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### Innovation Advantage

#### Disparagement dooms biosimilar innovation---antitrust is key.

Carrier 2020, Michael A. Carrier Rutgers Law School Distinguished Professor (Northwestern Law Review 2020 “DON’T DIE! HOW BIOSIMILAR DISPARAGEMENT VIOLATES ANTITRUST LAW” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3595785)//ellie

In the small-molecule setting, disparagement is not a concern. Brands are not likely to falsely injure near-identical generics, which garner sales not from advertising campaigns but from state laws that allow—and in many cases require—pharmacists to substitute generic versions of brand-name prescriptions.39 In contrast, the education of stakeholders is critical to the marketing of biologics and biosimilars,40 which has tempted biologic firms to engage in disparagement. There are four related categories of statements and omissions that biologic firms have made against biosimilars, none of which is consistent with the statute. The first category is the most dramatic. A January 2019 Washington Post article quotes Philip Schneider, chairman of the Alliance for Safe Biologic Medicines’ international advisory board, as suggesting caution in a move to unbranded biologics “so we don’t end up with another thalidomide [which famously caused birth defects]” or “all the other things that happen when safety isn’t considered.”41 Offering another example in the fearmongering category, the article further quotes a patient advocate affiliated with the group, who stated that a switch from one drug to another “disrupts your continuity of care,” as “[y]ou could end up in an emergency room, or be[] hospitalized, or try[] other, less efficient treatments,” all of which “can exacerbate or flare your disease, bring[ing] it out of remission.”42 The second group of assertions claims that the biosimilar acts differently from the reference product. In an Amgen YouTube video quoted in Pfizer’s citizen petition raising awareness of this issue, the company states that the two products “can behave differently in the body.”43 Amgen also tweeted: “Biologics or biosimilars? It’s not just apples to apples. While #biosimilars may be highly similar to their #biologic reference products, there’s still a chance that patients may react differently.”44 Janssen Biotech provides a similar, albeit more subtle, example. In a patient brochure, the company states that a patient “may be asked to switch to a biosimilar that works in a similar way to REMICADE,” but that “you and your doctor did a lot of fine tuning to get where you are now,” so “if your REMICADE® treatment is still working for you, talk to your doctor about staying on it.”45 The third category is based on claims that the biosimilar is not identical to the reference product. The Amgen video mentioned above states that “no two biologic medicines are identical.”46 Similarly, Genentech’s website, again as discussed in the Pfizer citizen petition, states that “FDA requires a biosimilar to be highly similar, but not identical” to the reference product.47 The fourth group emphasizes that biosimilars do not satisfy the standard of interchangeability. In the brochure mentioned above, Janssen states that “[e]ven though infliximab biosimilars are very similar to REMICADE®, that doesn’t mean they are interchangeable with REMICADE®.” Janssen also warned (in bolded statements) that “no infliximab biosimilar has been proven to be interchangeable with REMICADE®” and that “[t]he infliximab biosimilars are not approved as interchangeable with REMICADE®.”48 Each of these four categories can constitute disparagement. The first— consisting of threatening comparisons to Thalidomide and warnings of trips to the emergency room—needs no explanation. But each of the other categories also runs afoul of the statute’s requirements. The second category—that the biosimilar acts differently—fails to mention that the FDA only approves a biosimilar when it is “highly similar” to and has “no clinically meaningful differences” from the biologic product.49 In other words, the biologic and biosimilar products are required to have the same safety and effectiveness profile.50 As the FDA explained in Draft Guidance issued in February 2020, “representations or suggestions that create an impression that a biosimilar is not highly similar to its reference product are likely to be false or misleading.”51 Evidence from Europe, which has witnessed robust biosimilar market entry, has confirmed that more than “700 million patient days of treatment” demonstrated that “clinical outcomes with biosimilars match the outcomes of the reference biologics.”52 This evidence also has revealed that “patient[s] switching from the reference biologic to the biosimilar . . . is not of concern” since more than 14,000 switches resulted in “[n]o change in clinical outcomes.”53 As discussed below,54 disparaging statements, even if not completely false, are, at a minimum, deceptive in conveying the misleading interpretation that biosimilars have “clinically meaningful differences” from their reference biologics.55 The third category—claiming that the biosimilar is not identical— focuses on an issue that is irrelevant; in fact, it is “normal and expected within the manufacturing process” for even batches of biologic products themselves to reveal “[s]light differences.”56 In the Draft Guidance mentioned above, the FDA “remind[ed] firms that a biosimilar product is not required to be identical to the reference product” but that it need only be “highly similar to the reference product notwithstanding minor differences in clinically inactive components and that there are no clinically meaningful differences . . . in terms of safety, purity, and potency.”57 Finally, for the fourth category, a biosimilar’s failure to attain interchangeability does not mean that it is less safe. For starters, this status only makes sense for biosimilars that will be dispensed at the pharmacy counter (where substitution takes place), but