# Harvard BH NDT Round 3 Open Source

# 1NC

## Off

**New affs bad**

**New affs are bad – skews prep, reduces clash, and incentives run and gun affs – counter interp is disclose before the round**

**Civil RICO**

#### The United States federal government should prohibit algorithmic dynamic pricing as a violation of RICO\*.

\*RICO = the Racketeer Influenced and Corrupt Organizations act.

**Solves better than antitrust**

Irvin B. **Nathan ‘83**, Doubling the Treble Damage Option: What an Antitrust Practitioner Needs to Know about RICO, 52 Antitrust L.J. 327 (1983).

Antitrust practitioners need to become more familiar with the private, civil remedies provided by the Racketeer Influenced and Corrupt Organizations statute ("RICO").' RICO's treble damage provisions, explicitly patterned on Section 4 of the Clayton Act,' are increasingly being invoked in a wide variety of commercial contexts. Although **RICO is far more encompassing** than the antitrust laws, there are **broad areas of overlap**. RICO's civil provisions have been utilized in cases involving allegations of horizontal and vertical price fixing,3 attempted monopolization, 4 anticompetitive mergers, 5 collusion over municipal contracts 6 industrial espionage,' Robinson-Patman Act violations8 and other forms of unfair competition.9 Enacted in 1970 as part of an effort to combat organized crime and prevent its infiltration into legitimate businesses, RICO was considered during the first decade of its existence principally a criminal statute. The statute authorizes stiff fines, long periods of imprisonment and even forfeiture of property to the federal government. 0 RICO's civil provisions, little noted when the statute was enacted, were intended by Congress to allow private parties to use machinery based on the antitrust model to supplement the federal government's criminal enforcement of RICO." The statute permits a federal action for treble damages and attorney's fees for any person injured in his business or property by reason of a violation of the substantive provisions of RICO 12. Within the last several years, some plaintiffs' counsel have invoked these provisions in a rapidly growing number of commercial cases generally having little or nothing to do with "organized crime."

**States**

#### The 50 states and relevant territories of the United States should increase prohibitions on algorithmic dynamic pricing through the multistate rulemaking authority under the National Association of Attorneys General’s Multistate Antitrust Task Force

**Stocks**

**CP: The United States federal government should**

* **maintain the scope of antitrust laws at status quo levels;**
* **cease and/or settle current antitrust lawsuits;**
* **issue a memorandum to the fifty state attorney generals to enter deferred prosecution and settlement agreements on current antitrust lawsuits.**

**Market is bucking declinist trends—March was the lowest it’ll go**

**Reuters 3/30** (“Analysis: U.S. stock rally defies economic unease’, https://www.reuters.com/business/mystifying-us-stock-rally-defies-economic-unease-2022-03-30/)

NEW YORK, March 30 (Reuters) - As **a stunning rebound in U.S. stocks charges on**, investors are questioning how long the surge can continue in the face of a hawkish Federal Reserve, warnings of recession from the bond market and geopolitical uncertainty.

The S&P 500 is up 11% since March 8, its biggest 15-day percentage gain since June 2020, led by many of the high-growth stocks that have been pummeled for much of the year. The benchmark index has cut its year-to-date losses to 2.8%, after it earlier swooned by as much as 12.5%.

The move has come **despite a broad range of concerns** that rocked equities earlier this quarter, among them the war in Ukraine, surging inflation and a sharp rise in Treasury yields fueled by tightening monetary policy from the Fed. read more

Stocks shrugged off the latest ominous sign from the bond market on Tuesday. The S&P 500 closed up 1.2% even as the widely tracked U.S. 2-year/10-year Treasury yield curve inverted for the first time since September 2019, a phenomenon that has reliably predicted past recessions. read more

"It's been mystifying," said Jack Ablin, chief investment officer at Cresset Capital Management. "I think that the bond market is sober and the equity market is quixotic."

Investors are pointing to a number of factors that could be driving the bounce in equities.

Many have taken heart from Fed Chairman Jerome Powell's assessment of the U.S. economy as strong enough to handle an aggressive pace of rate increases and may be cheering a Fed that now appears to be tackling sky-high inflation head on, analysts said.

The S&P 500 has gained over 6% since the Fed's March 16 monetary policy meeting, at which it raised interest rates by 25 basis points and penciled in 150 basis points of tightening for the rest of the year. read more

"While stock investors love low interest rates, they don't love an inflationary environment that gets out of control," said J. Bryant Evans, investment advisor and portfolio manager at Cozad Asset Management.

Recent weeks have also seen institutional investors driving up prices as they unwind so-called "short" bets against equities, analysts at Goldman Sachs said in a recent report.

At the same time, individual investors have been using the weakness in stocks as an opportunity to buy, the bank said.

According to Goldman, $93 billion of capital has flowed into U.S. equity funds since the start of the year, "suggesting that households have continued to buy after the record year for U.S. equity inflows in 2021."

Indeed, many of the stock rally's biggest gainers have come in high-growth, retail investor favorites that had been hammered as bond yields shot higher earlier this year. Those include so-called meme stock darlings GameStop (GME.N) and AMC Entertainment Holdings (AMC.N), whose prices have more than doubled from their 2022 lows, and Cathie Wood's ARK Innovation fund (ARKK.P) ETF, which is up 36.5% from its recent low.

Strategist Ed Yardeni of Yardeni Research said **March 8 may have marked a bottom for the stock market this year**, believing stocks are gaining support from investors **using equities as a hedge against inflation**, which stands at its highest level in nearly four decades.

"The fog of war had masked the outlook, but the long-term bull market, punctuated by panic attacks, remains intact," he wrote on Tuesday.

The corporate earnings outlook also remains solid, even as higher energy and other prices threaten to erode profit margins. Estimates for S&P 500 profits have risen since the start of the year with companies overall expected to increase earnings by 8.8% in 2022, according to Refinitiv IBES.

"Stocks were knocked down, but **earnings** estimates **just kept going up**," said Matthew Miskin, co-chief investment strategist at John Hancock Investment Management. "Investors are hesitant to really unload on stocks here as the earnings and economic picture looks still very favorable."

Another factor may be investors adjusting their portfolios as the quarter winds down, strategists at JPMorgan said. Investor rebalancing of portfolios "likely played a major role over the past two weeks, hurting bonds and supporting equities," they wrote.

**Plan is perceived as a wrecking ball on corporate earnings—stifles bull expectations**

**Thierer 21** (Adam; 2/26/21; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>)

Unfortunately, the calls for more **bureaucracy** and **regulation** emanating from all corners of the political world could have an **unintended consequence**: **discouraging** the sort of **vibrant innovation** and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of **antitrust regulators** at the **F**ederal **T**rade **C**ommission and the **D**epartment **o**f **J**ustice. It also includes new filing requirements and potentially hefty civil fines.

The **most important** feature is the proposed **change** to the **legal standard** by which regulator**s** approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like **simple**, **semantic** tweaks, but – much like some of the other policy ideas currently circulating – they would **upend decades** of **settled law** and create a **sea change** in U.S. **antitrust enforcement**. This change could **undermine business dynamism**, **innovation** and investment in ways that **inhibit** the **global competitiveness** of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively **prohibit m**ergers **and a**cquisition**s** by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a **different lesson**. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative **business deals**. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a **learning experience** that illustrated how **dynamic** media and technology markets can be with firms **constantly searching** for value-added arrangements that serve their customers and shareholders. If we make this type of activity **presumptively illegal**, we’re imagining that **government bureaucrats** are **better suited** to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, **legal tests** like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably **open-ended** and could be **easily abused**. The system will be **gamed by opponents** of deals for business reasons. They will claim that their **own failure** to attract investors or customers must all be the fault of more creative rivals. That’s a **recipe for cronyism** and **economic stagnation**.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how **similar fears** were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will **MySpace** Ever **Lose Its Monopoly**?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is **no likelihood** that **Apple** can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming **case studies** in the continuing power of “creative destruction.” **New innovations** and **players** emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face **similar pressures**, and it’s better to let **rivalry** and **innovation** emerge **organically**, not through the **wrecking ball** of heavy-handed **antitrust regulation**.

**Bull market exuberance is tenuous—the plan causes a crash and recession**

**Roberts 11/7/21** (Lance, Seeking Alpha, “Did The Fed Just Set The Stock Market Up For A Crash?”, https://seekingalpha.com/article/4466775-did-the-fed-just-set-the-stock-market-up-for-a-crash)

Market Back To Extreme Overbought As noted last week, the more significant concern remains the underlying technical condition of the market. While the rally has been impressive, rising to all-time highs, the market is now back to more extreme overbought levels. Furthermore, our "money flow buy signal" **is near a peak** and **slightly triggered a "sell signal**." However, with the MACD still positive, **the signal suggests a consolidation** rather than correction. However, a confirming MACD often aligns with short-term corrections at a minimum. Therefore, we will watch that signal closely. Also, this entire rally from the recent lows has been on very weak volume, which suggests a lack of commitment. **Currently, the bulls control the market** as we are in the middle of a "buying stampede." Historically, buying stampedes last on average between 7 and 12 days. Logically, buying stampedes always get followed by selling stampedes of similar lengths. However, there are times these stampedes can last much longer than expected. We are currently in one of those longer-term periods. As shown below, the S&P 500 has only been down in 2 of the last 18 days. How unusual is that? In the previous 20 years of the S&P 500, the number of times the market accomplished such a feat was precisely ZERO. Of course, **that stampede gets driven by exuberance**. Irrational Exuberance In our daily market commentary, we quoted a piece of analysis from Chartr.com. To wit: "Every week it feels like we get a new headline about financial markets doing something unusual. Just this week we've had:" A "squid game" crypto token falling 99.99% in a few minutes. Tesla adding hundreds of billions of dollars in value over a deal with Hertz that hasn't even been signed. US stock markets hitting fresh all-time highs. "All of which begs the question: are we in a bubble?" So where are we now? The latest CAPE ratio for the S&P 500 Index is 38x. That's pretty close to **the all-time record**, which was 44x back in 2000. For those with a short memory, that was just before the dotcom bubble burst and stock markets (particularly tech) **crashed hard**." As we have noted previously, valuations, by themselves, are a terrible timing metric. However, they tell us a great deal about expected future returns and current market psychology. When it comes to "irrational exuberance," there are other indicators better at revealing speculation in the markets that have **preceded a stock market crash**. The CNN Fear/Greed index is now at extreme greed territory. Furthermore, the demand for protection against a stock market crash (put options) fell to new lows. Historically, such periods of "speculative" activity led to a minimum of short-term stock market corrections, but **a crash is not beyond the realm of possibilities**. As noted above, with **the market extremely overbought, speculative activity surging**, and conviction weak, taking some actions to rebalance and manage risk is warranted. **However, for now, investors have "no fear"** as they believe the Fed will continue to remain accommodative. The Fed's Third Mandate Takes Priority My co-portfolio manager, Michael Lebowitz, made an important observation on Thursday. "Jerome Powell made it clear the Fed is in no hurry to raise interest rates. 'We don't think it's time yet to raise interest rates. There is still ground to cover to reach maximum employment, both in terms of employment and in terms of participation.' The Fed's reason is the employment picture is not back to pre-pandemic levels. In our mind, there is plenty of evidence such as the outsize quits rate, rising wages, and the record number of job openings that scream the labor market is very healthy. Does Mr. Powell disagree with our assessment, or is there more to the Fed's policy stance? We believe he answered the question at Wednesday's press conference. Per Jerome Powell: 'The Fed's policy actions have been guided by our mandate to promote maximum employment and stable prices for the American people along with our responsibilities to promote the stability of the financial system.'" The last sentence is the most important. According to the Federal Reserve's Congressional authorization, the Fed has only TWO mandates: price stability (inflation) and full employment. The third mandate is a self-imposed mandate from Ben Bernanke, who was the Fed Chairman in 2010: "This approach eased financial conditions in the past and, so far, looks to be effective again. Stock prices rose, and long-term interest rates fell when investors began to anticipate the most recent action. Easier financial conditions will promote economic growth. For example, lower mortgage rates will make housing more affordable and allow more homeowners to refinance. Lower corporate bond rates will encourage investment. And higher stock prices will boost consumer wealth and help increase confidence, which can also spur spending." Fed Opts To Keep Markets Elevated Jerome Powell ignored surging inflationary pressures and a robust job market **in favor of supporting asset prices**. With valuations surging, speculative activity rising, and investors heavily leveraged, the Fed faces a difficult choice. There is already a decoupling of markets from consumer confidence. A stock market **crash would further devastate confidence pushing the economy into recession**. That is the risk the Fed cannot afford.

**Nuke war**

Jomo Kwame **Sundaram &** Vladimir **Popov 19**. Former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007. Former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin “Economic Crisis Can Trigger World War.” <http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/>.

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, **there are growing concerns about the increased possibility of large-scale military conflict**.

More worryingly, in the current political landscape, prolonged economic crisis, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, **could easily spin out of control and ‘morph’ into military conflict, and worse, world war.**

Crisis responses limited

The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered **likely**. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy.

The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to **foment unrest, conflict, even war** as it is blamed on the foreign.

International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition!

Liberalization’s discontents

**Rising economic insecurity**, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and **increase social tensions and turmoil, especially among the growing precariat and others who feel vulnerable or threatened.**

Thus, **ethno-populist inspired chauvinistic nationalism may exacerbate tensions**, leading to conflicts and tensions among countries, as in the 1930s. Opportunistic leaders have been blaming such misfortunes on outsiders and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization.

Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality.

To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries.

Insecurity, populism, conflict

Thomas Piketty has argued that a sudden increase in income inequality is often followed by a great crisis. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern.

Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could inadvertently catalyse future crises and conflicts.

Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse.

At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies.

Avoiding Thucydides’ iceberg

Thus, **protracted economic distress, economic conflicts or another financial crisis could lead to military confrontation by the protagonists, even if unintended.** Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers.

They patently ignored Thucydides’ warning, in chronicling the Peloponnesian wars over two millennia before, when the rise of Athens threatened the established dominance of Sparta!

Anticipating and addressing such possibilities may well serve to help avoid otherwise imminent disasters by undertaking pre-emptive collective action, as difficult as that may be.

**Axon**

**The Supreme Court will narrowly rule in Axon v. FTC over procedural due process rights in the administrative proceedings, but it will spawn a wave of broad constitutional challenges in the future---if they succeed, then it upends the structure of independent agencies like the FTC and the Securities and Exchanges Commission**

Christopher **Cole 2-18** High Court's FTC Case Carries Potential For Broad Impact, https://www.law360.com/articles/1465429/high-court-s-ftc-case-carries-potential-for-broad-impact

The U.S. Supreme Court is poised to decide when **lower courts** can take up **challenges** to the **F**ederal **T**rade **C**ommission's structure in a case that could have **far-reaching implications** for commission merger reviews and efforts to protect consumers from fraud, but more **broadly** for **administrative powers of other federal agencies**, too.

The court recently agreed to hear one question, that of when parties defending themselves in an FTC administrative proceeding may challenge the constitutionality of the FTC's action.

The case arose from police body cam supplier **Axon Enterprises'** bid to fend off an FTC merger challenge. Axon initially asked that **the high court** case examine the **constitutionality** of the FTC's structure, but the court agreed to review only the **narrower question** of whether **district courts** could take up such **constitutional challenges** before the agency has issued a **final order** of some kind.

The company, which faces an FTC administrative trial over the merger, has argued that its challenge to the agency's in-house proceeding should be heard by a district court right now rather than after the agency action wraps up. The company argues that the FTC's administrative proceedings violate **due process rights** because cases are fixed in **favor of the agency**, which effectively serves as **prosecutor**, **judge** and **jury**.

Justices chose **not** to get to the **heart** of Axon's due process concerns in their upcoming review, but they agreed to dissect the trial courts' authority to field the issue while an underlying agency proceeding remains underway. In the meantime, the commission's in-house proceeding over the Axon merger remains on ice pending the Supreme Court outcome.

Their ruling in this case will likely **establish** a key precedent that will affect **other federal agencies** that carry out **administrative trials**.

And while **the jurisdictional question** currently before the court is **narrow**, observers told Law360 that the high court's decision to take the case at all **emboldens** those who would **challenge** the FTC structure's legality and **that larger issue inevitably return to the high court someday**.

New York antitrust lawyer Leonard Gordon, former FTC regional director in the Northeast, told Law360 the court appears focused **for now** on the process of **disputing** agency actions, not whether the commission's own mechanics pass **constitutional muster**.

"I think they're interested in the **procedural question**" of whether someone in the crosshairs of an FTC proceeding can challenge the constitutionality of the administrative process, said Gordon, chair of Venable LLP's advertising and marketing group.

That question is "**limited**," he said, **but** the jurists may well decide that federal courts can hear such challenges before the commission's own procedure is over, which would mark a **shift in jurisprudence**. "The law as it sits **right now** is **not** very favorable for those kinds of challenges."

FTC On Defense - Again

When the justices hear oral arguments in Axon Enterprise Inc. v. FTC this fall, it will be the second time in two years that government lawyers hop the marble steps on First Street in hopes of shielding the commission from a private sector legal attack.

The last round didn't go well for the feds. In AMG Capital Management v. FTC, the commission was challenged on its use of injunctive powers to seek monetary relief directly in district court, a unanimous court ultimately ruled that the FTC's injunction power, established under Section 13(b) of the FTC Act, is meant only to stop bad behavior going forward, not recover money for consumers.

That dealt a body blow to a chief FTC weapon long used to obtain court orders for restitution or disgorgement of ill-gotten gains, though it retained the power to seek restitution and disgorgement through its own administrative trials.

But now those in-house procedures are themselves under siege in the Axon case, in which the Arizona company had originally sought not only the power to sue the FTC in district court to stop the merger suit, but also to overturn the agency's structure as unconstitutional.

By only taking up the **former** question, the justices have **punted** what would otherwise amount to **existential threat** to the FTC, since taking away its power to bring cases before the commission's administrative law judge would undercut the agency's main weapon against alleged marketplace abuses.

That **doesn't** mean, though, that the high court has **permanently** tossed aside the **larger issue**. Companies such as Axon, which faces **an FTC administrative complaint** seeking to unwind its completed purchase of body cam supplier Vievu, stand ready to **litigate** the FTC's structure in the lower courts if the justices say there's no need to wait on the administrative trial.

Although the justices declined to review the larger issues of the FTC's structure right now, Axon officials say that their willingness to look at when such a challenge can be brought to the lower courts is a victory in itself. The thrust of Axon's argument is that harm accrues to a party during the FTC's slow-moving administrative process, so district courts should allow for a remedy - especially given that the process runs afoul of the Constitution in the first place.

"The question the Court agreed to resolve has enormous practical consequences, both for Axon and for others embroiled in proceedings before the FTC," Pam Petersen, Axon's vice president of litigation, told Law360 in a recent email.

"Under a series of recent Supreme Court decisions, it is clear that there are constitutional defects with how the FTC is structured," she said. "But as things stand, we could be forced to spend years submitting to proceedings before an unconstitutionally constituted FTC before we can ever get a court to consider and remedy those defects. We're hopeful that the Supreme Court will recognize that there is no legal basis for such an illogical regime."

The FTC has responded in court papers that Axon is wrongly trying to bypass the plan established by Congress for reviewing commission decisions.

An FTC spokeswoman declined to comment Friday.

Wider Implications Likely

As former FTC general counsel Stephen Calkins put it, the court's review of Axon, which came out of a Ninth Circuit ruling, draws the battle lines for a "two-front war" where Axon fights at the Supreme Court while other companies continue to file district court challenges.

Calkins, a professor at Wayne State University Law School, said Thursday there was nothing to stop litigants from filing a case in federal court regardless of what's happening at the high court.

"You would think there would be a very good chance that the FTC would lose this case, and that any FTC administrative complaint going forward is sure to be met by a district complaint challenging the constitutional structure of the FTC," he said. "It must think simultaneously about being a defendant in a district court lawsuit." He predicted "a number of district court challenges" and that eventually the FTC will be back on the second question, although the FTC could try to stay other court cases with Axon still unresolved.

"The irony with the loss of its 13(b) power," he said, is that "the FTC has been scrambling to find ways to get money to consumers, and one possible option is to file an administrative case and wait to go to district court until after the administrative case has gone through," but now that option could be dashed as well.

Calkins said a **Supreme Court ruling striking down** the FTC's in-house authority and its **overall structure** would give become **important case law** for other challenges to federal bodies that use similar procedures, such as the **S**ecurities and **E**xchange **C**ommission.

Venable's Gordon pointed out that even with the justices tackling only the question of bringing suit in district court against the FTC, a ruling in Axon's favor could be cited in any number of lower court cases seeking to buck agencies' administrative authority.

"Anybody who's got a challenge to the constitutionality of either the process that the government agency is engaged in, or the constitutionality of the way the agency is set up ... it will open up the opportunity for a sort of collateral attack on what the agency does," he said.

Gordon said **plenty of these cases are waiting in the wings**. "There are always some people claiming the administrative state is depriving them of due process."

**Perception of aggressive FTC enforcement causes the court to rule broadly on the constitutionality of FTC and other administrative agencies in future cases**

Grace **Karabinus 1-13**, Associate @ Porter Wright Morris & Arthur LLP, J.D., Vanderbilt Law, Has Axon dealt another blow to FTC authority? <https://www.antitrustlawsource.com/2022/01/has-axon-dealt-another-blow-to-ftc-authority/>

**Takeaway**

Facially, Axon’s bid to the **Supreme Court** may not seem all that significant. **After all,** the **specific** issue is **only** whether a federal district court **can** hear the constitutional challenge **while** the administrative proceeding is ongoing. And **that is a long way from declaring the FTC’s structure unconstitutional**. **But**, FTC administrative orders are **rarely appealed** to a federal appellate court. Therefore, if the Supreme Court allows for a simultaneous federal constitutional challenge, the structure of the **constitutionality** of the FTC and **other administrative** enforcement mechanisms **could** be heard. In this day and age, when **the FTC** has become the **target of** much **criticism** for its **aggressive policies**, this could **become quite significant.**

**SEC regulatory authority solves digital assets laundering**

Todd **Phillips 21** J.D., Director, Financial Regulation and Corporate Governance @ American Progress, The SEC’s Regulatory Role in the Digital Asset Markets, https://www.americanprogress.org/article/secs-regulatory-role-digital-asset-markets/

**Preventing money laundering**, **tax evasion**, **and** **criminal activities** It has been said that the primary uses for **digital assets** are to **evade** **financial sanctions** **and** **collect ransoms**.67 **Bitcoin’s** **notoriety** initially **came from** its **ability to be used to buy** **illicit goods** **and** **services** anonymously **on the dark web**,68 with the FBI estimating that the most infamous platform, Silk Road, facilitated $1.2 billion in sales via bitcoin from 2011 to 2013.69 **Today**, the **North Korean** regime **uses** **digital assets** **to avoid** U.S. and international **sanctions**, **hacking exchanges** **and** **stealing assets** **that it then uses to buy goods and services**.70 Additionally, **the ease** **and** **anonymity** **with which digital assets are** **bought and** sold has **facilitated** **a 66 percent annual rise** **in ransomware** **attacks**, in which hackers will threaten to disable a company’s online services or delete its data unless it pays a significant ransom. As the Colonial Pipeline hack demonstrated, this can have significant real-world consequences.71 According to Chainalysis, the total amount paid by ransomware victims in 2020 reached nearly $350 million in digital assets.72 These blatant violations of the law are possible because individuals can trade digital assets with pseudonymity; although all transactions are registered on a blockchain, it is possible for people to set up and use digital asset wallets without verifying their identities.73 **This** same flaw **also facilitates tax evasion**. Although digital asset owners are required to pay capital gains taxes on proceeds from the sales of their assets, the congressional Joint Committee on Taxation estimates that nearly $30 billion will be lost to the U.S. Treasury over the next decade as a result of U.S. taxpayers not reporting these profits.74 While it is against the law to launder money, finance terrorists, or not pay taxes owed, the nation’s laws do not merely expect compliance; the government requires companies that make up the plumbing of financial markets to prevent such violations from occurring in the first place. **Securities brokers** **and** **asset managers** **are required to know** their **customers’ identities**,75 **so that they can halt** **transactions to or from** **individuals on the** **Treasury** Department’s Specially Designated Nationals and Blocked Persons **List** **and report suspicious activities**.76 **They** are also required to **record and report** customers’ **transactions**, sending 1099-B forms to both clients and the IRS that contain clients’ capital gains information in order to ensure that the tax authorities have full information about what investors owe.77 **If individuals use U.S. companies to attempt illegal activities**, **the companies are legally required to put a stop to it.** Although some digital asset brokers and exchanges state that they “don’t have access to the information required for information reporting,”78 platforms can be designed so that they do.79 **By regulating** **digital asset securities**, **the SEC** and FINRA **would be able to require U.S.-based brokers** **trading in these assets, or those assisting U.S. clients**, **to comply with the various** **a**nti-**m**oney **l**aundering **and** **tax** reporting **laws**. **If these new brokers refuse**, **the SEC** and FINRA **would be able to revoke** their **licenses**, **putting them out of business.** Conclusion The markets for digital assets are a growing area of interest to investors and a growing area of concern for legislators and regulators; without market oversight and the transparency that regulation brings, not only will investors not understand the risks to their investments and be liable to be significantly harmed, but the purported benefits of digital assets will also certainly fail to come to fruition. Fortunately, although new legislation may be necessary in the future, **regulators** **already have** at least some **legal authority**—**through** **enforcing** the **rules already in place** **and drafting new regulations**—**to address** **any** **issues that** **digital assets** raise. This report has discussed the **authority of the SEC** **to regulate digital asset securities**, as well as the brokers, dealers, and exchanges that facilitate their transactions, and has encouraged it to do so in ways that improve the climate footprint of the assets, protect consumers, and **prevent** **money laundering** and tax evasion.

**That funds North Korean nuclear development**

Richard Llyod **Parry 2-22**, British foreign correspondent, Kim Jong-un steals crypto to make a bomb, <https://www.thetimes.co.uk/article/kim-steals-crypto-to-make-a-bomb-hhjxmjvrx>

**No**rth **Ko**rea **is** **using** increasingly **sophisticated** **hacking** **and** **money-laundering** **techniques to steal** **crypto**currencies **in** its **latest effort to evade sanctions and fund** its **nuclear weapons programmes**. **Kim** Jong-un’**s** **government is earning** **hundreds of millions** of dollars at a time **in hacking raids on** **cryptocurrency exchanges**, **where** **currencies** **such as bitcoin are traded digitally**, **studies indicate**. The regime is evading efforts to clamp down on its activities with the use of the latest technologies that help it to transfer and sell digital currencies without detection.

**Unchecked development causes nuclear use**

Markus **Garlauskas 21** is a nonresident senior fellow with the Atlantic Council’s Scowcroft Center for Strategy and Security, affiliated with its Asia Security Initiative and Forward Defense programs. Proactively Countering North Korea’s Advancing Nuclear Threats, https://www.atlanticcouncil.org/wp-content/uploads/2021/12/COUNTERING-NORTH-KOREA-4.pdf

**No**rth **Ko**rea’s **nuclear** **and** **missile** **capabilities**—once viewed with derision by outside observers—**have been** **advancing** rapidly in recent years despite international diplomatic efforts and United Nations (UN) economic sanctions designed to end these weapons programs. **If these programs** **continue** along the path North Korean leader Kim Jong Un has outlined to his country’s ruling body, **then** **No**rth **Ko**rea’s **nuclear capabilities will provide a flexible tactical nuclear force**, **robust** **regional** nuclear **strike options, and the capability to credibly** **threaten the US homeland with nuclear retaliation** **with a robust second-strike** **capability**.2 Taken together, **these capabilities** **increase the odds** that **Pyongyang would** **aggressively** **leverage** its **nuclear weapons for coercion** **and** **would** even **risk** **escalating** **to limited nuclear use** **in the event of war**.3 **The continued improvement** **and expansion** of North Korean nuclear and missile capabilities, **if unchecked**, **would** therefore **drive** **a dramatic increase** **in the risk of** two serious scenarios coming to pass in the years ahead. First, a North Korea emboldened by its enhanced capabilities could make **a grave miscalculation** **that would** **lead to spiraling escalation**, **eventually leading to** **a nuclear war** that results in millions of deaths—many of them Americans. Alternately, North Korean **nuclear**-backed **coercion could lead to Seoul’s** **acquiescence** to Pyongyang’s demands, **effectively** **ending** **the US-South Korea alliance** as Washington distances itself to avoid the risk of nuclear retaliation.

**T Exemptions**

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**‘Scope’ is the extent of the area dealt with or relevant to the core laws**

**Oxford Languages ND**, “scope,” shorturl.at/wCDY3

scope

the extent of the **area** or **subject matter** that something **deals with** or **to which it is relevant**.

"we widened the scope of our investigation"

**It’s bounded by exemptions and immunities**

**Kruse et al. 19**, Layne E. Kruse, Co-Chair; Melissa H. Maxman, Co-Chair; Vittorio Cottafavi, Vice Chair; Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The **Handbook on the Scope of the Antitrust Laws** was **published in 2015.**

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

The **Committee’s** current charter accurately characterizes its **purview**—that is, **addressing the scope of the antitrust laws**. **That scope**, of course, is **defined** primarily in terms of **exemptions** and **immunities** (both **statutory** and **non-statutory**). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless **directly affect** the application **and** extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

**‘Expand’ must make more expansive---NOT merely clarify existing principles**

Terry J. **Hatter, Jr. 90**, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is **remedial** in nature and **merely** serves to **clarify existing law**, **no question** of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does **not support the conclusion that the amendment** to section 66452.6(f) **was simply a clarification** of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would **expand** the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its **ordinary meaning**, the term "**expand**" indicates a **change** in the law, **rather than a restatement of existing** [\*\*11] **law**. In light of the Counsel's comment, Eastport's argument is unpersuasive.

**The AFF just intensifies the application of antitrust to already covered activities---it does NOT curtail an exemption or immunity.**

**Vote NEG---eliminating exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity.**

**1NC—Freedom of Contract**

**Antitrust is a coercive violation of the freedom of contract—moral side constraint.**

**Mack 78** (Eric Mack, Ph.D., is associate professor of philosophy at Tulane University. “In Defense of 'Unbridled' Freedom of Contract” The American Journal of Economics and Sociology , Jan., 1981, Vol. 40, No. 1 (Jan., 1981), pp. 1-15)

Philosophically, there is no satisfactory way to defend the narrowe more hesitant, historical view except by defending the general, un- bridled, view of which it is a logical part. Furthermore, anything less than a defense of the unbridled view allows some **limitations on freedom of contract which**, in turn, will be employed as **precedents for further limitations**. For example, in Coppage v. Kansas, the dissenting opinion cites the prohibition on the sale of lottery tickets (9) as a legitimate and constitutional curtailment of liberty of contract and, hence, as a sign that other legitimate curtailments are likely to be found. **In order to stay off the slippery slope** which descends toward the admission of more and more constraints as legitimate, the freedom of contract advocate must reject the legitimacy of **any** genuine curtailment (10). It must be remembered, however, that the setting aside of those contracts or clauses of contracts which have resulted from rights violating activities such as threats, deceptions, and (in some cases) "undue influence" will not count as genuine curtailments of freedom of contract. For it is only in terms of a recognition of the rights that are violated by such threats and deceptions that the doctrine of freedom of contract is defined and advanced. Furthermore, an apparent contract may be set aside on the basis of the contractual in- competence of one or more of the parties to it. What is crucial for the advocate of freedom of contract is not that nothing having the appearance of a contract be set aside but, rather, that contracts not be set aside simply on the basis of their substantive terms (11)

THE MORAL PHILOSOPHICAL PERSPECTIVE from which I shall be arguing is essentially Lockean. Among individuals there are no **natural moral slaves and no natural moral sovereigns**. This means that no one's pur- poses or goals take moral precedence over the purposes and goals of any other person in a way which would justify the subordination of the former to the latter. The moral equality among persons and the value of each individual life-its ultimate value to him whose life it is-allows us to speak of individuals as moral ends-in-themselves, as beings not to be sacrificed (against their will) to advance the interests of others. A person's life is his to dispose of because to deny him this self-determination would be to presume that he (and his purposes) **are naturally subordinate to another** and that other's will. To deny him that self-determination would be to treat him as a **means to one's own ends**, not as a purposive being having ends of his own which are morally on a par with one's own. This does not mean that one has to be im- partial between one's own goals and the goals of another. It means merely that others are not and are not to be treated as means for one's own purposes.

In a limited sense, then, there are natural sovereigns-each being a natural sovereign over himself. And persons are not ethereal beings. A person's sovereignty over himself involves a claim to his body and whatever other objects he acquires as instruments of his purposes with- out violating the like sovereignty of others. His sovereignty involves a claim, **a right, to life and liberty, to property** in his own body, and to other property permissibly acquired. And its right involves a corre- lative obligation in all others not to (non-consensually) deprive him of life, liberty, and legitimate property. Understanding "coercion" as constraining a person against his will in a way that involves some viola- tion of his rights, we can speak generally of a right **against coercion** possessed by each person and an obligation upon **all persons not to coerce**. These are the (natural) moral rights and obligations of individuals which exist **independent of and prior to any agreements among persons and independent of the social utility or positive legality of recognizing these rights and obligations**.

In one important respect these are very modest rights and obligations. While each person has a right against all others not to be coerced this right will be satisfied simply by that person's being left alone. As long as an individual is not made to act in ways which do not accord with his purposes he is uncoerced and his right against coercion is being respected. Each person can fulfill his obligation not to coerce by merely leaving others alone. Hence, these **natural rights and obligations are negative**. That is, Smith's rights require only that Jones not coerce him. They require no positive act from Jones. Jones' obligation is ful- filled in not coercing others. He needn't perform any positive act in order to fulfill his natural obligations.

This view of natural rights and obligations should be accompanied by a **full theory of property rights in external objects**. Such a theory would present something like the following structure. A person comes to possess a property right to an object when, through non-coercive activities, he comes to be so related to that object as an instrument of his purposes that subsequently to deprive him of that object without his agreement is to deprive him also of something to which he already has an acknowledged right, e.g., the materials he has invested in the newly acquired and transformed object are equivalent to the portion of his life invested in that object. If I have labored on a previously unowned field in order to clear it for planting and then it is seized by others for their purposes, my actions have been disposed of for the purposes of others which I do not share. I and my activities have been treated as resources at the disposal of others. Such a seizure (unless it is done in accordance with previous contractual agreement or as an act of restitution for a previous unjustified seizure) presupposes that the laborer is **naturally subservient to and owned by those who seize his product**. Nozick points out:

Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a [legal, but morally unjustified] property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it (13).

Such a **seizure is coercive.** The natural obligation not to coerce requires, then, that no individual ever be deprived of his legitimate property without his consent. And, of course, it is always within an individual's right to retain his property since in merely retaining it he cannot be coercing another. His obligation not to coerce never requires (in the absence of contract) that he surrender his legitimate property to anyone or any group.

Of course, in any human society individuals do more than merely leave each other alone. Almost all individuals receive all sorts of goods and services from other individuals. Yet any disposal of the time, activity or property of Jones requires Jones' agreement. He must willingly make or allow that disposal (and he may will or allow any- thing noncoercive). In order to insure the provision of goods and services by others, each of us seeks pledges from others that desired goods or services will be forthcoming. A pledge from Smith to Jones to provide a certain service generates a positive right in Jones to have that service performed and a positive obligation in Smith to perform that service. Characteristically, of course, such a pledge from Smith to Jones will be elicited in return for a rights-generating pledge from Jones to Smith, c.g., a pledge to pay Smith a certain fee for his service.

All the special (positive) rights that individuals have beyond the (general) negative right against coercion and all the special (positive) obligations that individuals have beyond the (general) negative obligation not to coerce are the products of contractual relationships. Each person, then, has a right to accept any contractual offer (except for payments to coerce others). But no one has a right to be made any particular offer (14). So, Smith must elicit contractual offers from Jones by means of the goods or services Smith can counter-offer to Jones. And it is the fact that Jones has no right to any particular counter-offer by Smith which requires that Jones adjust his offers to Smith's preferences just as Smith adjusts his counter-offers to Jones. In emphasizing this symmetry of rights to withhold agreement to ex- changes, the majority in Coppage z'. Kansas asserted that,

The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it (15).

Strictly speaking, however, neither party has a (pre-contractual) right to an exchange **on any particular terms**. **Each simply has a right not to have terms of exchange imposed** upon him. The actual terms of exchange in a noncoerced agreement must, then, represent a mutual accommodation among the contracting parties.

These symmetrically ascribed rights are violated by, e.g., minimum wage laws. Suppose employee Jones, who in the absence of minimum wage laws would contract to work for Smith for $2.50 per hour, be- comes subject to a $3.00 per hour minimum wage law. There are two alternative cases: either Jones will no longer be employed or he will be offered and will accept a contract at $3.00 per hour. The first case was, it seems, largely ignored by the courts in freedom of contract cases. Yet it is when this alternative is realized that Jones' freedom of con- tract is most clearly and grievously violated. For in this case Jones would want to offer his services at $2.50 per hour and would be co- ercively prevented from doing so. Suppose, in contrast, that Jones remains employed at $3.00 per hour. Characteristically, courts invok- ing the freedom of contract doctrine would say that here too Jones has been denied his freedom of contract. Now although this is true- Jones was not free to accept $2.50 per hour and an increased risk of unemployment was coercively imposed upon him-it also seems a bit disingenuous. For in these circumstances the only act which Jones is coercively forbidden to do (viz., offering to work at $2.50 per hour) is one which, by hypothesis, Jones does not want to do (at least after he knows that he will still be employed at $3.00 per hour) (16). The real victim in this instance is Smith who is coercively required to make an offer which he has a right not to make and which, except for being coerced not to make a lower offer, he would not make. The right not to make contractual offers, which includes the right not to make the more pleasing (to others) offers which would not be made in the absence of coercion, is just as central to freedom of contract as the right to tender and accept offers. (Of course, any restriction such as a minimal wage which applies to a class of employees is likely to produce victims of both sorts, viz., those relatively unseen victims who are unemployed because the mandated terms of employment are too favorable to them and those more visible victims upon whom greater costs are imposed than would have resulted from unregulated negotiation.)

The type of individualistic and pluralistic natural rights view I have sketched has been labeled a "moral side-constraint" view. For on this view, the only constraints on an individual's actions are constraints against employing certain means in the pursuit of one's goals-whatever those goals be. Individuals are morally constrained from taking paths to their goals which involve the violation of others' natural or contractual rights, i.e., which involve coercion or default on promised actions. What a person must aim at with his life and time is in no way constrained (except in the trivial sense of being constrained from acting with the violation of moral side-constraints as his end). Such an approach in social and legal philosophy is to be contrasted with what I call the social goal approach. According to each version of the social goal approach there is some single, overall, social goal e.g., utility maximization, equality, stability, etc. or some mixture of these, to which each person's life and effort should be devoted. Each person is so obligated to pursue this or that favored social goal that he may properly **be coerced into doing whatever most accords with realizing that goal**. Persons are to look at themselves and others as resources to be devoted to this common social project. If particular coercive acts are not conducive to the greatest realization of the favored goal, then they should not be done. But, according to this approach, an individual's claim against being manipulated and used must always be made out by showing that this utilization of this individual at this time is, in terms favored goal, an ineffective utilization of a social resource. Similarly, on this approach, an individual's claim to any freedom or object or ser- vice is valid only insofar as his being permitted that freedom or pro- vided with that object or service remains part of the most effective overall program for generating the sanctified social goal. Many objec- tions to principled defenses of freedom-including defenses of freedom of contract-proceed from one social goal theory or another. But, to put it briefly, none of these objections are sound since **no social goal theory is true** since the moral side-constraint view is true. There are moral constraints on how we must treat other individuals which do not leave room for our thinking of people as (even partial) unclaimed re- sources permissibly to be used for "our" or "society's" purposes. **There is no collective social purpose** and no specially ordained individual purposes which can justify the **forceful subordination** of individuals and their (noncoercive) life-plans (17).

