every measure of progress

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(Yevgeniy, "The Golden Age Is Now", 5-23-14, <http://www.city-journal.org/html/golden-age-now-9816.html>)

Bjørn Lomborg is well-known as a climate “skeptic.” He has frequently voiced concerns that money spent battling climate change could shift scarce resources away from more urgent global problems, such as malaria and HIV/AIDS. But the most recent book by the self-proclaimed “skeptical environmentalist” does more than just voice concern; it attempts to evaluate the damage caused by a variety of problems—from climate change to malnutrition to war—and project future costs related to these same issues. In How Much Have Global Problems Cost the World?, Lomborg and a group of economists conclude that, with a few exceptions, the world is richer, freer, healthier, and smarter than it’s ever been. These gains have coincided with the near-universal rejection of statism and the flourishing of capitalist principles. At a time when political figures such as New York City mayor Bill de Blasio and religious leaders such as Pope Francis frequently remind us about the evils of unfettered capitalism, this is a worthwhile message. The doubling of human life expectancy is one of the most remarkable achievements of the past century. Consider, Lomborg writes, that “the twentieth century saw life expectancy rise by about 3 months for every calendar year.” The average child in 1900 could expect to live to just 32 years old; now that same child should make it to 70. This increase came during a century when worldwide economic output, driven by the spread of capitalism and freedom, grew by more than 4,000 percent. These gains occurred in developed and developing countries alike; among men and women; and even in a sense among children, as child mortality plummeted. Why are we living so much longer? Massive improvements in public health certainly played an important role. The World Health Organization’s global vaccination efforts essentially eradicated smallpox. But this would have been impossible without the innovative methods of vaccine preservation developed in the private sector by British scientist Leslie Collier. Oral rehydration therapies and antibiotics have also been instrumental in reducing child mortality. Simply put, technological progress is the key to these gains—and market economies have liberated, and rewarded, technological innovation. People are not just living longer, but better—sometimes with government’s help, and sometimes despite it. Even people in the developing countries of Africa and Latin America are better educated and better fed than ever before. Hundreds of thousands of children who would have died during previous eras due to malnutrition are alive today. Here, we can thank massive advancements in agricultural production unleashed by the free market. In the 1960s, privately funded agricultural researchers bred new, high-yield strains of corn, wheat, and various other crops thanks to advances in molecular genetics. Globalization helped spread these technologies to developing countries, which used them not only to feed their people, but also to become export powerhouses. This so-called “green revolution” reinforced both the educational progress (properly nourished children tend to learn more) and the life-expectancy gains (better nutrition leads to better health) of the twentieth century. These children live in a world with fewer armed conflicts, netting what the authors call a “peace dividend.” Globalization and trade liberalization have surely contributed to this more peaceful world (on aggregate). An interdependent global economy makes war costly. Of course, problems remain. As Lomborg points out, most foreign aid likely does little to boost economic welfare, yet hundreds of billions of dollars in “development assistance” continue to flow every year from developed countries to the developing world. Moreover, climate change is widely projected to intensify in the second half of the twenty-first century, and will carry with it a significant economic cost. But those familiar with the prior work of the “skeptical environmentalist” understand that ameliorating these effects over time could prove wasteful. Lomborg notes that the latest research on climate change estimates a net cost of 0.2 to 2 percent of GDP from 2055 to 2080. The same report points out that in 2030, mitigation costs may be as high as 4 percent of GDP. Perhaps directing mitigation funding to other priorities—curing AIDS for instance—would be a better use of the resources. Lomborg’s main message? Ignore those pining for the “good old days.” Thanks to the immense gains of the past century, there has never been a better time to be alive.

#### The alternative’s lack of hyper-specific demands means it will inevitably be coopted by corporations, losing its radical potential

JULIANNE TVETEN 18, writes about the tech industry, labor, and culture, “Living in a Pepsi Ad World”, https://newrepublic.com/article/147748/commodified-protest-movements-trump-era

In a commercial for Google’s smart-home subsidiary Nest, a teenage boy, dressed for prom night, prepares to board a limousine. Before he leaves, a paternal voice off camera gently commands the boy to treat his date with respect, reminding him that he is entitled to nothing. That voice, it’s soon revealed, belongs not to the girl’s father, but to the boy’s: It emanates from a curved, black audio device mounted in place of a doorbell as the father tele-parents from work via the Nest app. A text overlay appears, reading, “It starts at home.” The ad, which occupied a coveted Academy Awards slot, is an obvious nod to the #MeToo movement—a concept surely familiar to the Oscar-viewing public in the wake of Hollywood’s recent sexual-assault reckoning. At first glance, there’s nothing remarkable about the commercial; it uses such standard marketing techniques as demographic targeting and imparts a general air of corporate goodwill. Yet beneath its putative message of male responsibility lies a more insidious phenomenon: The commodification of protest, particularly in the era of Trump. This issue reached a fever pitch a year ago, when an infamous Pepsi commercial starring Kendall Jenner distilled the iconography of protests against police brutality into a collage of meaningless signs, dance moves, and amicable cops. Though it was an egregious example of corporate appropriation, the repercussions were mild and fleeting: Pepsi removed the ad, apologized, and moved on. Meanwhile, companies like Nest have continued to glom on to mainstream social movements, simply in more subtle forms. Since, roughly, Trump’s inauguration, private enterprise has tapped into an American furor gone mainstream, leveraging marches into marketplaces. In 2017, New York magazine’s style vertical, The Cut, informed readers which scarves and leggings from Uniqlo, Amazon, and American Apparel they should tote at the Women’s March. Smaller companies, too, used it as an advertising platform: The CEO of cosmetics firm Glossier carried a sign to the same march proclaiming “We’re in it together” under the company’s signature “G,” and health-tech startup Tia offered free poster templates for download, its playful serif logo nestled in the corner. (The page appears to have been deactivated.) Cell carrier CREDO Mobile adopted the same tactic, branding intact, for last month’s March For Our Lives to protest gun violence. If protesters are a market, it should come as no surprise that signs and posters designed for them aren’t just canvases for ads; they’re also for sale. Princeton Architectural Press, for instance, has published a series of ready-made signs: Posters for Change, a collection of 50 removable posters running the gamut of causes of the #Resistance, from the abstract “Stay woke” to the more concrete, if nonspecific, “Fund the Arts.” The book exhorts prospective marchers to “Tear, Paste, Protest”—that is, after they fork over the requisite $25. Media outlets reinforce this process of commercialization. Like clockwork, the likes of BuzzFeed, The Washington Post, The Guardian, and Slate comb the crowds at the Women’s March, March For Our Lives, and other mass demonstrations, compiling the signs they deem the wittiest and pithiest of the bunch. Here, the protest sign transitions from an expression of conviction to something far more marketable—clickbait—plus bragging rights for whichever clever marcher happened to make the cut. This predated Trump: In 2011, New York consulted with a Madison Avenue ad executive to “grade” signs from the Occupy Wall Street movement on their “brand-building” potential. As the Occupy report card suggests, the monetization of resistance didn’t begin with the ascendancy of Trump. Genevieve LeBaron and Peter Dauvergne examined how corporations like ExxonMobil and WalMart co-opt and neuter dissent in 2014’s Protest Inc.: The Corporatization of Activism, starting with the year 2008, when the financial crisis awoke even the world’s wealthiest countries to their own precarity. In 2011, journalist Allison Kilkenny lamented the corporatization of Occupy Wall Street, citing such youth-capturing wangles as an MTV music award for “Most Memorable #OWS Performance” and the possibility of Occupy Wall Street-themed installments of MTV’s reality franchises The Real World and True Life. Yet it’s worth considering the effect of the Trump presidency on this trend. Trump’s victory rattled a segment of the American population that, thanks to its own social and financial capital, had been complacent under the eight years of the Obama administration. As many have noted, Trump didn’t introduce America’s ugliness—its militarism, its feeble social-welfare programs, its rampant privatization of public goods, its latent and overt bigotries, to name a few—he merely amplified it. However, those with the wherewithal to think otherwise—that “America Is Already Great,” as the Democrats suggested in 2016—treated the current presidency as an affront on American values, a departure from Who We Are. The members of this demographic—largely middle-class, white, self-described liberals—are, on the whole, new to protest. Historically, they’ve been shielded from America’s worst policies; after the election, however, they were thrust out of their institution-trusting comfort zone, forced to acknowledge the ills that, as subtext under Obama, became text under Trump. Previously unaccustomed to taking it to the streets, this group had suddenly arrived with pun-laden signs in tow. Accordingly, the Women’s March of 2017 generated record numbers, peppered with celebrities and food trucks. Protest had, again, entered the mainstream, its new core attendees equipped with money to burn—a fact of which “conscious” corporations became all too aware. Relatedly, most mass movements, while aiming to counteract some of the horrors of the Trump administration, have been content to couch their messaging in broad, fuzzy terms. They lack many of the demands that lie at the heart of activist politics on the left, which are both granular in their specifics and sweeping in their call for holistic, systemic change. This is evident in criticism of the Women’s March for its racial exclusion; of the post-Weinstein #MeToo movement for its scant attention to class; and of the March For Our Lives for silencing the voices of Marjory Stoneman Douglas’s black students. In an absence of specific, structural critiques and demands—even if that absence is unconscious—corporations can more easily claim causes as their own. If, say, economic injustice isn’t clearly among the chief grievances of the Women’s March, it’s far easier for companies to shoehorn themselves in—to, as Pepsi so nebulously put it, “join the conversation.” These companies can then masquerade as champions of social justice, proclaiming a half-baked message of equality with no financial loss and plenty to gain. It’s difficult to make prescriptions about acts of protest, especially in such fraught times. What shouldn’t be up for debate, though, is that effective, inclusive social movements are compromised when they become vehicles for corporate exploitation. The next time a protester at one of America’s post-2016 marches sees a business logo on a sign, an article prompting them to buy leggings, or a #woke commercial, it just might behoove them to ask what, and who, it’s all for.