each of the 15 biosimilars that has entered the U.S. market is dispensed in a hospital or infusion center.58 More fundamentally, as Pfizer pointed out in its citizen petition, its biosimilar “demonstrated that a single switch does not result in different safety or efficacy.”59 As the statement from the global regulatory authorities explained, “[a] full clinical development program[] is not necessary when extensive laboratory testing has demonstrated that the biosimilar is highly similar to the originator.”60 And as Boehringer Ingelheim explained in supporting Pfizer’s petition, “an FDA interchangeability designation is irrelevant” for “the majority of biologics . . . administered to the patient by the physician who has written the prescription,” with “misinformation . . . generated” to “impl[y] that interchangeable biologics are ‘better biosimilars’ . . . rather than the same biosimilar on which additional data has been generated.”61 II. REGULATORY SETTING How should courts analyze the antitrust effects of biologic firms’ disparagement of biosimilars? This Part sets the stage for the antitrust analysis by discussing the importance of the regulatory regime, showing the regime’s ineffectiveness, and highlighting the significant barriers to entry facing biosimilars. By brief way of background, the antitrust framework that applies to a single firm acting unilaterally is monopolization. This offense requires a showing of monopoly power and exclusionary conduct.62 Monopoly power is “the power to control prices or exclude competition.”63 Biologic firms that disparage biosimilars are likely to satisfy this element because of their ability to charge and sustain supracompetitive prices in a market characterized by significant barriers to entry.64 In contrast to monopoly power, the caselaw on exclusionary conduct is less clear. Courts often distinguish between the “willful acquisition or maintenance of [monopoly] power” and “growth or development as a consequence of a superior product, business acumen, or historic accident.”65 Considering the regulatory regime can shed critical light on the issue of exclusionary conduct. A. Regulatory Regime As the Supreme Court explained in Verizon Communications v. Trinko, the starting point for antitrust analysis is the regulatory regime. The Court stated that antitrust analysis must take “careful account” of “the pervasive federal and state regulation characteristic of the industry” and “recognize and reflect the distinctive economic and legal setting of the regulated industry to which it applies.”66 The Court in Trinko considered not just the existence of a regulatory regime, but also its effectiveness. In Trinko, the regime was working: phone companies providing local service were required to “be on good behavior” and not to discriminate in providing access before entering the long-distance market.67 Firms that did not satisfy these conditions were subject to financial penalties, weekly reporting requirements, or the suspension or revocation of long-distance approval.68 In contrast, regulatory abuse has prevented the biologics regime from operating as intended. The combination of ineffective FDA regulation and high barriers to entry ensures a role for antitrust.69 B. Ineffective Regulation Biosimilar competition in the United States is far from robust. In Europe, 59 biosimilars have received approval.70 In the United States, 27 biosimilars have been approved (with more than half the approvals occurring since July 2018).71 In addition, U.S. biosimilars have offered savings of only 15% to 35% (typically on the lower end), far less than the more significant (often 70%) discounts in Europe.72 The weak U.S. biosimilar market is not the consequence of the FDA’s lack of effort. In its citizen petition, Pfizer pointed to “various initiatives” the agency had undertaken “aimed at encouraging and facilitating the development and approval of biosimilars.”73 Such activities included “the numerous biosimilar-related guidance documents FDA has issued, the Agency’s development and distribution of educational materials . . . , the Agency’s Biosimilar User Fee Act performance goals, and the . . . Biosimilars Action Plan.”74 Despite these efforts, FDA officials have expressed frustration with the lack of biosimilar competition. In 2018, Former Commissioner Scott Gottlieb “worried” that the market for biosimilars “still isn’t established” and that “[t]he ability for these products to penetrate clinical practice, and gain acceptance, is still not firm.”75 In addition, Gottlieb lamented that biosimilar competition is “anemic” and that “the real savings” from biosimilars have been “just a fraction of even the most conservative initial estimates.”76 In fact, the agency found that “if Americans had the opportunity to purchase successfully marketed, FDA-approved biosimilar prescription drugs, they could have saved more than $4.5 billion in 2017.”77 Such savings, however, will not come to fruition if biologic companies “unfairly delay or derail the entry of biosimilar competitors” through conduct (discussed in the next Part) such as patent thickets and anticompetitive contracts.78 Gottlieb expressed further concern “that the biosimilar manufacturers may pull out” if biologics “are able to lock up markets even in cases where there’s a fully interchangeable competitor.”79 Even more on point, Gottlieb “worried” that “there are either deliberate or unintentional efforts by branded companies to create confusion” about biosimilars’ safety and effectiveness.80 These messages “can potentially undermine consumer confidence in biosimilars in ways that are untrue” and “negatively impact a patient’s judgment about an otherwise safe and effective product.”81 The FDA and FTC reiterated these concerns in a joint statement in February 2020 in which they explained that they “support competitive markets for biologics” and “have serious concerns about false or misleading statements and their negative impacts on public health and competition.”82