### Adv CP

#### The United States federal government should

#### - provide consumer vouchers for any customer of a company that increases its prices faster than its sales

#### - substantially increase its funding of supply chain resiliency and efficiency at least including subsidies to key supply industries

#### - substantially increase funding of and technical support for mega cities, at least including substantial subsidies to companies or consumers interacting with companies engaging in algorithmic pricing

**First adv**

### Inflation

**Plan resolves inflation**

Hal **Singer 2-22** “Antitrust Should Be Used to Fight Inflation” https://prospect.org/economy/antitrust-should-be-used-to-fight-inflation/

According to a Morning Consult poll from mid-January, more than half of voters blame a lack of competition among companies for inflation. Yet nearly two-thirds of economists disagree. What gives? To begin, not all economists oppose using antitrust to combat inflation, and those who oppose using antitrust for this purpose tend to oppose using antitrust at all. Antitrust scholars Steve Salop and Fiona Scott Morton wrote that in a concentrated economic sector, the risk of disruption from an epidemic will “lead to a larger … price impact than if there were more diversity” in the industry. Former Antitrust Division economist and Georgetown University industrial organization professor Nathan Miller explained that antitrust, by increasing competition, could limit the ability for companies with market power to raise prices. Economists have been trained to think that interest rates are the only inflation-fighting tool. This tool is certainly effective, but by throwing sand in the gears of the economy, raising interest rates imposes a huge toll, especially on workers. And there’s an open question as to whether interest rates would even solve a problem of inadequate supply. More from Hal Singer According to Paul Krugman, overall demand has not increased by enough, even with the fiscal stimulus, to explain this bout of inflation; instead he reasons that the pandemic caused demand to shift from services to physical things, which has strained our supply systems. Companies are hiking prices because they don’t have the goods available to fill orders, and are therefore trying to ration the goods they have. To the extent that the source of inflation is coming from the supply side, government should focus its energies there. **One supply-side approach is to** alleviate capacity constraints. And the other is to **increase competition.** Alleviating capacity constraints caused by a pandemic falls outside the Federal Reserve’s tool kit. That’s in part a job for the medical community and political leaders, to make vaccines and to convince citizens to take them. To the extent that there are broken supply chains, it’s also a job for regulators to encourage smoother functioning, by making trucking a better-paying job, or fining cargo owners whose shipments are clogging the ports. That antitrust should be used to combat inflation shouldn’t be controversial. Antitrust is about controlling the unlawful exercise of “market power,” which is defined as raising prices above competitive levels and thus generating short-term inflation. Inflation is coming from concentrated sectors of the economy such as meatpacking. The price of beef and poultry increased by over 20 percent since December 2019. Because beef and poultry are included in the basket of goods that comprise the consumer price index (CPI), increased beef and poultry prices have a direct effect on broader inflation. That antitrust should be used to combat inflation shouldn’t be controversial. Antitrust skeptics insist that concentration can’t be behind the recent wave of inflation because concentration hasn’t changed in the last two years. Yet no change in concentration is needed to explain why beef and poultry prices are skyrocketing: These industries are highly concentrated, and economics teaches us that concentrated industries are more susceptible to price-fixing. The pandemic provides the cover for coordinated pricing. **Indeed, general inflation can serve as a pretext for a coordinated price hike.** That a few concentrated industries are not jacking up prices this year does not disprove this hypothesis. Just as cigarette smoking doesn’t guarantee imminent death but rather heightens the likelihood of death, concentration makes an industry more susceptible to coordinated pricing at the margin. So what would beefed-up antitrust enforcement look like here? I propose automatic antitrust probes into industries that meet three criteria: (1) highly concentrated; (2) rising margins; and (3) year-over-year price hikes in excess of 10 percent. Meatpacking meets all three conditions, with skyrocketing prices and margins. (Alas, meatpacking isn’t the only industry exploiting the crisis; according to The Wall Street Journal, nearly two-thirds of the largest U.S. publicly traded companies reported fatter profit margins than they did before the pandemic.) Clearly, these firms are not just passing on higher costs. The point is to put concentrated industries on notice, and thereby discourage explicit or tacit collusion. Economists assess policies from a cost-benefit perspective. In terms of benefits, automatic antitrust probes when the three criteria are met would make cartels think twice about jointly raising prices. Because collusion is rarely detected and would be masked by shortages, bottlenecks, and general chaos in the marketplace during a pandemic, firms would be silly not to try raising prices. Automatic probes would address the problem of “under-deterrence.” **And the mere threat of antitrust investigation could curb price hikes**: Beef prices rose every month from December 2020 until December 2021, when they suddenly dropped by 2.3 percent, right as President Biden was putting on the heat. A similar phenomenon occurred after President Kennedy used the bully pulpit to admonish steel companies in April 1962; the price hikes were rescinded within days. In terms of the costs of my proposal, to echo a point made by Krugman, what is the harm of using antitrust to discourage price hikes in concentrated industries? Antitrust skeptics argue that this would somehow politicize antitrust. Such voices are quick to call any use of antitrust “political.” They say FTC Chair Lina Khan’s effort to use antitrust to promote small merchants and workers is politicized antitrust, but it’s actually just returning antitrust to its origins. As John Sherman said about the legislation bearing his name in 1890, “If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessities of life.” Also, if Khan’s attempt to use antitrust to combat power imbalances is a political act, then the Chicago school’s attempt to neuter antitrust so that it can never be enforced, thereby protecting powerful firms, is also a political act. Biden’s use of the bully pulpit can be easily distinguished from Trump’s use of what I dubbed “gangster antitrust” on these very pages. Trump asked antitrust agencies to go after his political enemies, such as carmakers that settled with California or marijuana growers. For Biden, meatpackers are not a personal enemy or an enemy of the state. In any event, the benefit of my proposal is that it would put the agencies on autopilot, rendering any unsavory cajoling from the president unnecessary. For now, the economics profession is skeptical of using antitrust to combat inflation. But my profession was also slow to recognize that raising the minimum wage was a good thing. For a long time, monopsony power lingered at the periphery of economic research, which focused on monopoly power instead. That buying power can reduce wages is simply the mirror image of the idea that selling power can inflate prices. As they did with these other issues, the economics profession will hopefully come around on using antitrust to combat inflation.

**Inflation solves debt crisis and allows future economic recovery**

Karl **Smith 21** Bloomberg Opinion columnist. He was formerly vice president for federal policy at the Tax Foundation and assistant professor of economics at the University of North Carolina, America Needs Higher, Longer-Lasting Inflation, https://www.washingtonpost.com/business/america-needs-higher-longer-lasting-inflation/2021/10/11/af2728e4-2a86-11ec-b17d-985c186de338\_story.html

Analysts are **concerned** that the rise in **inflation** may be **persistent** because they see hints of a **broader**, **gentler rise** in prices **across a range of goods** — and, crucially, in **the wages** of the workers who produce those products. This increase in both wages and prices can lead to the dreaded wage-price spiral. **Yet** because it is shared by both households and businesses, the pain is muted. Indeed, a higher rate of inflation, and correspondingly higher wage growth, could be a **net positive** for the economy. There are two main reasons. The first is **debt dynamics**. Higher rates of inflation make debt more expensive, **but** easier to manage. A permanent increase in inflation from 2% (its average over the last decade) to 4% would cause interest rates to rise by roughly 2% as well, as **lenders** sought to **protect** themselves from rising prices. Economists describe this as a rise in **nominal rates**, because the net return from lending — the **real interest rate** after accounting for inflation — remains the same. One way to see how this would play out is to consider the **mortgage market**. Higher nominal **interest rates** would mean a **higher monthly payment** for any given loan. That might seem to make houses even less affordable. But what’s been clear over the last two decades — and what economic theory predicts — is that **housing prices** in the most desirable urban areas are determined by the **maximum mortgage** an affluent urban family can afford. Buyers in those markets bid against each other for a relatively **fixed stock** of housing. Over the last decade, as nominal interest rates fell, families could afford to take out larger mortgages, and so **maximum bids** rose. Overall, buyers ended up with roughly the same monthly payment. **Yet** wage growth was also slow over the last decade. So those same families haven’t seen their mortgage payments **decline** as a fraction of their income at the same rates as previous generations did. They have **less room** to manage **unforeseen expenses**, making their financial future more **uncertain**. Modest **increases** in inflation and wages would **reverse** this whole process — that is, they would **decrease** mortgage sizes and maximum bids, thereby **slowing the rise** in home **prices**. Meanwhile **rising wages** would make those mortgages more **affordable** over time. The second reason to support higher inflation, and the resulting higher nominal interest rates, has less to do with homeowners than with Federal Reserve Chairman Jerome Powell. Higher interest rates would give the **Fed** more room to cut interest rates **in case of a downturn**. When **covid struck**, the nominal interest rate the Fed controls was only 2%. That gave it very little room to **stimulate** the economy. **Fortunately**, in part because of the **unusual** nature of the recession, **Congress did**. **The next recession,** hopefully, will not be the result of a global pandemic. That means Congress is **unlikely** to provide the same level of support, and the Fed will have to **do more** to **stimulate the economy**. To do that, **it needs higher nominal interest rates**. Inflation — particularly when caused by sharp increases in a few products — is politically unpopular. A modest **sustained increase** in prices and wages, however, would create **a more stable U.S. economy** by improving **debt dynamics** and **giving the Fed more flexibility**. In an **uncertain** world, those two advantages make **higher inflation** more than **worth it**

**Global war –** collapses econ, kills readiness of active and training forces, collapses dollar as global reserve, encourages adversarial challenges

**Mitchell 21** “Pentagon chiefs say debt default could risk national security” ELLEN MITCHELL - 10/06/21, https://thehill.com/policy/defense/575559-pentagon-chief-says-possible-debt-default-could-risk-national-security/

Defense Secretary Lloyd Austin, along with seven former Pentagon chiefs, on Wednesday warned Congress that a debt default would damage U.S. national security and harm military families.

“If the United States defaults, it would undermine the economic strength on which our national security rests,” Austin said in a statement. “It would also seriously harm our service members and their families because, as Secretary, I would have no authority or ability to ensure that our service members, civilians, or contractors would be paid in full or on time.”

In a separate letter sent to Congress on Wednesday, six former Defense secretaries make the same plea, beseeching lawmakers “to work together to raise the statutory debt limit and avoid catastrophic consequences for the Defense Department, our military families, and our position of leadership in the world.”

Former Vice President Dick Cheney, William Perry, William Cohen, Leon Panetta, Chuck Hagel, Aston Carter and James Mattis signed the letter.

The U.S. reached its federal borrowing limit in July, with Treasury Secretary Janet Yellen warning leadership that they need to raise it by Oct. 18 or risk a historic default.

Republicans have vowed to not provide votes to raise the debt ceiling, leaving Senate Democrats scrambling to come up with a backup plan.

Though the debt limit covers spending Congress has already approved, Austin cites several risks related to a default, including risking the benefits “earned by and owed to 2.4 million military retirees and 400,000 survivors.”

In addition, “federal contractors, including large firms and thousands of small businesses, that provide our military with world-class services, technology, and equipment could have their payments delayed, jeopardizing their operations and many American jobs.”

Austin also said a default “risks undermining the international reputation of the United States as a reliable and trustworthy economic and national security partner,” as well as the “stature of the U.S. dollar as the global reserve currency of choice.”

“Our service members and Department of Defense civilians live up to their commitments. My hope is that, as a nation, we will come together to ensure we meet our obligations to them, without delay or disruption,” he adds.

Similarly, the former Pentagon chiefs say if the U.S. government fails to pay 2.1 million military members “**we will not have a highly capable military to fight and win the nation’s wars.”**

As for the federal contractors “who operate our military bases at home and abroad and provide service to crucial defense technologies,” a failure to pay them for work they have already been approved to undertake “could jeopardize ongoing military training and readiness.”

They argue that Congress can avoid this outcome by agreeing “as it has roughly 80 times before – to authorize the government to pay bills it has already incurred.”

The former officials also argue that a default on the will send a signal to allies and adversaries “that America does not keep its word to our military forces. We can hardly think of a more damaging message in an era of global instability and the rise of great power competition.”

**1NC – Supply Chains**

**SC resilient now and no impact**

**Drezner 21** (Dan, Daniel W. Drezner is a professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University and a regular contributor to PostEverything., “Global supply chains will be fine”, https://www.washingtonpost.com/outlook/2021/05/05/global-supply-chains-will-be-fine/)

Remember six weeks ago, when that container ship blocked the Suez Canal and everyone interpreted it as a sign of excessive globalization? Turns out everything sorted itself out. It worked out so well that I bet you cannot even remember the name of the ship that got stuck. As I noted at the time, “This is not an all-or-nothing crisis, but rather one in which prices react to real-world shocks and private-sector actors will respond to shifting incentives.”

I bring this up because those concerns about excessive globalization have again gravitated toward global supply chains, particularly in semiconductor chips. This has been a running theme of the past year of pandemic. Throughout 2020, consultants and business publications were banging on about the need to think about supply chain integrity in response to shocks like covid-19.

This concern has increased in recent weeks. Manufacturing output growth in the United States slowed last month because automakers face semiconductor chip shortages. “60 Minutes” did a big story this past weekend on the problem, with Lesley Stahl asserting in her voiceover, “Covid showed that the global supply chain of chips is fragile and unable to react quickly to changes in demand.” Stahl’s report also raises the specter of geopolitical risks posed by Taiwan’s dominance of the semiconductor industry.

This is a cudgel that CNN and other outlets have also wielded. The thing is, Stahl’s own reporting undercuts her hyperbole about fragile global supply chains. As Kevin Drum noted:

Why is there a shortage of chips? Is it because we’ve outsourced everything to the wily Chinese folks on Taiwan? You’d think so after inhaling Lesley Stahl’s inane reporting, except for the fact that she inadvertently allowed the chairman of Taiwanese chipmaker TSMC a brief moment to give the game away: “In March 2020, as COVID paralyzed the U.S., car sales tumbled, leading automakers to cancel their chip orders. So TSMC **stopped making them**.”

Oh. **So it has nothing to do with Taiwanese fabs vs. American fabs or global supply constraints or any of that. Nor is it related to a possible invasion of Taiwan or the fact that Intel may or may not have made good decisions about its future business**. It’s because American car companies canceled their chip orders and never bothered to reinstate them. Then in December, when car sales “unexpectedly” began to rebound, they panicked and realized what they had done. You’d think these guys had never done an economic forecast or used an MRP system before in their lives.

Fortunately, contra to Drum’s fears, it would seem that the car manufacturers might have been the outlier. According to one recent survey of supply chain decision-makers, **91 percent of respondents expressed confidence in their own supply chain**. **Eighty percent said they were investing in inventory capacity in 2021 to improve resiliency.**

That last point is important. While “just in time” management cut costs for final producers, it redistributed some of those costs to intermediate producers, who wound up either holding extra stock or finding other ways to cope with demand-side fluctuations. The Financial Times’ David Keohane, Claire Bushey and Joe Miller report that the latest surge in demand for chips has triggered a debate about whether suppliers or final producers will shoulder the costs of carrying inventory:

Jean-Marc Chéry, chief executive of STMicroelectronics, said that his customers, whether carmakers or car part suppliers, will need to hold more inventory or agree to more non-cancellable contracts to make supply more predictable and reduce the risk of shortages.

That would mark a shift from the current system where chipmakers hold excess inventory to accommodate the sector’s just-in-time supply chain.

“If they expect the semiconductor [suppliers] to be the bank, to keep having a big working capital to support them, they can forget it,” said Chéry.

Fortunately, the Wall Street Journal’s Sean McLain reports that auto manufacturers are coming around to a similar view, deciding it is worth stockpiling some inventory:

Executives say they don’t want to replace just in time entirely, because the savings are too great. But they are moving to undo it to some degree, focusing on areas of greatest vulnerability. They are seeking to stockpile more critical parts, especially if they are light and relatively inexpensive yet irreplaceable like semiconductors.

Ford’s chief executive, Jim Farley, said he was looking at keeping more inventory. “Most other industries use safety stock for critical components like chips,” he said at an event hosted by Automotive News. “And many of these companies pay for chips upfront, years and years ahead of the capacity requirements.”

Three decades in the car business hadn’t prepared Mr. Farley for this year. “It’s shocking to me how much I’ve learned about the supply base,” he said.

Much like the complaints about the Ever Given blocking the Suez Canal, this is a “bad news caused by good news” kind of story. The FT story confirms the “60 Minutes” point: “The chip shortage was caused by an unexpected rebound in demand for cars that coincided with a booming consumer electronics market.” Demand surged in the last quarter of 2020 and the first quarter of 2021. As vaccines spread across the developed world, demand will likely spike even further. Still, much like the recent Suez crisis, firms are responding to shifts in prices. In other words, **this is a problem that is sorting itself out.**

It is worth noting the dogs that are not barking in any of the detailed reporting on global supply chains. There are no issues with importing goods from the Pacific Rim. There are no reports of concerns about disruption due to geopolitical risks. Indeed, **despite all the hyperbole** surveys of firms do not show geopolitical risk anywhere near the top of the concern queue.

To repeat a theme: global **supply chains are not fragile** and the geopolitical risks to them **have been exaggerated**. The current shortages are caused by producers underestimating demand and lacking the immediate inventory to respond. One lasting effect of covid-19 will likely be the **increase of buffer stocks** by final producers **to ensure this problem does not recur**.

The hard-working staff here at Spoiler Alerts is well aware of the problems associated with weaponized interdependence. That does not mean that every supply chain hiccup is reason for hyperventilation. **This problem is sorting itself out.**

**1NC---AT: Taiwan War**

**No war in Taiwan.**

**Sacks 21** – David Sacks, research fellow at the Council on Foreign Relations, International Relations MA from John Hopkins University. [Why a Cross-Strait Crisis Will Be Averted in 2021, 2-18-2021, https://www.cfr.org/blog/why-cross-strait-crisis-will-be-averted-2021]

In sum, leaders in both Beijing and Taipei are not happy with one another, believe they are reacting to moves made by the other side, and are not inclined to make a conciliatory gesture to jumpstart cross-Strait dialogue. While some might conclude that cross-Strait relations will continue to deteriorate and could spark a crisis, instead **this period of tension** will **persist** without **boiling over**.

While China has escalated its coercion of Taiwan, primarily by increasing the frequency and scale of bomber flights over the median line and into Taiwan’s air defense identification zone, Taiwan has not responded in kind. Tsai has **avoided** creating **an escalatory dynamic**. She has also demonstrated **an ability** to improve Taiwan’s relationship with the United States while **not pushing for changes** that would provoke **a harsh response from Beijing**. Tsai is thus **unlikely** to trigger a crisis.

Although Beijing is displeased with Tsai and has increased its coercion of Taiwan, it is **preoccupied with multiple challenges** and does not want to add a **crisis over Taiwan to its inbox**. It is looking to **reset relations** with the United States (albeit on its own terms), bring its economy **back to its pre-COVID level**, and maintain **a positive atmosphere** throughout the year, which marks **the 100th anniversary** of the **C**hinese **C**ommunist **P**arty’s founding. **A confrontation over Taiwan** would complicate China’s ability to accomplish these tasks.

The United States is the other principal actor, and while the Biden administration has indicated it will continue to strengthen **U.S.-Taiwan relations**, it will probably do so in a way that does not test **Beijing’s red lines**. The Trump administration, although it should be commended for bolstering U.S.-Taiwan relations, often prioritized symbolism over substance and unnecessarily publicized certain developments that in turn prompted a forceful Chinese response. The Biden administration can be expected to take a lower key approach that China will feel less compelled to publicly react to.

In addition, the Biden administration has sent useful signals that it would respond to further Chinese coercion against Taiwan. While President Trump allegedly likened Taiwan to the tip of a sharpie, and his desk to China, undermining deterrence by communicating that Taiwan was not defendable, senior Biden administration officials have stated that the United States should be “crystal clear” about its commitments to Taiwan.

While 2021 is unlikely to see cross-Strait tensions spill over into open confrontation, there are a few ways that cross-Strait relations can be put on a firmer footing to minimize the chance of conflict.

First, while the Trump administration did not make it a priority to encourage cross-Strait dialogue, the Biden administration can publicly and privately urge both sides to resume official communications and press one side when it believes it is acting in bad faith. In a positive sign, the State Department urged Beijing to “engage in meaningful dialogue with Taiwan’s democratically elected representatives” in its first statement on cross-Strait relations under the Biden administration. Such messaging should continue, and it should be repeated privately at the highest levels.

Second, the United States can reinforce deterrence by publicly and privately highlighting its commitment to Taiwan and allocating the resources necessary to back up that rhetoric. This would involve developing a credible denial strategy for Taiwan, shifting additional military assets to Asia and dispersing them throughout the region, procuring long-range munitions and stationing them in the region, coordinating with Japan on contingency planning, and working more closely with Taiwan’s military to improve Taiwan’s ability to defend itself. By making clear it has the will and the capacity to come to Taiwan’s defense, the United States would reduce the chances of a cross-Strait conflagration.

Finally, Taiwan and China can seek to cooperate on practical matters even without agreement on the framework for cross-Strait relations. For instance, they can attempt to establish an exchange of medical information to ease travel during the pandemic. In addition, they can look to resume scholarly exchanges, virtually for the time being. Either of these steps would help build trust and place a floor on cross-Strait relations.

While some are predicting that the deterioration of cross-Strait relations will trigger a conflict between China and Taiwan over the next year, Taiwan’s **reluctance to escalate**, China’s **preoccupation with multiple challenges**, and **the change in administration** in the United States make **such a scenario unlikely**. Over the next year, cross-Strait relations will **remain fraught**, but China and Taiwan will avoid **a direct confrontation**

**1NC---AT: China Tech**

**No impact to loss of tech leadership.**

Dr. Michael **Swaine 21**, PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute, 4/21/2021, "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/

Finally, the latter set of supposedly existential normative or ideological threats consists of many elements, including Beijing’s possible **overturning** of the so-called global **l**iberal **i**nternational **o**rder, Chinese **influence operations** aimed at U.S. society, the **export** of China’s **political values** and state-directed economic approach, and its sale of **surveillance technologies** and other items that facilitate the rise or strengthening of **authoritarian states**. These threats all seem hair-raising at first glance. But while significant, they are greatly exaggerated and do not rise to the level of constituting an existential threat.

Beijing has **little interest** in **exporting** its **governance system**, and where it does, it is almost entirely directed at **developing countries**, not industrial democracies such as the United States. In addition, there is **no evidence** to indicate that the Chinese are **actually engaged** in **compelling** or actively **persuading** countries to follow their experience. Rather, they want developing nations to study from and copy China’s approach because doing so would help to legitimize the Chinese system both internationally and more importantly to Beijing’s **domestic audience**.

In addition, the notion that Beijing is deliberately attempting to control other countries and make them more authoritarian by entrapping them in **debt** and selling them “Big Brother” hardware such as **surveillance systems** is **unsupported** by the **facts**. Chinese banks show **little desire** to extend **loans that will fail**, and the failures that do occur are mostly due to **poor feasibility studies** and the **incompetence** and excessive zeal of lenders and/or borrowers. Moreover, in both loan-giving and surveillance equipment sales, China has shown no **specific preference** for nondemocratic over democratic states.

Even if Beijing were to **attempt** to export its development approach to other states, the actual **attractiveness** of that approach would prove to be **highly limited**. The **features undergirding** China’s developmental success are **not replicable** for most (if any) countries. These include a **high savings rate**; a highly acquisitive and **entrepreneurial cultural environment**; a **state-owned banking** system and **nonconvertible currency**; many massive **state-owned industries** that exist to provide employment, facilitate party control over key sectors, and drive huge infrastructure construction; and **strong controls** over virtually all information flows. Moreover, such a model (if you can call it that) is almost certainly **not sustainable** in its present form, given China’s **aging population**, extensive **corruption**, very large levels of **income inequality**, inadequate social **safety net**, and the fact that **free information flows** are required to drive **global innovation**.

Although China’s combination of economic reform policies and authoritarian political system has been around since the early 1980s, **not a single nation** has adopted that system either **willingly** or under **Chinese compulsion**. There are certainly many authoritarian states and fragile democracies on China’s periphery, but none of them were made that way by China.

China’s challenge to the so-called global **l**iberal **i**nternational **o**rder is also **exaggerated**. In the first place, it is **highly debatable** whether in fact a single **coherent** global order **even exists**. What observers usually refer to as the “liberal international order” (a relatively recent term) actually consists of an **amalgam** of **disparate regimes** with different origins, including international **human rights** pacts, multilateral **economic arrangements**, and an **international court**.

The United States certainly plays an important or leading role in many of these regimes. But it did not create and does not drive all global regimes—and in fact does not support some of them, such as the International Court of Justice, and has not ratified some critical pacts such as the United National Convention on the Law of the Sea. And many very important global regimes (e.g., regarding the proliferation of weapons of mass destruction, trade and investment, climate change, and pandemics) have no deep connection to liberal democratic values per se and are supported by Beijing, albeit sometimes more in letter than in spirit.

The challenge for the **U**nited **S**tates is not how to fend off the **imagined existential threats** posed by China. Rather, it lies in developing a much clearer and factually based overall understanding of the **limited challenges**, threats, and indeed opportunities China poses to the United States and the policies needed to address them. Rejecting the **specious notion** that China is threatening to **destroy** an **entire way of life** will make this task much easier.

**Second Adv**

**1NC – Megacity**

**Squo solves megacity sustainability**

Augustine **Quek**, reporter @ Scientific American, PhD. Civil and Environmental Engineering (National University of Singapore), 7-10-**2018**, https://blogs.scientificamerican.com/observations/innovavations-from-the-energy-and-environmental-sustainability-solutions-for-megacities-program/

Urban populations have grown unabated since the advent of cities. Some urban centers have such high populations (> 10 million) that the term, megacity, is used. The impact of megacities on the natural environment has reached unprecedented scales in human history. Growing resource and energy consumption, with corresponding waste generation, has exerted a toll on the regional and planetary environment. Overexploitation of natural resources, air and water pollution and solid waste mismanagement are undermining sustainability in many cities. For example, the United Nations estimated that cities consume about 75 percent of globally generated power, which produce 70 percent of anthropogenic greenhouse gas emissions. The problems are expected to exacerbate by 2050, when two-thirds of the world’s population is projected to live in cities. Therefore, sustainable urban solutions are required. Researchers of various disciplines in the Energy and Environmental Sustainability Solutions for Megacities (E2S2) program—a collaboration between Shanghai Jiao Tong University, in China, and the National University of Singapore—have conducted research and data collection in two cities of different size and complexity, the megacity of Shanghai and land-scarce Singapore. A major problem in both cities involves the incineration of food waste, which comprises more than 22 percent of incinerable waste but is only 16 percent recycled in Singapore. E2S2 found solutions that coupled the problem of waste management with energy and material production. These include a high-efficiency three-stage anaerobic digester (AD) that converts food waste to biogas, and a high-solids anaerobic digester that is water-efficient. We have developed gasification technology that can convert solid wastes and the digestates from the AD process into syngas and biochar. Pilot tests are now being run at eateries in Singapore to prove the feasibility of AD in an urban environment. Other solutions include technologies for using low-quality waste heat in adsorptive cooling and dehumidification, wireless air-quality sensor network and monitoring of emerging contaminants in reservoirs in real-time, by a network of water drones. Studies were also done on toxicology and risks assessments for contaminants in air, water and land environments in the city. These sustainable solutions are applicable for Singapore and other megacities in Asia and around the world, to provide a clean and healthy urban environment, while maintaining environmental sustainability.

**1NC -- 1NC---Resource Wars D**

**No correlation between resources and war.**

**Atkins, 16**—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

The economic and strategic importance of oil and other non-renewable resource is indisputable. Yet the globalised character of international commerce has resulted in many nations ceasing to perceive **resource dependency** as **a threat to autonomy or survival** (Deudney, 1990). This interdependence has resulted in the **decreased likelihood of inter-state conflict** over control of resources, due to the price shocks these actions could propel across the system and the increasingly technological developments (Lipschutz and Holdren, 1990). Such dynamics are **well illustrated** by the **1973 oil crisis** (Dabelko and Dabelko, 1993). Although the move by the Organisation of Arab Petroleum Exporting Countries (OAPEC) to restrict exports resulted in record price rises and the transformation of the international sphere, thus illustrating the economic relevance of resources, it **did not result in international violent conflict**. Furthermore, Le Billon (2001) has stated that the spectre of resource scarcity has resulted in the escalation of **socioeconomic innovation** and **economic diversification** – with the market mechanisms of contemporary capitalism creating an **important impediment to conflict**. In Botswana and Norway, minerals and oil, respectively, have been mobilised to ensure **peaceful development rather than violent confrontation** (Le Billon, 2001). Furthermore, in many cases potential scarcity has resulted in increased **inter-state cooperation** due to the **shared interest in continued supply**. The continued sanctity of the 1960 **Indus Waters Treaty**, between Pakistan and India, is an **important example**, with the spirit of cooperation over water resources **enduring despite increased political tensions** between the two nations (Wolf, 1998).

**Air Pollution Low---1NC**

**Air pollution is low and decreasing**

Amanda **Schmidt 18**, multimedia journalist from AccuWeather with a degree in Broadcast Journalism with a minor of Political Science and Environmental Sustainability from Penn State, 5-25-2018, "Why air pollution in the US will likely never reach India's extreme levels," Accuweather, https://www.accuweather.com/en/weather-news/why-air-pollution-in-the-us-will-likely-never-reach-indias-extreme-levels/70003392

**The United States has made great strides in decreasing air pollution since its peak.** "In 1970, Congress strengthened the Clean Air Act, created the EPA and gave it the primary role in carrying out the law. **Since that time, the EPA, along with states, tribes and local air quality agencies, has made tremendous progress in cleaning our nation’s air," the EPA spokesperson said.** From 1970 to 2016, the combined emissions of six common air pollutants declined 73 percent in the U.S. Meanwhile, the economy grew, the population increased, energy use increased and people drove more, according to the EPA. The six common air pollutants are fine and coarse particulate matter (PM10 and PM2.5), sulfur dioxide (SO2), nitrogen oxides (NOX), volatile organic compounds (VOCs), carbon monoxide (CO) and lead (Pb). Since 2000, concentrations of fine particulate matter have declined 35 percent compared to the agency’s annual standard for the pollutant and 45 percent when compared to the 24-hour standard, the EPA stated. **Extremely high levels of particle pollution today are rare**. Events such as forest fires can generate high levels of fine particle pollution. Air quality hot spots in the U.S., outside of wildfire smoke events, occur mainly in industrious valleys. The valleys of California and the Great Salt Lake Basin in Utah are a few such areas. These areas are generally dry and are home to industrious cities; therefore, pollutants often get trapped in valleys. This results in periods of poor air quality, Eherts said. The U.S. continues to monitor and improve air quality through the Clean Air Act, through regulation and by working across all levels of government, including the EPA, states, tribes and local governments. "Technology developments also have played an important role in this progress by improving pollution control. Industries have helped develop new, innovative and more cost-effective methods to reduce pollution," the EPA spokesperson said. **The Clean Air Act provides broad opportunities for public participation. It encourages open access to data about emissions and concentrations of pollution in the air.**

### Squo Solves Megacities---1NC

#### Existing tech AND innovation ensure megacity resilience

Tarry **Singh 19**. Columnist, CEO, Founder and AI Neuroscience Researcher of AI startup [https://deepkapha.ai](https://deepkapha.ai/). [deepkapha.ai](http://deepkapha.ai/). 03/04/2019. "AI Economy Will Further Accelerate The Pace Of Innovation." Forbes. <https://www.forbes.com/sites/cognitiveworld/2019/03/04/ai-economy-will-further-accelerate-the-pace-of-innovation/#4c584a4b2f29>

**Technological** **Innovation - why is it speeding up?**

I've been writing on Linkedin occasionally and thought of summarizing some massively trending posts that might help explain my motivation for posting these mini-videos.

Trending Video #1 - Pace of innovation in tech is driving traditional companies out of business

This example clearly shows how Apple came from near-bankruptcy to take the crown of the most loved brand in the world. Same applies for companies that did not even exist 20 years ago like Google, Amazon, Facebook.

Future outlook: If your company is not investing heavily in data-driven intelligence, then it will not last the next decade.

Trending Video #2 - Learning genetically programmed cells to hunt and kill cancer cells

Today In: Innovation

This innovation in Nanotech cancer research medicine is one such example.

Future benefit: Here where technology has made it possible for us to see how the right drugs, programmed drugs or cells could save humanity's worst curse.

Trending Video #3 - Learning a Car to Drive Using Evolutionary Algorithms

This example is in the area of Deep Reinforcement Learning that uses the NeuroEvolution Technique to teach a car to learn about racing.

Future outlook: In the 60s driving was fun and a privilege. These days densely connected cities and traffic have made driving a big problem. Algorithms like these will help us develop self-driving cars that can do the job better than us without stress!

WHY is it speeding up?

Fast broadband internet, inexpensive commodity hardware and soon inexpensive HPC hardware too for individual researchers and scientists. Engineers and managers too may have fast computers under their desks soon!

PART 2: What is **HPC** and why is it becoming the backbone of AI innovation

**High performance computing** is **in the backend** making **cities smarter**, organisations **data-driven** and **decision making** a **streamlined** process that can **sift** **through** **yottabytes** (meaning: huge quantities of data) with **ease**.

AI will speed up the pace of innovation [HTTPS://WWW.HPCWIRE.COM/2018/01/18/NEW-BLUEPRINT-CONVERGING-HPC-BIG-DATA/](https://www.hpcwire.com/2018/01/18/NEW-BLUEPRINT-CONVERGING-HPC-BIG-DATA/)

Technological innovation is happening at a **very** **rapid** pace and with **A**rtificial **I**ntelligence and the associated **architectures** **that come with it**, it will **even go faster!**

PART 3: Artificial Intelligence will further accelerate this pace, but HOW?

This all started when Google open sourced its Machine Learning library TensorFlow, AI library and Tensor Processing Unit.

Someday we will look back and say how this was the turning point of the AI Economy - or whatever fancy term it will be then in 2030.

Obviously Facebook too followed the open source path releasing PyTorch. Today we hear that Uber, Netflix, Tesla and practically all fast growing companies are using some form of Machine Learning and/or Deep Learning architectures.

Nvidia obviously is running ahead with their GPUs (Graphic Cards) but two things will define the next wave of this revolution :

We will have architectures all about Tensors

We will see decline and slow death of 32-bit and 64-bit IEEE 754 floating-point architectures

You might wonder: "Wait, What is a Tensor"

Moving on...

[I apologize in advance for making math out of this fun storytelling but it is crucial, stay with me]

It's nothing new, you've been using this in the 80s as well: Tensor languages have actually been around for years. Programming languages like APL and Fortran have used it in the past.

Numerical computing optimization has been going on for a while: In the 1950s already programmers knew how to make linear algebra go faster by blocking the data to fit the architecture. Matrix-matrix operations, in particular, run best when the matrices are tiled into submatrices, and even sub-submatrices.

Dot Product - Huh?

Perhaps you've have heard from your engineers or employee of this term. If not, you've done this in high school math some time ago.

All the pictures or text corpus that your Machine Learning or Deep Learning engineers are using to do face recognition, securing devices from hacks or analysing traffic for self-driving cars are essentially (somewhere) Matrix-matrix operations.

OK, I'll stop now before your head hurts!

AI will **dramatically** **make** **many** **computing paradigms** **of the 90s and 2000s** **obsolete** as **new** **models, architectures and** **hardware solutions** **will** **flood the market in the next 5-7** **year**.

# 2NC

## Civil Rico

### 2NC – O/V

#### 1) Scope—Civil RICO solves without expanding the antitrust laws, but uses the same mechanisms to reach more conduct, and is more efficient for plaintiffs

Irvin B. Nathan ‘83, Doubling the Treble Damage Option: What an Antitrust Practitioner Needs to Know about RICO, 52 Antitrust L.J. 327 (1983).

There are, however, cases of anticompetitive conduct in which civil RICO may prove as beneficial or more beneficial to potential plaintiffs than the antitrust laws. Consider, for example, a situation in which a business is injured by the fraudulent or predatory practices of one of its principal competitors. If the predator is acting unilaterally and if its market share is such that it does not have a realistic prospect of monopolization, there will be no valid claim under Sections 1 and 2 of the Sherman Act.62 If, however, as is likely, the scheme has been carried out through the use of the mails, interstate telephone calls, telexes or wire transfers, the damaged company may well have a claim for treble damages under civil RICO. Even if the predator may have the capacity to monopolize or attempt to monopolize the relevant market, the potential plaintiff may well be better advised to utilize civil RICO, thus sparing itself the difficult and diverting issue of proving the relevant market and defendant's share of power in that market. Avoiding the issues of the relevant market and market power spares a plaintiff the considerable cost of assembling data, compensating expert witnesses and confusing the trier of fact about matters which may not be directly pertinent to plaintiff's injury. Neither the relevant market nor the defendant's share would be a necessary element to establish liability under civil RICO. Under civil RICO, the plaintiff would only be required to prove the scheme to defraud, the defendant's intent, the mailings or telephone calls in furtherance of it, the damage to the plaintiffs business and a few ancillary matters such as the requisite effect on interstate or foreign commerce. In a case where the defendant had the requisite monopoly power, the plaintiff would probably want to plead both a Section 2 count and a RICO count, with one serving as a backup for the other in case there were a failure of proof on an element which was not common to both counts.

#### 2) Certainty – antitrust means past conduct is inadmissible, CP creates a broader reach!

Irvin B. Nathan ‘83, Doubling the Treble Damage Option: What an Antitrust Practitioner Needs to Know about RICO, 52 Antitrust L.J. 327 (1983).

Another significant potential advantage under civil RICO is the breadth of claims which can be legitimately asserted. The standards of relevance and the rules relating to joinder of claims are likely to be far more restricted in an antitrust case than in a civil RICO action. In a civil RICO action, particularly where it may be pertinent to establish that one of the defendants acquired its assets "through a pattern of racketeering," claims can legitimately be made that prior activities and events are material to prove an overall pattern of misconduct. Thus, the civil RICO plaintiff has the advantages of far-reaching discovery and the possibility of prejudicing the judge or jury by proof relating to a broad range of loosely related, illegal practices. Under civil RICO, claims of anticompetitive conduct are often joined by claims of related criminal offenses-such as bribery, interstate shipment of stolen property or extortion-which might be inadmissible in a standard antitrust context.64 In any case in which serious criminal charges ancillary to the antitrust misconduct can be validly alleged, a plaintiff would be well advised to add a RICO count to his antitrust complaint. The breadth of conduct permissible to establish a "pattern of racketeering" under a civil RICO claim may also allow the use of prior agency or court decisions that would be inadmissible in a typical antitrust suit. For example, antitrust law has long established that no private right of action is available for an unfair trade practice in violation of the Federal Trade Commission Act, and that a private suitor may not benefit from a FTC injunction secured under that statute. 65 However, the unfair trade practice might also constitute a scheme to defraud, and, if accompanied by the requisite mailings or interstate telephone calls, may be one of the predicate acts which serve to establish a "pattern of racketeering." Further, under prevailing notions of collateral estoppel, a litigated decision against the defendant secured by the federal government may preclude the defendant from relitigating the unfair trade practice against the 66 private party victim.

#### 3) Legal Copycat—CP expands the scope of RICO without expanding the scope of antitrust – any antitrust suit can be transformed into a RICO claim.

Lauren M. Papenhausen & Kevin C. Adam 20, Papenhausen is a partner in the Global White Collar Practice Group and is based in the Boston office; Adam is a litigation associate in the firm's Boston and New York offices and a member of the Global Antitrust/Competition Group, “Why A Surge In Drug Pricing Litigation Is Unlikely,” White & Case, 7/28/20, https://www.whitecase.com/publications/article/why-surge-drug-pricing-litigation-unlikely

Antitrust Theories

While antitrust law is more focused on pricing than the FCA, antitrust challenges to the pricing practices of pharmaceutical companies face a similar uphill battle, and for good reason. As the Federal Trade Commission and Antitrust Division of the U.S. Department of Justice have explained, "excessive pricing in pharmaceuticals by itself is not an antitrust violation under U.S. antitrust law."[9]

And while some scholars recently have argued that high prices alone should give rise to antitrust liability,[10] courts have long held that companies are free, with very few exceptions, to charge whatever price they want for their products, even in rare instances in which the company may have monopoly power.[11]

As such, antitrust cases characterized by the media and others as targeting pharmaceutical pricing almost always challenge some other traditional form of alleged anticompetitive conduct — such as an illegal agreement in restraint of trade, under Section 1 of the Sherman Act, or some form of exclusionary conduct to acquire or maintain monopoly power, under Section 2 — rather than actual pricing of drugs at issue.

For example, one of the most notable antitrust cases involving drug prices to date is the sprawling multidistrict litigation in the Eastern District of Pennsylvania regarding alleged price-fixing in the market for generic drugs.[12] While much of the media attention there has focused on the prices charged for certain groups of generic drugs, and how those prices purportedly rose over time, the antitrust claim at issue actually hinges on alleged agreements between competitors, not the prices charged.

Similarly, the FTC and New York Attorney General's recent antitrust lawsuit against Vyera Pharmaceuticals, LLC, formerly known as Turing Pharmaceuticals LLC, and its founder Martin Shkreli, has been lauded as an antitrust challenge to the prices charged for Daraprim (pyrimethamine), a drug used for treating the parasitic infection toxoplasmosis.[13]

But the antitrust claim there is not based on Daraprim price increases; it is based on alleged efforts to control supply through the use of exclusive contracts that purportedly blocked potential generic competitors from access to the available licensed suppliers of the active pharmaceutical ingredient.

Other Theories

Plaintiffs also have advanced other legal theories in drug pricing cases, such as civil claims under RICO and state consumer protection laws. Though both theories have had some success in surviving motions to dismiss, they have yet to be fully litigated and tested, and they appear to stretch these laws beyond their natural bounds.

RICO

A civil RICO claim requires proof of, among other things, a pattern of racketeering activity by the defendant that caused injury to the plaintiff's business or property.[14] Racketeering activity — the RICO predicate offense — encompasses various criminal statutes, including mail and wire fraud.[15]

In 2018, the U.S. District Court for the District of Kansas rejected a motion to dismiss a RICO claim against Mylan and Pfizer Inc. that accused them of engaging in a pattern of racketeering activity to inflate the price of the EpiPen and restrict generic competition.