#### Capitalism is sustainable---recent data proves we’re entering the golden age

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The past 30 years have seen immense progress in improving the quality of life for much of humanity. Extreme poverty — the number of people living on less than $1.90 per day — has fallen by nearly two-thirds, from 1.9 billion to around 650 million. Life expectancy has risen in most of the world, along with literacy and access to education, while infant mortality has fallen. Despite perceptions to the contrary, the average person born today is likely to have access to more opportunities and have a better quality of life than at any other point in human history. Much of this increase in human wellbeing has been propelled by rapid economic growth driven largely by state-led industrial policy, particularly in poor-to-middle income countries. However, this growth has come at a cost: between 1990 and 2019, global emissions of CO2 increased by 56%. Historically, economic growth has been closely linked to increased energy consumption — and increased CO2 emissions in particular — leading some to argue that a more prosperous world is one that necessarily has more impacts on our natural environment and climate. There is a lively academic debate about our ability to “absolutely decouple” emissions and growth — that is, the extent to which the adoption of clean energy technology can allow emissions to decline while economic growth continues. Over the past 15 years, however, something has begun to change. Rather than a 21st century dominated by coal that energy modelers foresaw, global coal use peaked in 2013 and is now in structural decline. We have succeeded in making clean energy cheap, with solar power and battery storage costs falling 10-fold since 2009. The world produced more electricity from clean energy — solar, wind, hydro, and nuclear — than from coal over the past two years. And, according to some major oil companies, peak oil is upon us — not because we have run out of cheap oil to produce, but because demand is falling and companies expect further decline as consumers increasingly shift to electric vehicles. The world has long been experiencing a relative decoupling between economic growth and CO2 emissions, with the emissions per unit of GDP falling for the past 60 years. This is the case even in countries like India and China that have been undergoing rapid economic growth. But relative decoupling alone is inadequate in a world where global CO2 emissions need to peak and decline in the next decade to give us any chance at limiting warming to well below 2℃, in line with Paris Agreement targets. Thankfully, there is increasing evidence that the world is on track to absolutely decouple CO2 emissions and economic growth — with global CO2 emissions potentially having peaked in 2019 and unlikely to increase substantially in the coming decade. While an emissions peak is just the first and easiest step towards eventually reaching the net-zero emissions required to stop the world from continuing to warm, it demonstrates that linkages between emissions and economic activity are not an immutable law, but rather simply a result of our current means of energy production. In recent years we have seen more and more examples of absolute decoupling — economic growth accompanied by falling CO2 emissions. Since 2005, 32 countries with a population of at least one million people have absolutely decoupled emissions from economic growth, both for terrestrial emissions (those within national borders) and consumption emissions (emissions embodied in the goods consumed in a country). This includes the United States, Japan, Mexico, Germany, United Kingdom, France, Spain, Poland, Romania, Netherlands, Belgium, Portugal, Sweden, Hungary, Belarus, Austria, Bulgaria, El Salvador, Singapore, Denmark, Finland, Slovakia, Norway, Ireland, New Zealand, Croatia, Jamaica, Lithuania, Slovenia, Latvia, Estonia, and Cyprus. Figure 1, below, shows the declines in territorial emissions (blue) and increases in GDP (red). To qualify as having experienced absolute decoupling, we require countries included in this analysis to pass four separate filters: a population of at least one million (to focus the analysis on more representative cases), declining territorial emissions over the 2005-2019 period (based on a linear regression), declining consumption emissions, and increasing real GDP (on a purchasing power parity basis, using constant 2017 international $USD). We chose not to include 2020 in this analysis because it is not particularly representative of longer-term trends, and consumption and territorial emissions estimates are not yet available for many countries. There is a wide range of rates of economic growth between 2005-2019 among countries experiencing absolute decoupling. Somewhat counterintuitively, there is no significant relationship between the rate of economic growth and the magnitude of emissions reductions within the group. While it is unlikely that there is not at least some linkage between the two factors, there are plenty of examples of countries (e.g., Singapore, Romania, and Ireland) experiencing both extremely rapid economic growth and large reductions in CO2 emissions. One of the primary criticisms of some prior analyses of absolute decoupling is that they ignore leakage. Specifically, the offshoring of manufacturing from high-income countries over the past three decades to countries like China has led to “illusory” drops in emissions, where the emissions associated with high-income country consumption are simply shipped overseas and no longer show up in territorial emissions accounting. There is some truth in this critique, as there was a large increase in emissions embodied in imports from developing countries between 1990 and 2005. After 2005, however, structural changes in China and a growing domestic market led to a reversal of these trends; the amount of emissions “exported” from developed countries to developing countries has actually declined over the past 15 years. This means that, for many countries, both territorial emissions and consumption emissions (which include any emissions “exported” to other countries) have jointly declined. In fact, on average, consumption emissions have been declining slightly faster than territorial emissions since 2005 in the 32 countries we identify as experiencing absolute decoupling. Figure 2, below, shows the change in consumption emissions (teal) and GDP (red) between 2005 and 2019. There is a pretty wide variation in the extent to which these countries have reduced their territorial and consumption emissions since 2005. Some countries — such as the UK, Denmark, Finland, and Singapore – have seen territorial emissions fall faster than consumption emissions, while the US, Japan, Germany, and Spain (among others) have seen consumption emissions fall faster. Figure 3 shows reductions in consumption and territorial emissions for each country, with the size of the dot representing the size of the population in 2019. Absolute decoupling is possible. There is no physical law requiring economic growth — and broader increases in human wellbeing — to necessarily be linked to CO2 emissions. All of the services that we rely on today that emit fossil fuels — electricity, transportation, heating, food — can in principle be replaced by near-zero carbon alternatives, though these are more mature in some sectors (electricity, transportation, buildings) than in others (industrial processes, agriculture).

#### The world as a supercomputer is an unhelpful and dangerous analytic. The norm of sovereignty as territorial influences IR.

Alexander B. Murphy 10, Professor in the department of geography and Rippey Chair in Liberal Arts & Sciences at the University of Oregon, “Intersecting Geographies of Institutions and Sovereignty,” International Studies, March 10, https://oxfordre.com/internationalstudies/abstract/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-409/version/0

The checkered history of sovereignty has prompted a number of commentators to suggest that it is useful to distinguish between de jure and de facto sovereignty within the modern state system (e.g. Murphy 1996; Austin and Kumar 1998). As traditionally deployed, de jure sovereignty refers to a legal principle giving state governments final authority within their territorial domains, but requiring them to respect the territorial integrity of other domains. De facto sovereignty refers to the actual ability of state governments to exercise final authority within their territorial domains, along with the existence of a system in which states do, in fact, respect the territorial integrity of other states. Viewed in these terms, it is clear that there has always been a gap between de jure and de facto sovereignty – and that the gap has fluctuated over time. Both were fairly strong in Central Europe in the decades following the signing of the Peace of Westphalia, and both were eroding rapidly by the middle of the eighteenth century. During the subsequent two hundred years, the spatial reach of de jure sovereignty widened with the expansion of the modern state system – eventually making sovereignty a bedrock principle of international law. De facto sovereignty, by contrast, ebbed and flowed with the times – often strengthening for a time after major international agreements affirmed sovereignty’s de jure significance, but then eroding in the face of real-world power differentials and changing political, economic, and technological circumstances.

Until relatively recently the dissonance between de jure and de facto sovereignty could be rationalized as a product of an inevitable gap between institutionalized norms and concrete practices. (The fact that many people cheat on their taxes does not render tax law a fiction or make taxation an insignificant element in the exercise of power.) Thus even when the Cold War was in full swing and the United States and the Soviet Union were involved in the internal affairs of many states around the globe, sovereignty as a de jure principle was not seriously questioned. As already noted, this view was reinforced by a conceptually dominant modernization thesis, which treated the state as the final step in the evolution of the modern political order.