#### False advertisement wrecks biosimilars---maintaining competition with antitrust is key.

Carrier and Tushnet 21, Michael A. Carrier Rutgers Law School Distinguished Professor, Rebecca Tushnet Harvard Law School Professor of Law (Iowa Law Review 2021 “An Antitrust Framework for False Advertising” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3593914)//ellie

An example illustrates our framework. The pharmaceutical industry is marked by high barriers to entry. It is expensive to enter the market, and there are significant hurdles such as receiving approval from the FDA. These barriers are even higher in the biologics setting. Compared to the “small molecule” drugs that have made up the pharmaceutical market for the past several decades, biologic products are more complex and less predictable. As a result, unlike the near-identical relationship between brand and generic drugs, the connection between biologics and “follow-on biosimilars” is not as direct.171 The relevant statute, the Biologics Price Competition and Innovation Act (“BPCIA”),172 requires a biosimilar to be “highly similar to” the biologic and have “no clinically meaningful differences” in relation to “safety, purity, and potency.”173 But the uncertainty surrounding the products has resulted in biologic manufacturers stating or implying that biosimilars are unsafe, sometimes by omitting relevant information about their functional equivalence with the reference biologics.174 In a setting in which even the most minute differences between products could be enough to dissuade patients from trying new medications, the assertions at least implied dissimilarities that could have significant safety effects. For example, Genentech noted on its “Examine Biosimilars” website that “FDA requires a biosimilar to be highly similar, but not identical to the [reference product].”175 More explicitly, Amgen tweeted: “Biologics or biosimilars? It’s not just apples to apples. While #biosimilars may be highly similar to their #biologic reference products, there’s still a chance that patients may react differently.”176 Given the context of life-saving medications, it’s easy to imply dire consequences. For example, Amgen created a YouTube video asserting that a switch “carries risks, given that no two biologic medicines are identical,” which suggests that they “can behave differently in the body.”177 Amgen also cautioned that “[s]witching drugs is not a good idea if your medicine is working for you” and that “an inadvertent substitution . . . is not appropriate care.”178 Finally, some biologic manufacturers have warned that patients could face “additional risks” by taking biosimilars or even “could end up in the emergency room.”179 These claims raise several concerns. Most significant, the statements at issue imply that biosimilars create serious risks, failing to disclose that the FDA approves a biosimilar only when “there are no clinically meaningful differences [from] the biologic product.”180 To the contrary, biologic and biosimilar products are required to have the same safety and effectiveness profile.181 Evidence from Europe, which has witnessed robust biosimilar entry, has confirmed that “over 700 million patient days of treatment” demonstrated “that clinical outcomes with biosimilars match the outcomes of the reference biologics.”182 This evidence also has revealed that “patient switching from the reference biologic to the biosimilar . . . is not of concern” since the more than 14,000 switches from biologic to biosimilar resulted in “[n]o change in clinical outcomes.”183 Given significant development costs, regulatory barriers, thickets of dozens of (or even more than 100) patents,184 and exclusive contractual arrangements,185 biologic manufacturers are likely to have monopoly power.186 Taking the absence of clinically meaningful differences in FDAapproved biosimilars as a given, plaintiffs challenging false statements are likely to satisfy our presumption if they can show that, under false advertising law, the statements (or omissions) are false and material, and therefore are likely to deceive consumers and cause harm. False advertising principles establish that biologic manufacturers will not be liable unless their statements are false or mislead substantial numbers of relevant consumers. But, if falsity or misleadingness are established, they are not likely to be able to rebut the presumption of anticompetitive conduct given the significance of health risk claims to consumers. Even for attempted monopolists, as long as a plaintiff establishes falsity or misleadingness, the factors would seem to favor liability. Given the lack of biosimilar entry to date, in many cases biosimilars will be seeking to enter the market. The statements, which focus directly on risk, pose significant barriers to entry, as doctors and consumers are not likely to take a chance on drugs that have even the possibility of safety concerns. It is hard to think of examples that would more concretely affect consumers than warnings that drug products are potentially unsafe. In fact, the FTC recently issued warning letters to a number of plaintiff-side law firms for advertising that linked FDAapproved drugs with serious side effects, potentially frightening patients away from useful medications.187 In addition, a biologic manufacturer’s disparagement of a biosimilar rival may be part of a broader range of anticompetitive conduct. For example, disparagement could entrench barriers to entry that convince insurance companies to favor biologics through potentially anticompetitive exclusive dealing, bundling, and rebates.188 In short, false advertising law provides useful tools for determining if substantial numbers of relevant consumers are being misled to their detriment. And our framework would likely find that a biologic manufacturer’s proven false advertising that raises safety concerns against a biosimilar constitutes monopolization.