The facts the court found as adequately pleading a RICO violation included marketing statements regarding Mylan's efforts to provide free EpiPens to schools (the plaintiffs alleged the statements were fraudulent because the school program was actually "an anticompetitive means to implement exclusive dealing contracts") and the defendants' statements about certain patent litigation settlements that suggested the settlements were not anti-competitive.[16]

In other words, the court took the view that failing to disclose an alleged antitrust violation can be racketeering activity, even though an antitrust violation itself is not a RICO predicate offense. This raises the question whether every bad act can be transformed into a RICO predicate in the same manner, which clearly is not what Congress intended. The court also held that the plaintiffs adequately pleaded causation of injury under the RICO statute.

### Solves—Exemptions

#### Solves everything including exemptions

James P. Kennedy 86, Civil Rico in the Antitrust Context, 55 Antitrust L.J. 463 (1986).

With the large number of offenses which qualify as "racketeering activities" under the statute,22 particularly mail and wire fraud, it is likely that many fact patterns which give rise to liability under the antitrust laws would also be found to violate civil RICO. This is illustrated by the use of RICO in various cases involving anticompetitive conduct, including alleged horizontal and vertical price-fixing,23 monopolization attempts, 24 anticompetitive mergers,25 Robinson-Patman Act violations, 26 and other forms of unfair competition.27 When the alleged antitrust violation is firmly grounded on the traditionally established antitrust theories of recovery, RICO provides few discernible benefits to the plaintiff in terms of the remedies available although it may be easier to proceed under RICO. 28 The principal advantage, however, of RICO's civil remedies mandatory treble damages and attorneys' fees-is particularly inviting to plaintiffs who are facing one or more barriers such as standing problems, substantive deficiencies in their antitrust claims, or exemptions under the antitrust laws, obstacles which might not be present in private civil actions under RICO. In these flawed antitrust cases, RICO provides the would-be plaintiffs with another option for treble damages which might not otherwise have been available.

### 2NC – AT: Deterrnec

#### Even better, RICO’s trebling is mandatory, and the burden to establish misconduct is way lower!

Blair Silver 9, J.D., Georgetown University Law Center, 2008, “Controlling Patent Trolling with Civil RICO,” 11 Yale J.L. & Tech. 70 (2009), https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1046&context=yjolt

The allure of RICO lies beyond flexibility, in its remedies. RICO calls for the award of treble damages, costs of the suit, and reasonable attorney's fees. 23 The statute's remedy provision is mandatory: "any person injured . . . shall be awarded. 24 Mandatory treble damages, costs, and attorneys fees dwarf the normal remedies under the modern patent regime.

Under the patent laws, treble damages are available, but they are not mandatory.25 Attorney's fees are only available in exceptional cases.26 This uncertainty has not stopped would-be plaintiffs from alleging willful infringement, a common ground for exceptional circumstances and treble damages, in almost every patent suit. Many attorneys may find a strong incentive to seek damages under civil RICO because if the RICO claim is successful, treble damages are mandatory.

Other fraud remedies available under patent law are equally lackluster in comparison. Inequitable conduct, which is also commonly pled in patent lawsuits, will render a patent unenforceable after finding fraud on the PTO. 28 Antitrust liability can lead to enhanced damages under the almost defunct doctrine of Walker Process, due to the fraudulent procurement of a patent.29 Under Walker Process, damages are available beyond unenforceability if the patentee obtained the patent by knowing and willful misrepresentations of fact to the PTO and after an evaluation of the antitrust implications of issuing that patent.30 The claimant must prove all the elements of a Sherman Act Section 2 case, which include an appraisal of the exclusionary power of the illegal patent claim in terms of the relevant market for the product involved.31 Walker Process claims pose a notoriously difficult burden, which has greatly diminished the doctrine's value.

Therefore, civil RICO is an attractive alternative as compared to the uncertainty of treble damages under section 285, the damage-free remedy of inequitable conduct, or the impossible doctrine of Walker Process damages.

### 2NC—AT: Perm do the CP

#### Core antitrust laws are Sherman, Clayton, and FTCA

Kendall Kuntz 21, J.D. Candidate at The University of Maryland Francis King Carey School of Law, “Can the Courts and New Antitrust Laws Break Up Big Tech?,” 2/23/21, https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/

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

#### Their scope is what those provisions cover

Donald F. Parsons Jr. 14, Vice Chancellor of the Court of Chancery of Delaware, “Vichi v. Koninklijke Philips Electronics, N.V.,” 85 A.3d 725, Lexis

As an initial matter, I reject the proposition that the determination of who can invoke a choice of law provision must precede the analysis of the provision's validity and scope. The “scope” of a choice of law provision refers to how broadly or narrowly that provision applies and includes the question of whether the provision created enforceable rights in third parties.310 The only case Philips N.V. cites in support of its assertion that Delaware law should govern whether it can invoke the choice of law clause merely stands for the proposition that a Delaware court will apply its own conflict of laws rules to determine which jurisdiction's substantive law will govern the claims before it.311 As noted previously, under Delaware conflict of laws rules, the scope of a valid choice of law provision is determined by the law of the selected jurisdiction—in this case, England.

#### ‘Of’ means that coverage must come from the core laws

M. Margaret McKeown 11, Judge, US Court of Appeals for the 9th Circuit, “Simonoff v. Expedia, Inc,” 643 F.3d 1202, Lexis

Our recent decision in Doe 1 is central to our analysis. There we considered a forum selection clause in AOL's website user agreement that [\*\*5] provided for "exclusive jurisdiction for any claim or dispute . . . in the courts of Virginia." Id. at 1080. We concluded that the choice of the preposition "of" in the phrase "the courts of Virginia" was determinative—"of" is a term "'denoting that from which anything proceeds; indicating origin, source, descent, and the like.'" Id. at 1082 (quoting Black's Law Dictionary 1080 (6th ed. 1990)). Thus, the phrase "the courts of" a state refers to courts that derive their power from the state—i.e., only state courts—and the forum selection clause, which vested exclusive jurisdiction in the courts "of" Virginia, limited jurisdiction to the Virginia state courts. Id. at 1081-82.

#### The CP doesn’t do that---it expands Civil RICO, the Racketeer Influenced and Corrupt Organization Act

Robert W. Ray 84, prominent litigator and former federal prosecutor and Independent Counsel for the Whitewater investigation, has joined ZEK as a partner, J.D., Washington and Lee University School of Law, “A Day of Reckoning Is Near: RICO, Treble Damages, and Securities Fraud,” 41 Wash. & Lee L. Rev. 1089 (1984), https://scholarlycommons.law.wlu.edu/wlulr/vol41/iss3/9

Two circuit courts recently have considered whether Congress intended section 1964(c) of RICO to remedy only commercial or competitive injuries caused by a defendant.I3 The Eighth Circuit in Bennett v. Berg 32 considered the commercial and competitive injury limitations to RICO as one issue since the defendants argued that the plaintiffs failed to allege an injury to property affecting the plaintiffs' commercial or competitive interests. ' 33 The Eighth Circuit concluded that an allegation of commercial or competitive injury is not a prerequisite to recovery under civil RICO.'" The Bennett court cited legislative history indicating that Congress passed RICO to attack the property interests of organized crime notwithstanding the type of business or property injury alleged.'" In determining that restrictive standing requirements applicable in the antitrust field are not consistent with the business or property language of RICO, the Eighth Circuit noted that Congress did not intend to limit RICO to the antitrust goal of preventing interference with free trade.'36 The Seventh Circuit in Schacht v. Brown' 37 considered defendants' argument that civil RICO applies only to those injured as competitors of the defendants.'38 According to the defendants in Schacht, Congress patterned section 1964(c) of RICO after section 4 of the Clayton Act which provides treble damages and attorneys fees to private plaintiffs who prevail in antitrust actions.'" While conceding the obvious similarities between section 1964(c) and section 4 of the Clayton Act, the Seventh Circuit nevertheless held that neither the plain language nor the legislative history of RICO warrants restricting section 1964(c) to competitive injures.' 40 The Schacht court emphasized that Congress enacted RICO to attack organized crime and not restraints on competition.'' In support of the Seventh Circuit's view that RICO is not the equivalent of an amendment to the antitrust laws, the Schacht court noted that prior to enacting RICO Congress considered but rejected a bill that would have amended the antitrust laws to cover organized criminal activity.' 42 The Schacht court, therefore, concluded that Congress enacted RICO as a separate tool to combat organized crime. 143 [FOOTNOTE 143 BEGINS] 143. 711 F.2d at 1357. Congress enacted RICO apart from the antitrust laws to avoid confusing the goal of eradicating organized crime with the goal of regulating competition. See 115 Cong. Rec. S9567 (daily ed. Apr. 18, 1969) (remarks of Sen. McClellan) (maintaining that OCCA does not import complexities of antitrust law into area of organized crime control); see also 115 CoNG. REc. S6995 (daily ed. Mar. 20, 1969) (report of Antitrust Section of American Bar Association) (recommending that Congress enact organized crime control legislation as separate statute from Sherman Act since amending antitrust laws to combat organized crime would create standing requirements appropriate only in antitrust context). [FOOTNOTE 143 ENDS]

While analogizing civil RICO to the antitrust laws would seem to be contrary to the legislative intent, defendants nevertheless have argued that courts should limit section 1964 of RICO to racketeering enterprise injuries in the same way that courts limit section 4 of the Clayton Act to antitrust injuries.' 44 In Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.,' 41 the Supreme Court required the plaintiffs to prove "antitrust injury" which the Court defined as the type of injury that Congress intended the antitrust laws to prevent.'" The Brunswick court noted that Congress aimed the antitrust laws at anticompetitive practices.' 47 RICO defendants have borrowed the concept of antitrust injury from Brunswick in attempting to persuade courts to limit RICO, not to competitive injuries as in the antitrust area, but to racketeering enterprise injuries of the type Congress intended RICO to prevent.'"

### 2NC—AT: Perm Do Both

#### 1. Mootness—can’t do both, the plan overrides the authority to expand RICO. Makes the CP irrelevant.

Michael W. Coffield 83, If RICO Is Applied to Securities Fraud, Can Antitrust Be Far behind, 52 Antitrust L.J. 379 (1983).

Aware of this possibility, Congress initially proposed amending the Sherman Act to apply to organized crime. 8 The American Bar Association, however, was critical of this specific proposal. 9 The Section of Antitrust Law, while endorsing the general theory of the bill, suggested that the RICO provisions be incorporated in a separate statute. 0 In making this suggestion, the Section was primarily concerned that the restrictions antitrust law placed on standing to sue and on proximately caused damages would prevent injured persons from recovering treble damages from racketeer influenced organizations.2 1 The Antitrust Section argued that these restrictions, appropriate for statutes intended primarily to protect competition, were inappropriate for laws designed to remove organized crime's influence in the economy-laws by definition not primarily concerned with maintaining competition. 22 In enacting RICO, Congress accepted the ABA's suggestions, clearly contemplating a statute free of this antitrust precedent, and rejected the standing and injury requirements of antitrust law for RICO. The implications of this rejection of antitrust precedent are important: because of this action, courts should give the expansive wording of RICO's damage provision"any person injured in his business or property"2"-its natural meaning. Accordingly, commercial, competitive, or direct injury limitations in RICO actions are improper in most situations.24

## 2NC – Vouchers CP

### 2NC – Solves

#### Surge pricing crushes intelligent transportation systems – key to electric vehicles and smart cities.

Saharana ’20 [Sandeep et al; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; Seema Bawaa; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; Neeraj Kumar; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; “Dynamic Pricing Techniques for Intelligent Transportation System in Smart Cities: A Systematic Review,” Computer Communications, 150, p. 603–625; AS]

2.3. Demerits of dynamic pricing for ITS

(a)Dynamic fare pricing: Improper dynamic fare pricing sometimes leads to congestion on roads, promotes private transportation, consumes more energy, leads to more emissions [30], [31]. In competitive freight transportation environment, it may show biasness in revenue generated by the competitors.

(b)Dynamic charging/discharging pricing for EVs: Dynamic pricing can increase prices up to a certain level, which alone is not sufficient remedy to all problems. In case of uncontrolled EV charging [45] peak demand can increase during peak load time. While determining prices dynamically, the mismatch of parameter(s) with real scenario can lead to several power quality issues such as voltage drops, power unbalances, and voltage/current harmonics [4].

(c)Dynamic parking pricing: Spatial boundary effect, i.e., implementation of uncoordinated dynamic parking pricing among different parking lots, may result in higher cruising time, and more congestion outside parking lots [35]. Temporal boundary effect, i.e., parkers parks earlier or later than high charging period can neglect the advantage of dynamic pricing [37].

(d)Dynamic congestion pricing: Road pricing can sometimes creates undesired boundary effects. In ‘temporal boundary effect’, travelers depart earlier or later than a charging period to avoid paying full or part of the congestion charges. In ‘spatial boundary effect’, travelers would rather stay away from a charging zone than paying congestion charges. This causes undesired congestion on roads parallel to the edge of the charging zone [28], [46], [47]. Limitations of technology and other parameters such as drop offs in electricity can limit the advantages of dynamic congestion pricing. Thus, the poor coordination of dynamic toll pricing with equipments such as sensors and cameras can lead to low average speed or high congestion in some lanes. Wrongly implemented congestion pricing can over crowd the public transportation and places such as bus stops, railway stations, airports.

## K

### 2NC—Overview

#### The aff leads us down the Road to Serfdom, voting neg is your off-ramp.

Morriss 22 (Andrew P. Morriss, Professor, Bush School of Government & Public Service School of Law, Texas A&M University. “Forward Down the Road to Serfdom: International Tax Law as a Means of Central Planning” MARCH 2022 Law & Economics Center at George Mason University Scalia Law School Research Paper Series, 22-006)

While it rested his earlier work, The Road to Serfdom is not simply a rewrite of Hayek’s earlier critique of the flaws of Soviet-style central planning. While he predicted that an authoritarian state engaged in a high level of manipulation of the economy lay at the end of the road, the road was long and off-ramps and turnarounds were possible. The book was thus not simply a broadside against imitating the Nazis (or Soviets, whose economic policies Hayek saw as similar to the Nazis’) but a warning that the lesser measures proposed by the Labour Party were the first steps along the road which led to a bad destination.

2. Governments must avoid interfering indirectly and directly in price signals: Governments can undermine the price mechanism and prevent it from functioning properly through steps far short of Soviet-style planning.

This was more than a warning that Labour’s interference in the price mechanism by nationalizing various industries or that its proposals for expanded social welfare policies would reduce economic efficiency (although Hayek’s analysis pointed in those directions). Rather, Hayek’s point was that avoiding driving up the on-ramp to the road to serfdom requires governments to refrain from measures that interfere with the price mechanism’s ability to transmit information.

3. Only measures that set general conditions avoid interfering in the transmission of information through prices: Governments must be “bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one’s individual affairs on the basis of this knowledge.”25 As a result, governments need to confine themselves “to creating conditions under which the knowledge and initiative of individuals are given the best scope so that they [individuals] can plan most successfully”26 so that “within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used to frustrate his efforts.”27

When governments follow Hayek’s advice, they set the “rules of the game” or the “Highway Code” that tells us on which side of the road to drive, but they do not seek to influence the outcome of the game or tell people which road to take.28 As he later developed in greater detail in The Constitution of Liberty and Law, Legislation, and Liberty, a government’s role is to enable the formation of an extended order, whose ends no one intends and evolve out of the free interactions of individuals in society.29 These first three parts thus set out the maps on how to avoid getting on the road to serfdom in the first place.

But what happens when the people elect – as they did in 1945 in Britain – a government that does not take Hayek’s advice and sets out to alter the outcomes produced by the market without immediately adopting comprehensive economic planning? In other words, what do the first miles of the road to serfdom look like? The process of selecting which plan will itself advance a society on to the road to serfdom:

4. The conflicts inherent in planning advance society further down the road to serfdom: Even where there is general agreement (even unanimous agreement) on the need for planning, there will not be agreement on the particulars of the plan to be adopted.30 These disagreements “will evoke stronger and stronger demands that the government or some individual should be given powers to act on their own responsibility.”31

Once a particular plan is selected, implementation requires abandoning generality and allowing planners to make choices among individuals based on something other than the general rules. In short, if we’re going to make an omelet, some eggs are going to be cracked.32 Therefore:

5. Planning requires that planners have the ability to act outside of general rules: Governments implementing plans must go beyond general rules as a planning authority cannot “tie itself down in advance to general and formal rules which prevent arbitrariness. It must provide for the actual needs of people as they arise and then choose deliberately between them. In short, to direct economic life, the authorities must have “powers to make and enforce decisions in circumstances which cannot be foreseen and on principles which cannot be stated in generic form”33 and so cannot be reduced to rules. As governments take actions outside of the general rules to successfully change market outcomes by implementing any plan, then they inevitably take arbitrary actions and so undermine the rule of law, speeding the trip toward serfdom. 34

6. Planning requires planners to take arbitrary/discriminatory actions: Implementing a plan requires delegating to “some authority” the “power to make with force of law what to all intents and purposes are arbitrary decisions.”35 It must constantly decide questions which cannot be answered by formal principles only, and in making these decisions, it must set up distinctions of merit between the needs of different people.”36 This “necessarily involves deliberate discrimination between particular needs of different people, and allowing one man to do what another must be prevented from doing.”37 Once governments acquire these powers, the “Rule of Law cannot hold” because “the use of the government’s coercive powers will no longer be limited and determined by preestablished rules.”38

Some of the power of Hayek’s argument is because it does not allow for half-measures. He argued that there was no “middle way between ‘atomistic’ competition and central direction,” that it was impossible to have “a judicious mixture” of “free competition” and “complete centralization.” Planning is not “a medicine, which taken in small doses, can produce the effects for which one might hope from its thoroughgoing application.”39 The simplest way to avoid arriving at the terminus of the road to serfdom was thus not to get on the road in the first place.40 Once on it, the only remedy was to exist as quickly as possible.

### AT: Util

#### 1. There is no universal social utility absent negative rights. Any theory of morality that allows coercion requires weighing the utility of depriving individuals of rights and slips into violence.

Mack 78 (Eric Mack, Ph.D., is associate professor of philosophy at Tulane University. The American Journal of Economics and Sociology , Jan., 1981, Vol. 40, No. 1 (Jan., 1981), pp. 1-15)

OBJECTIONS TO UNBRIDLED FREEDOM OF CONTRACT HAVING CLARIFIED THE DOCTRINE of freedom of contract and having, in the name of Lockean natural rights, dismissed objections to liberty of contract which are explicitly based on social goal theories, we may now consider four recurring objections to unbridled freedom of contract each of which adopts the language of freedom, noncoercion or just exchange.

According to one objection, belief in unbridled freedom of contract results from slipping into a faultily empty conception of freedom. It is claimed that non-coercion should be valued only insofar as it is a condition for freedom in the sense of persons having abilities and oppor- tunities to do what they want (or what would make them happy, or what they should do). One historically important advocate of this conception of freedom, T. H. Green, gives as the initial characterization of such "positive freedom": "a positive power or capacity of doing or enjoying something worth doing or enjoying" (18). The further claim is that if the promotion of such freedom is the valued goal, then al- though we might sometimes allow freedom of contract as a means to this goal, we should also be prepared to interfere with the terms of a (potential) contract if that interference would maximize positive free- dom. While some forcible intervention against Jones, i.e., some depri- vation of Jones' negative liberty, may carry with it some loss of positive freedom for Jones, we are to favor it if it also brings a greater gain of positive freedom, for, e.g., Smith. Many thinkers have pointed out that the theory of positive freedom blurs the useful distinctions between a person's being free to do X, his having the opportunity to do X, his having the ability to do X, etc. At the very least the advocate of posi- tive liberty must acknowledge that he really is promoting some ill- defined mixture of (negative) freedom, opportunity, capacity, etc. More importantly, he turns out to be just another version of a social goal theorist. For his theory will take one of two possible forms. He may advocate a utilitarianism of positive freedom, i.e., that everyone should be seen as a social resource for maximizing the sum of positive freedom. As with all types of utilitarianism, this approach will require that individuals be deprived of their positive freedom when and to the extent that such deprivations yield larger gains in positive freedom for others. Whereas one individual's enjoyment of negative freedom (i.e., of freedom from coercion as previously defined) never requires that any other person surrender his enjoyment of negative freedom, one individual's possession of the opportunities and abilities which make up positive freedom may well require that others be denied or deprived of opportunities and abilities which are necessary for their positive free- dom. In shifting to positive freedom, then, one becomes entangled in determining the relative moral weights of alternative combinations of positive freedoms with the aim of favoring the most socially weighty combination. If one wants to obscure the fact that some persons' free- doms are thereby to be sacrified for larger gains in other individuals' freedoms, one can insist that only the freedoms which are part of the socially best combination of freedoms are true freedoms. To avoid acknowledging the clash of positive freedoms, one may whittle down what counts as freedom by declaring that true positive freedom is only displayed in actions which serve or partake of some sanctified social goal, e.g., "the common good." This, for example, is exactly the tack taken by T. H. Green, for whom the social realization of positive free- dom is finally said to be ". . . the liberation of the powers of all men equally for contributions to a common good." We are told that "no one has a right to do what he will with his own in such a way as to contravene this end" (19). Here, perhaps even more explicitly than in the utilitarianism of positive freedom, we have an abandonment of individual rights and the moral side-constraints they impose for a col- lective social goal orientation.

#### 2. We access most probable internal link to extinction.

Rand 63 (Ayn, The Virtue of Selfishness: A New Concept of Egoism, Page 145) edited for gendered language

A society that robs an individual of the product of his [or her] effort or enslaves him [or her], or attempts to limit the freedom of his [or her] mind, or compels him [or her] to act against his [or her] own rational judgement—a society that sets up a conflict between its edicts and the requirements of [hu]man’s nature—is not, strictly speaking, a society, but a mob held together by institutionalized gang-rule. Such a society destroys all the values of human coexistence, has no possible justification and represents, not a source of benefits, but the deadliest threat to [hu]man’s survival. Life on a desert island is safer than and incomparably preferable to existence in Soviet Russia or Nazi Germany.

#### 3. Don’t sacrifice the present for the future

Schue 89 (Henry Shue, Professor of Ethics and Public Life, Princeton University, 1989, <Nuclear Deterrence and Moral Restraint, p. 64-5)

The issue raises interesting problems about obligations among generations. What obligations do we owe to future generations whose very existence will be affected by our risks? A crude utilitarian calculation would suggest that since the pleasures of future generations may last infi­nitely (or until the sun burns out), no risk that we take to assure certain values for our generation can compare with almost infinite value in the future. Thus we have no right to take such risks. In effect, such an approach would establish a dictatorship of future generations over the present one. The only permissible role for our genera­tion would be biological procreation. If we care about other values in addition to survival, this crude utilitarian approach produces intolerable consequences for the current generation. Moreover, utility is too crude a concept to support such a calculation. We have little idea of what utility will mean to generations very distant from ours. We think we know something about our children, and perhaps our grandchil­dren, but what will people value 8,000 years from now? If we do not know, then there is the ironic prospect that something we deny ourselves now for the sake of a future generation may be of little value to them. A more defensible approach to the issue of justice among generations is the principle of equal access. Each generation should have roughly equal access to important values. We must admit that we shall not be certain of the detailed prefer­ences of increasingly distant generations, but we can as­sume that they will wish equal chances of survival. On the other hand, there is no reason to assume that they would want survival as a sole value any more than the current generation does. On the contrary, if they would wish equal access to other values that give meaning to life, we could infer that they might wish us to take some risks of species extinction in order to provide them equal access to those values. If we have benefited from "life, liberty and the pursuit of happiness," why should we as­sume that the next generation would want only life?

#### 4. Their moral theory turns you into the utility monster and embraces “kill to save” logic. Reject it

Nozick 74 (Robert, held the Joseph Pellegrino University Professorship at Harvard University, Robert Nozick - Anarchy, state and Utopia (2013, Basic Books) https://docero.net/doc/robert-nozick-anarchy-state-and-utopia-2013-basic-books-14mr3w49n3)

To the utilitarian we may say: If only the experiences of pleasure, pain, happiness, and so on (and the capacity for these experiences) are morally relevant, then animals must be counted in moral calculations to the extent they do have these capacities and experiences. Form a matrix where the rows represent alternative policies or actions, the columns represent different individual organisms, and each entry represents the utility (net pleasure, happiness) the policy will lead to for the organism. The utilitarian theory evaluates each policy by the sum of the entries in its row and directs us to perform an action or adopt a policy whose sum is maximal. Each column is weighted equally and counted once, be it that of a person or a nonhuman animal. Though the structure of the view treats them equally, animals might be less important in the decisions because of facts about them. If animals have less capacity for pleasure, pain, happiness than humans do, the matrix entries in animals’ columns will be lower generally than those in people’s columns. In this case, they will be less important factors in the ultimate decisions to be made. A utilitarian would find it difficult to deny animals this kind of equal consideration. On what grounds could he consistently distinguish persons’ happiness from that of animals, to count only the former? Even if experiences don’t get entered in the utility matrix unless they are above a certain threshold, surely some animal experiences are greater than some people’s experiences that the utilitarian wishes to count. (Compare an animal’s being burned alive unanesthetized with a person’s mild annoyance.) Bentham, we may note, does count animals’ happiness equally in just the way we have explained.9 Under “utilitarianism for animals, Kantianism for people,” animals will be used for the gain of other animals and persons, but persons will never be used (harmed, sacrificed) against their will, for the gain of animals. Nothing may be inflicted upon persons for the sake of animals. (Including penalties for violating laws against cruelty to animals?) Is this an acceptable consequence? Can’t one save 10,000 animals from excruciating suffering by inflicting some slight discomfort on a person who did not cause the animals’ suffering? One may feel the side constraint is not absolute when it is people who can be saved from excruciating suffering. So perhaps the side contraint also relaxes, though not as much, when animals’ suffering is at stake. The thoroughgoing utilitarian (for animals and for people, combined in one group) goes further and holds that, ceteris paribus, we may inflict some suffering on a person to avoid a (slightly) greater suffering of an animal. This permissive principle seems to me to be unacceptably strong, even when the purpose is to avoid greater suffering to a person! Utilitarian theory is embarrassed by the possibility of utility monsters who get enormously greater gains in utility from any sacrifice of others than these others lose. For, unacceptably, the theory seems to require that we all be sacrificed in the monster’s maw, in order to increase total utility. Similarly if people are utility devourers with respect to animals, always getting greatly counterbalancing utility from each sacrifice of an animal, we may feel that “utilitarianism for animals, Kantianism for people,” in requiring (or allowing) that almost always animals be sacrificed, makes animals too subordinate to persons. Since it counts only the happiness and suffering of animals, would the utilitarian view hold it all right to kill animals painlessly? Would it be all right, on the utilitarian view, to kill people painlessly, in the night, provided one didn’t first announce it? Utilitarianism is notoriously inept with decisions where the number of persons is at issue. (In this area, it must be conceded, eptness is hard to come by.) Maximizing the total happiness requires continuing to add persons so long as their net utility is positive and is sufficient to counterbalance the loss in utility their presence in the world causes others. Maximizing the average utility allows a person to kill everyone else if that would make him ecstatic, and so happier than average. (Don’t say he shouldn’t because after his death the average would drop lower than if he didn’t kill all the others.) Is it all right to kill someone provided you immediately substitute another (by having a child or, in science-fiction fashion, by creating a full-grown person) who will be as happy as the rest of the life of the person you killed? After all, there would be no net diminution in total utility, or even any change in its profile of distribution. Do we forbid murder only to prevent feelings of worry on the part of potential victims? (And how does a utilitarian explain what it is they’re worried about, and would he really base a policy on what he must hold to be an irrational fear?) Clearly, a utilitarian needs to supplement his view to handle such issues; perhaps he will find that the supplementary theory becomes the main one, relegating utilitarian considerations to a corner. But isn’t utilitarianism at least adequate for animals? I think not. But if not only the animals’ felt experiences are relevant, what else is? Here a tangle of questions arises. How much does an animal’s life have to be respected once it’s alive, and how can we decide this? Must one also introduce some notion of a nondegraded existence? Would it be all right to use genetic-engineering techniques to breed natural slaves who would be contented with their lots? Natural animal slaves? Was that the domestication of animals? Even for animals, utilitarianism won’t do as the whole story, but the thicket of questions daunts us.

## Inflation Good

### 2NC – Link

#### Supply chain prices are key

PBS 11-10 “How the supply chain caused current inflation, and why it might be here to stay” <https://www.pbs.org/newshour/economy/how-the-supply-chain-caused-current-inflation-and-why-it-might-be-here-to-stay>

Consumer prices soared in October 2021 and are now up 6.2% from a year earlier – higher than most economists’ estimates and the fastest increase in more than three decades. At this point, that may be no surprise to most Americans, who are seeing higher prices while shopping for shoes and steaks, dining at restaurants and pumping fuel in their cars.

One of the big debates going on right now among economists, government officials like Treasury Secretary Janet Yellen and other observers is whether these soaring costs are transitory or permanent.

The Federal Reserve, which would be responsible for fighting inflation if it stays too high for too long, insisted again on Nov. 3, 2021, that it’ll be temporary, in large part because it’s tied to the supply chain mess bedeviling economies, companies and consumers.

READ MORE: How the pandemic has affected the economy, from empty shelves to higher prices

Not everyone agrees – including some within the Fed itself – and there’s been a growing chorus of economists, strategists and business executives sounding the alarm that high inflation will likely be with us well into 2022 and beyond.

I study supply chains and their impact. It’s true that prices are surging largely because of the severe shortages of both goods and labor in supply chains, but based on my research, that doesn’t mean it’ll be temporary. Rather, it suggests that inflation is here to stay.

Demand is up

Inflation began to soar in early 2021 and has been hovering at above 5% or so, year on year, since May. That’s more than double the 2% pace that the Fed has set as a target.

The reasons prices are rising are complex and many. But one of the most important relates to the dynamic of supply and demand. And both are to blame.

Let’s start with demand.

Even though early in the pandemic consumer demand dropped as people hunkered down amid lockdowns and unemployment skyrocketed, it has soared over the past year – not for services like restaurants and travel, but for goods, mostly ordered online.

E-commerce activity has simply mushroomed to levels that never existed before the pandemic. Demand for products has significantly outstripped the market’s capacity to produce or ship what is ordered. Some people aren’t even going to the supermarket, hardware store or restaurant anymore because they do all their ordering online.

Many retailers, such as Macy’s, Target and others, have had to navigate this economy with scarce inventories and higher freight costs to stay alive during the pandemic.

These trends have created more demand than the delivery carriers can accommodate, stretching their ability to deliver products. For example, the holiday shopping season is predicted to have 4.7 million packages a day beyond what the system can possibly absorb or deliver. Storing these packages for even a short period costs money.

Given there is great difficulty finding drivers, containers and labor across industries, big retailers are offering generous education and other benefits to both attract and keep employees on hand as a means of adding capacity.

All these added costs – to hire, store and deliver – are usually passed on to consumers.

Supply is down

At the same time, supply chains remain a mess – and are only getting worse.

Bottlenecks have piled up all across Asia, putting great strains on the capacity of supply chains to deliver in a timely fashion. And severe global shortages of drivers and other workers are making it difficult to expand capacity or fix other problems plaguing the supply chains, so they can’t break free of the thick mud they’re in.

This creates a shortage of products getting through that limit competition, causing price increases.

There are dozens of huge container ships continually idling near ports in Los Angeles, New York and elsewhere around the world, which is tying up large quantities of merchandise waiting to be unloaded. There are over 500,000 shipping containers with about 12 million metric tons of goods near Southern California alone.

Ports have tried to lengthen their operating hours – U.S. President Joe Biden has made it a key issue and plans to spend billions of dollars fixing the problems – but there are not enough workers and drivers to unload the cargo.

Such delays cost money, because businesses choose then to carry more inventory, which they pass on to customers.

As an illustration, let’s look at Nike, which largely depends on Vietnam for much of its shoe production. It lost 10 weeks of production because of lockdowns within that country. And it’s taking an average of 80 days to get shoes from Asia to retailers in North America – twice as long as before the pandemic. As a result, shoe prices are soaring like everything else.

READ MORE: U.S. consumer prices spiked 6.2 percent in past year, highest inflation rate since 1990

Or consider Malouf, a Utah-based furniture retailer, which reports that it has only 55% of its normal inventory on hand because of freight delays. Cars get stuck in garages because of the shortage of spare parts. Living room, kitchen and dining room furniture prices are up 13.1% from a year ago.

Another way to think about it is to examine one single product: Bullfrog Spa’s M9 hot tub. It requires 1,850 separate parts. Supply chain disruptions have pushed manufacturing time from six weeks to six months.

There is no industry unaffected.

Why there’s no easy fix

In other words, there’s no end to the supply chain problems. Consumer demand is only going to increase through the holiday season and beyond. And that’s why inflation isn’t going away anytime soon.

Corporate executives – who in many ways will determine whether prices keep rising at a fast clip – are already warning that all of these challenges are going to continue into 2022 at the earliest. Some say the problems will extend into 2023 as well.

Economists surveyed by Bloomberg in October expect inflation to slow to 3.4% next summer and hit 2.6% by the end of the year. While that would be encouraging, it’s still well above the pre-pandemic average of 1.8% and outside the Fed’s target. It’s unclear whether economists are recalibrating their expectations after the October Consumer Price Index report.

Regardless, consumers should get used to the higher prices. They’re the new normal.

#### Moderate inflation now causes sustained inflation in future

Dan Weil – 3/1 “Inflation Will Be Higher, More Fed Rate Hikes to Come: Goldman” <https://www.thestreet.com/investing/goldman-estimates-higher-inflation-more-fed-rate-hikes>

Goldman Sachs has lifted its inflation estimate for this year and next. And as a result, it has lifted its estimate for the number of Federal Reserve interest-rate hikes for 2023. As for inflation, “we are increasingly concerned about two main risks,” Goldman economists led by Jan Hatzius wrote in a commentary. This is your last chance to demystify investing and learn how to build your wealth with TheStreet Smarts, our Founder's Sale ends soon! “First, the initial inflation surge might have lasted long enough and reached a high enough peak to raise inflation expectations in a way that feeds back to wage and price setting. “Second, a very tight labor market -- which now shows the widest gap between available jobs and workers in postwar U.S. history -- is generating broad-based wage growth at a pace well above that compatible with 2% inflation.” **Those two factors could combine to “ignite a moderate wage-price spiral,” the economists said.** Scroll to Continue TheStreet Recommends Elon Musk Tesla Lead TECHNOLOGY Elon Musk Has an Original Idea to End Russian Invasion of Ukraine MAR 16, 2022 2:23 PM EDT Home Office Lead SPONSORED STORY Tax Tips: Employees Who Work at Home MAR 17, 2022 7:00 AM EDT Can I Claim a Boyfriend/Girlfriend as a Dependent on Income Taxes? SPONSORED STORY Guide: Filing Taxes In 2022 MAR 9, 2022 7:00 AM EST They now forecast the personal consumption expenditures price deflator, excluding food and energy, will register a 3.7% annual increase at year-end, up from their previous forecast of 3.1%. Goldman predicts a 2.4% increase at year-end 2023, up from 2.2% previously. The PCE deflator is the Fed’s favored inflation measure. The index jumped 5.2% in the 12 months through January, excluding food and energy. Goldman predicted the consumer price index will register an annual increase of 4.6% at year-end in 2022 and 2.9% at year-end next year. The index soared 7.5% for the 12 months through January. As for the Fed, “a very high inflation path in 2022 should make an easy case for steady rate hikes at all seven remaining [policy] meetings,” the Goldman economists said. Given their inflation forecast, they now expect four Fed rate hikes next year, up from their prior forecast of three. Meanwhile, market speculation of a 0.5-percentage-point hike by the Fed this month has disappeared. Interest-rate traders are pricing in a 94% probability that the central bank raises the federal funds rate target by 0.25 percentage point.

### 2NC – I/L

#### Reduces federal government debt

Wharton 21 “Can Higher Inflation Help Offset The Effects Of Larger Government Debt?” https://budgetmodel.wharton.upenn.edu/issues/2021/10/21/can-inflation-offset-government-debt

Debt Devaluation **Inflation reduces the real wealth of people who hold dollars** and other fixed nominal return assets such as non-indexed U.S. Treasury debt. In well-functioning financial markets, if price inflation is expected, then the price of these types of assets accounts for inflation so that the real return of the asset is maintained. However, holders of existing debt suffer an unexpected loss in real value with a surprise inflation. Savers and investors cannot be repeatedly “tricked” with surprise inflation each year, so surprise inflation is not a long-term policy tool. **The** **large majority of currently outstanding federal government debt is fixed in nominal terms**. As of 2021, only about 7.5 percent of the debt was issued as inflation-linked bonds. The longer the duration of the debt, the more it is affected by a permanent increase in inflation. The government pays the non-indexed debt’s coupon payments and principal with nominal dollars as per the contracted terms at issuance until the debt matures. **The real value of the debt asset declines with higher inflation since the income received by the debt-holders has lost real purchasing power.** Unexpected inflation, therefore, effectively transfers wealth from debt-holders to the government and, as such, functions as a tax whose size is proportional to the amount of outstanding debt. This wealth transfer also applies to U.S. government debt held by foreigners. At the end of the first quarter of 2021, total non-indexed U.S. federal debt held by foreign investors was $6.4 trillion. We estimate that the total real liability of current federal debt decreases by 4 percent, 7 percent, 13 percent, and 19 percent for unexpected inflation of 2.5, 3, 4, and 5 percent, respectively. Private sector nominal fixed-return assets and liabilities include mortgages, corporate bonds, bank savings deposits, and many other financial instruments. As these financial instruments become revalued, transfers of real wealth result within the private sector. For this analysis, we abstract from these transfers and focus on the wealth transfer from the private sector (and foreign investors) to the U.S. federal government.

### --AT: Oil

#### Oil proves

Lazarus 2/25 (David, His work has earned an Emmy, a Golden Mike, two National Headliner Awards and multiple honors from the Society of Professional Journalists. He was named Journalist of the Year by the Consumer Federation of California.“Higher oil prices are unlikely to derail U.S. economic growth (for now)”, https://ktla.com/news/money-smart/higher-oil-prices-are-unlikely-to-derail-u-s-economic-growth-for-now/#:~:text=Goldman%20Sachs%20estimates%20that%20U.S.,borrowing%20costs%20for%20consumers%20down.)

Higher energy costs could deter the Federal Reserve from raising interest rates **too aggressively in coming months**. This would help keep borrowing costs for consumers down. Economists say it’s unlikely the U.S. economy will plunge into recession because of higher oil prices — as opposed to what happened during the Arab Oil Embargo in 1973 and Iraq’s invasion of Kuwait in 1990. The big difference today is that the United States isn’t as dependent on foreign oil as it was back then. We’re also consuming less energy as a percentage of gross domestic product because of the sweeping shift to a service economy rather than a manufacturing economy. What this means for you is that despite near-inevitable pain at the gas pump, and possibly higher consumer prices resulting from increased transportation costs, the U.S. economy should remain relatively strong.

### 2NC – Sustained Econ Bad

#### Sustained economic collapse causes world war

**Sundaram and Popov** **19** [Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007. Vladimir Popov, a former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin. Economic Crisis Can Trigger World War. February 12, 2019. www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/]

KUALA LUMPUR and BERLIN, Feb 12 2019 (IPS) - Economic recovery efforts since the **2008**-2009 global financial crisis have mainly depended on **unconventional** monetary **policies**. As fears rise of yet another international **financial crisis**, there are growing **concerns** about the increased possibility of **large-scale military conflict**. More worryingly, in the **current political landscape**, prolonged **economic crisis**, combined with rising economic inequality, chauvinistic **ethno-populism** as well as aggressive **jingoist rhetoric**, including **threats**, could **easily spin out of control** and ‘morph’ into military conflict, and worse, **world war**. Crisis responses limited The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates. But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address **underlying** economic **weaknesses**, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms. Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of **structural reform** has meant that the unprecedented **liquidity** central banks injected into economies has **not been well allocated** to stimulate resurgence of the real economy. From bust to bubble Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression. As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy. The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of **economic stress** is deemed likely to foment **unrest**, **conflict**, even **war** as it is **blamed** on the **foreign**. International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition! Liberalization’s discontents Rising economic insecurity, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and **increase** social **tensions** and turmoil, especially among the growing precariat and others who feel vulnerable or threatened. Thus, ethno-populist inspired chauvinistic **nationalism** may exacerbate tensions, leading to **conflicts** and tensions among countries, as in the **1930s**. **Opportunistic leaders** have been **blaming** such **misfortunes** on **outsiders** and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization. Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality. To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries. Insecurity, populism, conflict Thomas Piketty has argued that a **sudden increase** in income **inequality** is often followed by a **great crisis**. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern. Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could **inadvertently** **catalyse** **future crises and conflicts**. Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse. At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies. Avoiding Thucydides’ iceberg Thus, protracted economic distress, economic conflicts or **another financial crisis** could lead to **military confrontation** by the protagonists, even if **unintended**. Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers.