Yet the tendency to take sovereignty for granted began to change as increasingly well-recognized foci of power outside the framework of the territorial state emerged, for these represented a different type of challenge to the sovereignty principle. They called into question not just the gap between de facto and de jure sovereignty, but whether the legitimate exercise of power could be seen in terms of the Westphalian, territorialized conception of sovereignty. Scholars grappling with this latter matter adopted two different, although not necessarily clashing, approaches to sovereignty’s changing character. One approach sought to document the ways in which territorial sovereignty was being eroded by extrastate sources of power without necessarily arguing that the Westphalian sovereign system was completely dead. The goal instead was to point to the functional changes occurring in the system. The other approach took the position that it is no longer useful to see sovereignty in Westphalian territorial terms because the legitimate exercise of power is no longer fundamentally rooted in a set of discrete territorial units.

Turning to the first of these approaches, growing evidence of economic and cultural globalization provided the spark for a set of commentaries dating back to the 1970s, if not earlier, that began to call into question the power of the state to control fundamental aspects of the global political economy. Much of the attention was focused on multinational corporations and financial practices and institutions that were beyond the effective reach of individual states. Contemporaneously, the growing visibility of substate nationalist groups challenging state authority began to attract the attention of scholars.

Few of these early forays into the changing territorial power of the state made any significant reference to sovereignty, but they set the stage for a series of studies in the 1990s focused explicitly on territorial sovereignty’s weakening significance (see generally Flint 2002). These studies directed attention to such matters as the impacts of transportation and communications technologies on the geographical organization of power, the ways in which expanding flows of goods and people were undercutting traditional state prerogatives, the impacts of sub- and trans-state identity communities on the role of the state as the arbiter of citizenship, and the deterritorialization of traditional government practices. Examples of studies on each of these topics provide insight into the ways in which the shifting human geography of the planet brought the Westphalian sovereignty construct into question.

In the transportation and communications arena, Stanley Brunn (1998) looked at how the internet was weakening sovereignty arrangements both by facilitating extrastate forms of political and economic practice and by making it more difficult for the state to control communication. He contended that the internet, along with a variety of other innovations in communications and transportation, shapes how states “view themselves in the world, how they address their own and others’ problems and issues, and the form and frequencies of information exchanges” (1998:107). This set the stage for more recent scholarly work on the disjunction between state territoriality and the institutionalization of policy initiatives and spatial representations in an era of rapid technological change (e.g. O’Lear 1999; Steinberg 2001).

John Agnew (1999) focused attention on the ways in which population migration and monetary flows are undermining the traditional role of the state. He documented a series of developments that, he argued, are fundamentally altering the geography of power. In his words, “political power now circulates in ways that are not best captured by the theoretical equation of fixed state territoriality, pre-given political identities, and limited movement of goods, investment, and people” (1999:521). As such, he contended that conventional theories in International Relations, which are grounded in a set of assumptions rooted in the Westphalian state system, need to be rethought.

Turning to matters of identity, edited compilations assembled by Knippenburg and Markusse (1999) and Herb and Kaplan (1999) highlighted the growing significance of identity communities emerging above and below the scale of the state (e.g. substate nationalist groups, cross-border communities, and supranational groupings). A fundamental (sometimes implicit) premise of many studies in these volumes is that states no longer play as dominant a role in identity formation as they once did – thus undermining the strength of the nation–state link that historically helped to deepen sovereignty’s reach. This theme has been taken up by anthropologists as well as geographers, with Ong (2006:7), for example, contending that neoliberalism is reconfiguring the geography of citizenship in ways that “fragment and extend the space of the state.” Studies of the shifting nature of borders also drew attention to the strengthening of extrastate identity communities. Indeed, Newman and Paasi (1998) and Paasi (1998) argued that borders were among the places where sovereignty and collective identity were being most dramatically renegotiated.

Timothy Luke’s (1991) influential study of the Kuwait government during the 1991 Gulf War highlighted the potential decoupling of traditional government practices from state territoriality, as traditionally understood. Luke argued that, before the Gulf War, the practice of statehood in Kuwait was already significantly deterritorialized because governance fundamentally relied on foreign bank accounts, extrastate real estate and stock holdings, and a set of globalized economic flows. This meant that, after the Iraqi invasion, the Kuwaiti government could continue to function as a state even though it lacked a territorial base and was forced to coordinate its operations from Washington, DC, and Taif, Saudi Arabia. Luke’s assessment cast Westphalian territorial sovereignty almost as an anachronism in a world of networks and flows.

In recent years a number of studies have built on the foregoing assessments of the functional challenges to sovereignty, providing an increasingly rich picture of the situation of the state in relation to nodes and flows existing at different scales. In terms of how the geography-sovereignty-institution nexus is conceptualized, however, the most significant recent development is arguably the contention that sovereignty and territory have become essentially “unbundled” (Raustiala 2005). In the geographical literature this idea finds early support in an article by Austin and Kumar (1998:58), which seeks to redefine sovereignty as reflective of “the degree to which a state, other institution, or organization can coerce or otherwise intentionally (and significantly) influence the behavior of other participants in the world political system and have such behavior recognized and accepted by a significant number of participants in that world political system.” But it finds fullest expression in John Agnew’s (2005) piece, which argues for a focus on effective sovereignty because a de jure territorial sovereignty system has never really been created.

The roots of the call to unbundle territory and sovereignty lie in the functional challenges to the role of the state outlined above. Those challenges were behind David Elkins’s (1995) effort to outline what a world would look like that was Beyond Sovereignty. This is not the project of Austin and Kumar (1998) or Agnew (2005), however. They proceed from the premise that there are still norms governing the legitimate exercise of power that need to be recognized – norms that are invoked by the concept of sovereignty – but that those norms are now so divorced from the Westphalian political-territorial order that it makes no sense to continue to frame sovereignty exclusively in Westphalian territorial terms. Agnew (2005), in particular, argues that we should abandon the concept of de jure sovereignty as traditionally deployed, for that concept is rooted in a Westphalian political-territorial ideal that never functioned as such – and is certainly not doing so now. Instead, he proposes that we look at how the legitimate exercise of power is actually constructed geographically and functionally.

In support of his call for a focus on effective sovereignty, Agnew looks at contemporary currency regimes and suggests that four types of sovereignty arrangements govern those regimes (2005:445–56):

• A classic sovereignty regime that combines consolidated territoriality and strong central state authority. China, controlling its currency rates within its borders, embodies this regime.

• An integrative sovereignty regime that combines consolidated territoriality with weaker central state control. The EU, consolidating currency control internally, exemplifies this regime.

• A globalist sovereignty regime that combines open territoriality with strong central state control. The US, which undersigns the bulk of the international financial network, embodies this regime.

• An imperialist sovereignty regime that combines open territoriality and weaker central state authority. South America, where some national currencies have been replaced by US dollars, typifies this regime.

Each of these regimes incorporates some form of territoriality, ranging from strongly consolidated to relatively open, so they do not necessarily represent a complete decoupling of sovereignty and territory.

Although the impetus for the call to sever sovereignty from its Westphalian territorial roots came in part from accumulated evidence of the significance of loci of power beyond the territorial state, the US invasion of Iraq in 2003 and the creation of a space of “exceptional sovereignty” at Guantánamo Bay (Reid-Henry 2007) were of particular significance. For many commentators, the doctrine of preemptive war that was invoked by the United States to justify its invasion of Iraq exposed Westphalian sovereignty as a chimera (Elden 2009). And the legal claims that were advanced to justify the existence of the US prison at Guantánamo Bay – and the practices that took place there – demonstrated a “complicity of law and force” that may further undermine the political-territorial foundations of modernism that find expression in the sovereign state system (Reid 2005:241).

In the end, Agnew (2005:456) argues, “we cannot meaningfully apply the orthodox conception of sovereignty to the conditional exercise of relative, limited, and partial powers that local, regional, national, international, and nonterritorial communities and actors now exert.” Following this logic, the best way forward is to abandon a concern with whether sovereignty is eroding, as the concept has never had sufficient fixity to justify investigations of its growing demise. Instead, what is needed is an exploration of different kinds of institutionalized structures of power, for these hold the clues as to how sovereignty actually works in the contemporary world.

The Continuing Impacts of Westphalian Sovereignty

Almost no one has argued that sovereignty has been unaffected by new technologies and changing economic and political arrangements, but a significant body of recent scholarship takes the position that Westphalian political-territorial practices and norms continue to have considerable influence, and therefore should not be overlooked. Studies in this vein generally focus on the tangible and normative impacts of traditional conceptions of sovereignty. In so doing, they reject, at least implicitly, the idea that de jure sovereignty is unworthy of scrutiny.