#### Antitrust and biosimilar competition is make or break for the future of pharma

Marmaro, 21 – Morgan, Editor-in-Chief, Colum. J.L. & Soc. Probs., 2020-2021. J.D. Candidate 2021, Columbia Law School. Molecule Size Doesn't Matter: The Case for Harmonizing Antitrust Treatment of Pay-for-Delay Agreements, 54 Colum. J.L. & Soc. Probs. 169, Winter, p. Nexis – Iowa

In contrast, the FDA only recently developed the regulations allowing it to determine that a biosimilar is "interchangeable" with a biologic. 30 As of September 2020, the FDA has yet to designate a single biosimilar or biologic drug in the U.S as "interchangeable." 31 Indeed, the FDA has been relatively slow to even approve biologic and biosimilar drugs for sale in the U.S., making biosimilar introduction relatively slow in the U.S compared to Europe. 32 While there are seventy-one biosimilar drugs approved in Europe as of January 2020, only twenty-six biosimilars had been approved in the U.S. 33 But even when the FDA actually approves a biosimilar as an "interchangeable" drug, most states do not have laws that permit or mandate the substitution of the "interchangeable" drug with the biologic. 34 The pharmaceutical industry successfully lobbied for laws requiring naming conventions for biosimilar drugs that make it difficult for pharmacists to identify similar biologic drugs. 35 [\*177] States, for their part, have generally not updated their laws to provide more substitution of biosimilars or those drugs with interchangeability designations. However, with the end of the "golden age" for small-molecule brand drugs in sight and $200 billion in brand sales subject to generic competition by 2025, companies increasingly see biologics and biosimilars as the future of the pharmaceutical market. 36 As explained infra, biologic drugs' large price tag derives, in part, from a lack of meaningful competition in the U.S. and few pricing constraints. 37 Some $67 billion of the biologic market is vulnerable to biosimilar competition as major patents are set to expire in 2020; 38 the use of patents and pay-for-delay agreements by biologics companies remains a potent threat to any real competition. A class action, In re Humira (Adalimumab) Antitrust Litigation, 46alleges that AbbVie's multiple agreements are actually market allocating agreements and settlements qualifying as reverse payments. As of this writing, the In re Humira litigation is undergoing appeal after a district court ruled in favor of AbbVie, noting that while the behaviors seem unsavory, they were legal "exploited [\*179] advantages" derived from the current regulatory system. 47The court went further astray, finding that the agreements were not anticompetitive, and in contradiction with Actavis's rejection of the scope of the patent doctrine, did so by relying upon the alleged strength of AbbVie's Humira patents. 48But neither the parties nor the Court in In re Humira questioned the basic application of Actavis to the agreements in this case. Though the In re Humira district court dismissed the case in favor of defendants, 49this Note argues that the In re Humira district court was correct to engage in an Actavis analysis but did so incorrectly. A constrictive reading of Actavis to not include biologics, despite similar economic incentives to game the system and collusively divide the markets, would undoubtedly result in the proliferation of collusive biologic settlement agreements that will increase the already staggering biologic prices. There is clear congressional intent that supports treating biologic and small molecule collusive agreements under the same standards. 