### 2NC – Uniqueness

**Debt collapse inevitable - math**

**Kallis** **20** [Giorgos Kallis, Susan Paulson, Giacomo D'Alisa, and Federico Demaria, \* ICREA Professor at the Institute of Environmental Science and Technology, Autonomous University of Barcelona, \*\* Professor at the Center for Latin American Studies, University of Florida, \*\*\* FCT post-doctoral fellow at the Centre for Social Studies, University of Coimbra, \*\*\*\* lecturer in ecological economics and political ecology at the University of Barcelona, “The Case for Degrowth,” 2020, Polity, pp. 28-34, EA – ability edited]

Pursuit of Growth Drives Debt, Inequality, and Financial Crises

Compound growth is **unsustainable** not only because the planet is finite, but also because growth requires **greater** **sacrifice** as each necessary addition gets progressively bigger and bigger. Ever since mid-century growth began to stagnate in the 1970s, governments have tried to minimize production costs by limiting wages, cutting benefits and public services, and weakening unions and labor standards. Meanwhile, they have **stimulated consumption** with mechanisms like home mortgages and student loans that encourage workers to **buy** **with** **credit**.

Starting in the 1980s, the UK, US, and other economies were aggressively **re-engineered** via neoliberal reforms designed to rekindle growth **for** **the** **wealthy**, with the promise that prosperity would **“trickle down”** to the rest. Portrayed as liberating markets from burdensome constraints, neoliberal policies are anything but laissez-faire; they redirect regulations, taxes, and public spending on multiple scales.5 These new rules of the game have helped to sustain growth in the quantities of labor and resources extracted, in market consumption, and in GDPs.

They have also redistributed gains toward the wealthiest, resulting in **greater** **inequalities** within and among countries. In the US, average wages have failed to gain purchasing power over forty years, despite a three-fold growth in GDP.6 Economist Juliet Schor correlates increased consumption during this period with remarkably steep increases in personal debt and average hours worked for pay.7 These trends have reshaped relationships and subjectivities, contributing to outcomes like higher incidences of depression among people burdened with debt. 8 The bitter irony is that this sacrifice of individual and family wellbeing to boost GDPs in the short term is proving **unable to sustain macroeconomic growth over generations.**

Growth through debt is a **vicious** **cycle**. Economies **get indebted to grow**, then **have to** **grow to pay back debts.** World debt hit a **record** **high** of $247,000 trillion in the first quarter of 2018, an 11.1 percent year-on-year increase.9 Debt repayments by the world’s poorest countries have doubled since 2010.10 International organizations like the IMF and the World Bank guide indebted governments into structural adjustments designed to raise revenues, often by attracting investment from global corporations seeking cheap labor and resources to sustain their own growth.

Global financial crises **lay** **bare** the **weak foundations** of accelerated growth. When the derivatives structures hiding unsound mortgages collapsed in 2007, the US government responded with massive bailouts that saved financial institutions, but failed to prevent **widespread** **pain**, dislocation, and **conflict** around the globe. Whereas analysts and media portray the 2008–10 crisis as resulting from faltering growth, we locate its source in the pursuit of growth in untenable conditions. Countries showing **more GDP growth** beforehand **suffered greater damages and decline** during the crisis.11 **Greece** and **Ireland**, for example, whose growth performance surpassing 4 percent was celebrated by the IMF before 2008, collapsed not because they had failed to grow more, but because they had used public and private debt to **grow** **too** **much**.

**Short-Sighted Endeavors** to Sustain Growth

As economies began to decelerate, with growth rates declining toward zero in cases like Japan and Italy, governments and central banks reacted by **pouring** **money** **into** **markets** and by **cutting** **public** **expenditures.** The negative impacts of both are **unequal** and **enduring**.

Between 2009 and 2019, the European Central Bank pumped almost €2.6 trillion into banks, and the US over €4 trillion – equivalent to its budget for World War II.12 This “**quantitative easing**” (in which central banks injected additional money into markets by using newly created reserves to purchase bonds and other assets) was intended together with lowered interest rates to produce additional liquidity, encouraging investment and lending to keep households and economies afloat. Some of the excess money ended up in **speculation** that **perverted** commodity, housing, and other **markets**, leading to **devastating** **outcomes** including hunger and homelessness.

Saskia Sassen points to some ominous implications for democracy and civil rights from resulting trends in real estate markets.13 First was a sharp scale-up in mega-project construction and in corporate and foreign purchase of buildings (in 100 cities worldwide, corporate buying of existing properties exceeded $600 billion from mid-2013 to mid-2014, and $1 trillion a year later). Second were catastrophic levels of foreclosure on modest properties owned by middle-income households (US Federal Reserve data show that over 14 million homeowners lost their homes between 2006 and 2014).

Escalation of housing prices has forced countless residents to **leave** their **homes and cities**, to **commute long hours** to work, or to **lose** their **jobs**. Acute crises of homelessness amid meteoric growth are evident in London where, from 2008 to 2014, foreigners bought £100 billion of property,14 and in San Francisco, where the city with most billionaires per inhabitant is sullied with the feces of residents without homes.15

In the face of unplanned stagnation, governments who had counted on growth have imposed **austerity** **measures** that reduce spending in realms including health, education, welfare, environment, and salaries. While curbing deficits and freeing up money to pay debts, such **cuts** **undermine** the wellbeing and regeneration of a country’s most important resource: **human** **beings**.

A UN review found that in the UK, the world’s fifth largest economy and a center of global finance, austerity cuts had left 14 million people in poverty, and crippled **[impaired]** **public responses** to growing needs around mental health and child poverty.16 Cuts to European health systems have led to **increased** **infectious** **diseases** and suicides17 and left rich countries unprepared for dealing with **epidemics**, despite their formidable resources. Feminists rightly denounce the mounting crises of care, including situations in which all adults in a family must work long hours, while workers paid to care for children, elders, the sick, and homes are underpaid and exploited through gender, ethnoracial, and geographical hierarchies.

In October 2019, Ecuador’s president Lenin Moreno decreed a plan for structural adjustment negotiated with the IMF as a precondition for a $4.2 billion loan. Miriam Lang’s analysis of the resulting revolt points to recent allotments of around $4 billion in tax cuts and exemptions to large companies with potential to grow Ecuador’s GDP.18 The announced austerity package hit lower-income people by eliminating longstanding fuel subsidies and reducing benefits for public sector workers. When union, indigenous, student, and other groups erupted in protest, the government declared a state of emergency, sending thousands of military personnel and heavy equipment onto the streets. Twelve days of conflict resulted in eight deaths, an estimated 1,300 injuries and 1,200 detentions, and the withdrawal of the austerity package.

In sum, **onerous** **debt**, **forced** **austerity**, and wild **inflation** in food and housing markets are all portrayed as maladies to be cured by growth. We argue, to the contrary, that these are all **consequences of** policies intended to stimulate **growth.**

## 1st adv

### 2NC – Supply Chain

**Supply chain restructuring is inevitable because of COVID.**

**Brown 20** – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

The **COVID-19 pandemic** has been **deeply disruptive for supply chains** as businesses **grapple with fluctuations in supply and demand**, **intermittent outbreaks** in different parts of the world, and **speculation about reshoring** and **reducing reliance on China**. **Many companies** are **looking at restructuring their supply chains**, trying to balance resilience with efficiency and reduced costs — a process either **started or accelerated** because of the pandemic.

Even so, some predictions about how supply chains are changing are overblown, according to two supply chain experts. In separate web presentations recently, MIT professors Yossi Sheffi and David Simchi-Levi offered their thoughts about reliance on China, the possibility of reshoring, and how supply chains will — and won’t — change in the era of COVID-19.

Supply chain restructuring isn’t pandemic-specific

Supply chain restructuring was **underway before the pandemic**, Simchi-Levi said in a June webinar hosted by the MIT Industrial Liaisons Program. This includes companies **reconsidering** their **relationship with China** because of the trade war between the U.S. and China.

According to a survey of more than 3,000 companies released in February by Bank of America, companies in 10 of 12 global sectors said they **intended to shift** at least a portion of their **supply chains from current locations**. Companies cited **tariffs**, **automation**, and **national security** among the reason for the changes.

Some companies are thinking about **bringing manufacturing closer to demand**, said Simchi-Levi, an engineering professor, while others are **looking toward fully reshoring**.

Restructuring plans vary by industry, Simchi-Levi said. Some apparel manufacturing companies are moving out of China to Southeast Asia. High-tech industries are maintaining some manufacturing in China, but also bringing capacity closer to market demand by moving to Brazil, Mexico, and Eastern Europe. Simchi-Levi said these **restructuring trends** will **likely continue** and **accelerate in light of the coronavirus pandemic**.

**Supply chain relocation is inevitable – COVID and U.S.-China strategic rivalry ensure it.**

**Suzuki 21** – Visiting fellow with the Japan Chair at the Center for Strategic and International Studies

Hiroyuki Suzuki, “Building Resilient Global Supply Chains: The Geopolitics of the Indo-Pacific Region,” CSIS, February 2021, https://www.csis.org/analysis/building-resilient-global-supply-chains-geopolitics-indo-pacific-region

Covid-19 Has Accelerated Supply Chain Restructuring

During the era of globalization over the last two decades, companies of all sizes have been building domestic and international supply chains that prioritize efficiency. However, **rising labor costs** in emerging economies, including China, and **growing geopolitical uncertainty due to U.S.-China strategic rivalry**, including the **strengthening of protectionist policies** in the United States, **forced** a **reassessment** of **global business models**—such as multinational corporations announcing plans to **relocate** their **manufacturing operations** to Vietnam and Mexico in 2018–19. The Covid-19 pandemic has **greatly accelerated this trend** and reaffirmed the importance of protecting citizens’ livelihoods by strengthening supply chains. In particular, the impact on essential commodities such as food and medicines and on social infrastructure, coupled with political tensions, provided an **opportunity** to **promote policies of homeland security** in many countries.

In response to an **increasingly complex global economic environment**, global corporations are taking the following measures to **reduce supply chain risk**:

▪ **Reshoring**

In short, this is a strategy to **redirect manufacturing operations back to the home market**. This **trend has been evident since 2019**, **particularly in the United States** due to **tariff increases** in the wake of the U.S.-China trade conflict that have caused the U.S. manufacturing import ratio (imports as a percentage of total domestic manufacturing output) to fall for the first time in almost a decade. In addition, the Covid-19 pandemic has **increased awareness** in the United States of the **vulnerability of supply chains** for critical items such as health care products and food, **further encouraging policies** that allow companies to **repatriate** their **supply chains** back to their home countries. However, in the case of developed countries, reshoring entire supply chains is not practical due to additional labor and overhead costs, so it is important to focus on strategic sectors for reshoring from a national security and industrial policy viewpoint.

**BUT large scale restructuring is impossible.**

**Brown 20** – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

Companies are unlikely to completely abandon China

The new coronavirus has put a spotlight on the world’s reliance on Chinese manufacturing, and prompted speculation that supply chain restructuring might start with pulling out of China.

But “this is really not happening,” said Sheffi, the director of the MIT Center for Transportation and Logistics, at the EmTech Next conference last month. While some companies have been leaving China over the last decade as costs go up, Sheffi said **most can’t**, **and won’t**, move their supply chains out of the country completely.

China is a **sophisticated supplier** of many parts, he said, pointing out that clothing manufacturers who have left China for other countries are **still buying Chinese textiles**. Proof in point: While China’s share of clothing manufacturing has fallen over the last five years, its export of raw textiles, which are made with sophisticated large machinery, has gone up.

Even if sewing and parts of some other industries leave, “**big industries invested decades** in building up a whole ecosystem in China,” Sheffi said. “It will take **decades** and **untold money** to move out of China, so I don’t see it happening very quickly.”

Sheffi said none of the executives he’s interviewed for an upcoming book expressed plans to move out of the country entirely.

“**They just can’t**,” he said. Even if costs are high, China offers **capability**, **speed**, and **sophistication** — an **entire ecosystem** that can’t **easily be replicated or replaced**.

### 2NC---AT: Taiwan War

#### No Taiwan wars.

Tønnesson 17 – Dr. Stein Tønnesson, Norwegian peace researcher and historian who wrote the miscut econ impact card. [Peace by Development, Chapter 4 of *Debating the East Asian Peace: What It Is. How It Came About. Will It Last?* NIAS Studies in Asian Topics, Copenhagen: NIAS Press, EBSCOhost]

This could fit the contemporary situation in the Taiwan Strait, where the more and more liberal government in Taipei has sought to avoid militarized disputes, while the developmental PRC has used military threats and missile tests without going as far as to provoke a military confrontation. But then this may have more to do with the relative strength of the two sides.3 In the last few decades, Beijing has acquired a capacity for destroying Taiwan’s infrastructure with land-based missiles deployed along the mainland coast, but has avoided any outright crisis since 1995–96, even in the period when President Chen Hsui-bian sought to alter Taiwan’s international status (2000–08). China is also expected to continue to show restraint although the current president Tsai Ing-wen (2016– ), who like Chen Hsui-bian represents the Democratic Progressive Party (DPP), identifies independence as a long-term goal.4 She is expected to refrain from policies that could provoke military reactions from the mainland. If these expectations are fulfilled, could this outcome be explained mainly by the high level of cross-strait investments, trade and communication, or by the domestic functioning of Taiwan’s liberal political system? Or might it be due to the fact that both states are in a sense developmental? Or would it simply, as realists would contend, follow from the US policy of deterring the mainland and holding Taiwan back from seeking independence? The economic loss to be expected from a war has increased exponentially. This may have led to restraint on both sides.

### 2NC---AT: China Tech

#### No risk to tech leadership.

Dr. Michael Swaine 21, PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute, 4/21/2021, "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/

Some observers claim that Beijing could somehow set standards in critical technology areas and install tech hardware around the world, to the extent that China would be able to relegate the United States to a permanently inferior status in both the commercial and military realms, thus threatening the very existence of the country. This is also highly unlikely.

Chinese companies are certainly participating in standard-setting in key areas, including 5G. But this process is highly competitive globally, and U.S., Asian, and European companies all hold major portions of the standards and the standard-essential patents that undergird the global technology ecosystem. There is little if any chance that Chinese companies could come to dominate this process. Many tech experts state that the most likely worst-case outcome of Chinese gains regarding standards and hardware would be a fragmented technology ecosystem that would impoverish all countries, not give China a level of power that would enable it to vanquish the United States.

#### Tech leadership’s inevitable -- complexity widens the gap.

Gilli & Gilli 19 Andrea Gilli, Senior Researcher in Military Affairs at the NATO Defense College in Rome, works at the Center for International Security and Cooperation, PhD in Political Science from the European University Institute, MSc in International Relations from the London School of Economics, & Mauro Gilli, a Senior Researcher in Military Technology and International Security, PhD in Political Science from Northwestern University, MA in International Studies from Johns Hopkins University. [Why China Has Not Caught Up Yet: Military-Technological Superiority and the Limits of Imitation, Reverse Engineering, and Cyber Espionage, 43(3), 141–189]

Can adversaries of the United States easily imitate its most advanced weapon systems and thus erode its military-technological superiority? Do reverse engineering, industrial espionage, and, in particular, cyber espionage facilitate and accelerate this process? China's decades-long economic boom, military modernization program, massive reliance on cyber espionage, and assertive foreign policy have made these questions increasingly salient. Yet, almost everything known about this topic draws from the past. As we explain in this article, the conclusions that the existing literature has reached by studying prior eras have no applicability to the current day. Scholarship in international relations theory generally assumes that rising states benefit from the "advantage of backwardness," as described by [End Page 141] Alexander Gerschenkron.1 By free riding on the research and technology of the most advanced countries, less developed states can allegedly close the military-technological gap with their rivals relatively easily and quickly.2 More recent works maintain that globalization, the emergence of dual-use components, and advances in communications (including the opportunity for cyber espionage) have facilitated this process.3 This literature is built on shaky theoretical foundations, and its claims lack empirical support. The international relations literature largely ignores one of the most important changes to have occurred in the realm of weapons development since the second industrial revolution (1870–1914): the exponential increase in the complexity of military technology. We argue that this increase in complexity has promoted a change in the system of production that has made the imitation and replication of the performance of state-of-the-art weapon systems harder—so much so as to offset the diffusing effects of globalization and advances in communications. On the one hand, the increase in complexity has significantly raised the entry barriers for the production of advanced weapon systems: countries must now possess an extremely advanced industrial, scientific, and technological base in weapons production before they can copy foreign military technology. On the other hand, the knowledge to design, develop, and produce advanced weapon systems is less likely to diffuse, given its increasingly tacit and organizational nature. As a result, the advantage of backwardness has shrunk significantly, and know-how and experience in the production of advanced weapon systems have become an important source of power for those who master them. We employ two case studies to test this argument: Imperial Germany's rapid success in closing the technological gap with the British Dreadnought battleship, despite significant inhibiting factors; and China's struggle to imitate the U.S. F-22/A Raptor jet fighter, despite several facilitating conditions. Our research contributes to key theoretical and policy debates. First, the [End Page 142] ability to imitate state-of-the-art military hardware plays a central role in theories that seek to explain patterns of internal balancing and the rise and fall of great powers. Yet, the mainstream international relations literature has not investigated this process.4 Because imitating military technology was relatively easy in the past, scholars and policymakers assume that it also is today, as frequent analogies between Wilhelmine Germany and contemporary China epitomize.5 In this article, we investigate the conditions under which the imitation of state-of-the-art weapon systems such as attack submarines and combat aircraft is more or less likely to succeed. Second, we develop the first systematic theoretical explanation of why U.S. superiority in military technology remains largely unrivaled almost thirty years after the end of the Cold War, despite globalization and the information and communication technology revolution. Some scholars have argued that developing modern weapon systems has become dramatically more demanding, which in turn has made internal balancing against the United States more difficult.6 This literature, however, cannot explain why in the age of globalization and instant communications—with cyber espionage permitting the theft of massive amount of digital data—U.S. know-how in advanced weapon systems has not already diffused to other states. Other contributors to the debate on unipolarity have either pointed to the relative inferiority of Chinese military technology without providing a theoretical explanation, or they have argued that developing the military capabilities to challenge the status quo is, in the long run, a function of political will—an argument that cannot account for the failure of the Soviet Union to cope with U.S. military technology from the late 1970s onward.7 We argue that in the transition from the second industrial [End Page 143] revolution to the information age, the imitation of state-of-the-art military technology has become more difficult, so much so that today rising powers or even peer competitors cannot easily copy foreign weapon systems.8 Our findings address existing concerns that China's use of cyber espionage and the increasing globalization of arms production will allow Beijing to rapidly close the military-technological gap with the United States.9

#### Stealing’s not a shortcut.

Gilli 19 Andrea Gilli, Senior Researcher in Military Affairs at the NATO Defense College in Rome, works at the Center for International Security and Cooperation, PhD in Political Science from the European University Institute, MSc in International Relations from the London School of Economics. [Is China’s Cyberespionage a Military Game-Changer? 3-5-2019, https://www.belfercenter.org/publication/chinas-cyberespionage-military-game-changer]

There’s no magical shortcut to catch up on the latest weapons tech According to an internal Navy review last week, China has the U.S. Navy “under cyber siege,” and Navy suppliers and contractors struggle to stem the supply-chain security breaches. Other experts claim that China has reportedly stolen over 50 terabytes of data related to U.S. stealth fighters, radars, missiles and engines over the past 15 years. Can China steal its way to dominance in military technology? For national security policymakers, this is a heated debate. Beijing has fielded technologies that seem to resemble advanced U.S. weapon systems, aviation prototypes and other military technologies. The evidence that China may have appropriated sensitive technology echoes warnings from defense analysts such as Richard Clarke, who argues that the United States could see all of its R&D “stolen by the Chinese.” Along the same lines, former National Security Agency director Keith Alexander worries that cyberespionage could lead to “the greatest transfer of wealth in history” by depriving the United States of its industrial, scientific and technological advantage. They needn’t be quite so worried. Our new article in International Security, “Why China Has Not Caught Up Yet,” provides evidence that stealing foreign information isn’t nearly as valuable as it’s made out to be. Free riding isn’t free Military technologies are not plug-and-play. Countries can’t simply exploit stolen secrets about the design, development and production of advanced weapon systems for free. To understand and apply this type of information, they first need to build an advanced industrial, scientific and technological base, including product-specific laboratories, testing facilities and specialized personnel. For instance, U.S. air power depends on facilities like the McKinley Climatic Laboratory (Eglin Air Force Base), the Nevada Test and Training Range (Nellis Air Force Base) and the Avionics Laboratory (Wright-Patterson Air Force Base). Foreign competitors need similar facilities to figure out and apply the data that they have stolen. The Soviet Union ran into this problem in the 1960s and 1970s while trying to copy the Concorde, the Anglo-French supersonic airliner. Moscow obtained designs and blueprints through industrial espionage but couldn’t get far. According to one intelligence analyst, “Soviet technology or metallurgy was not up to the job of interpreting or reconstructing Western technology.” Know-how does not spread easily Hacking foreign servers is unlikely to provide all the information necessary to reproduce a given technology. Crucial details may be missing from blueprints and designs because engineers don’t always write down everything that is important. In fact, at times, the U.S. military has difficulty understanding its own technologies. When the U.S. Navy started to refurbish the nuclear warheads on Trident ballistic missiles in the 1990s, it found that it could not replicate an aerogel material created in the 1980s, code-named “Fogbank.” Personnel who had worked on “Fogbank” had retired or moved on, leaving no written records or details. The Navy then spent $69 million and needed more than a decade to reproduce this essential material. Modern weapons systems have myriad components that can cause serious problems if not produced or integrated precisely to spec — and getting things right is hard without all the information. Our research findings suggest that access to foreign data is most helpful when the country stealing it is “almost there” — when it faces just one hurdle or a small number of problems in catching up with a particular technology. The closer a project is to completion, the harder and more expensive it gets to iron out the final hurdles. Engineers building the F-117 Nighthawk estimated that the last 10 percent of the work cost 40 percent of the total project. So if a country is in those final stages, information on how exactly to produce a given material, for example, might be the turning point. China has found it hard to catch up In our article, we detail the range of difficulties China has experienced in imitating, copying and reverse-engineering Western weapon systems. For instance, China has so far failed to produce reliable and powerful turbofan engines, which are necessary for its fourth-generation aircraft to operate from aircraft carriers as well as for the fifth-generation aircraft. These problems stem from the fact that China has not yet mastered the processes and materials required to produce highly machined aircraft engines, where extremely minor deviations from the optimal standards (a 1/10th of a millimeter imperfection) can be sufficient for the engine to stall. The engine China is developing for its most advanced fighter experienced an explosion during ground tests, and Chinese engineers appear not to have found a solution. As long as China cannot develop powerful and reliable engines, its air power will remain severely limited. Sure, stealing other countries’ technologies can provide an advantage. But this approach isn’t a magical way to catch up on the latest tech. To become a first-tier weapons producer, a country first has to develop the necessary industrial, scientific and technological capabilities — and then go through an extensive and expensive process of trial and error before it can gain the capacity to produce state-of-the-art weapons systems. Shortcuts will go only so far.

#### China lags in digital tech.

Jun Jun 18, dean of the School of Economics at Fudan University and director of the China Center for Economic Studies; Nikkei Asia; 8/3/2018, “The West exaggerates China's technological progress,” https://asia.nikkei.com/Opinion/The-West-exaggerates-China-s-technological-progress

This is a serious misrepresentation. While it is true that digital technologies are transforming China's economy, this reflects the implementation of mobile-Internet-enabled business models more than the development of cutting-edge technologies, and it affects consumption patterns more than, say, manufacturing. This kind of transformation is hardly unique to China, though it is occurring particularly rapidly here, thanks to a huge consumer market and weak financial regulation.

Furthermore, it is not so obvious that these changes have anything to do with the government's industrial policies. On the contrary, the growth of China's internet economy has been driven largely by the entrepreneurship of privately owned companies like Alibaba and Tencent.

In fact, Western observers -- not just the media, but also academics and government leaders, including U.S. President Donald Trump -- have fundamentally misunderstood the nature and exaggerated the role of China's policies for developing strategic and high-tech industries. Contrary to popular belief, these policies do little more than help lower the entry cost for firms and enhance competition. In fact, such policies encourage excessive entry, and the resulting competition and lack of protection for existing firms have been constantly criticized in China. Therefore, to the extent that China relies on effective industrial policies, they do not create much unfairness in terms of global rules.

Having said that, what are China's actual technological prospects? The Chinese are certainly fast learners. Over the last 30 years, Chinese manufacturers have proved adept at seizing opportunities to emulate, adapt and diffuse new technologies.

But technological advances in the Chinese business sector occur at the middle of the smile curve (where gains are generally lower than at the innovative start of a new product or at the end, in marketing finished goods to consumers).

Foreign core-technology owners extract most of the added value from Chinese manufacturing. For example, in Danyang, a county of Jiangsu Province that is a production hub of optical lenses for global markets, manufacturers can produce the most sophisticated models. Yet they lack the core software to produce, say, progressive lenses, so they must pay a fixed royalty to a U.S. company for each progressive lens they make. Likewise, China's automobile manufacturers still import their assembly lines from developed countries.

Clearly, there is a big difference between applying digital technologies to consumer-oriented business models and becoming a world leader in developing and producing hard technology. The latter goal will demand sustained investment of time, human capital, and financial resources in sectors with long basic R&D cycles (such as pharmaceuticals).

Given this, China probably remains 15-20 years away from matching the R&D input of, say, Japan or South Korea, and when it comes to output -- the more important factor -- it is much further behind. While China can accelerate progress by attracting creative talent and strengthening incentives for long-term research, there are no real shortcuts when it comes to achieving the gradual shift from learning to innovating.

### AT: Add On

#### No blackouts.

Larson 18 Selena Larson, Cyber threat intelligence analyst at Dragos, Inc. [Threats to Electric Grid are Real; Widespread Blackouts are Not, 8-6-2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/]//BPS

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks---and in some cases, ICS networks---in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event---but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

#### No grid impacts.

Joe Uchill 18, Cybersecurity reporter at Axios, former cybersecurity reporter at The Hill, internally citing Department of Homeland Security officials and other cybersecurity experts, 8/23/2018, “Why "crashing the grid" doesn't keep cyber experts awake at night,” <https://www.axios.com/why-crashing-the-grid-doesnt-keep-cyber-experts-awake-at-night-a40563a5-f266-493d-856a-5c9a5c1383dd.html>, Stras

Reality check: The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers take down the entire grid — the one that's also the plot of the "Die Hard" movie where Bruce Willis blows up a helicopter by launching a car at it — is not a realistic threat. And focusing on the wrong problem means we’re not focusing on the right ones.

So, why can't you hack the grid? Here's one big reason: "The thing called the grid does not exist," said a Department of Homeland Security official involved in securing the U.S. power structure.

Think of the grid like the internet. We refer to the collective mess of servers, software, users and equipment that routes internet traffic as "the internet." The internet is a singular noun, but it’s not a singular thing.

* You can’t hack the entire internet. There’s so much stuff running independently that all you can hack is individual pieces of the internet.
* Similarly, the North American electric grid is actually five interconnected grids that can borrow electricity from each other. And the mini-grids aren't singular things either. Taking down "the grid" would be more like collapsing the thousands of companies that provide and distribute power accross the country.
* "When someone talks about 'the grid,' it's usually a red flag they aren't going to know what they are talking about," says Sergio Caltagirone, director of threat intelligence at Dragos, a firm that specializes in industrial cybersecurity including the energy sector.

Redundancy and resilience: Every aspect of the electric system, from the machines in power plants to the grid as a whole, is designed with redundancy in mind. You can’t just break a thing or 10 and expect a prolonged blackout.

* On some level, most people already know this. Everyone has lived through blackouts, but no one has lived through a blackout so big it caused the Purge.
* 'The power system is the most complex machine ever made by humans," said Chris Sistrunk, principle consultant at FireEye in energy cybersecurity. "Setting it up, or hacking it, is more complicated than putting a man on the moon."
* An attack that took out power to New York using cyber means would require a nearly prohibitive amount of effort to coordinate, said Lesley Carhart of Dragos. Such a failure would also tip off other regions that there was an attack afoot. Causing a power outage in New York would likely prevent a power outage in Chicago.

### AT: Cyber War

#### No cyber impact---attribution, restraint, and capabilities.

James Andrew Lewis 20, senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies, 8/17/20, "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

## 2nd Adv

### 2NC – I/L

#### Literally about uber drivers

Schroder ’20 [Malte et al; Center for Advancing Electronics Dresden @ Technical University of Dresden; David-Maximilian Storch; Institute for Theoretical Physics @ Technical University of Dresden; Philip Marszal; Center for Advancing Electronics Dresden @ Technical University of Dresden; Marc Timme; Center for Advancing Electronics Dresden @ Technical University of Dresden; “Anomalous Supply Shortages from Dynamic Pricing in On-Demand Mobility,” *Nature Communications*, 11(1), p. 1-8]

Complex engineered systems are known to exhibit unintended states in their collective dynamics that often disrupt their function1–5. In complex mobility systems, examples include the emergence of congestion6,7, anomalous random walks in human travel patterns8, and cascading failures of mobility networks9–11. As urban mobility becomes more and more self-organized and digitized, mobility services increasingly employ dynamic pricing12–16, in general serving two main purposes (Fig. 1a). First, dynamic pricing adjusts the price of a product or service to compensate for changes in its intrinsic base cost. Second, it creates incentives for all market participants to equilibrate demand–supply imbalances by increasing the price if demand exceeds supply and vice versa. A higher price both imposes higher costs to customers incentivizing them to decrease their demand and, at the same time, offers higher profit for identical service to suppliers, in turn motivating them to increase their supply. However, recent reports on on-demand ride-hailing17–19 indicate that dynamic pricing may have the opposite effect and instead cause demand–supply imbalances. Here, we quantitatively demonstrate the existence of these imbalances by comparing price time series and demand estimates for ride-hailing services. In a game theoretic analysis we reveal the incentive structure for drivers to induce anomalous supply shortages as a generic feature of dynamic pricing. This observation suggests that similar dynamics should emerge independent of the location or industry. Comparing price time series for 137 locations in 59 urban areas across six continents we find price dynamics reflecting anomalous supply shortages in several cities around the world. Results Dynamic pricing in on-demand mobility. Dynamic pricing schemes are commonly applied by on-demand mobility service providers, such as Lyft and Uber15,16. For Uber, the price p of the service (the total fare for a ride) decomposes into two parts16, base cost pbase and surge fee psurge, p ¼ pbase þ psurgeðD; SÞ ; ð1Þ as illustrated in Fig. 1b for trips from Reagan National Airport (DCA) to Union Station in Washington, DC (see “Methods” section and Supplementary Table 1 for more details). The first component (base cost) consists of regular fees for a ride pbase ¼ p0 þ pt Δt þ pl Δl ; ð2Þ including one-off fees p0 as well as trip fees pt and pl proportional to the duration Δt and distance Δl of the trip, similar to the fare for a typical taxi cab. These base cost increase, for example, during times of heavy traffic, such as morning and evening commuting hours (gray shading in Fig. 1b) when the trip duration Δt increases due to congestion. The second component (surge fee psurge) implements Uber’s surge pricing algorithm16,20 and reflects the time evolution of supply–demand imbalances. The surge fee increases due to persistent supply–demand imbalance during commuting hours. Longer trip duration means that drivers spend more time in traffic serving the same number of customers, which effectively reduces the supply of available drivers compared to the demand, and causes an increase of the surge fee. These price surges are meant to incentivize customers to delay their request, reducing the current demand, as well as to incentivize drivers to offer their service in areas or at times with high demand, increasing the supply. As illustrated in Fig. 1b, during the evening the system settles to constant base cost, reflecting constant trip duration in uncongested traffic. Yet, even under these apparent equilibrium conditions, the time evolution of the surge fee exhibits a series of short, repeated price surges (dashed box in Fig. 1b) that are not reflected in the demand dynamics (Fig. 1c). In fact, recent reports about driver behavior at DCA17–19 indicate that drivers collaboratively stimulate price surges in the evening hours by temporarily switching off their app. Thereby, they cause artificial supply shortages, implying supply-side-induced out-of-equilibrium price dynamics at this airport consistent with our observations. Using the observed price surges of confirmed anomalous supply shortages at DCA as a reference case, we address two key questions: First, what are the underlying incentives causing drivers to induce anomalous supply shortages and under which conditions do they emerge? Second, do these non-equilibrium dynamics emerge at other locations as well and how can we identify them without direct observation? Incentives promoting anomalous supply shortages. While the specific conditions promoting artificial price surges depend on local details and demand dynamics, a first principles game theoretic description captures fundamental incentives underlying the anomalous supply shortages: S = 2 drivers are competing for a fixed demand D aiming to maximize their expected profit (Fig. 2a). For illustration, we take a piecewise linear price function, representing the simplest possible demand-supply response, such that drivers earn the total fare p0 ðS;DÞ ¼ pbase if S ≥D pbase þ pmax surge DS D else ( ð3Þ when they serve a customer, where pbase denotes the (constant) base cost and pmax surge denotes the maximum possible surge fee when S = 0 (see “Methods” section, Supplementary Note 3 and Supplementary Fig. 16 for details). Each driver has the option to temporarily not offer their service, contributing to an artificial supply shortage, S < 2. As drivers turn off their app, the fare increases from plow ¼ p0 ð2;DÞ with both drivers online over pmid ¼ p0 ð1;DÞ ≥ plow as one driver goes offline to phigh ¼ p0 ð0;DÞ ≥ pmid when both drivers withhold their service. While drivers who do not offer their service would typically miss out on a customer, the use of online mobile applications in most ridehailing services enables them to quickly change their decision. Turning their app back on, they can capitalize on the additional surge fee and earn the higher total fare by quickly accepting a customer before the dynamic pricing algorithm reacts (Fig. 2a, see “Methods” section for details). Figure 2b illustrates the phase diagram of the resulting Nash equilibria. When the demand is inelastic and does not change as the price increases [Fig. 2b, panel (i)], at low demand and low surge fee the payoff structure of the game resembles a prisoner’s dilemma21, describing a conflict of interest between the drivers. While the socially optimal strategy for both drivers is to go offline, maximizing their total profit, each driver individually profits more from remaining online. Consequently, both drivers remain online due to the high risk of completely missing out on a customer if the other driver remains online (ON–ON equilibrium, green). The payoff structure changes to a stag hung22 with multiple Nash equilibria when the surge fee or the demand increases. If both drivers are online, neither profits individually from going offline, and vice-versa if both drivers are offline. Depending on the trust between the drivers, they settle into either an on–on (risk-averse) or an off–off (payoff-dominant and socially optimal) Nash equilibrium. In this regime, an additional mixed strategy Nash equilibrium also exists, where both drivers go offline with a certain probability. At high demand, the payoff structure becomes that of a trivial game without any conflict of interest between the drivers as both drivers always profit from inducing artificial supply shortages to earn the additional surge fee (OFF–OFF equilibrium, orange). As the demand becomes elastic [Fig. 2b, panels (ii) and (iii)], i.e. the demand decreases in response to an increase of the total fare as D0 ðp0 ;DÞ ¼ D ð1 δ ðp0 pbaseÞÞ ð4Þ governed by the price elasticity δ, the risk of missing out on a customer increases and profits due to surge fees are counteracted by the reduced demand. For a sufficiently strong demand response (high elasticity), the game setting effectively changes to low demand conditions when a single driver goes offline. The game becomes a prisoner’s dilemma or a trivial game where both drivers remain online (green). Consequently, the parameter region where drivers are incentivized to switch off their app (orange) shrinks. In particular, drivers are more strongly incentivized to create artificial price surges when the maximum surge fee is small. For intermediate conditions, a new state of partial supply shortages emerges, where only one of the two drivers goes offline (red-blue-hatched). This incentive structure is a generic property of the dynamic pricing, illustrated by its existence in this fundamental game-theoretic model and demonstrated for more than two players in Supplementary Fig. 20 and non-linear demand response in Supplementary Fig. 19. Moreover, these incentives are sufficient to explain anomalous supply shortages in a time-continuous game under constant conditions (constant demand, a constant number of drivers and a constant price elasticity of demand) where the ON–OFFdecisions of the drivers, reacting to the current conditions, are the only remaining dynamics (Fig. 2c). Drivers contribute to an artificial supply shortage if sufficiently many other idle drivers are willing to also participate, following their mean-field optimal strategy. To avoid never making profit, however, individual drivers remain offline only for a short amount of time, explicitly limiting the timescale of potential artificial price surges (see “Methods” section and Supplementary Note 3 for details). The simulations shown in Fig. 2c reproduce qualitatively the same non-equilibrium price dynamics as observed in the recorded price data (compare Fig. 1b): Increases of the trip duration during commuting hours (gray shading in Fig. 2c) are accompanied by a sustained supply–demand imbalance and surge fees without drivers turning off their app. At other times, the drivers create short, artificial price surges to maximize their profit. Identifying characteristic price dynamics. The fact that these incentives are generic to dynamic pricing schemes suggests that artificial supply shortages and non-equilibrium surge dynamics emerge independent of the location. However, direct observation of the supply dynamics, e.g. of the number and location of online drivers, is typically impossible as this information is not publicly available. Even with the above results, a bottom-up prediction is practically infeasible since the exact conditions under which these dynamics are promoted depend on the specific details of the trip, the local dynamics of demand and drivers, publicly unavailable details on the surge pricing algorithm as well as additional external influences such as local legislation. We overcome these obstacles by exploiting the characteristic temporal structure of the surge dynamics observed for confirmed anomalous supply shortages in DCA (compare Fig. 1b) to identify locations with similar dynamics. Based only on the price time series, we quantify the timescales of normalized price changes Δp for 137 different routes in 59 urban areas across six continents (Fig. 3a, see “Methods” section for details). The distribution of price changes separates into a slow and fast timescale and a contribution where the price does not change Pð Þ¼ Δp wbase Pbase Δp; σbase ð Þ þ wsurge PsurgeðΔp; σsurgeÞ þ w0 δðΔpÞ : ð5Þ The slow price changes Pbase Δp; σbase ð Þ describe changes of the base cost varying as slowly as traffic conditions change during the day. The fast price changes PsurgeðΔp; σsurgeÞ are associated with sudden changes of the surge fee. The last term w0 δ(Δp) describes times when the price remains constant and contributes only at Δp = 0, where δ represents the Dirac-Delta distribution and w0 the remaining weight w0 = 1−wbase−wsurge. Characterizing the contribution wsurge of the surge fee and the magnitude σsurge of the associated price changes with a maximum-likelihood Gaussian mixture model fit PxðΔp; σxÞ ¼ 1 ffiffiffiffiffiffiffiffiffiffi 2πσ2 x p e Δp2 2σ2 x ð6Þ with x 2 f g base;surge (see “Methods” section for details), we find locations without surge activity (Fig. 3b and c) as well as locations with strong but infrequent price surges (Fig. 3d). Importantly, we also identify several locations with price change characteristics similar to those observed at DCA, with a high magnitude and contribution of surge price changes, suggesting strong and frequent price surges potentially driven by anomalous supply dynamics (compare Fig. 3e). Indeed, all of the identified locations exhibit qualitatively similar non-equilibrium surge fee dynamics with a large number of repeated price surges, in particular during evening hours, demonstrating that the phenomenon is ubiquitous (Fig. 4, see Supplementary Figs. 14 and 15 for additional examples). While these results do not directly imply that all price surges at these locations are induced artificially, both the similarity of the timescale separation to confirmed artificial price surges and the universality of the incentives for drivers provide evidence supporting this conclusion. Discussion In summary, we quantitatively demonstrated the emergence of non-equilibrium price dynamics in on-demand mobility systems at various locations across the globe and explained the fundamental incentive structure ultimately giving rise to such nonequilibrium price dynamics. The exact conditions promoting anomalous supply shortages and artificial price surges depend on a multitude of factors at each location, such as users’ transportation preferences, working conditions for service providers, local legislation, and the availability of alternative transport options. Our methodology to classify the price dynamics based on the separation of timescales of price changes, without explicit knowledge about the timeresolved demand and supply evolution, enables a systematic search for supply anomalies based on price time series only. Although a direct observation of the supply dynamics may be required to confirm anomalous supply shortages, we identify a number of locations likely exhibiting anomalous supply shortages by combining confirmed reports and quantitative observations for reference cases, game-theoretically revealed generic incentive structures and large-scale time series analysis of recorded price estimates. Our theoretical model demonstrates that the underlying incentives are a generic property of dynamic pricing and should even apply across industries where prices are adapted to supply and demand fluctuations on short timescales. This is particularly relevant for applications where prices are prescribed by an external algorithm instead of market clearing prices of buy and sell offers. One contemporary example may be recently discussed smart pricing schemes in power grids14,23, especially since large parts of the demand are inelastic due to fixed daily routines. Our results demonstrate that a carefully designed pricing scheme is essential to avoid unintended incentives that potentially reduce power grid stability instead of enhancing it. For mobility systems in particular, characterizing the incentives and the conditions that promote artificially induced price surges suggests specific actions to suppress their emergence. This may include offering ride-sharing options24–27 (effectively lowering the demand, compare Fig. 2b) or providing more or alternative public transport options (effectively increasing the price elasticity of demand, compare Fig. 2b). The same incentives following a combination of few public transport options and a mismatch in driver availability and demand dynamics28 may also promote the emergence of supply anomalies particularly in the evening and at nighttime. Importantly, our results suggest that limiting the maximum surge fee, as done in response to the initial reports from DCA29 (see Fig. 1b) and frequently discussed as potential legislation30,31 (compare Chennai, Fig. 4), is not an effective response and may even result in the opposite effect if the demand is highly elastic. In general, with the emergence of digital platforms, sharing economies and autonomous vehicle fleets, mobility services and other industries are becoming increasingly self-organized and complex such that new, potentially unintended collective dynamics can emerge1,3–5,7,11,32. Our results provide conceptual insights into these dynamics and may thereby support the creation and regulation of fair, efficient and transparent publicly available mobility services24–27,33–3.