Legal scholar Abdelhamid El Ouali (2006:630) summarizes the main argument underlying this stream of literature, contending that “sovereignty has ignited the ambitions of scores of societies.” He sees this as a reflection of the institutionalization in modern international law of conceptions and practices of territoriality that have made the maintenance of “territorial integrity” a fundamental goal of societies around the world. El Ouali’s contention is supported by a variety of studies focused on territorial sovereignty’s continuing ideological significance. Those studies treat sovereignty as a powerful norm and discourse that frames and structures myriad political and social initiatives. The degree of flexibility to that discourse is a matter of some debate (see Kuus 2002), but since that flexibility has limits, the Westphalian sovereignty norm arguably remains a force worth recognizing and investigating.

Much of the literature in keeping with this perspective is case-study-specific, showing how particular developments are influenced by traditional sovereignty norms. A number of studies focus attention on the role played by the Westphalian territorial ideal in the agendas of particular political movements. Kolossov and O’Loughlin (1999), for example, look at the attempt to form “pseudo-states” on the periphery of the former Soviet Union, showing that the sovereign territorial ideal provides an impetus for creating the de facto sovereignty that characterizes entities such as the Transdniester Moldovan Republic (TMR). Since attempts to create new states can destabilize a de jure sovereignty regime, these initiatives might be seen as corrosive of the Westphalian political-territorial order. Yet unlike other corrosive forces (economic globalization, international human rights regimes, etc.), the emergence of new territorial states does not necessarily challenge the logic of the system itself, since leaders of independence movements are typically seeking not to change the structure of the system, but to carve out a niche within it.

A different kind of example of the ongoing power of Westphalian sovereignty principles comes from a study by Berg (2006) of territorial conflicts in both Cyprus and Moldova. Berg looks at efforts to create federalization arrangements in these two divided states. Such arrangements would give the Turkish Republic of North Cyprus (TRNC) and the TMR a high degree of autonomy within Cyprus and Moldova, respectively, while keeping the states together. In both cases, however, such arrangements have been rejected by dominant interests in the capital cities. The explanation, according to Berg, lies in their unwillingness to embrace political-territorial structures that would significantly compromise the extension of governmental authority within state boundaries, as defined by the Westphalian territorial ideal. As Berg (2006:234) explains:

With the implementation of the federal structure, the central governments of Cyprus and Moldova would have to grant legal status to and reduce their future control over the federal entities of TRNC and TMR. Although Nicosia and Chisinau presently do not have any control over the separated territories, they are not willing to settle for an agreement granting legal status to TMR and TRNC with a risk of not having full control perpetuating their separateness and prefer to keep the unrealistic option of full control of the total territory open.

In other words, those in power in Cyprus and Moldova would rather accept a de facto arrangement in which they have no power over parts of their countries than less-than-full sovereignty in a portion of their territories.

There are numerous other studies documenting the ways in which an ideological commitment to Westphalian sovereignty principles shapes political outcomes. Such commitments have worked against the construction of joint sovereignty arrangements in places such as Jerusalem and Northern Ireland (Sucharov 1998; Anderson 2008), they have made it all but impossible for India and Pakistan to contemplate any kind of partitioning of Jammu and Kashmir (Murphy 1990), and they have influenced the types of solutions that are even contemplated in places that have disintegrated into civil war (e.g. Bosnia; see Jeffrey 2008). Indeed, Jeffrey (2008:441) argues that dominant framings of Bosnia “do not challenge the primacy of the state, despite the prevalence of references to forms of cosmopolitan solidarity beyond the nation-state.” Instead, they serve to “promote the state as the primary territorialisation of political life” (2008:429).

Another example of the power of the Westphalian territorial ideal comes from Glenn Petersen (1998), who studied the efforts of Micronesians to assert sovereign control over their homeland. While recognizing the contested nature of sovereignty as an international legal principle, Petersen shows that Micronesians view the doctrine as a “resource to be cultivated and exploited” (1998:179). Sovereignty, following Petersen, provides Micronesians with “a means of remaining true to their own traditional values, to free themselves from some of the risks their colonial status has exposed them to, and to enhance their ability to negotiate their future situation” (1998:202).

Arguments about the ongoing significance of traditional sovereignty notions even arise in the context of analyses of developments that explicitly challenge sovereign territorial norms. Stuart Elden (2007), for example, contends that even as sovereignty is being undermined in the “War on Terror,” important parts of it are preserved – especially the principle mandating deference to existing boundaries. Even Luke’s (1991) study of the Kuwait government in exile (discussed above) acknowledges that the existence of a concrete territorial base was symbolically necessary for the government in exile to function. Of course Luke’s principal purpose was to highlight a case that showed the declining importance of territory for statehood in the contemporary era, but Murphy (1994) has argued that the larger set of events surrounding the Kuwait affair show the enduring significance of Westphalian territorial norms. He bases this assertion on the fact that, even though the United States’ willingness to become involved in the situation was widely seen to be a product (at least in part) of its own geopolitical and geoeconomic interests, the US was able to assemble an unprecedented international coalition of states in support of its move to remove Saddam Hussein’s army from Kuwait by force. What allowed this to happen was the clear, unambiguous challenge to de jure territorial sovereignty that occurred when Iraq’s armies marched into Kuwait and “temporarily obliterated from the map a recognized state” (1994:216). Without that provocation, it is almost unimaginable that the United States could have rallied the international community in the way that it did.

The European Union (EU) represents perhaps the most explicit political-territorial challenge to the Westphalian state system because it disrupts the notion of a world politically constituted at a single scale: that of the state. Yet a number of commentators have argued that even in this case territorial assumptions rooted in traditional conceptions of sovereignty have shaped how the EU is conceptualized and what it has done. Ruggie (1993) contends that scholars and policy makers are so deeply mired in notions of territoriality associated with the modern state system that they lack even a vocabulary for describing what the EU might be. Moisio (2006) shows how conceptions of sovereignty frame debates over EU membership. And Murphy (1996; 2008) highlights the ways in which the political geographic imagination about the EU is caught up in an often unacknowledged, Westphalian-rooted idea that casts the success of the European integration project against the backdrop of the EU’s “state-building” capacity; those developments that make the EU look more state-like are generally treated as signs that integration is proceeding well, whereas those that challenge the concentration of power in Brussels are typically seen as signifying the opposite.

The problem of viewing the EU in this way is that it focuses attention on governmental institutions as opposed to underlying social, political, and cultural processes. Moreover, it presents European integration fundamentally as a movement aimed at merging the interests of several states into one superstate rather than as a potential challenge to the concept of the territorial state itself. These conceptual predispositions are expressed concretely in some of the EU’s principal recent policy priorities: monetary Europe, the crafting of a constitution, the enhancement of executive power, and the expansion of EU competence in the foreign policy arena. While some of these initiatives have been successful, they have also contributed to the EU’s recent difficulties – rooted as they are in growing reservations about the further concentration of powers in a centralized bureaucracy.

None of this means that the EU does not represent a challenge to the Westphalian political-territorial system. Those living in the EU are currently facing environmental degradation, uneven development, ethnic conflict, and other difficult problems. Each of these has a particular spatial character that bears little resemblance to the pattern of states, and the EU offers a potential framework for developing a less fragmented, more coherent, approach to confronting them. That potential is being realized to some extent through programs that foster transboundary cooperation, planning initiatives that are not organized on a state-by-state basis, and environmental research programs that collect and analyze data without concern for interstate boundaries. But these are up against larger, classic state-building initiatives – leading many in Europe to view the EU as a direct challenge to nationalist political-territorial aspirations rather than as a supplementary, or even complementary, force.

This last point is arguably of particular significance because the continuing vitality of nationalism may well represent the single greatest ongoing impact of traditional sovereignty principles. This is because nationalism is at least partially a product of the Westphalian territorial ideal, meaning that some notion of territorial self-governance is at the heart of the concept itself (White 2000). The bond between sovereign territorial norms and nationalism is evident in the very definitions that are used to define terms such as nation, which reference both the territorial dimensions of nationhood and the ideological commitment of nations to self-government. Konstantin Symmons-Symonolewicz (1985:221), for example, defines a nation as “a territorially based community of human beings sharing a distinct variant of modern culture, bound together by a strong sentiment of unity and solidarity, marked by a clear historically-rooted consciousness of national identity, and possessing, or striving to possess a genuine self-government” (emphasis added). Moreover, nationalism itself is generally understood to be associated with the quest for “nation-state” status, with all that implies in terms of the de jure territorial norms of the modern state system.

Of course, nationalism has been challenged in places by the rise of transnational cosmopolitan communities. Indeed, transnationalism has been a particular focus of study among those interested in examining the changing dynamics of state–society relations (e.g. Sassen 1999; Mountz 2003). Since the majority of the human population does not participate in those communities, however, traditional nationalist sentiment remains a fundamental force in the world today. The struggle over Iran’s nuclear program is rooted in a deeply held notion of the “Iranian nation’s” right to make its own decisions in its own territory. Russia’s efforts to assert its authority in the Arctic reflect a national sense of prerogative in a region being transformed by climate change. China’s outrage at external agitation over its policies in Tibet is rooted in a historically based sense of territory that casts Tibet as part of China’s sovereign territorial space. Ecuador and Peru’s long-standing boundary dispute is framed by nationalist territorial sensibilities. Even in supposedly postnationalist Europe, Irish votes against integration treaties and French protests over EU agricultural regulations show the continuing significance of a territorially grounded nationalism.