50 Further, using the ongoing In re Humira litigation as a framing device, an opportunity for courts to explicitly determine whether and how to apply the Actavis framework to biologic drug settlements, this Note will demonstrate how the reasoning and analysis of Actavis applies to qualifying settlements in the biologic sphere and is consistent with precedent, congressional intent, and public policy. While differences between biologics and small molecule pharmaceutical production warrant different FDA manufacturing [\*180] procedures, 51recent and ongoing legislative proposals addressing pay-for-delay agreements apply the same legal standards to adjudication of agreements for biologic and small molecule drug manufacturers. 52Some commentators, however, have advocated a narrow interpretation of Actavis to apply only to small molecule drugs 53because the Court only discusses the relevant regulatory framework for small molecule drugs in that case. 54They argue that the Actavis result was founded and based on the language and intent of the Hatch-Waxman Act. 55Just as the courts then spent years litigating whether Actavis only implicated cash-only "payments," 56savvy pharmaceutical attorneys are likely to argue that Actavis should apply only to drugs covered by the Hatch-Waxman Act. Part II will first discuss various forms of antitrust abuses that arise in the pharmaceutical space and are often utilized as part of or together with reverse payment agreements. It goes on to explain the legal and regulatory backgrounds of small and large molecule drugs, focusing on how the biologic regulatory regime differs. Part III then discusses the consequences of lax antitrust scrutiny on pharmaceuticals, and finishes with the allegations, arguments, and findings currently on appeal in In re Humira. Lastly, Part IV proposes a two-fold solution to the problems posed by Actavis's lack of legal clarity. First, there must be regulation or precedent that clearly indicates that for antitrust purposes, biologic settlement agreements should be subject to the same antitrust scrutiny as [\*181] those concerning small molecule drugs. In re Humira provides the perfect opportunity; and as the Part IV analysis will show, applying Actavis to biologics is in the spirit of the law, aligns with public policy, and follows precedent -- despite the In re Humira district court ruling in favor of the defendants. Second, this Note suggests a need for a corresponding legislative solution. This Note's purpose is to demonstrate that the way a drug is manufactured, approved, or allowed to compete does not alter the application of antitrust law seeking to rid the market of collusive agreements between rivals.

#### Pharma innovation solves disease, bioterror, and ABR.

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As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context. The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests. Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions. The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries. Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics. Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic. Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks. However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low. There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

#### Disease causes extinction---the risk is categorically underestimated.

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A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the risk of a civilisation collapse would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