#### Productive algorithmic employment is key to smart city development – solves resource scarcity, intelligent transportation, smart infrastructure, and pollution.

Bozkurt ’21 [Yusuf; Department of Computer Science @ Reutlingen University; Fauser, J., Braun, R., Hertweck, D., & Rossmann, A; “Development of a smart city service catalogue for sensor-based digital services,” in *Proceedings of the IADIS International Conference Connected Smart Cities*, p. 87-96; AS]

1. INTRODUCTION

The shift of populations to cities and urban areas creates complex problems, for instance, environmental impacts, rapid urbanisation, traffic etc. (Alberti et al., 2019). Cities play a significant role in the social and economic development of any country. Digitalisation has a major impact on society and the economy nowadays and in the future. According to Stolterman & Fors (2004), digitalisation, or digital transformation, refers to "the changes associated with the application of digital technology in all aspects of human society". Digitisation enables a wide range of opportunities to develop new services in smart cities to address different challenges related, e.g., climate change or urbanisation. Harakal'ova (2018) defines a smart city as the main element of the smart city concept: the use of information technology to improve management efficiency and standard of living while reducing costs and use of resources and ensuring greater participation of citizens in matters of management and urban development. Many smart city services are available based on Internet of Things (IoT) technology (Perera et al., 2014; Zanella et al., 2014). For example, the monitoring of CO2 and NOx concentration in the cities with IoT sensors. That could provide city developers information regarding the identification of green areas that have a significant impact on air quality (OKLab Köln, 2021). According to Peng et al. (2017), little research has been done on the awareness of such smart city services and user participation. Government officials, policymakers or SMEs are often unaware of the existing large variety of smart city service solutions (Kramers et al., 2014). Additionally, another barrier in enterprises or cities is their uncertainty about which technologies exist or to choose from to address the requirements for a concrete use case. Another issue is implementing the service effectively and determining the maturity of available service (Rachinger et al., 2019). In addition, high implementation costs and lack of technical experts in municipalities and enterprises are often a barrier.

To address these problems, the paper at hand deals with developing a smart city services catalogue that documents best practice services to create a platform to bring citizens, city government, and businesses together. A smart city service catalogue platform structures and describes existing services, supports developing new ideas and identifying and implementing new smart city services. Such a service catalogue represents the first point of contact to the service. It facilitates the contact between interested parties and providers, and users/cities that have already implemented this service. Vice versa, this leads to time and cost savings when implementing smart city services (Yuaca et al., 2019). We formulated the following research question for this paper: What are the components to develop a smart city service catalogue platform?

To answer this research question, we developed a concrete implementation of the smart city service catalogue platform iteratively, described in this paper and available online at www.smartcity-services.de. The rest of this paper is structured as follows: In section 2, we will introduce some background information and discuss related work. Section 3 describes our development process for the smart city service catalogue platform, and in section 4, we present the implemented service catalogue platform. In the last section, we summarise the main findings and discuss future research.

2. BACKGROUND

The urban population today makes up 56 % of the world's population. By 2050, the population is expected to increase to 68 % (United Nations, Department of Economic and Social Affairs, 2018). This growth leads to multiple challenges in different areas of a city (e.g. waste management, traffic management, public transportation). The European Commission (Catriona et al., 2014) structures smart cities in following six dimensions: Smart governance, smart environment, smart mobility, smart living, smart people and smart economy (Bozkurt et al., 2020; Caragliu et al., 2011; Catriona et al., 2014; Giffinger & Gudrun, 2010). Bozkurt et al. (2020) analyse these six dimensions and rank them according to their popularity in the scientific literature. According to this work, smart environment represents the most studied dimension, while smart economy ranks last. According to Bozkurt et al. (2020), the dimensions cover the following topics: 1) Smart environment focuses on sustainable and environmentally friendly urban development using information and communications technology (ICT). Activities range from smart buildings to energy-saving measures for IoT services. 2) Smart governance deals with, e.g., smart city strategy development, transparency and necessary framework conditions for digitalisation projects and smart city initiatives. 3) Intelligent transport systems, optimisation and creation of mobility services are discussed in smart mobility. Citizen participation, social justice, education and co-creation are discussed in 4) smart people. Literature on 5) smart living deals mainly with e-health, but also with smart home topics. Finally, the last dimension, 6) smart economy deals with data-driven business models and business generation in different data life cycle layers.

Despite some dimensions of smart cities are already visible and studied, it is still difficult to give an all-accepted definition of smart cities. For example, Caragliu et al. (2011) emphasise economic growth and high quality of life through the combination of traditional urban infrastructure and ICT and the investment in human and social capital and participatory governance. Lombardi et al. (2012) share a similar view, linking social and environmental issues with the application of ICTs. Cretu (2012) emphasises integrating ICT into every aspect of human life and new thinking paradigms in governance and economy. Washburn & Sindhu (2010) supported a more technological perspective considering smart cities as a collection of ICTs applied to urban infrastructure and services. In contrast, Kourtit et al. (2012) advocate a knowledge-intensive and creative perspective on human and social capital, infrastructure and entrepreneurial capital. Despite numerous definitions and views, the role of ICT as an enabler of smart city activities appears as a common element.

Smart city applications and services are deployed across the city to address challenges such as pollution, ageing society and resource scarcity. Government agencies and businesses are interested in using ICT as an enabler of new smart services. Mainly discussed smart city service areas are transportation (e.g. smart parking, smart traffic lights), healthcare (e.g. patient monitoring systems), energy (e.g. smart grids), public safety services (e.g. smart surveillance), building management, waste management and education (Peng et al., 2017). There is a general understanding that the proper use of smart city services can sustainably improve a city's liveability (Lee & Lee, 2014; Peng et al., 2017; Piro et al., 2014; Yeh, 2017; Yigitcanlar & Lee, 2014). While these smart city services are being technologically studied and implemented, little research has been done on the awareness of such services and user participation (Peng et al., 2017). To better understand the users of smart city services, Lytras & Visvizi (2018) conducted a qualitative study and questioned 102 participants on the usage of smart city services. One of the aspects of the study addressed the main concerns of citizens when using smart city services. It resulted that 45% of the respondents were concerned about security and privacy. This concern was followed by data protection (25%), lack of transparency (8%), ethical concerns (6%), required soft skills (5%), third party awareness (5%) and complexity of services (4%). These concerns can be overcome through a high level of transparency of smart city services. Therefore, a smart city service catalogue platform with best practices worldwide is the first approach to bring citizens, city administration and businesses together.

The concept of a service catalogue is not new and has been addressed and discussed by companies for years as part of IT governance frameworks such as ITIL or COBIT. Many articles deal with this topic and state the necessity and the advantages of service catalogues for companies (e.g. transparent communication of existing IT services) (Horvat et al., 2013; Taconi et al., 2014; Xu et al., 2010). There is no standard design for a service catalogue. Still, the ITIL framework describes some mandatory components: 1) A general list of all services offered, 2) a sufficient description of each service, 3) the alignment between IT and business, 4) the operation level agreement, 5) the service level agreement and 6) the underlying contract (Sembiring & Surendro, 2016). Such a catalogue is primarily used to communicate services transparently and create a consistent picture of the service portfolio (Horvat et al., 2013; Meriwether, 2014; Sembiring & Surendro, 2016; Sipina, 2011; Taconi et al., 2014; Xu et al., 2010). Although first smart city service catalogues are already visible (IoT Collaborative, n.d.; OASCITIES, 2021; UNPARALLEL Innovation, 2021), the topic of smart city service catalogues has remained almost unaddressed in the scientific community.

3. DEVELOPMENT PROCESS

Although various publications already exist, there is no consensus on what a service catalogue should look like. These publications and guides are primarily for businesses to assist them in designing and creating service catalogues (Horvat et al., 2013). Hubbers et al. (2007), for example, emphasise the decomposition of all business processes and the analysis of the IT infrastructure as well as the business goals as a starting point of creating a service catalogue. Kieninger et al. (2011) propose an approach to classify IT services into ten groups (e.g. standard application services, intranet services, backup services). A similar approach is described by Arcilla et al. (2013) by grouping services into hardware, email, backup. Taconi et al. (2014) propose a framework for identifying services and creating service catalogues structured in 9 phases and provides a step by step workflow for identifying available IT services in the company. However, all this valuable work is not directly applicable to creating a smart city service catalogue platform. An enterprise service catalogue, for example, lists and describes the IT services available in the company and the connected business processes. Nevertheless, in the case of the smart city service catalogue platform, we intend to present best practices from different cities to provide ideas for implementing new services and enable an exchange of services between various stakeholders.

Fehling et al. (2015) describe a three-phase model for 1) identification, 2) authoring, and 3) application of patterns in different domains with multiple actors. They describe the approach by referring to patterns in cloud computing, cloud data, application management, costumes in films and green business process. These domains are characterised by their high diversity, making a homogenised general description of patterns complex (Fehling et al., 2015). The basic approach of this methodology proved to be suitable for our project, as the topic of smart cities is also a strongly interdisciplinary field with a multi-stakeholder structure (Albino et al., 2015; Bozkurt et al., 2020; Giffinger & Gudrun, 2010; Lombardi et al., 2012). We were able to adopt the approach of Fehling et al. (2015) to identify and describe smart city services and create the service catalogue platform with minor modifications. That led to the development framework shown in Figure 1, which is the foundation of our work. The framework's core is the agile work approach of the research team, which develops and synchronises the service catalogue in regular sprints. Theoretical findings from the literature represent the foundation of the framework. In addition, the entire work is supported by the "Best Practices" and "Requirements" pillars, which represent findings from existing references and potential user groups.

We needed to consider the fundamental question of who the potential users of the online smart city service catalogue platform are. Therefore, potential users were identified initially in a workshop with graduate students and experts from the smart city field. As a result, the following personas were developed: 1) City administration (decision-makers and employees), 2) citizens and communities, 3) companies, 4) teaching and research institutions. Besides developing the personas, the theoretical foundation was established by the scientific literature on smart cities, service catalogues and smart city services (see Chapter 2). These findings were continuously taken into account. A smart city service catalogue platform flourishes through its multitude of existing services and also stimulates the expansion of services through its abundance. Therefore, it was essential for us to offer many services in the very first version of the service catalogue.

For this reason, the research team conducted an extensive search for existing smart city services. That involved a detailed review of existing service catalogues, smart city IoT communities and smart city service providers (e.g. eco curious, 2021; element14, 2021; Smart City Solutions, 2021; TTN Ulm, 2021). Each research member recorded the services at a detailed level to create a collective pool of smart city services in a first step. In the subsequent step, the research group reviewed the collection of smart city services in a workshop to identify relevant and universal categories to describe smart city services. In the second iteration, missing information was completed, and new services were included. Subsequently, the services were categorised according to the six smart city dimensions and resulted in a first version of the service catalogue as an Excel file.

The service catalogue was supposed to be available as an online service catalogue platform from the beginning, easily accessible and transparent for different users. But before developing the service catalogue as a platform, we created mock-ups based on the previously created service catalogue (Excel file) and considering the personas. Mock-ups helped us understand at an early stage that categorising the service catalogue platform according to the six smart city dimensions is not the right design for our target group. Especially the dimensions smart economy, smart living and smart people are not intuitive for general readers. Therefore, we decided to adopt five easily understandable high-level dimensions for the service catalogue platform as the entry point, namely 1) mobility, 2) environment, 3) public, 4) living and 5) industry. These five dimensions are still based on Catriona et al. (2014), but the understanding is easier for the general readers. After this revision, a preliminary version of the online service catalogue platform was implemented and filled with the first pilot services. The insertion of these pilot services helped us to gain new insights for further improvements. After implementing these insights, the remaining services were uploaded.

4. SERVICE CATALOGUE

We used the content management system (CMS) Word Press 1to implement our smart city service catalogue platform. Word Press is one of the most used CMS worldwide (Schäferhoff & WebSiteSetup, 2021; W3Techs, 2021). The platform aims to provide open source and commercial available best practice examples of IoT network services to different actors. Moreover, the platform offers a service catalogue for sensor-based, digital services (IoT services) and enables the exchange of services. The implemented smart city service catalogue is available on www.smartcity-services.de.

In Chapter 3, we described the five main categories in which we structured the different services, which supports the navigation and identification of relevant services for different user groups. We defined the category "Environment" as services that are monitoring environmental changes and used in, e.g., agriculture, buildings and energy savings etc. "Mobility" is defined as services in public or private transportation and traffic management. The category "Public" describes services for optimising the management of public infrastructure, city administration, citizen participation or education. Services in health, society and home were categorised in the category Living. In the category Industry, services for industrial usage such as condition monitoring or predictive maintenance were assigned. A service can be assigned to more than one category. For instance, the service "Vehicle / Asset Tracking" (LoRa Alliance, 2021). It is a LoRaWAN-based (The Things Network, 2021) GPS tracker for tracking products or material of a company. It supports optimising (intra-) logistic processes in container and asset management, warehouse and inventory scenarios, outdoor tracking, theft protection. Another scenario of "Asset Tracking" can also be in the public area, such as tracking bicycles of a sharing provider. To strengthen the community and the platform idea, we implemented a form that allows everyone to add a service to the service catalogue platform in a predefined structure. After a successful review, the service will be published on the service catalogue platform. In Table 1, we have listed the 32 services, which are currently available on the service catalogue platform. In addition, each service has a short description, and the assigned categories of the service are shown.

We developed a standardised format for describing the services to increase comprehensibility and address the users' different requirements. Inspired by Alexander et al. (1977) pattern description, we developed a structure to describe the individual services. To identify the service, each service has a title. A visualisation of a service on our smart city service catalogue platform is shown in Figure 2 ("DIY Fine Dust Sensor"). For quick visual identification of a service, we use cover images, which we assigned to the different categories, for example, environment or mobility. In which category a service was assigned is listed under the title. For further filter and description purposes, we assigned tags to every service. This should enable users to search the service catalogue beyond the different categories, such as a specific technology or keyword. We used the following tags to describe further the service "DIY Fine Dust Sensor": #Air #citizenscience #sensor. Below the tag section is a short description of the service. A short description should not exceed 30 words and summarises the key value proposition of the service. The short description aims to communicate the main idea of the service effectively and efficiently to the reader. In order to better understand the service, especially readers with non-IT background, a video, if available, is embedded in the service description. The category "Abstract" offers a detailed explanation of the service, structured in use case, functionality and benefits. This is intended to achieve a deeper understanding of the service for a user. The category "Place of operation" shows the country or the city where the service is already in usage. This should enable the user to evaluate the implementation in the context of regional factors, especially regarding data protection laws, which differ significantly between different countries and impact the implementation of a service. The "Licensing Model" category describes how a service is licensed, such as commercial licensing or open source. This is a piece of relevant information for evaluating any costs incurred by implementing the service. In addition, open-source services may also have specific implementation requirements. For the category "Technological Architecture", we used a toolchain approach to visualise the architecture components and their relationships, such as hardware, software, and communication protocols. Additionally, we give a short description of the technological architecture. This provides the user with an overview of technical implementation details.

5. CONCLUSION

The goal of this work was to describe the development of a smart city service catalogue platform based on an actual implementation. Despite multiple perspectives on smart cities and different definitions, the application of ICT as an enabler of smart city services is visible. Existing city services are optimised through ICT by integrating sensors into the physical world. But also new and innovative services for cities are developed with the use of ICT. An online catalogue of such services and best practices from cities worldwide can foster innovation in other cities. Driven by this motivation, we developed a platform for smart city services that helps cities develop new ideas and identify and implement new smart city services. However, the service catalogue platform is not only addressed to the city government but also to businesses, individual interested citizens, communities, and educational and research institutions. Although the concept of IT service catalogues is not new and guidelines and recommendations for the design and development of service catalogues already exist in the corporate context, there is little work on smart city service catalogues. Therefore, we have adapted approaches from agile software development and pattern research to develop the smart city service catalogue platform. This systematic approach has made it possible to develop the service catalogue iteratively in a project team with several researchers and students.

The results of this work provide practical and theoretical contributions. Practitioners can use this paper and the developed service catalogue as a guideline for creating smart city service catalogues in their region or their specific domain. Furthermore, the service catalogue is a valuable opportunity to share services and use it as a platform with different stakeholders. In this way, interested parties and providers can easily find each other. We hope that this will lead to a high level of transparency, innovation and stimulation of smart city activities by making it easier to get started. The theoretical contribution is that researchers can use this work to enhance the methodology and conduct further research on smart city service catalogues. Service catalogues are discussed in science and practice, but only from a business perspective. This work shows that there is no framework or guideline for the creation of service catalogues for smart city services, although smart city services are often discussed, and service catalogues are an essential element for transparency and open exchange. Furthermore, the service catalogue provides a basis for developing patterns in the smart city domain by conducting the phases 2) and 3) described by (Fehling et al., 2015). In addition to patterns, reference architectures for ICT-supported smart city services can also be developed, and business models for smart city services can be analysed using the smart city service catalogue platform.

#### Surge pricing crushes intelligent transportation systems – key to electric vehicles and smart cities.

Saharana ’20 [Sandeep et al; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; Seema Bawaa; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; Neeraj Kumar; Department of Computer Science and Engineering @ Thapar Institute of Engineering and Technology; “Dynamic Pricing Techniques for Intelligent Transportation System in Smart Cities: A Systematic Review,” Computer Communications, 150, p. 603–625; AS]

2.3. Demerits of dynamic pricing for ITS

(a)Dynamic fare pricing: Improper dynamic fare pricing sometimes leads to congestion on roads, promotes private transportation, consumes more energy, leads to more emissions [30], [31]. In competitive freight transportation environment, it may show biasness in revenue generated by the competitors.

(b)Dynamic charging/discharging pricing for EVs: Dynamic pricing can increase prices up to a certain level, which alone is not sufficient remedy to all problems. In case of uncontrolled EV charging [45] peak demand can increase during peak load time. While determining prices dynamically, the mismatch of parameter(s) with real scenario can lead to several power quality issues such as voltage drops, power unbalances, and voltage/current harmonics [4].

(c)Dynamic parking pricing: Spatial boundary effect, i.e., implementation of uncoordinated dynamic parking pricing among different parking lots, may result in higher cruising time, and more congestion outside parking lots [35]. Temporal boundary effect, i.e., parkers parks earlier or later than high charging period can neglect the advantage of dynamic pricing [37].

(d)Dynamic congestion pricing: Road pricing can sometimes creates undesired boundary effects. In ‘temporal boundary effect’, travelers depart earlier or later than a charging period to avoid paying full or part of the congestion charges. In ‘spatial boundary effect’, travelers would rather stay away from a charging zone than paying congestion charges. This causes undesired congestion on roads parallel to the edge of the charging zone [28], [46], [47]. Limitations of technology and other parameters such as drop offs in electricity can limit the advantages of dynamic congestion pricing. Thus, the poor coordination of dynamic toll pricing with equipments such as sensors and cameras can lead to low average speed or high congestion in some lanes. Wrongly implemented congestion pricing can over crowd the public transportation and places such as bus stops, railway stations, airports.

#### Urban mobility revolution key to sociotechnical city-transformation – independently solves extinction AND key to decarbonization, smart cities, SDGs, and EVs.

Schot ’18 [JohanSchotW., Science Policy Research Unit (SPRU), University of Sussex, UK, EdwardSteinmueller, Science Policy Research Unit (SPRU), University of Sussex, UK "Three frames for innovation policy: R&D, systems of innovation and transformative change," Research Policy Volume 47, Issue 9, November 2018, Pages 1554-1567; AS]

For a decade now governments have recognized they may need to align social and environmental challenges better with innovation objectives. Climate change, reduction of equality, poverty and pollution have been transformed into challenges and opportunities for science, technology and innovation policy. Through initiatives such as Horizon 2020, the EU expects innovation to address a number of well-chosen societal challenges and for example contribute to a transition to low-carbon and inclusive economy.24 The 2015 Lund Declaration explicitly prioritises training a new generation of researchers who will have the skills to address grand societal challenges underpinned by an excellent research base. 25 Also, the newly signed universal Paris climate change agreement has set the ambitious goal to reach zero net carbon emissions in the second half of the century, and the United Nations (2015) has formulated 17 Sustainable Development Goals (SDGs), calling for greener production, increased social justice, a fairer distribution of welfare, sustainable consumption patterns and new ways of producing economic growth.

Can we expect innovation to deliver on these challenges? Science, technology and innovation policies are based on the assumption that innovation is a force for creating a better world.26 The idea is that developing new technologies will lead to higher labour productivity and economic growth, and a better competitive position. It is expected that remaining externalities can be managed through regulation. Innovation policy focuses subsequently on stimulating R&D and building national systems of innovation. The assumption is that such a policy can lead to green growth in which governments are able to invest in clean technology missions, reducing pollution and cleaning up the environment. It is also assumed that inequality will be reduced through new job opportunities generated from growth and income redistribution. However, this is of course only so when we assume nation-states, despite globalisation, have the ability to invest in clean technologies in a persistent way for a longer time period, are in the position to organize the distribution function in an adequate way, confront tax avoidance, and are not captured and/or corrupted by other interests which favour investment and distribution in other directions. A main challenge is whether the State is indeed in the position to deliver on this.

The potential erosion of the power of nation-states, however, is not the main challenge. A more fundamental challenge is whether the externalities that are generated by growth such as such as climate change can indeed be managed ex-post through clean technology and distributional measures, even with a strong state in place. Our core proposition is that the existing R&D and national systems of innovation frames for science, technology and innovation policy are unfit for addressing the environmental and social challenges. An important reason is that both Frames 1 and 2 assume that stimulating innovation is positive, there is no deep engagement with the fact that innovation always represents a certain directionality. Of course, both framings recognize that technology development might lead to some bad outcomes in the short term, but it is claimed that the overall benefit compensates for this. For example, innovation may lead to unemployment in sectors experiencing rapid technical change; however, in the long term, everyone will benefit since new high quality jobs will be generated. It was for this reason that Schumpeter regarded technical change as a process of creative destruction. As Soete (2013), however, reminds us, innovation may also lead to destructive creation, benefiting the few at the expense of the many, leading to low quality jobs, and creating more problems than it solves. We think it is time to recognize in our framings for innovation policy that many technologies are deeply implicated in persistent environmental and social problems. Innovation contributes massively to the current resource-intensive, wasteful and fossil fuel-based paradigm of mass production and mass consumption (Meadows et al., 2004; Bardi, 2011; Steffen et al., 2015). It also contributes directly to inequality because current innovation trajectories favour high tech solutions which assume high quality and pervasive infrastructure, and produces mass-produced products aimed mainly for consumers with substantial purchasing power (Kaplinsky, 2011). Innovation policies in their current formats may lead to economic growth but often exacerbate inequalities. Even fast growth, such as China’s, is accompanied by growing inequality (Dutrénit and Sutz, 2014). The starting point of a new third frame for science, technology and innovation policy should be that innovation cannot be equated with social progress, even when corrective social policies are in place. After all, innovation itself may be causing a growing set of externalities. How then can science, technology and innovation policy address the double social and environmental challenge?

We argue that to meet the ambitious challenges expressed for example in the SDGs, we need a new framing for innovation policy. This is what we call Framing 3 aimed at transformative change. This raises the question -- what needs to be transformed? Based on the research in sustainability transitions studies we argue that transformation of socio-technical systems is needed in energy, mobility, food, water, healthcare, communication, backbone systems of modern societies (Grin et al., 2010; Markard et al., 2012; Steward, 2012; OECD, 2015). Socio-technical system transformation is very different from just developing new radical technological solutions. For example, science, technology and innovation policy can focus on the introduction of electric vehicles and its weak spot: overcoming the limited range through battery development. However, if the electric vehicle only is a substitute for the current car and we continue with a car dominated mobility system, the low carbon and inclusive economy will still be far away. Industry structures may be transformed but ambitious SDGs are not met. Therefore, we argue, it would be better to focus innovation policies supporting the emergence of new mobility systems in which for example private car ownership is less important, other mobility modalities such as small taxi vans, public transportation, walking and bicycling are more used in combination with for example electric vehicles provided by types of companies dedicated to the provision of mobility services using ICT capabilities. In this new system, mobility planning and thus also reduction of mobility has become an objective of all actors, and even a symbol of modern behaviour. This is what we call a socio-technical system transition, it implicates co-production of social, behavioural and technological change in an interrelated way. Socio-technical system transformation (or transition) is about changing skills, infrastructures, industry structures, products, regulations, user preferences and cultural predilections. It is about radical change in all elements of the configuration. This also makes system transitions difficult, because elements tend to be aligned and reinforce each other. It involves social innovation, since the focus is on many social elements and their relations with technological opportunities. It can include high tech solutions as well as innovation in old technologies (bicycles in the example above). System innovation always involves multiple actors, including civil society and users who can play a crucial innovative role – not just one of articulating a demand to be supplied by firm innovation (Oudshoorn and Pinch, 2003; Schot et al., 2016).

### 2NC – Megacities

#### Sustainable now

**Lee ’17** [Shin; October 17; Vice Dean, IUD Program (Ph.D.), IUDP Program, MGLEP Program at Seoul University; Seoul Solution, “What makes a megacity sustainable,” https://seoulsolution.kr/en/content/6566; KP]

This view of the concept of the “sustainable megacity” has implications, which are pertinent to the discussion of Seoul’s transformation from a megacity with its overwhelming burden of rapid expansion into what might be, arguably, referred to as a “smart megacity”. Quite importantly, the notion of the smart city inevitably involves the attributes of **sustainable development**, which will be addressed in a later section of this paper. Is it really the case that megacities are inherently unsustainable? Is the “**sustainable megacity**” an **oxymoron**? How about the “smart megacity?” Can a megacity be a smart city? Here, should the goal be to establish a city that contributes to smart development, rather than the smart city itself being the definitive outcome?

It may be futile to debate whether a city is sustainable, or smart for that matter, in any definitive sense. However, it is relatively **straightforward** to determine whether an attribute of the collective endeavors undertaken in a city contributes to **sustainable** development or smart-city building. Similarly, it would be relatively easy to see if several different types of attributes of public action results in greater sustainability or smarter development when presented in a city simultaneously, or better yet, when integrated as a coherent system. It would then be an extremely constructive exercise to identify such a set of collective endeavors in any city with a view to drawing lessons or transferring proven know-hows to other contexts where such a contribution to sustainable or smart development is greatly needed from the global perspective.

Before exploring what makes a smart megacity or what might contribute to sustainable development, it would be helpful to discuss what these adjectives signify and how the global urban community came to these popular ideas about the contemporary city and what they indicate.

What it is vs. what it aspires to be – Different uses of city descriptors

Giving a city different names or adding a variety of abstract descriptors before the word “city” is largely a post-modern phenomenon. Some cities have been named a “creative city,” for instance, and others have been referred to a “city of culture”; whilst the “world city” title has been conferred on somewhat differing groups of cities depending on the commentator and varying with time. During the modern times, cities used to be classified in certain ways –the sole basis for classification tended to be quantitative measures, such as size of population or economic output, or key functions of a city, such as port cities, administrative cities, trade cities, and so on.

Modern geographers (in human geography) were primarily concerned with the growth and development of cities, and sought to answer such questions as to why cities are where they are; or what makes a city grow or decline. Similarly, for urban economists, the most commonly used city classification criterion was the size of a city—with the classes being almost entirely limited to small, medium and large—as one of the basic hypotheses in urban economics was that the nature and size of agglomeration benefits or other economically significant phenomena are associated with a city’s size.

Urban planners in early modern times were a somewhat different breed, primarily in terms of their approach to the investigation of cities, from empiricists who examined cities on the basis of evidence, such as economists to early human geographers. Planners largely came from the tradition of design, hence, of imagination and creativity. Early urban planners would therefore be concerned with prescribing what things ought to be like (representing the “normative” perspective), whereas empiricists were primarily concerned with how things are (representing the “positive” perspective). As such, urban planners have continued to propose various models of the ideal city. Some of the city descriptors that we are familiar with today, including “sustainable,” “resilient,” or “smart” may be seen in the tradition of this normative perspective, that is to say that “sustainable” or “smart” are a kind of a state which a city might aspire to become. These abstract and value-based names are, therefore, different from a descriptor which is attached to some cities, because they are already what they are.

For instance, descriptors such as “small,” “large,” “port” or “historic” merely describe and characterize a city in a positive manner, whereas the words “sustainable” or “smart” indicate a character or a value that a city might aspire to possess as a central character or a representative value in a “normative” sense. When a city does possess and exhibit the key attributes of the core value and becomes an embodiment of that value, however, the descriptor then plays a descriptive role as well. Therefore, many cities would call themselves a creative city, for instance, when they would like to be one. But there may be a much smaller number of cities that are acknowledged as such by the rest of the world. The same ambivalence in naming a city applies to other value-based descriptors such as “sustainable,” “smart,” “resilient,” “livable,” “healthy” or “eco” city.

The rise and fall of great cities

There are about 2.5 million cities in the world today, and they are all different. Early scholars and commentators rather commonly used the adjective “great.” The word appears in the title of Jane Jacobs’ best-known book The Death and Life of Great American Cities (1961). Whereas Jacobs was probably the first to ignite an interest in, if not a fascination with, cities in the qualitative sense, while highlighting the importance of non-materialistic qualities such as conviviality or urban vibrancy, the word “great” is inevitably associated with a quantitative property. There have always been cities called “great” even in ancient times, but it was only after the Industrial Revolution when a significant number of cities grew to a scale that was easily distinguishable from the rest—in the sense of what they possessed and produced—and rose to join the world league of great cities. Some great cities of the past have withered over time, however, while others have stood the test of time.

City descriptors with normative connotations such as creative or culture became fashionable with the emergence of urban entrepreneurialism and city marketing around the 1980s, although largely in the Western part of the world. That was when industrial cities, whose past prosperity and wealth was largely accumulated on the basis of manufacturing, proactively sought ways of recovering their greatness by attracting different sorts of activities, such as cultural or creative ones, as they underwent the process of deindustrialization. In this context, place rebranding and city marketing were seen as modes of urban regeneration and competitiveness building. Hence, cities, or municipal governments, began to see their role as an entrepreneur rather than as a manager.

In contemporary terms, great cities must have the status as a world city. A great deal of research has been undertaken to define, describe and theorize the world cities phenomenon, but it is still subject to debate as to which cities make the list. Amongst a few widely known world city scholars, however, there is no one who has denied the world-class city status of New York, London, Paris, or Tokyo (Friedmann 1986; Sassen 1991; Know and Taylor 1995). Amsterdam is often included too. So are Seoul and Sao Paulo. Some scholars have published a more generous list including a few megacities in developing countries (Lo and Yeung 1996). The world city discourse is now somewhat dated, so the rapidly emerging, globally important great cities of China did not figure in the classic world city discussions, for instance. The most consistent criterion to assess the world-class city status of a city is to ask whether the decisions made in that city influence actions in the rest of the world, and to what extent does such a city exert its influence over other cities in the world, if indeed it does.

Economic dynamism is likely at the core of any great city. It is the magnetic power that continues to attract people, but it comes with strings attached in all known cases. The great cities of today and of the past alike have had their own big share of problems. This combination of great problems with great cities was seen as inevitable.

Ever since cities emerged in history, especially after they grew large with the help of transportation technology that evolved over time, cities have been seen as a source of opportunities and problems at the same time. What defines a city is simply the size of the population who live there. If an area can be visibly distinguished from its surrounding areas due to the population concentration, and the number of people living there exceeds a certain administratively determined threshold, it is defined as a city.

This concentration of people creates opportunities which are not available outside the area of concentration, but concentration inevitably means magnified conflicts and contests. Both agglomeration benefits and negative externalities (the secondary, unintended effects of what we do to live) exist in great quantities in great cities.

The industrial cities largely located in the West shared virtually the same set of urban problems: congestion (people and vehicular traffic), environmental pollution, decline of the city center, slums, homelessness, safety, public health, spatial segregation/disparity, high impact disasters due to occurring in an area with a dense population, and so on.

These consequences of industrialization and urban expansion aside, great cities in the world have enjoyed the prosperity they achieved, their popularity (or magnetism), and their status of being great. If, however, the problems grow out of proportion and eventually outweigh the attractiveness of the city, it ceases to be great, as seen in many industrial cities in the West. These cities had to undergo what is now commonly known as urban regeneration in order to recover their greatness. The key here lies in keeping the level of nuisance in check.

A move towards not-so-great cities: quality rather than quantity

However, do we all aspire to make our cities into great cities that boast great achievements and influence and, in return, tolerate the consequences of those achievements? Is greatness in terms of quantity what we aspire to today? The evolution of urban discourse does not suggest that this is the case.

Garden Cities

Throughout history, urban thinkers have proposed various models of a city in which human interactions are accommodated on the urban scale but, through design, excessive urban predicaments are minimized or even prevented. Early thinkers tended to focus on the balance between town and country; or the harmony between the built environment and the natural environment. This would be done by placing sufficient green areas – buffers – within the city as a way of mitigating harsh urban environments and the problems habitually associated with harsh and hard surfaces. Howard’s Garden City (1902) is probably the best known among these models and has had an enduring influence on subsequently proposed notions of urban planning along an extensive time spectrum, ranging from Howard’s own contemporary, namely Raymond Unwin and his Garden Suburb and the British planning tradition ranging from “greenbelt” and “New Town” to the “New Urbanism” movement of late.

Sustainable towns and cities

Approximately one century after the publication of Garden Cities of To-morrow (Howard 1989), the idea of sustainability was introduced. Our Common Future, more widely known as the Brundtland Report, was published in 1987, engendering the most popularly known definition of sustainability. We have since then quite positively and consistently embraced the idea. A multitude of ideas that are supposed to help cities remain sustainable or grow in a sustainable manner have been presented to the global urban community.

For instance, UN HABITAT made an attempt to instill a set of practical principles of sustainability when applied to urban and neighborhood planning. The “five principles are as follows:

1) Adequate space for streets and an efficient street network: The street network should occupy at least 30 percent of the land and include at least 18 km of street length per km².

2) High density: At least 15,000 people per km², i.e. 150 people/ha or 61 people/acre.

3) Mixed land-use: At least 40 percent of floor space should be allocated for economic use in any neighborhood.

4) Social mix: The availability of houses in different price ranges and tenures in any given neighborhood to accommodate different incomes; 20 to 50 percent of the residential floor area should be set aside for low cost housing; and each type of tenure should be no more than 50 percent of the total.

5) Limited land-use specialization: This is to limit single function blocks or neighborhoods; single function blocks should cover less than 10 percent of any neighborhood (2014)”.

Even though there is no mention of green space in this UN HABITAT description, it is hard to doubt that, in anyone’s imagination, the picture of a sustainable town or city includes abundant shades of green. As such, the physical structure or appearance of sustainable cities might share common characteristics with that of the Garden City. However, as can be seen in the above five principles suggested by UN HABITAT, the focus here with regard to sustainable towns and cities is on the ecological impact of urbanization.

The crucial difference between Howard’s Garden City and the sustainable city is that environmentalism lies at the core of the contemporary idea of sustainable cities. This would also mean that the shared goal is to achieve sustainability on the global scale and not just at the individual city level. The global community is more conscious than ever of the implications of what shape of development path an individual city follows. Prosperity may be achieved at an individual city level, but the often environmentally damaging impacts of a city’s prosperity are shared by all.

The wide diffusion of the sustainability concept, as well as its influence over nearly every aspect of collective actions that are undertaken in cities around the world, shows how our values and preferences have evolved over time. There probably are, among cities and people, those who prefer not-so-great cities – especially in terms of their physical size (of input and output; of population, land and productivity) and the size of negative externalities. The emergence and presence of sustainability as an overarching concept over the past quarter of a century suggests that our aspiration for greatness in terms of population and economic output is being replaced, at least in part, by the aspiration for cities with a low ecological impact. The variety of names for an ideal city that has penetrated into our day-to-day conversation as well as into academic discourse, such as sustainable cities, eco-cities and livable cities, and the intensity of the influence these concepts have on current urban practices might well indicate our contemporaries’ greater concern for quality rather than quantity.

Resilient Cities

More recently, however, “sustainable” has not seemed to be good enough or as fashionable as it had been until a decade ago, and the new buzzword has arguably become “resilient” in the core urban discourse. Leaving aside the purely equilibrium-focused viewpoint, a more inclusive definition of resilience that is useful for urban planning refers to “the ability of a system to adapt and adjust to changing internal or external processes (Holling, 1973; Gunderson et al, 1995; Pickett et al, 2004).”

According to a widely accepted definition of resiliency in cities, a locale is resilient if “it is able to withstand an extreme natural event without suffering devastating losses, damage, diminished productivity, or quality of life and without (receiving) a large amount of assistance from outside the community (Mileti, 1999, pp. 32–33).”

The Smart City

In the meanwhile, the adjective “smart” appears to have gained an astounding level of popularity, particularly amongst policy makers and practitioners.

Whilst “resilient” does not really seem to have gained traction outside academia, “smart” has indeed attracted considerable attention from governments in both the developing and the developed world, although the reaction appears to be more pronounced in the former. In fact, it was global technology firms that were responsible for the particularly rapid spread of this new “brand” of city (Holland 2014).

As such, the smart city is often associated with a “technological fix” or an attempt to resolve all types of urban problems through technology. A more useful and sensible definition of the smart city, however, refers to a city which is “more economically prosperous, equal, more efficiently governed and less environmentally wasteful” (Holland 2014), and it does not necessarily prescribe how to reach that state of a city, suggesting that the “question of how” is open to new ideas or innovations, be it through technological innovation, innovative use of existing technology or simply new ways of doing things as long as the new inputs and processes can bring about different outcomes from business as usual.

It is more commonly linked to such ideas as “doing more with less”; growing positively with fewer social costs; and, at the same time, responding to diverse human needs, demands and values. The emphases on diversity and inclusivity call for the ability of the city to coordinate and integrate different facets of municipal affairs, domains and goals.

Comparing contemporary ideas of a desirable city: Similarities and differences

When one looks closely into what each of the three models means and their respective components, these ideas for a city with differing names have much in common, while remaining quite distant from the early models proposed by Howard and modern urban thinkers of his time (Figure 1).

**Size matters** and so does speed: Dealing with **mega-size** urban problems in a short span of time

What about other cities that are often named as sustainable or **smart cities**, such as Curitiba, Freiburg, Copenhagen, Barcelona, or Singapore? Have they all not done what Seoul has done with regard to **sustainable transport**, high **recycling** rates, **sufficient** **housing** supply, effective **e-governance** and so forth? They may have done so—to varying degrees and in differing combinations of policy areas—but there appear to be some differences.

First, Seoul is quite different from other oft-cited sustainable or smart cities in terms of size. How many megacities in the world are also representative of the sustainable city? It is also one of the few sustainable or smart cities to have emerged from the developing world to which it still belonged not so long ago. How many of the megacities which used to represent a city paying the price of hyper-urbanization and super-fast industrialization until about twenty years ago have turned into one of the few cities representing the highest rates of recycling in the world? All of the recycling cities included in the previous figure come from the traditional first world (or countries which completed their industrialization by the early 1960s) except Seoul.

**Megacities** are thus called because they **exceed** certain thresholds in terms of population size, and for **no other reason**—with the caveat that the threshold is something of a moving target as the cities in the world generally grew further and faster with time.

The difference in size means the scale of the problem is conspicuously different. It may help to be reminded of the quote that appeared at the start of this paper: “…megacities are inherently unsustainable, with their vast consumption of resources drawn from distant “elsewheres,” and their equally vast production of wastes that are routinely exported elsewhere (Sorensen and Okata (2011).”

Figure 5 shows the size of growth in terms of urban population increments in Seoul over time. Its population grew by 270,000 per annum (22,000 people per month) for three decades, from 1960 to 1990. The speeds of growth are also indicated as the slope of the curve.

The size and rate of Seoul’s growth over the past century is compared with a few other world cities in Figure 6. Singapore, a city that is as often referred to as a smart city, is also included in the graph. Seoul’s steep population growth between 1960 and 1990 clearly stands out from the rest of the city group illustrated.

The rapid population growth in Seoul ran parallel to the rapid date of economic growth, as Figure 7 indicates. Similar to the preceding comparison (Figure 6), the subsequent chart (Figure 8) highlights that the rate of economic growth in Korea has surpassed that of most other countries, including some rapidly expanding economies in the developing world.

These two sets of statistics clearly reflect how Korea and its primary city Seoul have undergone extremely compressed economic development, which did not leave much temporal room for the urban planning that was needed to keep pace with the continuous and rapid growth of the city. The span of time available to absorb the shock of rapid growth and deal with the consequences of fast-tracked growth was simply not sufficient.

As a matter of empirical fact, the time taken for industrialization has increasingly lessened over the centuries behind us, as Figure 9 illustrates. This is not because newly industrializing countries have been more able than their predecessors, but rather because of the greatly enlarged world market.