All of these examples, and many more, support Daniel Philpott’s (2001) contention that de jure sovereignty should remain an object of analysis, if only for its power as an idea – albeit one with an institutional/legal grounding. Indeed, Philpott, following Hall (1999), argues for a research agenda focused on the normative impacts of traditional sovereignty principles. Such an agenda would include investigations of the ways in which “sovereignty constitutes authority,” the impacts of sovereignty norms on individual state decisions, and the normative status of the sovereignty principle itself (Philpott 2001:321–3). The goal of such an agenda is to move studies away from a focus on compliance with traditional sovereignty principles, which, he argues, ignores “a much deeper way in which the norms exercise influence – by constituting the very polities that enjoy sovereignty, and the very international system that helps to establish their authority” (2001:299).

A variety of scholars motivated by postmodern, or postfoundational, concerns have taken up Philpott’s challenge in recent years. Matthew Sparke (2005) has written an extended disquisition on the ways in which destabilization has worked together with the emergence of extrastate spatial ideas and arrangements to transform the geography of power. Even though the system has changed, Sparke takes the position that conceptions of space rooted in sovereignty practices continue to permeate scholarly analyses – among post-structuralists as well as more traditional theorists. Sparke also argues that contemporary developments have not just led to the deterritorialization of social and political practices; in many arenas reterritorialization is also occurring – ensuring the continued importance of state territoriality into the foreseeable future. Sparke’s effort to bring a Foucauldian perspective to bear on the geography-sovereignty dynamic reflects a broader turn in the political geographic literature toward a concern with the role of material-discursive interactions in studies of the spatiality of governance (see e.g. Painter 2006). And his efforts to describe and theorize the interplay between deterritorialization and reterritorialization touch on a theme that figures prominently in much recent literature on the evolving nature of sovereignty in the complexly configured geopolitical world of the twenty-first century (see generally Ó Tuathail and Luke 1994).

The Advantages and Disadvantages of Sovereignty

Michael Fowler and Julie Bunck’s (1995) book on Law, Power, and the Sovereign State ends with a chapter titled “Why is Sovereignty Useful?” (1995:127–52). This question has been taken up in one form or another by a number of commentators, including those who have largely side-stepped debates on the evolving character of the doctrine. On one side are commentators who view sovereignty primarily as pernicious rather than useful. Taylor (1994; 1995) sees sovereignty as a doctrine that institutionalizes a territorial structure that is fundamentally at odds with the spatial realities of contemporary life and that serves to encourage and reinforce structures of exchange and control that are repressive and unjust. He thus presents sovereignty as a principle that is “sure to be abolished in any viable sustainable world. The competition engendered by states in their territories is ultimately a route to doomsday” (Taylor 1995:14). He pays particular attention to the problems posed by ecological degradation, which he argues are rooted, at least in part, in economic competition among quasi-sovereign states. As Taylor sees it, the need to address such problems will inevitably propel humanity toward a post-sovereign world (Taylor 1994:161). In an effort to advance that project, over the past decade Taylor has devoted much of his energy to a project on World Cities, which focuses attention on some of the connections and flows that are most destabilizing of the traditional territorial state system.

Other indictments of the sovereignty principle focus on its negative impacts on particular places, regions, and problems. Some of these negative impacts have been suggested above (e.g. the ways in which sovereignty principles have prioritized “top–down” initiatives in the EU, worked against federal solutions to internal conflicts in Cyprus and Moldova, and discouraged joint sovereignty arrangements in zones of conflict). James Anderson’s (2008) review of the history of ethnonational conflict in Northern Ireland provides another example. He argues that Westphalian notions of territoriality have served to reinforce the simplifications that have driven ethnonational conflict in the region. As Anderson explains:

the problems of national conflict and conflict management stem from shortcomings inherent to nationalism, ethnicity, sovereignty, and representative democracy, and particularly from their common dependence on territoriality or the use of bordered geographical space to organise, symbolise and control. The shortcomings are compounded by the fact that flawed assumptions about them are typically shared by external conflict managers from other national governments, as well as by the immediate nationalistic protagonists they are trying to manage. Territoriality simplifies control, and its strengths in delimiting nations and states, sovereignty and democracy, underpin the tenacity of national conflicts. But it oversimplifies and distorts social realities, especially at contested borders, and its inherent weaknesses help explain the high failure rate of management solutions. (2008:86)

Countering these negative assessments of sovereignty’s role are studies that highlight the doctrine’s significance as a protector of rights and peoples. A theme running through some of the literature on indigenous communities in North America, for example, is the importance of juridical commitments to American Indian sovereignty – despite the long history of violations of those commitments. The special sovereignty status of American Indians in US law arguably represents a principle of signal importance – one that has been fought over repeatedly and that continues to offer hope as indigenous communities struggle to confront social and environmental challenges (e.g. Ranco and Suagee 2007). At a broader scale – that of the state system – it is interesting to note that some of sovereignty’s greatest proponents are those living in relatively weak, poor states. For all the fact that their de facto sovereignty has been seriously compromised by the actions of more powerful states and by globalized economic forces, those living in the global economic periphery often make the point that sovereignty provides the only check on the political and economic reach of more powerful countries – and provides at least a weak shield that permits a degree of local resistance to the forces of globalization (e.g. Petersen 1998).

The foregoing line of reasoning runs counter to the frequently held assumption that state sovereignty works in opposition to human rights. There are certainly many examples where sovereignty gives state governments cover to oppress those within their jurisdictions, but Jim Russell (2005) draws the opposite lesson from the US prison at Guantánamo Bay, where an explicit erosion of legal rights has taken place based on the idea that the prison is located outside the United States’ sovereign territory. Russell argues that states may stand in the way of human rights, but they also serve as important guarantors of human rights. In support of the latter point, Russell notes that “where state territorial sovereignty is ambiguous, such as in borderlands or military bases overseas, human rights are threatened. The advancement of universal human rights may well depend on strong state sovereignty, not its erosion” (2005:38). The counterargument is that a space of exception (using the term coined by Giorgio Agamben) such as Guantánamo Bay is a product of a territorial state. Taking a different tack, Derek Gregory (2006) argues that we should not simply accept Guantánamo Bay as a space of exception, but see it instead as a space of struggle, where arguments can (and should) be advanced countering the notion that the prison is exempt from the principles of law applied to the sovereign territory of the US because of its offshore location.

The foregoing examples highlight the complexities involved in assessing the advantages and disadvantages of territorial sovereignty. Adding to that complexity is the changing nature of sovereignty itself. Austen Parrish’s (2006/7) analysis of sovereignty’s impact on indigenous peoples takes the position that, over the long term, dominant Westphalian territorial notions have worked against the interests of native peoples by legitimating nation-state ideals that leave little room for minorities. He argues, though, that shifting sovereignty norms brought about by the forces of globalization and the expansion of extrastate regimes are opening up opportunities for indigenous communities and expanding their recognition under international law. He directs particular attention to decisions by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights that recognize the territorial rights of indigenous peoples (2006/7:309). These decisions have limited impact; the Commission is an advisory body and the Court has jurisdiction only over those sovereign states that have willingly ceded legal competence to it. But the rulings help to legitimate the territorial sovereignty principle advanced by many native peoples, although they also undermine a key component of Westphalian sovereignty: the dispersion of power across discrete units at only one scale.

It should be clear from the foregoing examples that evaluative assessments of sovereignty are wide-ranging and disparate as to their conclusions. They reflect the complexities of sovereignty itself, as well as its potential to favor certain interests and facilitate particular possibilities at different scales and in different places. This all works against consensus, but a number of commentators see positive transformative potential in the negotiations that are taking place over the doctrine’s nature and meaning. Such negotiations are seen as enhancing the prospect for more responsive, representative political orders in places experimenting with strong suprastate institutional arrangements (Moisio 2006), and facilitating the emergence of multilayered governance structures that could give some degree of concrete political expression to the complex patterns of culture that are sublimated in a world divided into 200-odd discrete “nation-states” (Ranco and Suagee 2007). Whether such negotiations might ultimately spell the end of de jure sovereignty in its Westphalian form, however, is an open question.

Where from Here?