#### Affirmative prohibition is critical to innovation---creates a presumption of antitrust liability.

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One concern courts have raised with making false advertising the basis for an antitrust violation is that much of this behavior does not affect the market as a whole. Courts are right that even if one company engages in this conduct, and even if an individual rival is harmed as a result, that does not mean that competition in the market as a whole is affected. But there is a simple solution to this concern: focus on the defendant’s market power. Of all the actors employing false advertising, monopolists are the most likely to affect the market, with those attempting to monopolize making up the second-most-likely category. Targeting these two categories of actors recognizes that Section 2 of the Sherman Act provides the appropriate—and in fact only—framework for antitrust liability for unilateral conduct such as false advertising. Focusing attention on only monopolists and attempted monopolists dramatically narrows the universe of false advertising/antitrust claims. Such an emphasis also is consistent with the approach taken in the Areeda/Hovenkamp treatise, which recognizes that antitrust may be appropriate when “the practice makes a durable contribution to the defendant’s market power.”131 The treatise crafts a de minimis presumption because of the relative unlikelihood that any given false claim would “lead[] to or perpetuat[e] durable market power.”132 But the treatise also recognizes that “misrepresentations and organized deception by a dominant firm may have Section 2 implications when used against a nascent firm just as it is entering the market.”133 Once we understand that the treatise’s concerns about overapplication of false advertising law are addressed by requiring monopoly (or, as discussed below, attempted monopoly) status, the treatise would lend support to liability when the defendant’s monopoly power makes false advertising especially likely to affect the market as a whole and harm competition. Our focus on monopolists and attempted monopolists also is consistent with antitrust injury doctrine. As the Supreme Court famously explained in Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., plaintiffs must prove “injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants’ acts unlawful.”134 In other words, plaintiffs must challenge a harm that affects the market as a whole. Limiting our scrutiny to monopolists and attempted monopolists helps effectuate Brunswick’s objectives. We suggest a presumption that false advertising by monopolists constitutes monopolization. Crucially, the most fundamental critique against applying antitrust to false advertising—that “false advertising” does not require marketwide effects—are addressed by the defendant’s control over the market. To satisfy the first of the two elements of a monopolization case, a plaintiff must show that the defendant has monopoly power. As discussed above,135 a plaintiff can do so indirectly by showing a market share of at least 75 percent (and more likely 90 percent) along with barriers to entry that could entrench that market position. A plaintiff also can prove market power directly, such as by showing the defendant’s power to impose price increases or output reductions. Second, the plaintiff must show that the defendant engaged in false advertising. As a matter of underlying substantive law, liability for false advertising already requires findings that the defendant’s conduct was literally false or misleading, was material, actually deceived or was likely to deceive consumers, and caused or was likely to cause harm to the plaintiff.136 These elements are logically and practically linked to each other; they constitute the wrong of false advertising, just as an agreement to set prices constitutes the wrong of price fixing. In particular, deception is generally presumed from literal falsity, or is demonstrated by showing misleadingness—if consumers receive a false message from a facially ambiguous or even literally true claim, they have been deceived. Likewise, once both deception and materiality have been shown, courts generally find a likelihood of harm, as consumers have been misled about facts that are likely to affect their decisions. The false advertising foundation provides a unique advantage for antitrust law, one not available in other settings. The reason is simple. False advertising’s underlying requirements focus on the bad conduct, show its relevance, and demonstrate the harm. These elements offer on a silver platter what antitrust needs to prove monopolization. In addition, materially false advertising by a monopolist threatens multiple concerns: It makes it more difficult to compete on the merits, can easily be repurposed to harm any competitor, and is hard to credibly rebut without souring consumers on factual claims more generally. Because of these harms and the satisfaction of false advertising’s elements, a monopolist’s materially false advertising should be presumed to affect the market as a whole. A presumption that a monopolist using false advertising has engaged in illegal monopolization also is appropriate given the near certainty of anticompetitive effects. Unlike other lawbreaking by a monopolist such as tax fraud, false advertising by definition harms at least one competitor, in what is a relatively small field. That is, by definition a monopolist controls most of the market, so there will be fewer competitors to harm. False advertising may even directly harm all the other competitors if the false claim is one of general superiority, or, as in the AT&T example, is directed at keeping existing customers from switching products. And by poisoning the informational environment, false advertising inherently threatens the key mechanism by which rivals can compete: by explaining to consumers what they can offer in a way that might persuade them. False advertising is also a technique that can easily be extended to the next competitor, further justifying a presumption that its use by a monopolist caused harm to competition. Another way to frame the presumption of harm to competition centers on how we know that harm to actual entities has crossed into the legal category of “harm to competition.” When an entity that meets the standards for monopoly power engages in materially false advertising that causes damage, we know that it is a monopolist and that it harmed identified victims (such as consumers or competitors) in a way likely to push the market as a whole toward an untrusting and untrustworthy market for lemons. When a monopolist introduces a valuable innovation to the market, in contrast, that can harm competitors, but it also produces social benefit, meaning that the harm should be tolerated. So too when a monopolist truthfully and nonmisleadingly advertises a superior product. But when the ready-made template of false advertising law makes clear that a monopolist harms consumers’ ability to trust information in the market and causes consumers to pay prices or buy products they otherwise wouldn’t have chosen, at the very least the burden should be on the monopolist to show that it did no structural damage to the market.