The successful **urban** **management** of Seoul ought to be looked at from the context of the exceedingly **rapid changes** that occurred in the city. At such rates of growth, the magnitude of urban problems is normally overwhelming and continues to grow at an alarming rate in the absence of appropriate intervention, as has been the case in numerous megacities in the developing world. The following pair of illustrations (Figure 10-11) will give perspective on how Seoul has been faced with some of the negative externalities of rapid urban expansion most frequently associated with megacities.

**Negative externalities** are not necessarily **proportional** to population and economic growth

Are negative externalities proportional to growth in a city’s population and economy? History seems to suggest that **they are not**. The City of Los Angeles and its surrounding areas long suffered from **urban smog** associated with high atmospheric ozone levels. The basin-like topography, abundant sunlight and low mixing heights resulting from the marine layer all work against atmospheric air quality in Los Angeles, and the city has been growing fast compared to other leading cities in the country. Despite these natural characteristics and urban indicators, ozone levels have been decreasing over the past few decades while the city’s population and economy, as well as the number of vehicles in the area, have continued to grow (Figure 12).

The decrease that began in the mid-1970s is not a coincidence. It was in that decade that a set of very **aggressive** policy measures were adopted by the city to **reduce emissions** from various sources including automobiles, a key contributor to urban ozone levels. Los Angeles clearly illustrates the ability of **public policies** in changing the nature of the relationship between growth and growth-related **negative** **externalities**.

### AT: Warming

#### Climate doesn’t cause extinction.

Dr. Amber Kerr et al. 19, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub; Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research; Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne; Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab; Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1; Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research; 6/4/2019, “Claim that human civilization could end in 30 years is speculative, not supported with evidence,” <https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/>, Stras

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat”---they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

### 2NC---Resource Wars D

#### They don’t escalate.

Atkins, 16—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

It is important to note that such conflicts predominantly occur on an intra-state basis, rather than between two nations. International conflict over environmental factors remain unlikely – whether due to the robust nature of the world trade system and dynamics of supply and demand or to the spread of small arms transforming the notion of traditional conflict (Deudney, 1990). An important example can be found in the assertions of water wars. Although the management of rivers is often complicated by their crossing of territorial boundaries and nations dependent on water from beyond their borders (Egypt, Hungary and Mauritania all rely on international watercourses for 90 per cent of their water), an international conflict exclusively over possession of and access to a shared water source is still to occur. The reasons for this are simply, as Wolf (1998: 251) states, ‘War over water seems neither strategically rational, hydrographically effective, nor economically viable.’ At the international level, the costs outweigh the benefits and cooperation is sought before conflict occurs.

#### Resource wars lit is ripe with issues – cost calculations, particularities, and ignoring cities.

Bayramov 17 Agha Bayramov, international relations PhD candidate at the University of Groningen. [Review: Dubious nexus between natural resources and conflict. Journal of Eurasian Studies, 9(1), p. 72-81, https://www.rug.nl/research/portal/files/63407252/1\_s2.0\_S187936651730026X\_main.pdf]

Second, less research has scrutinized political and economic costs of resources wars, namely occupation cost, international cost and investment costs (e.g. Meierding, 2016). The existing works give a misleading impression that resource incomes can cover easily invasion, investment and international costs of wars. Third, the existing works consider approximately most resource states to be more or less equal entities. Although such states may have equal rights from juridical perspective, they share too many diverse features to be considered equal entities in other empirical terms. For example, while Azerbaijan and Saudi Arabia have rich natural resources, they are dissimilar in a number of other important ways. However, both qualitative and quantitative analyses neglect this factor while explaining the resource-conflict nexus. Therefore, it is unwise to lump different case studies together in the same category without considering the particular characteristics of the region or country in question. Moreover, wide part of the existing works adopts a national-level approach by portraying abundancy, scarcity and conflict at the unitary state-level. Nevertheless, natural resources are distributed inconsistently over a nation’s territory. In other words, only particular places, namely cities or urban areas are affected by the abundancy or scarcity of resources. Hence, conflict more likely develops in areas which are excluded from resource wealth and development. However, the present works neglect the distinctive characteristics between resource rich cities and nonresource cities by putting them into country level analysis.

### Air Pollution Low---2NC

#### No pollution impact ---the status quo solves

Ronald Bailey 9, Science editor for Reason magazine and his writings have been published at The Best American Science and Nature Writing and worked as an economist for the Federal Energy Regulatory Commission “Predictions Of The ‘Overpopulation’ Alarmists: Wrong, Wrong, & Wrong Again” Monday, July 13, 2009 (Originally posted May 2000) http://www.prisonplanet.com/predictions-of-the-overpopulation-alarmists-wrong-wrong-wrong-again.html

Of course, the irrepressible Ehrlich chimed in, predicting in his Mademoiselle interview that “air pollution…is certainly going to take hundreds of thousands of lives in the next few years alone.” In Ramparts, Ehrlich sketched a scenario in which 200,000 Americans would die in 1973 during “smog disasters” in New York and Los Angeles.¶ So has air pollution gotten worse? Quite the contrary. In the most recent National Air Quality Trends report, the U.S. Environmental Protection Agency–itself created three decades ago partly as a response to Earth Day celebrations–had this to say: “Since 1970, total U.S. population increased 29 percent, vehicle miles traveled increased 121 percent, and the gross domestic product (GDP) increased 104 percent. During that same period, notable reductions in air quality concentrations and emissions took place.” Since 1970, ambient levels of sulfur dioxide and carbon monoxide have fallen by 75 percent, while total suspended particulates like smoke, soot, and dust have been cut by 50 percent since the 1950s.¶ In 1988, the particulate standard was changed to account for smaller particles. Even under this tougher standard, particulates have declined an additional 15 percent. Ambient ozone and nitrogen dioxide, prime constituents of smog, are both down by 30 percent since the 1970s. According to the EPA, the total number of days with air pollution alerts dropped 56 percent in Southern California and 66 percent in the remaining major cities in the United States between 1988 and 1997. Since at least the early 1990s, residents of infamously smogged-in Los Angeles have been able to see that their city is surrounded by mountains.

# 1NR

## Add-On

**None of this is reverse causal – even if they prevent abuse, they do not bolster the grid at all – they leave out the last paragraph of the card where the author actually says**

**Ballouz ’21** [Hala Joel Mathias; Sean Meyn, Robert Moye, and Joseph Warrington; President, Electric Power Engineers, Austin, Texas Department of Electrical and Computer Engineering, University of Florida; “Reliable Power Grid: Long Overdue Alternatives to Surge Pricing,” arXiv preprint arXiv:2103.06355]

The term **surge pricing** is a synonym for **critical peak pricing** (**CPP**) at the **distribution level**, and real time prices at the transmission level (such as those that made headlines in February of this year during the crisis at ERCOT). The article [1] presents analysis and evidence from prior literature to explain why dynamic prices do not achieve the goals claimed by power economists. Some influential academics and some in industry believe that **dynamic prices** will incentive **investment by generators**, and also **curtailment by consumers** when required. The Energy Policy Act of 2005 promoted this idea and made the case for real time prices to consumers. The arguments are compelling and convincing to anyone who has taken an introductory economics course, covering supply-demand curves and the theory of marginal cost pricing. These arguments have permeated the power sector. One example is from ten years ago in **Texas**: after a sequence of near **blackout** conditions at ERCOT in 2011, the PUCT determined that increasing the price caps in the wholesale market would incentivize investment by generation companies, and thereby enhance reliability. Over the years that followed, the price cap was gradually raised from $3,000/MWh to its current $9,000/MWh.

The belief that **price-signals** will solve our **infrastructure** challenges is **fundamentally flawed**:

• Incentive requires **crisis**: the generation companies will receive **rewards** only during a crisis. This year, the causes of the crisis at ERCOT were multi-fold, including lack of fuel supply. What value was a rise in payments from $30/MWh to $9,000/MWh? Even if the generation companies could have **predicted** the crisis, their **best response** will be based on **maximizing profits** based on their own business plan. How can we be sure that these decisions will lead to an acceptable outcome for Texans?

• The promotors of surge pricing **confuse** two **fundamentally different** concepts: operating reserves and installed reserves. The former is used (in part) to determine surge prices under scarcity conditions, but these reserves are based largely on decisions made by the grid operator; a miscalculation can result in massive transfers of wealth.

• Sufficient **installed reserves** and supporting infrastructure is essential for a **resilient power grid**. This requires **longterm planning** and **coordination** with all stakeholders.

• Consumers **do not value** power: a major flaw in supply-demand curve analysis is that the relationship between electric power and the ultimate use of electricity are only **loosely related** for the majority of electric loads. The use of surge pricing will eventually **destabilize the grid** with increased participation.

• There is also a **long literature** that refutes the value of **surge pricing** in both **power systems** and telecommunications, where in the latter case it was **promoted and then dismissed** as early as the 1980s [2].

The authors understand the value (and genius) of the market, but also make clear that this genius is a two-edged sword. In the case of **critical infrastructure**, we do not want the **uncertainty** that comes with **self-interested agents** that seek to **maximize profits**, without motivation to **maintain reliability**. We appreciate all the innovations that come with the marketplace, but we know from examples of successful companies (such as Apple or Tesco) that **the term market is not synonymous with marginal cost pricing**.

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We should follow the example of all large and successful industries: services obtained through carefully constructed financeable contracts. We propose the creation of a reliability system operator (RSO) that acts as a central planner and develops an optimal resource expansion plan across the entire market. The RSO takes on longterm strategic responsibilities related to system reliability that are not current addressed by today’s RTO or balancing authority. In particular, it will create contracts with generation companies and resource aggregators to ensure reliability at low cost. Theory and history in [1,2] makes clear why such contracts cannot be based on real-time prices.

## Axon DA

**SEC Key---Crypto---2NC**

**SEC is leading the regulation on crypto---solves fraud**

Roger E. **Barton 3-21** is a regular contributing columnist on securities regulation and litigation for Reuters Legal News and Westlaw Today. Are cryptocurrencies securities? The SEC is answering the question, https://www.reuters.com/legal/transactional/are-cryptocurrencies-securities-sec-is-answering-question-2022-03-21/

Part of **crypto**currency's appeal is that it has, until now, been largely **independent** of intermediary entities (such as banks and stock exchanges) and has eluded **reg**ulation by institutions such as the Securities and Exchange Commission (**SEC**) and the U.S. Department of the Treasury (USDT). This **lack of oversight** has allowed **crypto**currency to operate on an almost instantaneous basis among a large cohort of users. However, for these same reasons, crypto has also shown itself to be extremely **volatile**, susceptible to **fraud,** and lacking sufficient **investor protections**. The SEC is **leading the charge** for more regulatory **oversight** of **crypto**currency products and platforms that may be engaging in the sale and offering of securities. Securities — as opposed to other assets such as commodities — are strictly regulated and require detailed disclosures to inform investors of potential risks. Since the first cryptocurrency (Bitcoin) launched in 2009, the question of **how** exactly to **fit** the components of this new, **decentralized** financial ecosystem into **traditional categories** has been **widely debated**. Back in 2017, at the PLI 49th Annual Institute on Securities Regulation, then-SEC Chair Jay Clayton warned cryptocurrency exchanges that many of their products likely qualified as securities and should therefore be registered under federal securities laws. In 2018, Clayton clarified in an interview with CNBC that true cryptocurrencies (i.e., those that simply act as replacements for traditional fiat currency) are commodities rather than securities ("SEC chairman: Cryptocurrencies like bitcoin are not securities" June 6, 2018). This includes cryptocurrencies such as Bitcoin, Ether, and Litecoin. But since terms like "coin," "token," "currency," and "asset" are regularly used interchangeably to describe the thousands of products in the crypto world, it's difficult to accurately categorize them based on nomenclature alone. Instead, one must look at function. When determining whether a digital asset is a security, the SEC considers whether the asset constitutes an "investment contract." For an asset to be considered an investment contract, it must meet the three criteria of the Howey Test which was developed and named after the Supreme Court case SEC v. W.J. Howey Co., 328 U.S. 293 (1946). The Howey Test requires that there must be (1) the investment of money (2) in a common enterprise (3) with a reasonable expectation of profits to be derived from the efforts of others. Echoing his predecessor's sentiments, current SEC Chair Gary Gensler reiterated to CNBC in August 2021 that the SEC considers many cryptocurrency coins and tokens to be securities under the Howey Test, saying, "If somebody is raising money selling a token and the buyer is anticipating profits based on the efforts of that group to sponsor the seller, that fits into something that's a security" ("SEC chair Gary Gensler on his vision for cryptocurrency regulation" Aug. 4, 2021). Earlier this year, Gensler also indicated in a virtual press conference that the SEC will be focusing on crypto exchanges in 2022 ("Crypto Exchanges Will Face More Scrutiny From SEC, Gensler Says" Bloomberg, Jan. 19, 2022). The SEC has already waged several **successful legal battles** against **crypto creators** and **platforms** on this front. These cases provide a glimpse of what's likely to come. For example, in June 2019, the SEC filed a complaint in the Southern District of New York against Kik Interactive Inc. which, in 2017, sold one trillion of its digital tokens called "Kin" (SEC v. Kik Interactive Inc., 1:19-cv-05244). Kik claimed that the funds from the offering would help create a "Kin Ecosystem" revolving around — and driving up the value of — its new token. After Kik raised almost $100 million from investors, the SEC subsequently charged Kik with violating Section 5 of the Securities Act of 1933, alleging that the Kin tokens should have been registered as securities and accompanied by the proper investor disclosures. The SEC successfully argued that, under the Howey Test, Kik's offering met all three criteria for an investment contract: Money had been invested in a single integrated offering with the expectation by investors that they would see a return generated by Kik's future projects. On Sept. 30, 2020, the court sided with the SEC, granting the commission's motion for summary judgment and requiring Kik to pay a $5 million penalty. Beyond cryptocurrency issuers, the SEC has also started focusing its **enforcement** efforts on other players in the crypto world, including crypto **lenders** and **exchanges**. Cryptocurrency lending platform BlockFi Lending LLC recently faced the first crypto lending enforcement action of its kind by the SEC, as well as a civil suit from its own account holders. BlockFi is a platform that offers interest-bearing accounts through which investors can lend their crypto assets to BlockFi in exchange for monthly interest payments. These interest payments are generated through BlockFi's subsequent lending and investment activities.

**Defunding Key---Crypto---2NC**

**Defunding is key to stop the nuclear program**

Nicholas **Eberstadt 3-28**, Eberstadt holds a chair at the American Enterprise Institute and is a senior adviser to the National Bureau of Asian Research, The U.S. Needs to Bankrupt North Korea’s War,

<https://www.wsj.com/articles/the-u-s-needs-to-bankrupt-north-koreas-war-machine-hypersonic-missiles-kim-jong-un-weapons-test-11648502996?mod=djemalertNEWS>

The most recent tests signal that the **No**rth **Ko**rean economy is finally **recovering** after Mr. Kim’s draconian Covid lockdowns all but incapacitated it. **Economic constraints** may also be a reason Pyongyang’s weapons testing dropped off after the United Nations Security Council’s 2017 spate of comprehensive economic sanctions. And they could help explain why the tempo of missile and nuke tests under **Kim** Jong **Il** (a notoriously miserable economic manager, even by North Korean standards) was so much slower than under his son Kim Jong Un before those 2017 sanctions. Declaring a self-imposed moratorium—as the North did in 2018—sounds so much better than saying you are unable to scrape together the cash. President Biden caught a break by entering office while North Korea was suffering from acute, if self-inflicted, economic woes. The recent spate of missile tests suggests North Korea’s weapons programs are back in the black. **Further menacing tests may lie** in store—we shouldn’t rule out nuclear ones. And the return to testing means we should also expect a **resumption** of North Korea’s **brand of nuclear diplomacy**. Rather than trying to appease Mr. Kim, the Biden administration and the rest of the international community would be well served in **identifying**, and **squelching**, the new **resource flows funding the North Korean war machine**. Pyongyang has launched a lucrative new career in **cybercrime**. The Kim regime has also benefited from Russian and Chinese sanction-busting. There could well be other illicit revenues worth pursuing; the U.S. intelligence community should find out. Thirty years of fruitless attempts at diplomatic engagement with the North have demonstrated that outsiders can’t alter the regime’s determination to become a nuclear power. But forceful international economic penalties, tirelessly and creatively applied, can throw sand in the gears of the North’s military programs. We should address this task with the seriousness it deserves. If we don’t try to stop North Korea from becoming a greater threat, we will enter a world in which Pyongyang can credibly threaten the American homeland with nuclear missiles.

### Impact

**Adventurism risks first strikes and unintentional escalation**

John K. **Warden 19**, senior fellow at the Pacific Forum CSIS and Kentucky Round Robin Runner-Up; and Ankit Panda, Adjunct Senior Fellow in the Defense Posture Project at the Federation of American Scientists, 2/13/19, “Goals for any arms control proposal with North Korea,” <https://thebulletin.org/2019/02/goals-for-any-arms-control-proposal-with-north-korea/>

The **case for agreements** to **limit** **No**rth **Ko**rea’s **nuc**lear weapon**s** capability. For the United States, South Korea, and Japan, the goal should be to prove the optimists right—even if only in retrospect—by encouraging North Korea to accept a nuclear force posture **consistent with** a narrow, **defensive view** of the utility of nuclear weapons. As **No**rth **Ko**rea’s nuclear capability increases in size and sophistication, the Kim regime will gain greater **confidence** that it can **successfully execute nuclear strikes** in a **conflict** with the **U**nited **S**tates while living to fight another day. As a result, **No**rth **Ko**rea **may be tempted to initiate provocations**, **escalate crises**, or even risk war, thinking that its nuclear capabilities would allow it to favorably **manage** an e**scalating conventional conflict** if necessary.

**Regime Instability---2NC**

**Turns regime stability even if no escalation occurs**

**ICG 13** [International Crisis Group, “The Korean Peninsula: Flirting with Conflict,” 3-13, <https://www.crisisgroup.org/asia/north-east-asia/korean-peninsula/korean-peninsula-flirting-conflict>, y2k]

Whatever brinksmanship advantage Pyongyang believes it has is balanced by risks. **Military action**, even heightened tensions, could damage the **North’s** already **parlous economy**, producing **unintended consequences for the regime**. Following the North's artillery attack against the South in November 2010, war fears among North Koreans leading to food hoarding and financial upset were reported. The economy is not **immune** to confidence shocks, especially entering a season of depleted food stocks. Food insecurity is worsened by a steep decline in food aid since the December satellite launch. After its disastrous 2009 currency reform, there were reports of dissent and unprecedented official apologies. **Tightening sanctions**, **worsening food insecurity**, and **bellicose state behaviour** could have negative economic effects that could just possibly impact **regime stability** and predictability.

Mutual deterrence remains robust, but the threat of miscalculation and inadvertent escalation has risen considerably. In a worst-case scenario, retaliatory responses to an accident during either side's military exercises or a deliberate military provocation could lead rapidly to war with potential first-day casualties in the hundreds of thousands. **Even if** further escalation is **averted**, the North's actions likely will have **negative effects** on its **economy** and **worsening food insecurity**.

**NoKo regime collapse cause civil war, loose WMDs, and lash-out**

**Kazianis 19** – ( Harry J. Kazianisis Senior Director of Korean Studies at the Center for the National Interest. He also serves as Executive Editor of its publishing arm, The National Interest. Mr. Kazianis is a recognized expert on national security issues involving North & South Korea, China, the Asia-Pacific, general U.S. foreign policy and national security challenges., “Forget North Korea’s Nukes: A Dying Regime and Collapse Is Far Scary.” 10-16-19, https://nationalinterest.org/blog/buzz/forget-north-koreas-nukes-dying-regime-and-collapse-far-scary-8830) nL

What is left to say at this point when it comes to that “Hermit Kingdom” everyone loves to hate? **No**rth **Ko**rea, or also known as the so-called Democratic People’s Republic, is the ultimate **Pandora’s Box** and every president's worst nightmare: **A-bombs**, **chemical toxins**, **bio**logical **weapons** and missiles to lob them **all over the world**—including now at the continental United States. And Pyongyang knows how to get the news cycle to turn its way—thanks to making Northeast Asia shake with nuclear weapons tests. And yet, while North Korea flexing its atomic muscles is certainly a big deal, the world is missing the real story: What happens if someday **No**rth **Ko**rea falls apart through a **mass uprising**, **economic disaster**, or **war**? Plus-sized bad boy Kim Jung-un is at the head of a state that would likely take trillions of dollars to turn around towards anything resembling normal—say nothing of putting the lives back together of millions of people who been brainwashed, starved and treated as slaves. Back in 2013, an excellent research paper, more like a book if you look at length alone, was released by the RAND Corporation that tackles this issue and is well worth your time. The author of the report, Bruce Bennett, lays out a chilling tale of what could happen, what it would take to put the pieces back together and what Washington and its allies should do to prepare for such a contingency. As I love to do, here are five highlights from the report, which I would argue, demonstrates the real issue when it comes to North Korea. 1. What ‘Type’ of Collapses Are Possible? “Under what circumstances might the Kim Jong-Un regime collapse? Such a collapse could come in one of two forms: regime collapse and government collapse. In a regime collapse, the Kim family regime (and Kim Jong-Un, in particular) is overthrown, and some new leader takes control of North Korea, likely rising from within the military. Under this case, the national control mechanisms and organization could remain largely in place, although the overthrow will certainly disrupt the mechanisms for a period. The new ruler would be prone to purge many of the senior government leaders and replace them with personnel loyal to him." The next scenario is far scarier. “The alternative kind of collapse would be a **government collapse**. In this case, the Kim family regime would fail or be overthrown, and no single individual or group would be able to form a new central North Korean government. Most likely, factions would develop, each trying to control parts of the country, with some possibly having very weak control even over their own areas. Many **central government functions would fail**, including much of the control system. "Note that regime collapse could be a step along the path to government collapse. Indeed, collapse is both **a process and an outcome.** North Korea has not yet suffered either regime or government collapse, but the collapse process appears to be under way already. Thus, the Kim regime is perhaps best classified as a “failing or eroding totalitarian system.” 2. A Civil War Is Possible. “A civil war in North Korea and especially the use of WMD could spill over into the **ROK** and cause serious damage. Factional forces could cause considerable damage with artillery and special forces attacks on the ROK, especially if nuclear and/or biological weapons are used. In addition, one or more North Korean factions could purposefully attack the ROK, potentially as a form of revenge if they perceive themselves unlikely to survive. Thus, ballistic missile attacks against ROK cities—especially ones using nuclear weapons or even chemical or **bio**logical weapons—could cause damage across the ROK. Besides the physical damage done, the ROK economy and society could be significantly affected. All these consequences could make it difficult for the ROK to pay for and manage unification. From a ROK perspective, the worst outcome could be destabilization of all of Korea, including the ROK, as **crime** and **insurgency** spread, if the ROK is unable to contain and defeat them.”3. It Gets Worse: **China Could Intervene**. “In addition, China could intervene; indeed, some say that China would be likely to intervene. In doing so, China could try to thwart unification... As ROK, U.S., and Chinese forces advance, **conflict could develop** between the ROK–United States and China. Both Chinese efforts to thwart unification and conflict with China could further jeopardize Korean unification.” 4. **Famine Could Set In.** “Because North Korea already has difficulty feeding its population, a government collapse would likely plunge the North into starvation. Those with money would be motivated to hoard food to guarantee their access to it and because the price of food could well skyrocket in the postcollapse environment. As food disappears, the military and others with arms would likely increase their raids on those who potentially have food, stealing what little remains. The humanitarian aid organizations helping in North Korea would probably reduce their assistance as the security in North Korea deteriorates and could curtail their assistance if security decays to the point that their personnel are seriously threatened. The currently inadequate food supplies could be reduced below the starvation level for many people in North Korea.”

**Impact---Econ---SEC**

**Effective SEC regulation and enforcement is key to avoid economic crisis**

Lorin L. **Reisner 20**—Former deputy director of the SEC Enforcement Division, chief of the Criminal Division of the U.S. Attorney’s Office for the Southern District of New York. ("How the SEC can promote economic justice beyond shareholders," November 29, 2020, from The Hill, https://thehill.com/opinion/finance/527865-how-the-sec-can-promote-economic-justice-beyond-shareholders)

Effective regulatory **policy** and **enforcement**. The SEC must continue to be on the lookout for **financial products**, **services** and **practices** that **present systemic risk to the U.S. economy**. Financial firms should be rewarded for assisting in those efforts and penalized for failing to do so. Another financial crisis must be **averted to protect our economy** and our people. Those most vulnerable would again suffer the harshest consequences of further economic dislocation. Effective enforcement of the **securities laws** also is **absolutely essential** to protecting **investors** and preserving the integrity of the **financial markets**. The SEC must have a **robust, professional enforcement program** that inspires investor and public confidence.

The time is now for the **SEC to pursue these goals**, which will strengthen our country, enhance our markets, protect our communities, and provide greater and broader economic opportunity. The policy goals are right and true. Fortunately, the SEC has the **authority** and **capacity** to **execute on this agenda swiftly**.

**Biowar---2NC**

**North Korea uses bioweapons**

**Barno 18** [David W. Barno, is a Distinguished Practitioner in Residence, and Dr. Nora Bensahel is a Distinguished Scholar in Residence, at the School of International Service at American University, “WHY AMERICANS AREN’T REALLY WORRIED ABOUT WAR WITH NORTH KOREA,” 1-16, <https://warontherocks.com/2018/01/americans-arent-really-worried-war-north-korea/>, y2k]

With his regime under attack, **Kim** Jong Un could **retaliate** directly against the United States (as well as **So**uth **Ko**rea and **Japan**) with the full range of his **destructive** capabilities. He could, for example, try to directly attack the United States through a covertly delivered nuclear device. He could also utilize **clandestine agents** to try to spread **infectious biological toxins** to create widespread public health emergencies in one or more major American cities. Such attacks would face some technical challenges, but if even one such attempt succeeds, the resulting death and **destruction** could be **devastating**.

**UQ---2NC**

**The Axon case presents two questions---1: Whether the district courts have jurisdiction to hear constitutional challenges to the FTC and 2: Whether the structure of the FTC is unconstitutional**

**PR Newswire 11-15**, Axon Reports Record Bookings of $0.5B in Q3, Up 70% YTD; Q3 Revenue up 39%; Raises 2022 Revenue Outlook to $1 Billion, L/N

**Axon v. FTC**

Axon continues to vigorously **prosecute** its Federal court constitutional case **against the FTC** while the FTC's separate antitrust administrative action against the company remains stayed.

As background, Axon's Federal court constitutional challenge against the FTC was dismissed in April 2020, without prejudice, for lack of jurisdiction, holding that Axon must first bring its claims through the FTC's administrative process. Axon appealed that ruling to the Ninth Circuit (No. 20-15662). In January 2021, a Ninth Circuit panel in a 2-1 split decision affirmed the district court ruling against Axon on the jurisdictional question. The Court then denied Axon's petition for en banc rehearing but granted Axon's motion to stay the appellate mandate pending resolution of the company's certiorari petition with the U.S. Supreme Court.

Axon's Supreme Court petition (No. 21-86 docketed July 22, 2021) presents **two** questions:

**1.** Whether Congress impliedly stripped federal district courts of jurisdiction over **constitutional challenges** to the **F**ederal **T**rade **C**ommission's structure, procedures, and existence by granting the courts of appeals jurisdiction to "affirm, enforce, modify, or set aside" the Commission's cease-and-desist orders.

**2.** Whether, on the merits, **the structure of the Federal Trade Commission**, including the dual-layer for-cause removal protections afforded its administrative law judges, is **consistent** with the Constitution.

**In the squo, the Court will only rule on the first question---that avoids declaring the FTC unconstitutional, but the issue will lurk in the background**

Carrie G. **Amezcua 1-31**, a Philadelphia, Pennsylvania (PA) Lawyer, Attorney - Antitrust & Trade Regulation, Consumer Products @ Buchanan Ingersoll & Rooney PC, Supreme Court Takes Up Challenge To FTC Administrative Process, https://www.bipc.com/supreme-court-takes-up-challenge-to-ftc-administrative-process

Analysis

The Supreme Court appears to want to address **a very narrow issue** - whether federal district courts have **subject matter** jurisdiction to hear **constitutional challenges**, at least relating to the FTC. Its decision on this issue would resolve a Circuit split just created by a Fifth Circuit ruling in December, which, contrary to five other circuit courts, ruled that the plaintiff did not have to go through the SEC's full administrative process before bringing constitutional claims in federal district court. Cochran v. U.S. Securities and Exchange Commission, 20 F.4th 194 (5th Cir. 2021). The Supreme Court's decision could also have serious ramifications for arguably the most important tool in the FTC's tool box - its administrative complaint and hearing process. Even though it agreed to take up the question of **subject matter jurisdiction**, the Supreme Court did **not** take up the **second issue** that Axon presented - **whether the fundamental structure of the FTC itself is consistent with the Constitution**. So a **favorable** ruling from this Court would be **limited**, **for now**. **But** Axon's underlying **constitutional questions** on the "**structure**, **procedures**, and **existence**" of the FTC are **still live.** If the Supreme Court rules in favor of Axon and sends the case back to the district court, those issues would then be addressed on the merits - potentially upending the FTC's ability to challenge both antitrust and consumer protection claims through its administrative process. As Axon noted, the FTC has not lost a case brought through its administrative process in 25 years. Antitrust cases, such as https://www.ftc.gov/enforcement/cases-proceedings/141-0004/impax-laboratories-inc Impax (reverse payment) or https://www.ftc.gov/enforcement/cases-proceedings/101-0167/promedica-health-system-inc-corporation-matter ProMedica Health System (health system acquisition), would be able to be challenged by companies at the outset as a way to avoid the FTC's process. Consumer protection cases, such as https://www.ftc.gov/enforcement/cases-proceedings/122-3118/ecm-biofilms-inc-also-dba-enviroplastics-international-matter ECM Biofilms (false advertising) and https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter LabMD (data security), could also be challenged.

**They’re only taking up the narrow issue for now—but it could have far-reaching implications**

Amy **Gordon 22**—Associate in the Proskauer Rose LLP Litigation Department. ("The Administrative State Under Attack: Potentially Far-Reaching Implications of Supreme Court’s Decision to Hear Challenge to FTC Administrative Review Process," February 7, 2022, from JD Supra, https://www.jdsupra.com/legalnews/the-administrative-state-under-attack-3484266/)

On January 24, 2022, the U.S. Supreme Court agreed to hear a case challenging the constitutionality of the FTC’s administrative review scheme. The case is brought by Axon Enterprise Inc., a taser manufacturer, which sells stun guns, body-worn cameras and other equipment used by police. Although the Supreme Court **only took up the jurisdictional issue** — whether district courts can review constitutional challenges to the FTC’s structure without waiting for agency proceedings to play out — this case could have **far reaching implications** for the **admin**istrative adjudicatory process **across government agencies** if the Court **sides with Axon**.

**UQ---Framing---2NC**

**Link determines the direction of uniqueness---it’s uncertain how will the court rule now, but the justices might broadly chip away the administrative state**

Claude **Marx 1-31** reporter for FTCWatch, With Axon case, high court could deal FTC another blow, https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/with-axon-case-high-court-could-deal-ftc-another-blow#:~:text=%E2%80%9CThe%20agency%20caught%20a%20break,role%20in%20the%20administrative%20state.%E2%80%9D

The Supreme Court **could** pave the way for additional limits on the powers of the **F**ederal **T**rade **C**ommission, **depending on the outcome** of a case it will hear arguments on later this year.

The high court granted the **request** of body camera manufacturer Axon to decide **if** federal courts can hear challenges to the FTC’s administrative procedures and structure, though the justices **declined** to consider the **constitutionality** of those **procedures**.

“It’s hard to imagine something good coming out of this for the FTC,” former agency Chairman William Kovacic told FTCWatch. “The agency **caught a break** when the high court said it is not up to tackling the issue of its **legitimacy**. **But** the court **could** well chip away at the agency. The justices might say some **broad things** about the agency and its role in the **administrative state**.”

**AND- FTC enforcement determines the Court’s willingness to upend the FTC in future cases**

Mary **Gardner 1-27**, Partner at McDermott Will & Emery, LLP. McDermott Will & Emery, LLP, Temple University School of Law, Federal Trade Commission Goes to the Supreme Court Again, This Time in a Constitutional Challenge, https://www.jdsupra.com/legalnews/federal-trade-commission-goes-to-the-8293753/

However, in a surprising move, the **Supreme Court** recently granted certiorari in **Axon** Enterprises Inc. **v. FTC** to address whether Congress intended to **strip** federal district courts of jurisdiction to hear challenges to the **constitutionality** of the FTC's structure, procedures, and very existence. Importantly, **however**, the Court **declined** to **directly** address the petitioner's challenge to the constitutionality of the FTC. **Still**, the Court's decision could **significantly impact** how **future targets** of FTC **enforcement investigations** and actions will **challenge** the FTC's constitutional limits. To recap our prior coverage of Axon Enterprises Inc., after the police body camera manufacturer learned that it was being subjected to an FTC antitrust investigation, Axon sued the FTC[2] in federal court for declaratory relief, and then the FTC brought an administrative proceeding against Axon. Axon argued that the FTC's administrative action against Axon was void because (1) the FTC's administrative procedure violates due process and (2) the FTC's structure (including that its commissioners are insulated from executive removal) is unconstitutional. The district court dismissed[3] Axon's case, and the Ninth Circuit affirmed[4], finding that Axon must first raise and exhaust its constitutional arguments in the administrative action (i.e., where the FTC serves as prosecutor and decider) before those challenges can be heard in federal court. The lower court reasoned that 'Axon can ultimately obtain meaningful judicial review of its claims before this court once the FTC administrative proceeding concludes.' Axon now argues[5] that allowing the FTC to decide the constitutional claims in its own administrative enforcement proceeding enables it to be the 'judge and jury,' and thus that Axon 'is being subjected to an unconstitutional process.' In granting review, the Supreme Court added Axon's case to its October term 2022 calendar, which means it will hear the case sometime between October 2022 and May 2023. In all likelihood, an opinion will be issued by the end of June 2023, if not earlier. The Supreme **Court's decision** could have a **tremendous impact** on how a party subject to an FTC administrative action can challenge **the FTC's authority** to pursue that party. **But**, perhaps more significantly, **if** the Supreme **Court** ultimately grants federal district courts the right to hear constitutional challenges to the FTC's structure, such a decision is in line with the Court's recent skepticism[6] of whether **independent agencies** properly exercise quasi-legislative and quasi-judicial authority, or instead exercise executive authority, thus requiring the president's power of removal. This development could be a **harbinger of the Court's willingness** to consider a **future challenge** to the structure of the FTC and a potential **threat to the very existence of the FTC** as we know it.

**UQ---AT: Overwhelms---2NC**

**The conservative court might want to do away the FTC---it’s feasible**

Bill **Rothbard 2-17** Attorney at Law Offices of William I. Rothbard, FTC UNDER FIRE AGAIN AT THE SUPREME COURT, https://www.linkedin.com/pulse/ftc-under-fire-again-supreme-court-bill-rothbard/?trk=articles\_directory

The issue has arrived at the Supreme Court’s **door step** following a constitutional challenge to the FTC’s structure and procedures in **an antitrust fight** between FTC and Axon Enterprise, a maker of body cameras and other police equipment. In January 2020, when a proposed acquisition by Axon was under investigation by the FTC, Axon struck first in a declaratory relief suit in federal district court challenging the constitutionality of both the FTC’s administrative process and insulation of the FTC’s members from Executive oversight and removal. The FTC then sued Axon administratively to block the merger. The request for declaratory relief was denied, on the ground that the district court lacked jurisdiction because Axon first had to bring its constitutional challenge through the FTC’s administrative process. After the Ninth Circuit affirmed, the Supreme Court granted certiorari last month and will hear the case next term. The main issue before the Court **skirts** the **underlying constitutional question** concerning the FTC’s administrative structure and procedures. **Rather**, the Court will decide only the **limited procedural question** of whether a district court has **jurisdiction** to hear a challenge to the FTC’s constitutionality before it has been adjudicated through the very administrative process that is the subject of the challenge. But it is unlikely that the Court accepted the case just so that it could decide that narrow issue and then call it a day. The hostility of the Court’s **conservative supermajority** to the “**administrative state**,” and specifically to **independent** agencies like the FTC, whose members (and “quasi-independent” ALJs) are beyond the president’s removal powers, and thus unaccountable to the Executive, is **no secret**. In addition to deciding the jurisdictional question, Axon also has asked the Court to find that insulation of the FTC’s ALJs from presidential removal unconstitutionally violates the separation of powers. A decision against the FTC on that issue is distinctly possible given that not long ago, in a similar case, the Court found the structure of the Consumer Financial Protection Bureau to be unconstitutional because its director had also been shielded from presidential removal. A decision in **Axon’s favor** on either issue could be a **precursor** to a **future decision** declaring **the entire administrative structure of the FTC** – including its triple-duty function as “prosecutor- judge-jury” and insulation of its members from presidential control – **unconstitutional**. In its certiorari petition, Axon stated that it “**challenges** the very existence of the **F**ederal **T**rade **C**ommission—an independent agency created by Congress—as **unconstitutional**.” That is **not** an overstatement. As the FTC struggles to overcome the blow to its enforcement clout from AMG, it now has an even more worrisome and **bigger fight** on its hands in the High Court: **a threat to its very existence as we have known it.**

**UQ---AT: Antitrust Now Thumps**

**FTC action is limited and thumpers are exaggerated**

Jacob **Carpenter 3/18**—Journalist at Fortune. ("Congress could stop big tech mergers. It doesn't seem interested," March 18, 2022, from https://fortune.com/2022/03/18/amazon-mgm-antitrust-congress-ftc-lina-khan/)

Reports of the vertical acquisition’s death might have been **exaggerated**.

Despite the **hullabaloo** over the Biden administration **amping up anti-competition enforcement**, Amazon and MGM said Thursday they had closed an $8.5 billion acquisition that lets the e-commerce giant put the movie studio’s library on its Prime Video streaming platform.

The announcement, for now, **illustrated the limits** of **F**ederal **T**rade **C**ommission Chair Lina **Khan’s authority to curb** sprawling **tech giants’** outsize **power in numerous industries**. While antitrust advocates hoped the FTC would file suit to muck up the merger, largely on the grounds that Amazon is already too damn big, Khan and fellow Democratic **F**ederal **T**rade **C**ommissioner Rebecca Kelly Slaughter couldn’t persuade **either of the two Republican commissioners** to pursue a case, The Information reported Thursday.

Attention naturally turned Thursday to Georgetown University’s Alvaro Bedoya, Biden’s nominee to fill the fifth seat on the commission. While Bedoya’s nomination is languishing in Congress, where Senate Republicans unanimously oppose his selection, Democrats expect to eventually get him confirmed. Once that happens, the FTC’s three Democrats could sue to unwind the deal.

Even if that happens, though, antitrust enforcers likely **won’t succeed**. For that, they can thank **Congress**, which is showing **little appetite** for changing America’s decades-old merger and acquisition laws.

Historically, the courts have analyzed lawsuits seeking to stop vertical mergers—deals in which a company buys one of its suppliers of parts, content, or other goods—by determining whether the “effect of such acquisition may be substantially to lessen competition.”

In the past, judges have tended to **err on the side of corporations**. In perhaps the most glaring example, a federal judge in 2018 rejected the Justice Department’s claim that AT&T’s $85 billion acquisition of Time Warner would substantially stifle competition.

**Congress blocks antitrust**

Jacob **Carpenter 3/18**—Journalist at Fortune. ("Congress could stop big tech mergers. It doesn't seem interested," March 18, 2022, from https://fortune.com/2022/03/18/amazon-mgm-antitrust-congress-ftc-lina-khan/)

More broadly, Congress likely would need to upend current antitrust laws and jurisprudence to hobble many vertical mergers. And this week showed the **lack of momentum on that front**.

Two staunch Democratic opponents of Big Tech, Sen. Elizabeth Warren of Massachusetts and Rep. Mondaire Jones of New York, jointly introduced legislation Wednesday that would ban mergers worth more than $5 billion or give companies more than one-third market share in any industry.

Despite the widespread antipathy for tech giants like Amazon on Capitol Hill, the proposals generated **minimal excitement**. Twenty cosponsors signed on to the bills, but many of them come from the Democratic Party’s strongly progressive wing. **No Republicans** joined as cosponsors, while **moderate Dem**ocrats paid **little heed to the legislation**.

The FTC could still chip away at Big Tech’s power through rulemaking and other bureaucratic powers. Federal officials also could find some judges friendlier to their antitrust arguments. And mergers that clearly undercut competition, such as the recently abandoned Nvidia-Arm deal, still remain subject to scrutiny.

But until Congress acts, the Amazon-MGM deal should only **empower** America’s already mighty tech giants.

**Antitrust is constrained now because of bipartisan opposition**

Caitlin **Chin 3/22**—Fellow at the Center for Strategic and International Studies, former Research Analyst at The Brookings Institution. ("Market capitalization is not the right focus for U.S. and EU antitrust reform," March 22, 2022, from Brookings, https://www.brookings.edu/blog/techtank/2022/03/22/market-capitalization-is-not-the-right-focus-for-u-s-and-eu-antitrust-reform/)

But to those following antitrust developments in the **U**nited **S**tates, their objections may **sound familiar**. While the House Judiciary Committee voted in favor of six competition bills in June 2021 to address similar practices, and the Senate Judiciary Committee advanced Sens. Amy Klobuchar (D-MN) and Chuck Grassley’s (R-Iowa) American Innovation and Choice Online Act in January 2022, **several** of these U.S. federal bills also face some **internal challenges** from **members of both parties** over the scope of their application. Senator Dianne Feinstein (D-CA) recently summarized such concerns, stating that “it’s difficult to **see the justification** for a bill that regulates the behavior of only a handful of companies, while allowing everyone else to continue engaging in that exact same behavior.”