Over the past few decades, sovereignty has gone from being treated as a taken-for-granted principle to being an object of intense scrutiny. Given sovereignty’s checkered history and its changing character as an international legal norm, it is not surprising that tensions run throughout the recent literature on the concept. As the foregoing account suggests, a divide of particular significance has developed over the continuing usefulness of tying sovereignty to its Westphalian territorial roots. Almost everyone would agree with Yishai Blank’s (2006:265) contention that “[s]tates are no longer the sole bearers of rights and duties in the international sphere, nor are they the sole actors in the international arena.” The question is whether the workings of international capital, the emergence of new constellations of actors and interests, and the growing power of extrastate governance regimes have so undercut traditional sovereignty notions that we need to sever sovereignty from its historic roots. John Agnew argues that we should because a de jure territorial system is little more than an illusion. In Agnew’s (2005:437) words, de facto sovereignty “is all there is.” Countering this position, Philpott (2001), following Hall (1999), has argued that the territorial sovereignty regime that is scripted into modern international law has great normative power. He thus calls for a major research agenda focused on de jure sovereignty’s enduring impacts.

There is an irony to this debate, as a number of commentators who are philosophically aligned with Philpott and Hall derive inspiration from some of John Agnew’s earlier writings, especially his piece on “the territorial trap” (Agnew 1994), which highlights the influence of a particular geographical framing of the world with roots in Westphalian territorial norms. Agnew does not directly address this tension in his 2005 piece, but perhaps it can be best reconciled by seeing his recent call for a focus on effective sovereignty as a plea to examine critically the types of arrangements that are likely to expose the vacuity of a geographical imagination that cannot see beyond states. After all, Agnew does not suggest that certain practices are not governed by Westphalian territorial norms; he just sees those practices as part of one sovereignty regime among many – and therefore concludes that the Westphalian sovereignty regime should not be privileged.

The counterargument is that if sovereignty is unmoored from its territorial roots, then it simply becomes a synonym for power or control. This, in turn, ignores sovereignty’s special legal status and directs attention away from the powerful role that Westphalian territorial norms play in a variety of political, economic, and cultural arenas. Those norms do not operate in an unchanged, uncontested way, but their ongoing significance undercuts the idea that de facto sovereignty is all there is. Instead, de facto sovereignty arrangements are in dynamic tension with an institutionalized territorial system that is under increasing strain, but that continues to shape ideas and actions.

#### The ontology of technology isn’t static---its influenced by social/political change

Paul Rekret 19, Associate Professor of Politics at Richmond University, “Seeing Like a Cyborg? The Innocence of Posthuman Knowledge,” Chapter 6 in *Digital Objects, Digital Subjects: Interdisciplinary Perspectives on Capitalism, Labour and Politics in the Age of Big Data* Edited by David Chandler and Christian Fuchs, 2019, https://library.oapen.org/bitstream/handle/20.500.12657/25880/1004203.pdf?sequence=1

Despite the undeniably heterogeneous and complex research programmes that Haraway and Latour developed from these basic insights, our concern here is with the widespread adoption of the claim that we inhabit an age of hybridity. The view that the subject has been eroded in the current epoch is an ontological contention that increasingly shapes an expansive theoretical paradigm and is, moreover, often taken as self-evident. But it is worth remarking that this is an odd claim – at least where it implies a relation between ontology and history – for it insinuates that, in general, while existence itself is defined by hybridity, this only becomes self-evident in an epoch where technological change makes its manifestation undeniable. To twist a well-known phrase, history here becomes the midwife of ontology, where the hybrid entities that emerge from bioand enhancement technologies bear the weight of actualising the ontological assertion that the human never was an integral, autonomous being exercising control over itself or its surroundings in the first place. Yet such a claim so often denotes a move that seeks to rescue technological advancements – which are often the product of destructive capitalist compulsions, if not explicitly militarist impulses – for progressive theoretical ends. It follows that it falls upon the theorist’s ontological speculations to salvage and reimagine the technological for emancipatory purposes, a task which can only be accomplished where the deeper truths about existence which these processes harbour can be discerned. It is in this way that the posthumanist can be said to collapse ontological speculation into ethico-political argument, since it is the affirmation of hybridity and concordant critique of anthropocentrism that acts as the starting point for ethical and political thought in this context (Rekret 2016). Besides producing a peculiar oscillation between history and ontology, the critique of anthropocentrism can sometimes effect a sort of theoretical narcissism which places the theorist at the endpoint of an eschatology wherein the true nature of existence is only discernible from the historical instant at which they find themselves.

#### Their theory’s reductive, no structural systemic failure, and contingency’s best

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A major irony of Feenberg’s book is the following contradiction: on several occasions, he criticizes, and distances himself from, technological determinism; key parts of his argument suggest, however, that he himself flirts with, if not subscribes to, technological determinism. He rightly maintains, and convincingly demonstrates, that ‘society and technology are inextricably imbricated’.240 This insight justifies the underlying assumption that there is no comprehensive study of society without a critical sociology of technology. Yet, to contend that ‘[s]ocial groups exist through the technologies that bind their members together’241 is misleading. For not all social groups are primarily defined by the technologies that enable their members to relate to, and to bond with, one another. Indeed, not all social relations, or social bonds, are based on, let alone determined by, technology.

Of course, Feenberg is right to argue that ‘technologically mediated groups influence technical design through their choices and protests’.242 Ultimately, though, the previous assertion is tautological. This becomes clear if, in the above sentence, we replace the word ‘technological(ly)’ with terms such as ‘cultural(ly)’, ‘linguistical(ly)’, ‘political(ly)’, ‘economic(ally)’, or indeed another sociological qualifier commonly used to characterize the specificity of a social relation. Hence, we may declare that ‘culturally, linguistically, politically, and economically mediated groups influence cultural, linguistic, political, and economic conventions through their choices and protests’. In saying so, we are stating the obvious. If, however, we aim to make a case for cultural, linguistic, political, or economic determinism, then this is problematic to the extent that we end up reducing the constitution of social arrangements to the product of one overriding causal set of forces (whether these be cultural, linguistic, political, economic, technological, or otherwise).

While declaring that he is a critic of technological determinism, Feenberg – in central passages of his book – gives the impression that he is one of its fiercest advocates. Feenberg’s techno-Marxist evolutionism is based on the premise that ‘progress is realized essentially through technosystem change’243 – that is, on the assumption that, effectively, human progress is reducible to technological development. Feenberg is right to stress that ‘[t]echnical progress is joined indissolubly to the democratic enlargement of access to its benefits and protection from its harms’.244 ‘Concretization’,245 understood in this way, conceives of progress as a ‘local, context-bound phenomenon uniting technical and normative dimensions’.246 We may add, however, that progress has not only technical (or technological) but also economic, cultural, and political dimensions, which contain objective, normative, and subjective facets. At times, the differentiation between these aspects is blurred, if not lost, in Feenberg’s account, given his tendency to overstate the power of technology at the expense of other crucial social forces. In other words, progress is not only ‘inextricably entangled with the technosystem’,247 but it is also indissolubly entwined with the economic, cultural, and political systems in which it unfolds and for (or against) which it exerts its objective, normative, and subjective power.

The preceding reflection takes us back to the problem of techno-reductionism:

The struggle over the technosystem began with the labor movement. Workers’ demands for health and safety on the job were public interventions into production technology.248

All struggles over social (sub)systems have not only a technological but also various other (notably economic, cultural, and political) dimensions. Demands made by particular subjects (defined by class, ethnicity, gender, age, or ability – or a combination of these sociological variables) are commonly expressed in public interventions not only into production technology, but also into economic, cultural, and political systems. In all social struggles (including class struggle), technology can be an important means to an end, but it is rarely an end in itself. Put differently, social struggles are partly – but seldom essentially, let alone exclusively – about technology.

## 1AR

### 1AR – T Private Sector

#### The Chinese private sector is distinct BUT it is still a private sector

Olson 20 – Stephen Olson is a research fellow at the Hinrich Foundation, September 30 2020, “Are Private Chinese Companies Really Private? Beijing has been very transparent about its intentions and ambitions when it comes to “private” sector businesses.” <https://thediplomat.com/2020/09/are-private-chinese-companies-really-private/>

\*edited for language\*

The West has often been guilty of not listening to China. But China has communicated with great clarity that its definition of “private” business diverges in fundamental ways from the assumptions which underpin our existing global trade rules. It is not in anyone’s best interests to ignore or minimize this glaring and expanding fault line. Pretending that a private Chinese company is essentially the same as a private Australian, Chilean, or American company is simply delusional [misguided]. If we wish the global trade system to continue to be sustainable, we need to recognize and address this reality head on. A more sustainable trade system will benefit everyone – including China.

### 1AR – Cap K

**Going faster is key to solve environmental collapse.**

**Karlsson 16** (Rasmus Karlsson 16, Associate Professor in political science at Umeå University, “The Environmental Risks of Incomplete Globalisation” DOI: 10.1080/14747731.2016.1216820)

Clearly, as much as energy saving and other forms of demand-side management in the rich countries may make sense within their respective domestic contexts, such measures have the unfortunate effect of reducing the political interest in financing the kind of supply-side revolution that is needed globally. Third and finally, as it is becoming increasingly clear that the politically agreed target of keeping global warming below two degrees Celsius will not be met by conventional mitigation alone, there will most likely be a significant need for energy for carbon dioxide removal (CDR) but also for adaptation in terms of for instance mass desalination for agricultural purposes, further underscoring the inadequacies of the current soft energy approach. An alternative and very different approach to climate nationalism would be to ask, what kind of technologies would be required to achieve climate stability in a world of 10+ billion people living prosperous lives? Starting from that question and working backwards such an alternative approach would shift the focus from the immediate deployment of non-scalable technologies to the innovation of massively scalable high-energy technologies capable of providing an abundant and cheap supply of clean baseload electricity (Galiana & Green, 2010). The underlying premise would be that by making clean energy significantly cheaper than today it would be possible to rapidly displace fossil fuels and effectively overcome political and cultural inertia. No longer economically competitive, existing fossil infrastructure would then be abandoned as stranded assets, even in those countries that for political reasons may doubt the seriousness of climate change **or those where fossil industries may hold a strong political influence**. Most importantly, such an approach would give developing countries the reliable 7 **energy they need to move away from fossil fuels at the same time as they can universalise access to modern energy services**. Currently, indoor air pollution from the burning of wood and charcoal causes millions of premature deaths annually while simultaneously driving deforestation. Given its inherent merits, not the least its potential to once and for all resolve long running North-South tensions in international environmental debates (Williams, 2005), it may perhaps seem strange that such an advanced technological path to climate stability has not been widely considered in the literature (Dorr, 2016; Green, 2015; Symons & Karlsson, 2015). There are of course many reasons for this, in particular the fact that since the most obvious such “high-energy” technology would be nuclear power, it would mean moving into a minefield of political risk. Despite more than sixty years of civilian nuclear power with extremely few fatalities compared to fossil energy (it is for instance worth noting that no one has yet died from radiation after the Fukushima accident in 2011), public perception of the risk of nuclear energy has been unforgiving. Given that there seems to be no hope for a rational discussion on the risks of nuclear compared to those of uncontrollable climate change, it may matter surprisingly little to know that if all of the world were to build nuclear power at the same per capita rate that Sweden and France did during the 1970’s and 1980’s, then coal- and gas-fired electricity could be replaced worldwide within a few decades or less (Qvist & Brook, 2015). However, in addition to other concerns such as proliferation (Socolow & Glaser, 2009), existing nuclear designs are highly brittle in the sense that one single major accident could potentially mean an end to expansion plans everywhere. Given the limited remaining carbon budget if catastrophic climate change is to be avoided, such fragility is obviously a strong argument against making a global mitigation strategy dependent on existing nuclear designs. Accepting that puts the focus back on fundamental energy R&D. While nuclear technologies broadly conceived are likely to play an important part in any high-energy future, finding an energy source which is proliferation-resistant, passive safe, and which has an abundant supply of fuel that would allow it to generate baseload electricity at a cost far below fossil sources will require nothing short of an energy miracle. When Darrel Moellendorf writes that hoping for such a technological breakthrough “hardly amounts to a basis for responsible policy” (Moellendorf, 2014:183) he gives voice to a commonsensical view which is widely shared in the climate policy community. Obviously, 8 committing vast social resources to fundamentally uncertain research makes little sense if there is a meaningful alternative. Yet, after more than two decades marked by an ever more polarised climate debate (Keller, 2015:223), it should be obvious that current mitigation efforts are failing (Jamieson, 2014). Even if the progressive offshoring of carbon-intensive industries may have helped in improving the carbon inventories of certain rich countries, overall emissions (in particular when including aviation and shipping) have steadily gone up since the inception of the Kyoto Protocol. The prospect of brute force mitigation through directly reduced consumption rates, as envisioned by many Greens and theorists alike (Harris, 2010),seem as remote as ever. Contrary to the hopes of Greenpeace and other environmental NGOs, Germany, which has taken on itself to lead the world into a future of renewable energy, has seen rising carbon emissions for several years following the phase-out of nuclear energy. At a global level, the share of coal power in the world’s energy mix has not been higher since the 1970’s and the overall share of carbon fuels in the total energy consumption has remained more or less stable around 86-87% since 2000 (BP, 2015). Over time however it is likely that the very richest countries, which have sufficient numbers of affluent consumers who can afford to pay higher energy prices, will be able to complete the shift to small-scale renewable energy sources, especially if much of their overall physical infrastructure is produced elsewhere and the intermittency problem can be solved through energy storage (and not as today by fossil backup capacity). Yet, simple back-of-the-envelope calculations show that providing the several thousand exajoules of clean energy annually that would be needed for a global economic convergence is more or less impossible using such technologies (Trainer, 2013). That is one of the reasons why almost all climate scenarios that succeed in stabilising the climate over the course of the 21st century do so by inserting austere assumptions with regard to energy access and, thus, overall energy demand (Pielke, Wigley, & Green, 2008). In less technical language, such restrictions essentially mean that that the poor stay poor deep into the future. Considering this, the connection between climate nationalist thinking and the current state of incomplete globalisation becomes readily visible. According to the standard Malthusian narrative, technology can never “keep up with growth in population, affluence, and consumption” (Mitchell, 2012:25). As a consequence, the only hope of achieving climate stability hinges on constraining population growth and overall human welfare. Despite its dubious ethical implications, such an argument would perhaps 9 make sense if fairly marginal reductions in growth rates would be sufficient to achieve longterm sustainability. Yet, given how **deeply unsustainable** the very metabolism of modern industrial society is, **this is obviously not the case**. In a world of 7.3 billion people, **the reductions in economic activity would have to be of an almost apocalyptic magnitude** to bring down per capita emissions levels so that they would be lower than what is absorbed by natural sequestration processes. Given the political impossibility of achieving such dramatic reductions in the rich countries, it is not surprising that the political attention has shifted to the task of keeping poor people away from fossil forms of development, something which in fact has already become the explicit goal of many environmental NGOs but also a kind of “carbon conditionality” imposed by for instance the U.S. Agency for International Development’s “Power Africa” initiative. While much can be said about the morality of imposing such double standards at home and abroad respectively, the most apparent implication of this is that the poor will in effect stay poor. Even if distributed solar panels may be sufficient for charging a cell phone or powering a reading lamp at night, the energy provided is of a completely different scale compared to what was needed for the sweeping modernisation processes that made broadly shared prosperity possible in Europe, North America and, most recently, North-East Asia. Psychologically unrealistic as it may be to expect the poor to remain content with being locked out from modernity in this way, the current state of incomplete globalisation is likely to frustrate or at least delay their rise. While this may ostensibly win some time in terms of lower carbon emissions, it will also have many countervailing effects such as delaying the demographic transition that would follow from more comprehensive forms of modernisation or prolong the use of informal fuels. Failure to fully integrate the world will also have another important effect for the transition to sustainability, namely to slow overall global growth rates. While it is fashionable in more critical literature to suggest that the marginal utility of further economic growth has become negative in the advanced economies (Jackson, 2011), this is to grossly misunderstand contemporary economic and political dynamics. Not only is further economic growth indispensable to ensure the financial stability of retirement schemes and to pay the health costs associated with an ageing population, it is in fact the very life elixir of society as it lessens distributional conflicts and encourages public risk-taking (Friedman, 2006). Only in a situation of strong economic growth are politicians likely to make the bold 10 investments in energy R&D needed to bring about the kind of “**high-energy miracle**” discussed above. As a consequence, it is possible to see an indirect link between failure to integrate the world and the prospects of financing breakthrough innovation. Yet, beyond this indirect link, there is a much more direct link in terms of the costs of violent conflict caused by global inequality, the policing of borders, and the risks of pandemics (as most recently seen in the case of Ebola in West Africa), all diverting resources away from more urgent social needs, including energy R&D. To build a world unafraid of itself Even if analytic political philosophy may not have shown much recent enthusiasm for nationalism or other forms of metaethical particularism (Caney, 2005), the world of today is still one in which life opportunities remain largely determined by a completely randomly assigned variable (place of birth) rather than individual ambition and character. Not only does this “citizenship premium” (Milanovic, 2013) create migratory pressure and fuel resentment, it also means that billions of people never get a chance to develop their full intellectual potential and, with it, their economic productivity. Despite that many of the great hopes of the Enlightenment have been fulfilled over the last centuries, it has now become common to distrust the very possibility of social progress and to doubt that humanity can ultimately build a world unafraid of itself (Bronner, 2004). Without subscribing to teleology (Wendt, 2003) there are many reasons to think that, despite the recent rhetoric of Donald Trump or other signs of backsliding, much greater optimism is in fact warranted. Not only has there been **no new wave of protectionism** in the wake of the financial crisis (as was the case after the crash in 1929) but the World Value Survey and other similar studies have consistently shown a movement away from traditional values and hierarchical forms of authority towards secular-rational values, greater individual freedom, and autonomy (Welzel, 2013:143). Every year, more and more people travel by airplane and are able to experience other countries and cultures first-hand. As the world gets smaller, it is becoming increasingly difficult to deny our common humanity and insist on the artificial segregation of people based on mere geographical luck. Yet, in terms of politics or ideology, there has been surprisingly little interest in even imagining a world with universal freedom of movement and shared prosperity. It is reasonable to think that this disinterest in part derives from deeply entrenched Malthusian beliefs and fears of a coming climate crisis. 11 Malthusian discourse often portrays global climate change as ultimate evidence of irresponsibility, greed or even the “cancer stage of capitalism” (Barry, 2012:138). Such descriptions show little tolerance for learning or humility with regard to the difficulties of the task. There has never been a blueprint for how to build a prosperous planetary civilisation or for how to achieve technological maturity in a way that does not destroy the biosphere. Yet, in a world of **seven billion** actually **existing people**, the question is where to go from here? As discussed above, to try to reverse the great structural processes of modernity through intentional localisation **does not only seem wholly politically unrealistic, it is also most unlikely to actually deliver greater resilience or environmental sustainability**. Yet, the problem of lacking realism is just as acute for those advocating breakthrough innovation or seeking to more fully integrate the world (Karlsson, 2013). In a time of public austerity, rising xenophobia, and an almost complete absence of realistic yet transformative visions at the global level, it is not surprising that climate nationalist responses have emerged as the default policy orientation. While these responses may at best slow the rate of warming, they offer little hope for the 3.5 billion people who currently lack access to modern energy and, as such, they are likely to contribute to the creation of new patterns of climate injustice. They are also problematic in the sense that for every year that a more meaningful response is delayed, the need for CDR grows. Already now, such negative emissions technology has become more or less a necessity for achieving the two degree target according to the scenarios represented in the Intergovernmental Panel on Climate Change (IPCC) database (Anderson, 2015). Whereas breakthrough energy innovation could potentially offer a source of sustained global growth as energy would become significantly cheaper, CDR is always going to come at a net cost. If CDR eventually becomes unaffordable due to prolonged political procrastination and generally inefficient mitigation policies, it is likely that the political momentum will shift towards solar radiation management (SRM) and other more risky forms of climate engineering. Instead of fearfully backing into a warming future, there is an obvious need for bold and **proactive political action** (Garibaldi, 2014; Karlsson, 2016). Yet, as long as mitigation is perceived as a cost and something that runs counter to broader socio-economic goals, such action is unlikely. While accelerating the transition to a high-energy planet would undoubtedly put strong upward pressure on global emissions in the short run, it would also open up a political opportunity space for effective climate action that does not exist today. In a more 12 equal and integrated world, there would be greater financial and human resources to combat climate change. Most of all, by providing a progressive account of globalisation, there would be a meaningful counter-narrative to both nationalist and neoliberal thinking.