**Ukraine and Supreme Court nomination crowd out antitrust**

Hirsh **Chitkara 3/2**—Reporter at Protocol. ("The antitrust window is shrinking as DC turns to Ukraine," March 2, 2022, from Protocol, https://www.protocol.com/newsletters/policy/ukraine-russia-antitrust)

The question I want to explore today is whether the moment has also **passed for Big Tech antitrust**: Is there enough wind in those sails to get anything done by midterms?

For a while, antitrust enforcement sat at the top of every D.C. agenda. Sen. Amy Klobuchar spearheaded two significant, bipartisan antitrust bills. And Lina Khan landed at the FTC ready to fend off critics and launch one of its most consequential antitrust campaigns in decades.

**Antitrust no longer occupies** that **top slot**. The war in Ukraine has instead become everyone’s **highest priority**, for obvious reasons. D.C. has a **lot to figure out** in the coming days, from the ramifications of further **sanctions** to the diplomatic **fallout** in Europe.

There’s also Biden’s Supreme Court nominee, Judge **K**etanji **B**rown **J**ackson. Republicans may very well attempt to **block her confirmation**, and that would mean **further political deadlock**. It would also become another **wedge splitting support** for Klobuchar’s bills, which **already held a tenuous bipartisan balance**.

The war in Ukraine has **changed political calculus surrounding antitrust**. Big Tech and its lobbyists have **pressured Republicans to steer clear of antitrust** on the grounds that the U.S. needs big, powerful tech companies to uphold national security. That angle of attack may **gain more traction** as the U.S. faces off against Russia.

And **timing is everything**. We’re only eight months away from the midterms. Conventional D.C. wisdom (the irony of that phrase isn’t lost on me) says that nothing gets done during the eight weeks leading up to an election. Once you add the Labor Day recess into the mix, Congress realistically has until August to get antitrust measures passed. The lobbying arm opposing antitrust knows this, and it also knows midterms will likely swing Congress to the right. The **odds are in tech’s favor**, and the markets seem to agree — not that they ever took the threat all that seriously.

**Internal Link---SEC---Axon Upends---2NC**

**There’s already an SEC case pending that mirrors Axon’s!**

Al **Barbarino 3/30**—Writer at Law360. ("High Court Urged To Review SEC Judges Alongside FTC Case," March 30, 2022, from Law360, https://www.law360.com/articles/1478843/high-court-urged-to-review-sec-judges-alongside-ftc-case)

Cochran, a certified public accountant, came **under SEC scrutiny** in 2016 over alleged failures to comply with audit standards issued by the Public Company Accounting Oversight Board. An SEC administrative law judge had ruled against Cochran, imposing a $22,500 penalty and a five-year ban on practicing before the SEC.

Cochran challenged the decision in a Texas district court in January 2019, arguing the SEC's claims were made too late, that bringing her case before an **in-house administrative law judge instead of a jury was unconstitutional**, and that the protections preventing the judges' removal were also **unconstitutional**.

A Texas federal judge dismissed Cochran's challenge in March 2019 based on a lack of subject-matter jurisdiction.

Months later, an SEC administrative law judge denied her efforts to dismiss the agency's proceedings and in August 2020, a split Fifth Circuit panel said Cochran would have to make her constitutional arguments to the administrative law judge before appealing in federal court.

In a ruling that created a **split** between the circuit courts, the Fifth Circuit in December 2021 said Cochran can proceed with her claims that the agency's in-house judges are unconstitutionally protected from removal, finding Congress did not "implicitly strip" district courts of jurisdiction to hear structural constructional claims challenging SEC administrative proceedings.

Several circuits have previously held the **S**ecurities **E**xchange **A**ct implicitly strips federal courts of their jurisdiction to hear structural constitutional claims, both the SEC and the NCLA have noted.

In its March 11 petition, the SEC asked the court to hold the Cochran case until a decision is reached in the **Axon** case, in which the weapons maker is **similarly claiming** the FTC's use of administrative law judges violates the principles of "separation of powers" as laid out in the U.S. Constitution.

The commision argued the "**SEC statutory review scheme is materially identical to the FTC statutory review scheme**," meaning the court should "hold this petition for a writ of certiorari **pending the decision in Axon** Enterprise, and then dispose of the petition as appropriate in light of that decision."

Until the Fifth Circuit ruling, every other court of appeals had ruled that parties in Cochran's position cannot "bypass the statutory review scheme" in SEC adjudications by suing in district court to "enjoin an ongoing ALJ [administrative law judge] proceeding," the SEC added.

But while the Supreme Court agreed in January to review the Axon case in order to tackle similar questions regarding the constitutionality of the **F**ederal **T**rade **C**ommission's administrative proceedings, its resolution there would "not necessarily resolve the circuit split, which has arisen in the SEC context," accordion to Tuesday's NCLA brief.

"Holding the government's petition in this case pending the court's consideration of this issue in Axon under a different statute would unnecessarily prolong Cochran's time in the SEC administrative holding cell and possibly force plaintiffs in her position to have to litigate the impact of Axon as to the [Securities] Exchange Act," according to the brief. "That situation is untenable and unnecessary."

The Supreme Court instead must address the SEC's "statutory scheme directly," the NCLA said, arguing that, as structured currently, the agency brings the "vast majority" of its enforcement actions to its own administrative law judges, where it enjoys "a distinct home-court advantage."

"As a result, individuals are currently forced to litigate for years at great expense in a hostile forum where the ALJ is employed by their prosecutor, before they may ever challenge that ALJ's constitutional legitimacy," the NCLA said.

In addition to affirming the Fifth Circuit ruling, the NCLA added granting so-called plenary review on the Cochran case will also "forestall otherwise **inevitable spin-off litigation** that would accompany an FTC-specific decision in Axon."

**\*\*Turns Case---2NC**

**Axon upends the FTC—turns the case**

Carrie G. **Amezcua et al. 22**—Antitrust & Trade Regulation Lawyer; Jonathan D. Janow; Melissa M. Ihnat. ("Supreme Court Takes Up Challenge to FTC Administrative Process," January 31, 2022, from Buchanan Ingersoll & Rooney PC, <https://www.bipc.com/supreme-court-takes-up-challenge-to-ftc-administrative-process>)

The Supreme Court appears to want to address a very narrow issue – whether federal district courts have subject matter jurisdiction to hear constitutional challenges, at least relating to the FTC. Its decision on this issue would resolve a Circuit split just created by a Fifth Circuit ruling in December, which, contrary to five other circuit courts, ruled that the plaintiff did not have to go through the SEC’s full administrative process before bringing constitutional claims in federal district court. Cochran v. U.S. Securities and Exchange Commission, 20 F.4th 194 (5th Cir. 2021). The Supreme Court’s decision could also have **serious ramifications** for arguably **the most important tool in the FTC’s tool box** – its administrative complaint and hearing process.

Court did not take up the second issue that Axon presented – whether the fundamental structure of the FTC itself is consistent with the Constitution. So a favorable ruling from this Court would be limited, for now. But Axon’s underlying constitutional questions on the “structure, procedures, and **existence**” of the FTC are still live. If the Supreme Court rules in favor of Axon and sends the case back to the district court, those issues would then be addressed on the merits – potentially **upend**ing the FTC’s ability to **challenge** both **antitrust** and consumer protection claims through its administrative process. As Axon noted, the FTC has not lost a case brought through its administrative process in 25 years. Antitrust cases, such as Impax (reverse payment) or ProMedica Health System (health system acquisition), would be able to be **challenged by companies** at the outset as a way to **avoid the FTC’s process**. Consumer protection cases, such as ECM Biofilms (false advertising) and LabMD (data security), could also be challenged.

**Crushes antitrust enforcement and limits resources**

Amy B. **Gordon 22**—Associate in the Litigation Department of National Law Review. ("The Administrative State Under Attack: Potentially Far-Reaching Implications of Supreme Court’s Decision to Hear Challenge to FTC Administrative Review Process," February 7, 2022, from National Law Review, <https://www.natlawreview.com/article/administrative-state-under-attack-potentially-far-reaching-implications-supreme>)

By taking up this case, the Supreme Court granted itself the opportunity to weaken the FTC’s authority to adjudicate potential antitrust violations and enforce agency action. If the Supreme Court rules in favor of Axon, it would enable the federal **district courts to reevaluate the legitimacy of the FTC**’s administrative review system, as well as those of **other admin**istrative agencies. Under the current system, the federal appeals courts already have jurisdiction to hear such challenges. However, granting district courts the jurisdiction to hear these challenges as well, especially if they need not give deference to an FTC decision, **increases the likelihood** that these **challenges succeed**.

The FTC’s administrative review process is **crucial** to its ability to reshape the **antitrust** landscape, and in particular, its efforts to move away from a **c**onsumer **w**elfare **s**tandard, which is entrenched in federal antitrust jurisprudence. Should its ability to use this process be eroded, the FTC may find it **harder to implement** some of the sweeping changes it has promised. Also, from a logistical standpoint, if the FTC is forced to defend itself against an increasing number of **constitutional challenges**, it will have **fewer resources** to devote to scrutinizing the current swell of mergers and acquisitions.

We now wait and see how the Supreme Court decides this case, and whether it will continue its recent apparent receptiveness to arguments that **limit the scope of agencies’ implied authority**.

**And, causes congressional backlash**

Bruce D. **Sokler 21**—Chair of the Antitrust Section at National Law Review, over 30 years in private practice in antitrust. ("Body Camera Manufacturer Fails in Bid to Escape FTC Administrative Jurisdiction as Ninth Circuit Shows No Appetite for Judicial Overhaul of Merger Review Procedure," February 2, 2021, from National Law Review, https://www.natlawreview.com/article/body-camera-manufacturer-fails-bid-to-escape-ftc-administrative-jurisdiction-ninth)

Axon has indicated it is considering its legal options going forward, including both requesting an en banc hearing in the Ninth Circuit as well as appealing to the Supreme Court. Notably, the Ninth Circuit panel did not hold that Axon lacked standing to pursue its constitutional claims; if the standing issue were squarely faced, Axon should prevail on this issue. Instead, the holding is that Axon chose the wrong method—the wrong vehicle—to bring its claims in light of the statutory provisions in place. Of course were a court to hold the FTC structure unconstitutional, it would **upend entirely merger review and challenges** in the United States. This issue will likely move from the Article III arena **into Article I**—the Congress. The Supreme Court’s forthcoming restitution decision will likely be the **catalyst for increased activity** of this set of issues in **Congress**.

### Link

#### Per Se rules are large

BonaLaw, ND – Antitrust and Competition (“Antitrust Standards of Review: The Per Se, Rule of Reason, and Quick Look Tests” https://www.bonalaw.com/insights/legal-resources/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quick-look-tests)

Restraints analyzed under the per se rule are those that are always (or almost always) so inherently anticompetitive and damaging to the market that they warrant condemnation without further inquiry into their effects on the market or the existence of an objective competitive justification. (U.S. v Socony-Vacuum Oil Co., 310 U.S 150 (1940); United States v. Sealy, Inc., 388 U.S. 350 (1967); United States v. Topco Associates, Inc., 405 U.S. 596 (1972); Craftsmen Limousine, Inc. v. Ford Motor Co., 363 F.3d 761 (8th Cir. 2004); U.S. Dep’t of Justice and Federal Trade Comm’n, Antitrust Guidelines for Collaborations Among Competitors from April 2000 (Section 3.2).

In other words, first (besides antitrust injury), a plaintiff is only required to prove that the specific anticompetitive conduct actually took place. The plaintiff does not need to demonstrate the conduct’s competitive unreasonableness or negative competitive effects in the relevant product and geographic markets.

Second, under the per se rule, defendants are not entitled to justify their behavior based on any objective competitive justifications. (Northern Pac. Ry. Co. v. US 356 US (1940); Agnew v. National Collegiate Athletic Ass’n, 683 F.3d 328 (7th Circ. 2012); or In re Flat Glass Antitrust Litigation 385 F.3d 350 (3rd Cir. 2004)).

Finally, a plaintiff has less responsibility to analyze the market where the restraint is deemed per se anticompetitive. (National Soc. of Professional Engineers v. U.S. 435 U.S. (1878); In re Insurance Brokerage Antitrust Litigation, 618 F 3d 300 (2010); or In re Southeastern Milk Antitrust Litigation, 739 F.3d 262 (2014). The law, however, isn’t entirely clear to what extent a plaintiff must define the relevant market.

Business practices considered per se illegal under antitrust laws include: **(a)** horizontal agreements to fix prices, **(b**) horizontal market allocation agreements, (**c**) bid rigging among competitors; (**d)** certain horizontal group boycotts by competitors; and **(e**) sometimes tying arrangements.

**Links---2NC**

**Plan burns political capital with the Court—FTC needs to walk a fine line**

Joshua D. **Wright 20**—University Professor, Antonin Scalia Law School at George Mason University, Executive Director, Global Antitrust Institute, and former-Commissioner, Federal Trade Commission; & Alexander Krzepick, J.D. Candidate at Antonin Scalia Law School. ("What Is an Independent Agency to Do? The Trump Administration's Executive Order on Preventing Online Censorship and the Federal Trade Commission," from Administrative Law Review Accord, 6(1), 29-48)

The FTC faces a **crossroads** on both **legal** and **political dimensions**. President Trump's Executive Order on Preventing Online Censorship does make some demands on it, and the FTC must respond or **risk open warfare** with the White House. Context is critical here; the controversy over the Order is but a skirmish in a broader campaign about the role of administrative agencies particularly independent ones in our constitutional scheme. Fighting is on multiple fronts: **Axon's** facial challenge to the FTC's legitimacy, although unsuccessful, is on appeal before the Ninth Circuit and is just one salvo inspired by the **reinvigorated skepticism** about Humphreys Executor and independent agencies.88 The Supreme Court fired a **shot over the bow** when it found the CFPB's sole independent director structure unconstitutional. 89 Chief Justice Roberts's opinion in Seila Law recasts Humphrey's Executor and Morrison v. Olson as narrow exceptions to the rule of presidential control of agency heads, and it will take some time for the full implications of that decision to bear fruit.90 And Justice Gorsuch's dissent in Gundy v. United States9 1coupled with favorable remarks about it by Justice Kavanaugh's in his concurrence in Paul v. United States92 has reinvigorated the conversation around the nondelegation doctrine, the bedrock of the administrative state writ large.

So how should the agency respond? On the legal dimension as an enforcement agency, there are inherent flaws with any UDAP investigations based on speech restrictions; fundamentally these are akin to asking the U.S. government to police speech and allegations of anti-conservative bias. As former-Chairman Muris made clear, this "is a task the First Amendment leaves to the American people, not a government agency." 93 The FTC is a law enforcement agency, and the First Amendment is one of the laws it must enforce. With that in mind, one can broadly sketch out four alternative approaches the FTC could pursue in response to the Executive Order. The first would be to embrace the order's call for UDAP investigations into social media platforms and to conduct a study. Commissioner Wilson suggested considering the Order's UDAP suggestions, but the 6(b) inquiry she proposed is focused upon privacy as opposed to policing speech and platform bias. 94 Another alternative would be to conduct the 6(b) study, but with no UDAP investigation. A third option would be to jump straight into the investigation without a study. The fourth would be following Chairman Muris's lead which, in this case, would mean no UDAP investigation and abstaining from using the FTC's resources on a 6(b) study targeted at an area content curation and alleged political bias that have no nexus to the FTC's mission of protecting competition and consumers.

The first three approaches are each plagued by the same problem. Ultimately, the FTC's Section 5 authority does not support any action in this sphere on the backend, so any study or investigation would do little more than waste precious government resources. Commissioner Wilson's proposals adeptly avoid these issues about the inability to act on private speech, but they only do so by shifting the focus of the study away from free speech, which is where the Executive Order directs its focus, to privacy and targeted advertising. Any study or investigation of alleged platform bias cannot avoid entangling the FTC in the policing of speech. Former Chairman Muris had the right answer when it comes to the FTC's involvement in free speech issues, and it has the added benefit of being extremely cost effective.

The FTC also faces an important political challenge arising from the Executive Order. Should the FTC defend its independence in light of the Executive Order? And if so, how?

In our view, the FTC must also protect whatever Seila Law leaves of **its independence**. Not just for the sake of independence itself, but because its **independence** is a **critical asset** that helps the under resourced agency achieve its **core objectives** in protecting consumers and competition across the modern economy. Former-Chairman William E. Kovacic explained the importance of the "FTC managing carefully its [independence]. One way to envision the FTC's work is that its activities involve either **accumulating political capital** or **spending** **p**olitical **c**apital. In choosing **new programs**, the agency **must be attentive to the balance of its political capital account**."95 The FTC is in a difficult position as an independent law enforcement agency. The FTC's duty to the whole of the law, which includes the First Amendment and not just Section 5, implies that requests including those from the White House to consider investigations that are plainly not consistent with the First Amendment should be rejected. The FTC's independence—so long as it remains—exists precisely for circumstances such as these. As a law enforcement agency, it need not and **should not dip a toe** into this arena.

On this point, Chairman Joseph J. Simons laudably followed Chairman Muris' example. In response to a question during an oversight hearing from Senator Roger Wicker (R-Miss.) about what action the FTC has taken under the Executive Order, Chairman Simons clarified that the FTC **hasn't "taken any action** according to the [E]xecutive [O]rder," and he reaffirmed that political speech is not within the FTC's **jurisdiction**. 96

**Court is reactive to expanded FTC authority and willing to hold the FTC unconstitutional**

Gregory J. **Werden &** Luke M. **Froeb 21**—Former Senior Economic Counsel, FTC Antitrust Division; William C. and Margaret M. Oehmig Associate Professor of Entrepreneurship and Free Enterprise at Vanderbilt University's Owen Graduate School of Management. ("Can the FTC Turn Back the Clock?" August 25, 2021, from Antitrust Magazine Online, Oct. 2021)

Prior to her nomination to the FTC, Ms. Khan and FTC Commissioner Chopra published an article advocating a rulemaking on unfair methods of competition.59 In confirming the power of the FTC to promulgate binding substantive rules, however, the D.C. Circuit warned that: “The Commission is **hardly free to write its own law of consumer protection** and **antitrust** since the statutory standard which the rules may define with greater particularity is a legal standard.”60 A rulemaking should confirm that the determinative factor as to whether a practice is an unfair methods of competition is precisely the same as under the Sherman Act’s rule of reason.

In an earlier article, Ms. Khan had suggested that the FTC could use its rulemaking power to preclude the owners of Internet platforms from doing business on their own platforms.61 Based on her work on the October 2020 report issued by the House Subcommittee on Antitrust, Commercial and Administrative Law,62 she might be contemplating a rulemaking to declare self-preferencing an unfair method of competition when done by a dominant Internet platform. The **fundamental problem** the FTC would confront is that no two of the potentially dominant platforms are alike. What self-preferencing means differs across platforms, as does its impact, so any specific self-preferencing remedies should be the product of adjudicative proceedings.

Chair Khan will have to move expeditiously if the Supreme **Court is to review her initiatives while she remains chair**. The Court likely would be **unanimous in holding** that **harm to competition** must be what makes a practice an unfair method of competition, 63 and it **might be prepared to hold the FTC unconstitutional**,64 so Ms. **Khan should take care**. All Chair Khan should ask from the courts is reasonable leeway on proof of harm to competition, especially as to likelihood and immediacy. And the Department of Justice should have just as much leeway because the Sherman Act directed the Attorney General to institute proceedings to “prevent” violations. 65

Chair Khan’s writings before becoming chairman place her in the vanguard of a populist movement advocating radical reform, but a radical agenda as FTC Chair could be **stymied by the courts**. The best approach is likely to be incremental change through fact-based FTC decisions focused on competitive effects.

**Plan causes a wrath of judicial review---the court responds by curtailing the FTC authority**

William E. **Kovacic 15** Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority, The **F**ederal **T**rade **C**ommission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness, 100 Iowa L. Rev. 2085

In any event, independence as we have discussed it here cannot mean complete isolation from the political process. **Any** system of **competition law** (including its **law enforcement** elements) involves **tradeoffs** between independence and accountability. The agency's **interactions with courts**, for example through **judicial review** of the agency's final decisions in adjudicative proceedings, helps ensure that it operates **within** the boundaries set by constitutions and statutes. But accountability goes further. Even within the law enforcement context, for example, there is no judicial review of FTC decisions to enter consent settlements in administrative litigation, or of agency decisions not to prosecute. Further, even when judicial review does not operate as a check, competition agencies should be accountable to the public to explain their policy choices and to demonstrate that they have wisely exercised the discretion inherent in their mandates. To suggest that independence is an absolute value, or that judicial review fully ensures accountability, is to overlook the tension between the autonomy needed to ensure the principled execution of law enforcement and adjudication duties and the accountability needed to provide legitimacy. Even more generally, discussions about a competition agency's relationship to the political process often overlook difficult issues associated with the measures a competition agency must take to prosper within the political environment in which it resides. In observing discussions about the development of competition systems, we have noticed a tendency to assume that the absence of political influence is a measure of a system's maturity. In is strongest form, this view suggests that in the most sophisticated, highly-evolved regimes, elected officials respect the autonomy of competition so deeply that they have ceased to attempt to shape the agency's decisions - extending not only to adjudicative decisionmaking but also to (for example) decisions to conduct law enforcement and non-law enforcement investigations. 11 In this rarified stratum of agencies, there is no political pressure or influence. The notion that any competition agency is so isolated from the political process is a fiction. For older and newer competition agencies alike, **pressure** from elected officials is **ubiquitous** and **relentless**. The real questions for those designing a competition agency are how much independence is desirable and what mechanisms will most likely allow effective agency functioning with adequate accountability. From the competition agency's perspective, a continuing challenge - even for an agency with years of experience and nominal institutional safeguards to create autonomy - is how to **blunt** attempts at destructive political **intervention** and see that harmful **political influence** does not infect the agency's operations and, ultimately, risk **destroying** it. 12 A further tradeoff exists between independence and the agency's effectiveness. One valuable function of a competition agency is to advocate that legislatures and other government departments adopt pro-competitive policies. Fulfillment of this function requires engagement with elected officials. A completely autonomous competition agency is unlikely to build the political relationships needed to serve as an effective advocate, or to be consulted in a manner timely to ensure that its voice will be heard in the formulation of legislative or regulatory measures. III. The Sources of Political Pressure The intensity of political pressure a competition agency faces depends upon the functions it performs, the sanctions it can impose, and how aggressively it performs its duties. As powers grow, efforts by elected officials to determine how the agency uses such powers expand. Feeble public institutions generally attract tepid interest among politicians (except on rare occasions when the agency's perceived weakness itself becomes a political issue). 13 In its century of experience, the FTC has occasionally had volatile relations with Congress. In part, the Commission's broad statutory mandate elicits interest from Congress. The FTC Act gives the FTC jurisdiction over much of the economy and directs the agency to operate in political terrain. Below we explore the implications, for drafting laws and designing institutions, of the tasks Congress assigned the FTC in 1914 and the design choices Congress made in creating the agency. A. Implications for Law Drafting and Institutional Design One factor to consider in the design of a law's substantive commands and in the formulation of an implementation strategy is political risk. In identifying a preferred role for a competition agency, one must ask if that role is politically feasible. 14 The political feasibility of a statutory mandate does not depend on technical proficiency alone. Political adroitness frequently assumes equal importance in determining success. As one student of administrative behavior has noted: "Each agency must constantly create a climate of acceptance for its activities and negotiate alliances with powerful legislative and community groups to sustain its position. It must, in short, master the art of politics as well as the science of administration." 15 B. The FTC's Charter Two features of the FTC's mandate have considerable political significance. Section 5 gives the FTC power to ban "unfair methods of competition." 16 By this measure, Congress gave the agency flexibility to set norms of business behavior. The Senate Interstate Commerce Committee's Report on the Federal Trade Commission Act explained: The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid [them] or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine what practices were unfair. It concluded that the latter course would be better, for the reason … that there were too many unfair practices to define, and after writing 20 of them into law it would be quite possible to invent others. 17 Section 5's open-ended command affects the Commission's relations with Congress in two ways. First, section 5 invites legislators to demand that the FTC attack conduct that escapes the reach of prevailing judicial interpretations of the other antitrust laws. On its face, section 5 seems to offer a flexible tool to remedy any apparent obstructions to competition. 18 Congressional committees and subcommittees can urge the Commission to use section 5 to reach beyond existing antitrust principles. Such urgings can also come from individual legislators, including, but not limited to, committee chairs - and committees often speak through the individual legislators who chair them. Second, when relying on section 5, the FTC exposes itself to attack (by affected companies and sympathetic legislators) for departing from conventional interpretations of the law. Members of Congress can direct the FTC to use section 5 to expand the realm of enforcement, and other members - or sometimes the same members - can then attack the Commission's efforts to do so as dangerous adventurism. A second politically noteworthy feature of the FTC's authority is its information-gathering and reporting provisions. 19 Congress thought the use of these powers would guide the agency's choice of cases (including novel section 5 matters), help the agency give policy guidance to Congress and the President, and (though this function has dissipated over time) conduct investigations prior to DOJ litigation. 20 Applying these powers can also create political hazards. As one study of independent agencies has observed, "The authority to investigate … mammoth business concerns … is a power loaded with political dynamite. It is bound to arouse the bitter antagonism of those being investigated and to set in motion powerful political pressures." 21 In a number of instances, FTC efforts to use its investigation and reporting powers without explicit congressional approval have had destructive political reactions. 22 The FTC's broad authority also creates rent-seeking and credit-claiming possibilities for legislators and helps explain how Congress intervenes in the agency's affairs. 23 In the rent-seeking model, legislators seek votes and campaign contributions by affecting the FTC's enforcement decisions. A legislator can demand that the FTC attack firms whom the legislator's constituencies oppose, intervene to protect favored economic interests from FTC "overreaching," or tentatively support or oppose a pending Commission initiative to signal receptivity to contributions from affected economic interests. The rent-seeking model helps explain why Congress has left section 5's broad language in place despite business demands for amendment or repeal. 24 Section 5's breadth creates more occasions for legislators to demand FTC action or try to shield firms from an "out of control" agency. A decisive narrowing of section 5 would sacrifice future chances to exploit the FTC's use or nonuse of its powers. Thus, in reacting to claims of FTC "excesses," 25 Congress has not chosen to rewrite the agency's mandate and instead has relied on piecemeal exemptions for individual industries or temporary limits on the agency's use of funds that preserve more rent-seeking options. Thus, the existing mix of statutory powers and oversight devices affords legislators an agreeable set of opportunities either to press the FTC to bring cases or to insist that the agency abandon specific matters. 26 This review of the FTC's experience indicates that it is somewhat misleading to call the Commission an "independent" agency unless one interprets the meaning of that characterization in light of congressional expectations. 27 Congress intended the FTC to be largely independent from the Executive Branch in its day-to-day operations, despite the provision authorizing the President to direct the agency to undertake specific investigations. But Congress intended far less independence from itself. In creating the FTC in 1914, Congress desired to restore the legislature's primacy in controlling antitrust policy. 28 Beyond initial concerns about the substantive content of the "rule of reason" announced in Standard Oil Co. v. United States, 29 Congress established a mechanism for administrative enforcement "to prevent subversion of the legislative intent by district courts that either were unsympathetic or otherwise preoccupied." 30 When Standard Oil appeared, Francis Newlands, who later sponsored the FTC Act in the Senate, stated the need for an administrative enforcement body that was "the servant of Congress." 31 Later generations of legislators would adapt Senator Newlands' language in various forms. In devising the new agency, Congress contemplated a substantial role for legislative oversight to ensure that the Commission used its authority wisely. Congress knew it was giving the agency unusually broad powers and discretion. Senator Albert Cummins, a leading sponsor of the FTC Act, underscored this point during the debates leading to the statute's enactment. "I realize," Cummins said, "that if these five men were either unfaithful to the trust reposed in them or if their economic thought or trend of thought was contrary to the best interests of the people, the commission might do great harm." 32 Congress would ensure that the agency accounted to it for its use of its expansive mandate. "I would rather take my chance with a commission at all times under the power of Congress, at all times under the eye of the people," Cummins explained. 33 "If we find that the people are betrayed either through dishonesty or through mistaken opinion, the commission is always subordinate to Congress… . Congress can always destroy the Commission; it can repeal the law which creates it … ." 34 In the century to follow, congressional committees often have reminded Commission nominees that they owe special obedience to the legislature. 35 (Such reminders, moreover, have also been extended to nominees for commission seats at other agencies, including the Interstate Commerce Commission that was founded decades before the FTC. 36) And, following their confirmation by the Congress, many Commission members have expressed awareness of that circumstance. 37 IV. The Meaning of Independence Although the FTC's broad enabling act gives it substantial independence, there is also a considerable amount of legislative oversight that may at times create political pressure on the administration of agency affairs. The same dichotomy can arise in the drafting of any competition agency's organic law. We can imagine a large number of measures that a jurisdiction might take to ensure that a competition authority is insulated from the political process when it sets a policy agency and considers whether to pursue specific matters. A menu of "safeguards" that would tend to ensure insulation from political control would include: . Protections that prevent the removal of the agency head, absent specified causes, 38 for the head's term of office. (That office is usually a specified term, though an extreme variant might provide lifetime tenure comparable to that of federal judges.) For an independent agency with multiple members and a Chair, such protection could guard both the members and the Chair in holding their posts. . Legal commands or customs that impede the head of state, government ministries, the legislature or individual legislators from taking direct or indirect steps to shape broad policy or to determine how the agency exercises its power to prosecute cases or adopt secondary legislation. . To the extent that legal commands impede the political branches from taking such steps, judicial oversight to ensure that those commands are followed. . The absence of, or severe limits upon, the ability of citizens, nongovernment bodies, or commercial entities to influence the agency's agenda or to monitor its operations by having access to the agency's records or by participating in its activities. . Sources of funding that do not depend upon the exercise of discretion by the head of state, executive ministries, or the legislature. A jurisdiction would achieve the highest level of independence for a competition agency by embracing all of these measures. To adopt the complete roster of independence safeguards would come at a substantial - indeed, unacceptable - cost in accountability. The loss of accountability likely would be seen as a grave defect if the agency's powers were formidable. Moreover, no level of protection could prevent revision of the agency's organic statute. 39 The perceived weakness in accountability mechanisms could provoke a legislative backlash if the agency pressed an aggressive agenda. In fact, though, it is impossible to imagine that a jurisdiction would give broad powers to a competition agency without also adopting measures that constrain the agency's exercise of discretion. (These can include agency-specific measures or broadly applicable measures and processes, such as the Administrative Procedure Act or budgetary processes for congressionally sanctioned funding, to which the agency is subject.) Thus, we can posit that the complete insulation from external influence suggested in the roster of protections listed above would be viewed in most systems as illegitimate and unsupportable. To speak of an acceptable balance between independence and accountability requires a less expansive definition of what constitutes appropriate insulation from external influence. A more suitable definition of independence focuses on the agency's exercising its power to prosecute cases or to enact secondary legislation, such as rules that set binding standards of conduct. Safeguards should discourage political branches of government from intervening to guide or force the disposition of investigations, cases, or rulemakings and, preferably, the initiation of cases as well. Such safeguards should not, however, prevent political institutions from offering guidance or recommendations about larger issues of policy. By this standard, it would be inappropriate for political authorities to have the capacity to prevent, by direct mandate or by persuasion, an agency from blocking a specific merger. It would be appropriate for political authorities to offer their views more generally - for example, in a legislative hearing - about whether an agency's approach to merger review is too tolerant or too strict. V. Organizational Choices that Can Determine Independence Jurisdictions can influence the level of a competition agency's independence through a variety of choices that concern its structure and operations. These choices create tendencies that favor greater or lesser degrees of insulation from political interference in decisions about cases or rules. By themselves, the choices concerning organization and operations do not govern the level of independence an agency enjoys in practice. A variety of informal customs, norms, and habits can either increase or decrease the amount of independence that formal organizational structures and operating procedures might indicate. The organizational structure often thought to be most consistent with independence from political interference is an administrative body that stands outside existing government ministries. In most instances, this administrative body is a commission whose members are appointed to fixed terms and who cannot be removed from office except for good cause. One common model for the selection of board members is a sequence that involves nomination by the head of state and confirmation by the legislature. 40 In theory, an additional degree of independence can be provided by a requirement that the political backgrounds of board members be diverse. For the FTC, no more than three of the five members of the board can be members of the same political party. This has two possible effects that might promote independence. First, the diversification of political backgrounds, combined with appointments that are staggered by years, tends to diminish or delay abrupt adjustments in policy - including adjustments that might be demanded by the political branches of government. Second, when the board reaches a unanimous decision in the resolution of visible, difficult issues, there may be a greater sense outside the agency of political legitimacy arising from the attainment of a consensus outcome. To the extent that such outcomes increase respect for the agency, the agency's stature and independence may be enhanced. The model often seen as least consistent with political independence is to place the competition agency within a ministry of the executive branch. In this model, the individual head of the competition authority, or the multiple members and the chairperson, have no tenure; they can be removed at the discretion of the head of state. In some jurisdictions, the head of the agency, including, for a multi-member agency, both its members and its chairperson, must be approved by the legislature. Judgments about the actual degree of independence that these organizational models yield in practice require a careful examination of norms, customs, and habits that shape the actual operation of the institutions within the jurisdiction. Some of these may be readily apparent, and some are not. For example, as a stand-alone commission with five members appointed by the President and confirmed by the U.S. Senate, with political diversity in its members and a provision that commissioners may be removed from office only for good cause, the FTC is generally considered an independent agency. The FTC's structure was substantially modified and its independence in no small regard compromised, however, by Reorganization Plan No. 8 of 1950. 41 Before 1950, the Commissioners chose their own chairperson, and that chairperson had only limited powers beyond those of his colleagues; further, the FTC Commissioners rendered their chairperson even weaker than those of many other administrative agencies in 1916, when they began to rotate the position annually. 42 However, under a 1950 reorganization plan (which President Harry S. Truman issued under a 1949 law), the chairperson exercises the agency's "executive and administrative functions." Further, although the 1950 plan required approval of certain major decisions by the full Commission, and although it broadly required that the chairperson act subject to the "general policies" of the full Commission, the latter constraint, in particular, has been weak. Most tellingly, chairs who took office relatively early in a new administration, such as James C. Miller III in 1981, have felt little constraint in diverting staff to develop their own agenda, even before they had a Commission majority that fully supported that agenda. The chairperson's augmented powers, moreover, are particularly important because section 3 of the Reorganization Plan authorized the President to select a chairperson from among the commissioners, and the chairperson serves in that capacity at the President's pleasure. 43 In a particularly strong formulation, Sidney Milkis argues that the 1950 Plan for the FTC, and comparable plans for many other agencies, "eventually eroded the independent regulatory commission's autonomy." 44 However much the agency's independence has been compromised since 1950, though, the claim that the Commission is an independent agency begs the question: independent from whom? From the view of the U.S. Congress, the FTC is deemed to be independent from the executive branch of government, but not from the legislative branch. As noted above, legislators often describe the Commission as an agent of the Congress and intend for the Commission to be responsive to congressional preferences. As one indication of the nature of this relationship, the FTC's procedural rules acknowledge that FTC officials have no authority to withhold otherwise confidential information from Congress, 45 and have been construed to authorize agency staff, pursuant to a vote of the Commission, to give confidential briefings to the chairs of committees and subcommittees about ongoing merger investigations and other pending law enforcement matters. Such chairs routinely request and receive such briefings. At first glance, the Antitrust Division of the DOJ might appear far more subject to direct political influence than the FTC. The Antitrust Division is part of an executive branch ministry, and the Assistant Attorney General for Antitrust can be dismissed at the will of the President. This initial impression requires two qualifications. As a matter of custom developed over a period of decades, the Antitrust Division has developed a substantial degree of insulation from the president. Reported episodes of direct political interference to shape the disposition of cases are rare, and there are important instances in which the Antitrust Division has proceeded with major cases despite the vehement opposition of other executive branch ministries. 46 The Antitrust Division also is less inclined than the FTC to respond to congressional demands for information. For example, contrary to the practice of the FTC, the Antitrust Division does not provide confidential briefings about law enforcement matters to members of Congress. VI. Universal Pressure Points for Political Control or Influence Regardless of the organizational form given to the competition agency, there remain pressure points that political branches of government can exploit to control or influence the institution. These pressure points exist in most jurisdictions even if the competition agency is created as a stand-alone commission whose members have tenured appointments. The reason for considering these pressure points is that they demonstrate that complete insulation from the political process is unattainable. Thus, in considering how to attain institutional autonomy for the competition agency, the analysis should focus on how and whether to reduce political interference rather than how to eliminate it. One or more of the following pressure points inevitably limit a competition agency's freedom from political influence: the need for appointment of board members, the need to obtain funding, the possibility that the legislature will amend the law to curb the agency's powers, the ability of the legislature to impose significant costs upon the agency through demands for information and hearings, and the dedication to third parties of power to set the agency's agenda and shape its allocation of resources. These measures can be used individually or in combination to increase the agency's responsiveness to the preferences of political actors outside the institution. A. The Appointments Process The selection of agency leaders is an opportunity to choose individuals who are likely to be sympathetic to the wishes of the Head of State, executive ministries, or the legislature. Alternatively, in an agency that must have multi-party representation, 47 custom or legislative leverage may enable the minority party (that party that does not control the executive) essentially to select some of the Commissioners. The nominating entity (often the executive branch) and the approving entity (often the legislature) can use their power as gatekeepers to filter out candidates who seem certain to ignore external political preferences and, by reason of background and experience, are more likely to share the views of one or more political organs of government or party interests. The desire to appoint individuals with shared values is evident in the frequency with which appointees to the FTC have been former members of Congress, members of the White House staff, or members of congressional staffs. 48 Screening on the basis of these attributes does not ensure fidelity to executive branch or legislative preferences, but it can create a common understanding by which the appointee anticipates or responds favorably to those with whom the appointee shares a professional background. The proceedings that lead to approval by the body entrusted with the confirmation of the candidate also provide opportunities for the confirming body to extract commitments (subject, of course, to reneging by an individual after a tenured appointment is approved) for future action. In a system that allows reappointment for multiple terms, the desire to please the entity that holds the keys to reappointment and the entity that approves can induce a board member to alter behavior. One additional factor can affect the behavior of an appointee once Senate approval is obtained and the fixed term (with removal only for cause) begins. The autonomy of an FTC commissioner (or member of any other independent regulatory commission) depends heavily upon how much the appointee desires to be independent from Congress or the White House. Individuals nominated to serve on the FTC ordinarily have generally demonstrated their fidelity to the party of the officials who are the gatekeepers for the appointment. 49 Upon beginning their terms, an occasional appointee may feel little or no need to remain in good standing with the elected officials who selected them or, more generally, to be viewed within the party as loyal to the party's preferences. Because they do not desire or intend to seek future political favors (e.g., appointments to other positions that require political approval), they may be relatively unconcerned about whether their decisions on the Commission please various political overseers or observers. By contrast, most appointees may hope for future benefits from their party and therefore may be more reluctant to dismiss requests (or demands) for action from same-party leaders, either in Congress or in the executive branch. Such appointees may be particularly attentive and responsive to the expressed preferences of elected officials from their own party. Even with the protection of a fixed term, failure to heed these preferences could damage an individual's post-Commission career (by eliminating the prospect of appointment to a new government post, or causing political loyalists to withhold support for positions outside the government), or cause an unwelcome personal isolation that comes about when one's political cohort imposes ostracism for disloyalty. 50 In short, members of nominally independent agencies may be no more independent than they want to be. B. Funding Every competition agency requires funding to operate. A major factor of whether an agency prospers or flounders is the adequacy of its resources. One can imagine a system in which the agency's source of funds is, to some degree, insulated from the political process. For example, an agency might be permitted to collect and retain user fees associated with merger filings. It also might be allowed to retain all or part of the fines it collects from firms that violate competition laws. 51 In one sense, none of these funding mechanisms is entirely sheltered from the political process. A legislature always can decide to alter the means of financial support if it is truly unhappy with the agency's performance. Moreover, each of these autonomous funding techniques has serious difficulties. User fees tied to specific forms of activity depend upon the level of relevant activity, and a substantial drop in chargeable events (e.g., merger filings) can confront the agency with a large revenue shortfall. For example, user fees for merger filings can provide robust funding for an agency when stock markets are booming and parties can use appreciating share prices to purchase other companies. Amid a recession, the filings and the funding diminish dramatically. Allowing an agency to fund itself from the fines it collects can create perverse incentives that undermine sound public administration. Agencies might be tempted to strain to "discover" infringements of the law and accept settlements that fund operations but have questionable substantive merit. The most common method of funding for competition agencies consists of regular legislative appropriations that are set annually or for a period of years. The need for the agency to obtain regular appropriations creates two possible pressure points. If the agency must submit its budget estimates through an executive branch ministry, the process gives that ministry the ability to reward or punish the competition agency for past behavior. If the legislature is the final gatekeeper for budget approval, the agency must consider how legislators might take the agency's behavior into account in deciding how to vote on the budget. The legislature can remind the agency regularly during the course of the fiscal year that the agency's fidelity to its preferences will influence the next year's budget. Not only can the legislature augment or reduce the overall budget, in some jurisdictions it can specify the purposes for which funds must be used or shall not be used. The threat to slash a budget can have powerful effects. In January 2002, the FTC and the DOJ announced that a new plan for allocating matters that came within the jurisdiction of the two agencies. The reforms to the agencies' "clearance" procedure involved some redistribution of industries based on earlier customs that the FTC and DOJ had followed. The Chairman of the Senate Commerce Committee, Ernest Hollings, scorned the proposal. In words that would have made a gangster proud, Hollings said he wanted to "eliminate" Timothy Muris, the FTC's Chairman. 52 At the time, Hollings also served as the chairman of the Senate Appropriations Subcommittee responsible for the budgets of the Justice Department and the FTC. Hollings threatened to reduce the appropriations for the DOJ and the FTC if the two agencies implemented the clearance process reforms. The DOJ withdrew from the agreement, and the proposed reforms foundered. 53 C. Legislative Changes Political institutions that are displeased with a competition agency's work can threaten to advance legislation that will withdraw authority. The credibility of this threat depends on how difficult, as a matter of law and custom, it is within the jurisdiction to amend existing legislation. At a minimum, a promise to consider a reduction in authority will force the agency to expend considerable resources to make the case against a retrenchment of its powers. It may be possible to create a competing enforcement agent by establishing a new institution or making a grant of overlapping authority to an existing government body - as the FTC was itself created in 1914 to supplement existing enforcement by the DOJ. In general, it may be necessary for the legislature to amend existing statutes occasionally to get the agency's attention and to consider more carefully whether future initiatives will elicit this form of backlash. D. Routine Oversight A legislature can impose substantial costs upon an agency through methods that fall well short of amending legislation or threatening to do so. Legislators can demand that agency officials appear before them in hearings. Such events tend to require extensive preparation within the agency and compel top leadership to devote substantial effort to preparation. A legislature also can submit demands that the agency assemble and present information about its operations. Here, also, the collection and assimilation of records can consume a great deal of staff time. The political branches of government also may have the ability to direct government authorities (such as the U.S. Government Accountability Office) to audit the competition agency and prepare reports on the agency's work. Oversight may extend to efforts to obtain information about the status of pending law enforcement matters. The FTC's rules provide that the Commission can authorize its staff to provide confidential briefings to members of Congress. 54 The Commission has used this rule to provide confidential briefings to committee chairs and subcommittee chairs on pending law enforcement investigations. By this mechanism, the FTC's staff provided briefings on the agency's investigation of alleged anticompetitive practices by Google, Inc. to, among others, Senator Herbert Kohl, the Chairman of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights. 55 E. Setting the Form of **Judicial Review** The **political branches** of government can **constrain** a competition agency's discretion by providing for or increasing **judicial oversight of the agency**. Legislatures can impose **political constraints** in the form of legislation that directs courts to engage in **careful**, **painstaking review** of agency decision making. For example, if the legislature is dissatisfied with the agency's choice of cases, it can alter the agency's statutory mandate to set a more demanding standard of judicial review. **Such a signal** can be particularly **confining** if the agency already does not generally receive **deference** from the courts. F. Increased Monitoring by External Parties A competition agency's freedom of action is determined partly by the extent to which external parties - individual citizens, nongovernment organizations, private companies, or academics - can obtain information about the agency's operations or force the agency to take certain forms of action. If the legislature imposes expansive disclosure requirements, freedom of information laws can give third parties broad access to agency records and supply an important tool for monitoring agency performance. A competition law or an administrative procedure statute can shape the agency's agenda by forcing it to open a file in response to all complaints from external parties, explain all decisions to prosecute or not to prosecute, and by subjecting the agency to lawsuits by external parties who believe the agency's justifications for action or inaction are inadequate. Legislators can also enact statutes, such as the U.S. Government in the Sunshine Act, which require many types of administrative agency deliberations to take place in public. 56 A further mechanism is to establish procedural requirements that force the agency to permit the participation by outsiders in deliberations that could lead to the adoption of secondary legislation or in proceedings that resolve litigated disputes by settlement. G. The Tradeoff Between Accountability and the Breadth of Delegated Authority A legislature's judgment about how much power to delegate to a competition agency is likely to depend, in part, on the legislature's views about the adequacy of devices to ensure that the agency is accountable to legislators and the public for its policy choices. The more insulated the competition agency is from the political process, the narrower the powers that a legislature is likely to entrust to the agency. It is difficult to imagine that a jurisdiction would give broad powers to a competition agency - for example, to gather business records, to review a wide range of business behavior, and to impose strong sanctions - without also creating some mechanisms that press the agency to exercise its powers in ways that serve society's interests. H. Summary: Significance of the Pressure Points The political branches of government have a variety of measures to influence competition agencies to consider and respond to their preferences, even when the competition agency is established as an administration body that stands outside any government ministry and is headed by a board whose members have fixed terms and can be removed only for good cause. In many jurisdictions, executive bodies and legislatures have shown their willingness to use these techniques. Actual or threatened recourse to **pressure points** has **major implications** for the operations of a competition agency. **No agency** can prosper unless it takes account of these pressure points and considers how to **maneuver** through the external political environment. The formulation of an agency's strategy requires it to consider the **political consequences of its actions**. Every day, an agency **acquires** or **spends** **pol**itical **cap**ital. The agency should consider **new projects** in light of their **political costs** in several respects. The agency should identify how it can amass political support - for example, through the media - for projects that are certain to arouse political opposition. The agency also should be careful to avoid choosing so many **politically sensitive targets** at any one time that a critical mass of opposition will form and **overwhelm** the agency, as happened to the FTC from the late 1970s until restrictive legislation was adopted in 1980. 57

**The Court is hostile to expanding the scope of antitrust laws---deviation from the current framework will cause massive judicial backlash**

Alison **Jones 20**, Professor of Law, King’s College London, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of US Competition Policy." The Antitrust Bulletin 65.2 (2020): 227-255.

In the end, FTC’s efforts to improve capability proved **insufficient** to support the **expanded enforcement** agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of **implementation** obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked **swelling political opposition**, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80 New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now. These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief. The discussion in this section identifies likely impediments to the implementation of ambitious reforms, either through litigation (under the present-day regime) or legislation. These include judicial resistance to broader applications of the Sherman, Clayton, and FTC Acts, the complexities of designing effective remedies, the uncertainty of long-term political support for ambitious reforms and the possibilities for political backlash once agencies begin prosecuting major new cases, and the complications, and resistance, that confronts any effort in the United States to make legislative change. A. **Judicial Resistance** to **Extensions of Existing Antitrust Doctrine** As noted in Section II.A, judicial decisions since the mid-1970s have reshaped antitrust law; created more permissive substantive standards governing dominant firm conduct, mergers, and vertical restraints; and raised the bar to antitrust claims in a number of ways. This remolding has been facilitated by the Court’s conclusion that the Sherman Act constitutes “a special kind of common law offense,”81 so that Congress “expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.”82 This has allowed the statutory commands to be interpreted flexibly and the law to evolve with new circumstances and new wisdom;83 for example, where there is widespread agreement that the previous position is inappropriate or where the theoretical underpinnings of those decisions have been called into question.84 The proposed solutions will depend, in the short term at least, on the **ability** of enforcement agencies to **navigate** the described **jurisprudence** to find an antitrust infringement and, in some instances, a further rethinking, refinement, and/or development of doctrine, through softening, modification, or even a reversal of current case law. Although such an evolution could, in theory, result, as it did over the last forty years, from a steady stream of antitrust cases, **judicial appointments** since 2017 have arguably made such a change in direction **unlikely**. Rather, it seems more probable that successful **prosecution** of **major** antitrust, and especially Section 2 Sherman Act monopolization cases, will remain **challenging** and may even become **more difficult**. Cases will be litigated before judges who are ordinarily **predisposed** to accept the **current framework**, either by personal preference or by a felt compulsion to abide by forty years of jurisprudence that tells them to do so.85 A new president could gradually change the philosophy of the federal courts by appointing judges sympathetic to the aims of the proposed transformation.86 The reorientation of the courts through judicial appointments is, however, likely to take a long time.87

**Empirically, the Court pushes against FTC overreach by rebuking them in jurisdictional cases**

Sean **Heather 21** Senior Vice President, International Regulatory Affairs & Antitrust, **Pushing Back Against FTC Overreach**, 5-26, https://www.uschamber.com/regulations/pushing-back-against-ftc-overreach

It’s always a bad day when you lose, but it’s a really bad day when you lose **9-0**. Especially, if it’s before the **highest court** in the land. That’s exactly what happened when the Federal Trade Commission (FTC) lost **a 9-0 vote** before the **Supreme Court** recently. The agency lost a case over its attempts to seek monetary relief under the obscure-sounding section 13b of the FTC Act. Since this stinging rebuke, the FTC has shown little humility in its subsequent public statements. Instead, it has brazenly continued to urge Congress to “restore” authority it never, in fact, has had.

**Heightened FTC enforcement is what makes Axon’s case *more compelling***

Lawrence **Ebner et al. 21**—Executive Vice President & General Counsel, Atlantic Legal Foundation; Ilya Shapiro, Former Vice President and Director, Robert A. Levy Center for Constitutional Studies, Cato Institute; William Yeatman, Research Fellow, Cato Institute. ("Axon Enterprise v. FTC," August 17, 2021, from Atlantic Legal Foundation & Cato Institute, https://www.cato.org/legal-briefs/axon-enterprise-v-ftc)

For any company or individual targeted by the FTC (or by the Securities and Exchange Commission (SEC), which makes extensive use of a similar administrative enforcement scheme), the issue of whether federal district courts have jurisdiction to review structural constitutional claims prior to completion of an administrative enforcement proceeding is a question of whether justice delayed is justice denied. Fundamental fairness—and common sense—compel the conclusion that the respondent in an FTC administrative **enforcement action** should not be required to suffer the crippling cost, business disruption, reputational harm, and adverse outcome of a fully adjudicated administrative proceeding before seeking judicial review of substantial, wholly collateral, threshold objections to the entire proceeding’s constitutional legitimacy.

The fact that the FTC **aggressively prosecutes** such proceedings on its home turf, with the benefit of its own procedural rules, and before its own removal protected administrative law judge (ALJ), **makes the need for district court review even more compelling**. Contrary to the tepid opinion issued by the Ninth Circuit panel majority—and as Circuit Judge Patrick J. Bumatay explains in his pointed dissent—the Federal Trade Commission Act’s judicial review provision, 15 U.S.C. § 45(c), does not impliedly strip district courts of their federal question jurisdiction to consider **structural constitutional claims** like those that Axon seeks to pursue in this case.

**The perception of aggressive FTC enforcement shifts Court opinion**

Lawrence **Ebner et al. 21**—Executive Vice President & General Counsel, Atlantic Legal Foundation; Ilya Shapiro, Former Vice President and Director, Robert A. Levy Center for Constitutional Studies, Cato Institute; William Yeatman, Research Fellow, Cato Institute. ("Axon Enterprise v. FTC," August 17, 2021, from Atlantic Legal Foundation & Cato Institute, https://www.cato.org/legal-briefs/axon-enterprise-v-ftc)

The FTC’s **aggressive enforcement policies** have attracted the Supreme Court’s attention. See, e.g., AMG Cap. Mgmt., LLC v. FTC, 141 S. Ct. 1341 (2021) (holding that § 13(b) of the FTC Act, 15 U.S.C. § 53(b), which authorizes the FTC to seek injunctions, does not also authorize the FTC to seek, or courts to award, equitable monetary relief such as restitution or disgorgement of profits).

Last year in Seila Law, the Court described another independent federal regulatory agency, the Consumer Financial Protection Bureau (**CFPB**), as one that “wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U. S. economy.” 140 S. Ct. at 1291. The FTC not only falls into the **same category**, but also long has been one of the federal administrative state’s **most visible and ardent regulators**. As the Ninth Circuit panel majority acknowledged here, the FTC is among “an array of quasi-independent executive agencies that . . . wield **tremendous enforcement power**.” App-1– App-2. “[T]hese agencies can commence administrative enforcement proceedings against companies and individuals, and make their cases before their own administrative law judges (ALJs). Not surprisingly, ALJs overwhelmingly rule for their own agencies.” App-2; see also Bernstein, supra, at 5 (“FTC’s Continued Preference for Administrative Proceedings”); id. at 9 (“FTC Found Success In Administrative Actions”); Angel Reyes & Benjamin Hunter, Does the FTC Have Blood On Its Hands? An Analysis of FTC Overreach and Abuse of Power After Liu, 68 Buff. L. Rev. 1481, 1512 (2020) (“The FTC’s power has grown to an unacceptable and lethal level. . . . The damage that has been caused to businesses and private citizens . . . has been far too high of a cost for the benefit that the country has received in return.”).

**Link---Spillover---2NC**

**Spillover is guaranteed—new cases are *waiting in the wings***

--this is same as 1nc card but it’s diff (all unread) highlighting

Christopher **Cole 2/18**—Reporter at Law 360, attorney at the law firm Crowell & Moring. ("High Court’s FTC Case Carries Potential for Broad Impact," February 18, 2022, from Law 360)

**Wider Implications Likely**

As former FTC general counsel Stephen Calkins put it, the court's review of Axon, which came out of a Ninth Circuit ruling, draws the battle lines for a "**two-front war**" where Axon fights at the Supreme Court while other companies continue to file district court challenges.

Calkins, a professor at Wayne State University Law School, said Thursday there was nothing to stop litigants from filing a case in federal court regardless of what's happening at the high court.

"You would think there would be a very good chance that the FTC would lose this case, and that any FTC administrative complaint going forward is sure to be met by a district complaint challenging the constitutional structure of the FTC," he said. "It must think simultaneously about being a defendant in a district court lawsuit." He predicted "a number of district court challenges" and that eventually the FTC will be back on the second question, although the FTC could try to stay other court cases with Axon still unresolved. "

The irony with the loss of its 13(b) power," he said, is that "the FTC has been scrambling to find ways to get money to consumers, and one possible option is to file an administrative case and wait to go to district court until after the administrative case has gone through," but now that option could be dashed as well.

Calkins said a Supreme Court ruling striking down the FTC's in-house authority and its overall structure would give become **important case law for other challenges** to federal bodies that use similar procedures, such as the **S**ecurities and **E**xchange **C**ommission.

Venable's Gordon pointed out that even with the justices tackling only the question of bringing suit in district court against the FTC, a ruling in Axon's favor could be cited in **any number of lower court cases** seeking to **buck agencies' administrative authority**.

"Anybody who's got a challenge to the constitutionality of either the **process** that the government agency is engaged in, or the **constitutionality** of the way the agency is set up ... it will open up the opportunity for a sort of **collateral attack** on what the agency does," he said.

Gordon said **plenty of these cases are waiting in the wings**. "There are **always** some people claiming the administrative state is depriving them of due process."

**The case implicates many regulatory agencies—specifically, SEC**

Lawrence **Ebner et al. 21**—Executive Vice President & General Counsel, Atlantic Legal Foundation; Ilya Shapiro, Former Vice President and Director, Robert A. Levy Center for Constitutional Studies, Cato Institute; William Yeatman, Research Fellow, Cato Institute. ("Axon Enterprise v. FTC," August 17, 2021, from Atlantic Legal Foundation & Cato Institute, https://www.cato.org/legal-briefs/axon-enterprise-v-ftc)

Although this case involves an FTC-compelled divestiture, the panel’s broad holding is **not limited to antitrust**-related enforcement proceedings. It also encompasses FTC administrative enforcement actions in the **consumer protection** area. See 15 U.S.C. § 45(c). Moreover, the district court jurisdictional issue has potential implications for **many federal regulatory agencies** that conduct their own administrative prosecutions and adjudications of enforcement actions. Early judicial resolution of related structural constitutional issues is a matter of administrative **efficiency** and **judicial economy**, as well as fairness to respondents. And insofar as a federal agency has the authority to rule on the constitutionality of its own administrative enforcement scheme, requiring an enforcement respondent to exhaust that “remedy” before seeking judicial review is a wasteful exercise in futility.

The circuit court jurisprudence on the same fundamental jurisdictional issue—albeit in connection with the multilayer, for-cause-only removal protection afforded to **SEC** ALJs—further underscores the **significance of the question** presented here. The majority opinion notes that the FTC Act’s judicial review provision, 15 U.S.C. § 45(c), “is almost **identical** to the statutory review provision in the **SEC** Act,” 15 U.S.C. § 78y, and that “other circuits have held [that the SEC provision] shows a fairly discernible intent to strip district court jurisdiction.” App-10.

# 2NR

## Supply Chains Adv

### 2NR – Link

#### Bullwhip effect necessary to understanding inflation

Yossi **Sheffi** 1-13 “Prepare for the Bullwhip’s Sting”

<https://sloanreview.mit.edu/article/prepare-for-the-bullwhips-sting/#:~:text=High%20consumer%20demand%2C%20product%20shortages,can%20have%20far%2Dreaching%20consequences>.

Nearly two years into the disruption caused by the COVID-19 pandemic, signs are pointing to the growing risk of a global economic recession. High consumer demand, product **shortages, and transportation disruptions** in the second half of 2021 **triggered inflation and changes to manufacturers’ order patterns, setting up the bullwhip effect** — a supply chain phenomenon that can have far-reaching consequences. The ups and downs of money flows, labor patterns, inventory management, and product demand are setting the stage for what happens next — and business leaders, particularly in supply chain roles, should prepare now for the greater challenges that may lie ahead

#### Surge pricing causes bullwhips that roil supply chains in key industries.

Minderest ’20 [Minderest; “What is the bullwhip effect, and how does it affect prices?”; <https://www.minderest.com/blog/bullwhip-effect-on-prices>]

The bullwhip effect, whiplash effect or Forrester effect is a mismatch in the demand forecast that extends along the supply chain of an e-commerce business. It happens when an inaccuracy or error in the demand forecast at one point in the supply chain increases as it moves away from the end consumer. This exponential error can cause problems in the sale and distribution of different products and affect the company’s profitability. At the same time, the bullwhip effect maintains a two-way relationship with the e-commerce business’s pricing strategy. Sales prices can cause the bullwhip effect to either increase or decrease. Variations in this effect can lead to price changes. We explain in detail below.

In a more graphic example, the whip effect occurs when:

The consumer’s demand forecast is 10 units.

The retailer orders 15 units in case demand increases.

The distributor orders 20 units.

The manufacturer buys material to make 40 units to lower costs.

Result: between 1 and 10 units will be sold, and 40 units have been manufactured that will not go to the market in the short term. And the problem compounds if the difference between actual demand and available stock throughout the supply chain continues to widen month on month.

This mismatch can result from inventory problems and over-production, equipment rental overruns or extra staff hours. If the downwards estimate is wrong, it can result in a stock break that leaves the e-commerce business out of stock. It can also cause low production periods for manufacturers and logistical delays affecting end consumers. This is what happened in international trade in 2021, which led to a shortage of electronic products such as graphics cards, computers, or game consoles, such as PlayStation 5.

What is the role of pricing in the bullwhip effect?

On the one hand, price variations are factors that can lead to an increase in the bullwhip effect. In this sense, when an e-commerce business launches a special-offer campaign, demand is likely to increase based on the discount percentage. In addition, higher prices can lead customers to be more averse to purchasing products, thereby reducing demand. Therefore, it is essential to know the degree of elasticity of demand for each product. It is also necessary to maintain seamless communication with all agents in the supply chain, ensuring that they are aware of expected changes in demand.

On the other hand, in cases of stock overproduction, one way to control and reverse the bullwhip effect is to reduce items’ prices. This helps spark greater interest in retailers or end customers, depending on the location of the excess products.

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#### Supply chain inflation is the biggest cuase

Delia Macaluso and Michael McMahon 2022 “What is supply chain inflation and why is it driving up consumer prices now?” <https://www.economicsobservatory.com/what-is-supply-chain-inflation-and-why-is-it-driving-up-consumer-prices-now#:~:text=When%20the%20inputs%20that%20are,the%20supply%20chain%20of%20inflation>.

**The interconnectedness of global supply chains means that when one price goes up,** **others tend to follow**. Increases in labour, energy and transport costs are contributing to inflation around the world, posing difficult policy challenges. Back when we could travel easily, a regular announcement at airports all over the world was: ‘The airline would like to apologise for the delay to your flight. This is due to the late arrival of the incoming aircraft.’ But this essentially just says that we are late because we are late. Of course, it is true: lateness can create further lateness. A similar phenomenon happens with prices. **Prices increase because prices have increased**; we experience inflation because there is inflation. While consumer price inflation has been relatively low and stable for the last 20 years, the last few months have seen a big jump in price growth alongside lots of discussions about the role of supply chain disruptions. Increasing inflation in 2021 In December 2021, consumer prices, measured by the Consumer Prices Index (CPI), were 5.4% higher than a year previously in December 2020. This price increase (the annual rate of inflation) is up from 4.2% in the year to October 2021 and represents the highest rate since March 1992 (when it stood at 7.1%). Inflation has been increasing since last April when lockdown measures from earlier in 2021 were relaxed (see Figure 1). Figure 1: UK consumer price inflation (as measured by the CPI) Source: Office for National Statistics The increase in inflation has been driven by the rising prices of goods. Service prices have also started to recover (or at least they had before the Omicron variant of the virus that causes Covid-19 induced further restrictions). The pressure on goods prices reflects the dramatic change in our lifestyles since the start of the pandemic. Whether out of necessity to address our new living and working arrangements, or because many sectors had to shut down, demand quickly shifted from services (such as catering, accommodation and entertainment) to goods (such as food, beverages and consumer goods). This unexpected demand, combined with the effects of Covid-19 on production, severely affected the availability of such goods and, with it, their prices. Because inflation is the rate of change of prices, typically measured compared to a year earlier, the substantial increase this year can partly be explained by the economic halt last year, which depressed overall consumption and prices. This ‘base effect’ reflects the fact that the reference price level from a year before was at its lowest, accentuating the increase this year. What affects the price of goods and services? But where do price increases come from? **Producers generally set prices to maximise their own profit** (exceptions to this objective include third sector firms). Of course, sometimes they make pricing decisions that do not make the most profit immediately but provide future benefits (like brand loyalty) or increase demand for other products. **But ultimately, firms seek at the very least to cover the costs that they incur in production**. This raises the question as to whether recent price increases come from increases in the costs of inputs. **Which input costs have gone up?** The main inputs, and therefore costs, vary by industry. But broadly speaking, most costs come from paying workers (labour), the goods and services needed for production (such as raw materials), the costs of use of machinery and technology, and logistics (storage and transport). If the costs of any of these go up, there may be pressure on firms to raise their prices. If all of them go up, there will be greater pressure. **When the inputs that are common to most firms go up, more sectors increase prices further, raising the costs for the sectors they supply. This is the supply chain of inflation.** How can labour costs affect prices? Recently, firms in many sectors have faced difficulties recruiting. This drives up wages in those sectors, and workers have rightly sought wage increases to cover the rising cost of living. This has meant that average weekly earnings are rising across most sectors (including private, public, services, finance, manufacturing, construction and wholesale). **What about energy costs?** The recent increases in energy costs will not be a surprise to anyone. Figure 2 shows recent movements of oil and gas prices, which fell at the start of the pandemic, recovered in early 2021 but have surged since the summer of 2021. This partly reflects a hot summer (increased use of cooling technology) and higher seasonal demand from winter heating needs in the Northern hemisphere. Increased overall demand as economies recover is also an important factor. Oil supply is constrained somewhat due to sanctions on Iran, while gas supply is affected by geopolitical factors related to Nord Stream 2, the controversial new pipeline due to bring Russian gas to Germany through the Baltic Sea. The situation in the UK is made worse by the depreciation of sterling against the US dollar (which makes oil, priced in dollars, more expensive), resulting in an additional burden for local producers. The depreciation of sterling has happened as a result of many factors: the US economy has been recovering more strongly; interest rates in the United States rose faster than in the UK; and the UK has been afflicted by continuing uncertainty over its trading relationship with the European Union (EU). Figure 2: Oil and gas prices Source: Bloomberg **Supply chain links between companies also give rise to unusual implications of the energy price increases**. The high energy costs were a cause of September’s shortages in the UK of some fizzy drinks, beer and meats. The link is that the carbon dioxide (CO2) used to carbonate drinks, and used for the slaughter of animals, comes as a by-product in the production of fertiliser. But production at the biggest fertiliser plants ceased because of the soaring costs of natural gas. Even though these firms had contracted delivery of gas, it became more profitable for them to not use the gas in their own production and instead to sell it on at the high price to other companies. This meant no CO2generation – and shortages of certain products tends to push up their prices. How about the costs of freight and distribution? In the past year, there has been a steady increase in the container freight index, which approximates the cost of transporting goods via shipping liners. The index peaked at $10,839 last September, reaching a level that was almost ten times higher compared with two years before ($1,279). Other freight costs, such as air freight, have risen similarly. **These rising costs reflect many things. One driving force behind the rising cost of freight is the higher oil price.** But there are also factors directly related to Covid-19. **For example, there is a knock-on effect of reduced airline capacity**, especially into and out of Asia as a result of travel restrictions. Since planes are not travelling with paying passengers, the high-value goods that used to be transported by air must now be sent by sea. But this means that these goods compete for the capacity on cargo ships that was once used for lower-value goods. This re-evaluation of the priority of goods shipments means that the trade disruptions affect some goods more than others. Those lower-value goods that are shipped face higher costs. There have been other Covid-19-related issues. For example, there have been delays unloading cargo when ports have been understaffed due to sickness or isolation. And the widespread shortage of heavy goods vehicle (HGV) drivers has meant that the port warehouses are left fuller for longer. This leads to ships waiting to enter port and unload goods, which increases shipping times (and hence costs). These higher costs are passed on to the shipping company’s customers. Other shipping disruptions have been unlucky occurrences – for example, the disruption from the well-publicised grounding of the Ever Given ship in the Suez Canal in March 2021 as well as wider weather disruptions. But while in normal times a disruption would represent an unlikely and isolated event, all the events together have cumulated to produce bottlenecks in the system. With each additional setback, the world trade network has become more strained. What effect do shortages and higher input prices have on inflation? As in the case of CO2 shortages, **the** **impact of supply disruptions can lead directly to price increases in the affected goods.** But these shortages don’t have to be driven by other price increases. For example, semi-conductor plants have been affected by Covid-19-related disruptions. Although already facing large back-order books, semi-conductor plants across Asia had to shut down at the start of the pandemic when their staff had to follow lockdown rules. This exacerbated the starting position and the costs of re-establishing the dust-free environment in which microchips are made meant that production was costly to bring back to full capacity. This has meant that many consumer goods – from mobile phones to cars – have had their production affected. These shortages can lead to consumers bidding up prices. What is the overall effect? The energy sector price increases are important because they affect virtually all sectors as a critical input. This matters because it means that not only do the costs of energy increase for a particular firm, but as their suppliers also face increases in energy costs, it feeds directly into their input costs too. Rising costs of distribution for internationally traded goods, including those goods that are part of the production process in domestically produced goods, has a similar effect. Not all industries are affected equally. **Goods with a long supply chain may end up with bigger input price effects** because every step along the chain will compound the inflationary impact from both the raw input and the transformed good. Take, for example, the market for processed meat: animals need to be fed and sheltered. Forage is itself a by-product of agriculture, which needs fuel and electricity to operate. The same holds for every step of the process of harvesting, transforming, storing and delivering the animal feed to the farm and then the animal to the slaughterhouse to wholesale retailers. Compared with the rather simple market for diamonds, which is vertically integrated and requires low processing for the retail end-uses in jewellery and heavy construction, the market for processed meat is likely to have to absorb the impact of higher commodity prices more times before the final product reaches a supermarket shelf. Figure 3 shows the close relationship between manufacturing input costs and prices charged. The relationship is not always one-for-one. In late 2016, manufacturing input costs rose strongly (in part due to the UK’s referendum vote earlier that year to leave the EU), but the price charged increased less quickly. In contrast, the rising input costs in virtually all sectors since the pandemic have led to greater upward pressure on output prices. Figure 3: Manufacturing input cost growth and output price inflation Source: Office for National Statistics To what extent can firms pass on higher costs to their consumers? So why would a firm not increase prices if they faced higher costs of inputs? The risk of losing customers usually makes producers reluctant to increase their prices, although if there is high demand, then firms can charge higher prices without fear of depressing sales. The gap between the price charged to customers and the cost of producing a unit of the item sold – the mark-up – reflects the excess that goes to the producer as earnings to cover profits, other costs and new investments. This wedge means that producers can choose occasions when to absorb higher costs and avoid having to increase prices (which may result in a loss of consumers), and when to pass on the higher costs. Before the pandemic, prices (and wages) were typically quite predictable and only increased by small amounts per year. Stable input prices, as well as competitive pressures, reduced the pricing power of firms, which were reluctant to increase prices too much. But in the past year, firms have seen a resurgence of demand as economies re-opened. This demand has been supported by a build-up of cash balances, a pent-up desire for certain goods and experiences, and continued support from fiscal and monetary policy. At the same time, a combination of factors has contributed to rising input prices. When rising input prices are matched by strong demand, firms gain pricing power – that is, they are able to charge higher prices without fear of putting off customers and depressing their sales. When firms know that competitors are also facing similar cost pressures, it is also easier to pass on the costs safe in the knowledge that it is likely that their rivals will do the same. Conclusion So higher prices can feed higher prices through the supply chain. The risk that central banks wish to avoid is a widespread belief taking hold that larger price increases are going to be the norm going forward. **This would mean that even temporary cost increases will be passed on to customers and further feed the likelihood of inflation – a self-fulfilling prophecy.** But raising interest rates, which is the standard inflation-fighting tool of central banks, risks weakening a fragile economy that is still fraught with uncertainty. This is one of the difficult balancing acts that will dominate policy-makers’ decision-making in 2022.

### 2NR – Oil

#### Oil down

Reuters 3/29 (“Wall Street rallies on hopes Russia, Ukraine can resolve conflict”, https://www.reuters.com/business/futures-rise-russia-ukraine-hold-peace-talks-2022-03-29/)

NEW YORK, March 29 (Reuters) - U.S. stocks rose on Tuesday, with the Dow and S&P notching their fourth straight session of gains, on optimism some progress was being made toward a deal to resolve the conflict between Russia and Ukraine. Russia pledged to cut down on military operations around Kyiv and in northern Ukraine, while Ukraine proposed adopting a neutral status, the first sign of progress toward peace in weeks. Prices eased for oil and other commodities, helping calm concerns about rising inflation and the path of monetary policy by the Federal Reserve, which has started hiking interest rates to combat rising prices. "If you look over the course of the month this war has been going on, the market has priced in much more bad news than good news," said Art Hogan, chief market strategist at National Securities in New York. "It certainly shows the market has a natural coiled spring that will be a reaction function to any good news and we saw a bit of that this morning, but everything will have to be taken with a grain of salt and we will have to see things actually play out versus being actually talked about." The Dow Jones Industrial Average (.DJI) rose 338.3 points, or 0.97%, to 35,294.19, the S&P 500 (.SPX) gained 56.08 points, or 1.23%, to 4,631.6 and the Nasdaq Composite (.IXIC) added 264.73 points, or 1.84%, to 14,619.64. After a dismal start to the year for stocks that saw the S&P 500 fall into a correction, commonly referred to as a drop of more than 10% from its most recent high, the benchmark index is now down less than 3% on the year. Still, there were signs of market nervousness that the Fed could make a policy mistake that leads to a slowdown, or possibly a recession, in the economy as the widely tracked U.S. 2-year/10-year Treasury inverted for the first time since September 2019. "While I think the ultimate result of an aggressive Fed tightening cycle is a recession, I do not expect it to occur quickly. Historically speaking, all recessions are preceded by 2s10s inversions, but not all inversions result in recessions," said Ellis Phifer, managing director, fixed income research, at Raymond James in Memphis, Tennessee. After slumping more than 2% on Monday, the S&P energy index (.SPNY) was the only declining sector as crude prices fell more than 1%. read more As the conflict in Ukraine has escalated in recent weeks, already rising prices saw more upward pressure on commodities such as wheat, energy and metals. But even with the recent surge in inflation, data on Tuesday showed U.S. consumer confidence rebounded from a one-year low in March, while the current labor environment favors workers.Real estate (.SPLRCR), up nearly 3% on the session, was the best performing sector, which indicates some investors may see inflation remaining but no recession on the horizon. It was the biggest one-day percentage gain for the group since Jan. 28. FedEx Corp (FDX.N) gained 3.70% after the global delivery conglomerate named operating chief Raj Subramaniam as its top boss. read more Volume on U.S. exchanges was 13.22 billion shares, compared with the 14 billion average for the full session over the last 20 trading days. Advancing issues outnumbered declining ones on the NYSE by a 4.20-to-1 ratio; on Nasdaq, a 2.97-to-1 ratio favored advancers. The S&P 500 posted 51 new 52-week highs and no new lows; the Nasdaq Composite recorded 71 new highs and 38 new lows.

#### Market & commodity prices are adjusting even after Ukraine

Sonenshine 3/30 (Jacob, Barrons, “Stocks Soar on Russia-Ukraine Ceasefire Hopes. The Gains Don’t Always Last.”. https://www.barrons.com/articles/stock-market-russia-ukraine-war-51648640451)

The stock market jumped Tuesday amid optimism over a possible cease-fire following talks between Ukrainian and Russian officials in Turkey. Wednesday, however, was greeted with mild selling, something that is far from uncommon following “good news” on the conflict. ß Tuesday, the Dow Jones Industrial Average rose 1%, while the S&P 500 gained 1.2%, and the Nasdaq Composite climbed 1.8%, with little good news to push stocks harder beyond the possibility of an end to Russia’s war in Ukraine. The stock market wasn’t the only thing that was reacting. That seems to have helped send the price of WTI Crude oil down as much as 6%, with the commodity ending the day down 1.6% at $104.24 on hopes that the end of the conflict would mean fewer restrictions on Russian oil. Oil and stocks have been moving in opposite directions. Higher oil prices mean higher inflation, which would mean more rate increases. None of that is good for the stock market. Can the gains last? Recent history is mixed. We looked for days when there was positive Russia-Ukraine headlines, and found eight instances. The indexes averaged smaller gains—between 0.2% to 0.4% the day after those instances. But that doesn’t reflect the variety of possible outcomes, or the fact that there were a couple of instances of back-to-back days of good news. Even on days without any good news, markets could end mixed. On Feb. 25, a Russian spokesperson told the press that Moscow was sending a delegation to Belarus to speak with Ukrainian leadership, sending the Nasdaq up 1.6%, while the Dow and S&P 500 both gained over 2%. The next trading day, Feb. 28, the Nasdaq finished a touch higher, while the Dow and S&P 500 fell 0.5% and 0.2%, respectively. The overall trend, however, has been higher in recent weeks. After entering correction territory, defined as a 10% drop, on Feb. 22, the S&P 500 has now risen 10% from its closing low of the year hit on March 8. And since that date, oil is down 20% from its multiyear peak of $130.

#### Shifted back on oil

Lazarus 2/25 (David, His work has earned an Emmy, a Golden Mike, two National Headliner Awards and multiple honors from the Society of Professional Journalists. He was named Journalist of the Year by the Consumer Federation of California.“Higher oil prices are unlikely to derail U.S. economic growth (for now)”, https://ktla.com/news/money-smart/higher-oil-prices-are-unlikely-to-derail-u-s-economic-growth-for-now/#:~:text=Goldman%20Sachs%20estimates%20that%20U.S.,borrowing%20costs%20for%20consumers%20down.)

Higher energy costs could deter the Federal Reserve from raising interest rates **too aggressively in coming months**. This would help keep borrowing costs for consumers down. Economists say it’s unlikely the U.S. economy will plunge into recession because of higher oil prices — as opposed to what happened during the Arab Oil Embargo in 1973 and Iraq’s invasion of Kuwait in 1990. The big difference today is that the United States isn’t as dependent on foreign oil as it was back then. We’re also consuming less energy as a percentage of gross domestic product because of the sweeping shift to a service economy rather than a manufacturing economy. What this means for you is that despite near-inevitable pain at the gas pump, and possibly higher consumer prices resulting from increased transportation costs, the U.S. economy should remain relatively strong.

#### Food, gas etc all alt causes – plan doesn’t affect them because they aren’t algorithmically surge priced.

Christopher Rugaber 3/31/22, AP reporter, “A key inflation gauge sets 40-year high as gas and food soar,” AP News, apnews.com/article/business-prices-inflation-c9d81525f808b25ecd37e5c91d6bb0e5

WASHINGTON (AP) — An inflation gauge that is closely monitored by the Federal Reserve jumped 6.4% in February compared with a year ago, with sharply higher prices for food, gasoline and other necessities squeezing Americans’ finances.

The figure reported Thursday by the Commerce Department was the largest year-over-year rise since January 1982. Excluding volatile prices for food and energy, so-called core inflation increased 5.4% in February from 12 months earlier.

Robust consumer demand has combined with shortages of many goods to fuel the sharpest price jumps in four decades. Measures of inflation will likely worsen in the coming months because Thursday’s report doesn’t reflect the consequences of Russia’s invasion of Ukraine, which occurred Feb. 24. The war has disrupted global oil markets and accelerated prices for wheat, nickel and other key commodities.

Squeezed by inflation, consumers increased their spending by just 0.2% in February, down from a much larger 2.7% gain in January. Adjusted for inflation, spending actually fell 0.4% last month. The decline partly reflected a shift away from heavy spending on goods to a focus on services, such as health care, travel and entertainment, which consumers had long avoided during the worst of the pandemic.

Spending on such services grew 0.6%, the most since July, while purchases of autos, furniture, clothes and other goods dropped 2.1%. **Many economists had previously suggested that a shift away from goods purchases might loosen supply chain snarls and cool inflation. But prices are still rising rapidly for goods, including a 1.1% increase in February.**

Americans’ overall incomes rose 0.5% in February, the highest gain since November and up from just 0.1% in January. Wages and salaries jumped 0.8%, the most in four months.

Businesses have been raising pay to attract and keep employees — a trend that is benefiting workers but also giving employers cause to raise prices to offset their higher labor costs. That cycle is helping fuel inflation.

Last month, food costs climbed 1.4%, the most in nearly two years. Energy costs spiked 3.7%, the biggest such increase since October.

The Federal Reserve responded this month to the inflation surge by raising its benchmark short-term interest rate by a quarter-point from near zero, and it’s likely to keep raising it well into next year. Because its rate affects many consumer and business loans, the Fed’s rate hikes will make borrowing more expensive and could weaken the economy over time.

Michael Feroli of JPMorgan is among economists who now think the Fed will raise its key rate by an aggressive half-point in both May and June. The central bank hasn’t raised its benchmark rate by a half-point in two decades, a sign of how concerned it has become about the persistent surge in inflation.

On a monthly basis, prices rose 0.6% from January to February, up slightly from the previous month’s increase of 0.5% and matching the highest monthly figure since 2008. Core prices rose 0.4%, down from a 0.5% increase in January.

Gas prices have soared in the past month in the aftermath of Russia’s invasion, which led the United Kingdom and the Biden administration to ban Russia’s oil exports. The cost of a gallon of gas shot up to a national average of $4.24 a gallon Wednesday, according to AAA. That’s up 63 cents from a month ago, when it was $3.61.

Michael Pearce, an economist at Capital Economics, estimated that the gas price spike will cost Americans an annualized $100 billion in March.

Americans will likely dig into their savings to cover the higher gas costs in the near term, he said. “But if higher gasoline prices are sustained, that will eventually weigh on spending in other areas.”

On Thursday, President Joe Biden is expected to [order the release of up to 1 million barrels of oil](https://apnews.com/article/russia-ukraine-biden-business-europe-3e1808077371b88ae043c86584763afd/)a day from the nation’s strategic petroleum reserve in an effort to reduce gas prices.

Thursday’s report follows a more widely monitored inflation gauge, the consumer price index, that was issued earlier this month. The CPI jumped to 7.9% in February from a year ago, the sharpest such increase in four decades.

Many economists still expect inflation to peak in the coming months. In part, that’s because price spikes that occurred last year, when the economy widely reopened, will begin to make the year-over-year price increases appear smaller. Yet Fed officials project that inflation, as measured by its preferred gauge, will still be a comparatively high 4.3% by the end of this year.

### 2NR – AT: Oil

#### No space wars.

Aditya Nair 18, 11-9-2018, "How likely is war in space and what will it look like?," ABC News, https://www.abc.net.au/news/science/2018-11-10/space-war-how-likely-is-it/10456524

But is a real-life Star Wars really something we can expect soon? Steven Freeland, who specialises in space law at Western Sydney University, doesn't think so. "We've had humans utilising space for military purposes and for a whole range of other amazing things for 60 years — and we haven't had warfare in space," Mr Freeland said. "We've got treaty law that makes it clear space is to be utilised for peaceful purposes." According to Professor Freeland, the consequences of space warfare for countries that are reliant on satellite technology would be significant. Even one day without access to space would be a disaster for the United States, Australia, Russia or China, he said, because they're so dependent on it.