#### Capitalism solves the environment – innovation and regulations check consumption

Bailey 14 – Science Correspondent for Reason

(Ronald, “Is Capitalism Environmentally Unsustainable?”, 10-31-14, http://reason.com/archives/2014/10/31/is-capitalism-unsustainable?n\_play=54547667e4b0dcc26e7944fe)

Human activity is remaking the face of the Earth: transforming and polluting the landscape, warming the atmosphere and oceans, and causing species to go extinct. The orthodox view among ecologists is that human liberty—more specifically economic activity and free markets—is to blame. For example, the prominent biologist-activists Paul and Anne Ehrlich of Stanford University recently argued in a British science journal that the environmental problems we face are driven by "overpopulation, overconsumption of natural resources and the use of unnecessarily environmentally damaging technologies and socio-economic-political arrangements to service Homo sapiens' aggregate consumption." The Ehrlichs urge the "reduction of the worship of 'free' markets that infests the discipline" of economics. But the notion that economic activity and free markets are antithetical to the flourishing of the natural world is complicated by the fact that the countries with the biggest environmental problems today, and the least means and apparent interest in addressing them, are not the liberalized ones with advanced capitalist economies but the ones with weak or nonexistent democracies and still-developing economies. So is it really the case that liberty and the environment are simply opposed? Does the good of one come only at the expense of the other? Or can liberty and a flourishing natural environment reinforce one another, the good of one encouraging the good of the other? Can economic activity under a system of liberty be environmentally sustainable in the long run? ... Many of these academics—though not all—acknowledge that market economies on the whole have greatly improved the lot of humanity over the past few centuries, leading to better standards of living, higher levels of education, and more civil and political rights. But they argue that the system of liberty produces accumulating externalities that will eventually drive civilization to self-destruction. Either human beings start restructuring civilization soon, the Ehrlichs warn, or "nature will restructure civilization for us." The Lockean response to these academics' worries is that free-market capitalism is as much about growing inward as outward—about learning to derive progressively more value from a finite supply of natural resources, so that we need not consume ever more of those resources. On this understanding, there need be no contradiction between meeting human material needs and preserving a large portion of the natural environment. So we have two broad views of the sustainability of the system of liberty, and they could hardly be more opposed: one of steady growth and self-reinforcing gains in the efficient use of natural resources, and one in which this growth may be maintained for a deceptively bountiful period of human history before it collapses in on itself. ... We can now begin to see the shape of an answer to our initial question of whether liberty and the natural environment must necessarily be opposed. In early stages of modern economic development, as liberty is unleashed in open-access orders, people convert relatively plentiful but unproductive nature into more productive but relatively scarcer human labor—that is, higher population—and manufactured capital. In those early stages, liberty and the environment function as what economists call "substitute goods," with more liberty resulting in less demand for the environment in its natural state. In such societies, fertility rates remain high and environmental amenities and quality continue to deteriorate. But at later stages of economic development, human and manufactured capital become so effective, thanks especially to technological progress, that the environment can be returned to a more natural state. And since such societies are more prosperous, they can better afford the costs of environmental regulations, even inefficient ones. ... Free markets are the most robust mechanism ever devised by humanity for delivering rapid feedback on how decisions turn out. Profits and losses discipline people to learn quickly from and fix their mistakes. By contrast, top-down bureaucratization tends to stall innovation and to make it more difficult for people and societies to adapt rapidly to changing conditions, economic and ecological. Centrally planned economies fail; centrally planning the world's ecology will fail as well. Our aim must be to find ways for liberty and the environment to flourish together, not to sacrifice one in the vain hope of protecting the other.

#### Renewables can scale up without being bad.

Magill 14—Science writer [Bobby, “Renewables Are as Green as You'd Expect,” *Scientific America*, 8 Oct, <https://www.scientificamerican.com/article/renewables-are-as-green-as-you-d-expect/>, accessed 7 Jan 2017]

So just how green are these sources of low-carbon renewable electricity? Pretty green, it turns out.

Rolling out wind and solar power projects across the globe through 2050 will probably have a very low climate and environmental impact and even reduce air pollution despite the need for extracting pollution-intensive raw materials for those wind, solar and hydropower projects, according to new research published Monday.

As part of the new Norwegian University of Science and Technology study, researchers conducted the first-ever lifecycle analysis of a wide-scale global rollout of new wind, hydro and solar power plants, asking whether shifting from coal and natural gas power generation to renewables would increase or decrease certain types of pollution.

Generally, there isn’t much known about the environmental and climate costs of a global shift from fossil fuels to renewables and how that shift affects pollution from producing raw materials used in solar panels and wind turbine blades such as copper, concrete, aluminum, indium and other materials, according to the study.

Wind turbines require up to 14 times the iron needed for fossil fuel power generation, and solar photovoltaics require up to 40 times the copper than traditional coal, oil or natural gas-fired power plants, according to the study.

But over time, the environmental impact of extracting those raw materials declines, pollution decreases and the total quantity of those materials likely needed for renewables is a fraction of the volume of those materials being mined today, the study says.

The researchers assumed that solar, wind and hydropower will make up 39 percent of total global power production in 2050, up from 16.5 percent in 2010, requiring 1.5 gigatons of bulk raw materials for construction.

“I was surprised that all the pollution went down for renewables,” the study’s lead author, Edgar Hertwich, an energy and process engineering professor at the Norwegian University of Science and Technology, told Climate Central. “I expected some of the toxics might be rising because of the materials used. Metal ores contain a lot of heavy metals. I expected that to be significant. I was really surprised it didn’t show up.”

When compared to coal-fired power plants, renewables come out on top because wind and solar power generation requires no additional raw material over the lifespan of the turbine or solar panel. Coal-fired plants, on the other hand, require continued mining of coal, he said.

The study, published Monday in the journal Proceedings of the National Academy of Sciences, concludes that new renewable power installations would increase the demand for iron and steel by 10 percent by 2050, and the copper that would be needed for photovoltaic systems are equivalent to two years of current global copper production.

“The amount of material having to move for coal is more than metal moved for renewables,” he said.

Even when solar and wind power generators need to be rebuilt, raw materials can be recycled from older power generators, he said.