#### American innovation solves global threat readiness---extinction from cyber, bio, chemical, and refugee-induced war.

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Indeed, the United States’ leadership in science and technology has been a historical cornerstone of its capacity for “hard power” force application and projection and economic and societal “soft power.” It buttresses the country’s economic might, enables the modern standards of living of our citizenry, and expands our global cultural and normative reach.[ii] Equally so, the power of science and technology has been decisive in the context of national security. As President Truman noted in 1945, while urging Congress to create a Department of National Defense, “no aspect of military preparedness is more important than scientific research.” [iii] Through discoveries, technological innovation, and the capacity to develop ideas into deployable weapons, systems, and concepts, the United States has arrived at its modern-day military advantage and superiority.[iv]

To that end, science and technology may be considered key elements of the United States’ comprehensive national power – fundamentals of the country’s strength vis-à-vis competitors. Yet science and technology alone cannot ensure any country’s continued security, prosperity, or hegemony; far from operating in a vacuum, science and technology are constantly evolving to address changing domestic and international circumstances and threats. To reap advantage from science and technology, especially in their national security application, a country must continually innovate to tackle contemporary developments and anticipate future ones. This poses a considerable challenge, the solution to which extends beyond advanced engineering and research.

To explore these notions, this essay, particularly interested in the application of science and technology toward national security ends, examines the United States’ recent employment of security-related technologies. From this, it explores the attributes of science and technology power and the similarities and differences between science and technology power and other forms of national power such as the economic and diplomatic. Looking at the relative importance of science and technology in the United States today and likely significance in the coming future, it lays out a series of policy recommendations that may guide policymakers as they make decisions that impact the direction of the country’s scientific and technological course.

Employment of – and Challenges Facing – National Security-Related Technology

Recognizing the vital role that technology played in winning World War Two, along with the emerging threat of Soviet technological competitiveness, the United States established in the war’s wake an extensive infrastructure to support national security science and technology efforts. This provided foundation and catalyst for the development of military capabilities and tools needed to meet the challenges of the Cold War and the modern day: the nuclear triad, intelligence-gathering and cyber infrastructure, space-based radar and communications systems, advanced precision-guided munitions, and integrated command and control, along with myriad other assets.[v]

These technologies have seen extensive use in contemporary military conflicts. The wars in the Balkans and the Gulf saw the ever-increasing use of position, navigation, and timing assets such as GPS to provide precise and reliable information to the warfighter and direct precision-guided weaponry.[vi] Targeted airstrikes and weapons such as the long-range cruise missile have allowed for far more rapid, responsive, and accurate strikes than those of the past while substantially reducing collateral damage. Combat drones and unmanned aerial vehicles, innovations emblematic of the “War on Terror,” enable the warfighter to engage adversaries and conduct reconnaissance while safely remaining away from the front lines of the battlefield. Stealth aircraft, using a range of advanced technologies that reduce reflections and emissions, have helped pilots conduct sorties while evading detection.[vii]

Technology abets the United States’ security beyond warfighting. Advanced cyber capabilities – encryption, for example – seek to defend the networks which control the country’s power, transit, and water infrastructure from malicious hacks and crippling denial of service.[viii] Technologies capable of detecting harmful biological and chemical agents guard the country against potentially devastating attack by non-state actors.[ix] Increasingly sophisticated monitoring and surveillance technology enables the government to globally track and work to counter criminal activity, terrorist organizations, and other developments which threaten the country’s safety.[x]

Crucially, though, the United States’ contemporary application of national security systems has also demonstrated the inherent challenges of innovation and the limitations of technology. Despite advanced military hardware, principally designed to fight large-scale conventional wars against Cold War-era foes, the United States military had to “catch up” and react to unconventional tactics, such as roadside bombs and sniper attacks, employed against it in the Iraq and Afghanistan wars. Though decidedly outnumbered and outgunned, enemy combatants effectively countered the United States’ asymmetric technological advantage through guerilla warfare, propaganda, and exploiting collateral damage that advanced weapons systems created – doctrines which the United States’ technology did not anticipate and was unprepared or unsuited to counter.[xi] Likewise, despite the sophistication of the United States’ homeland security technologies, the government has struggled to prevent incidents of domestic terrorism such as mass shootings, often characterized by the use of simple, off-the-shelf equipment.[xii]

Meanwhile, in reaction to the United States’ present-day technological superiority, competitive foreign powers such as Russia and China are heavily investing in hardware and capabilities in the cyber and military realms specifically designed to counter the United States’ technological strengths and exploit its demonstrated vulnerabilities. The technological capabilities underlying the United States’ comparative military advantage are now proliferating to an increasing number of state and non-state actors, including potential adversaries, leveling the military “playing field.”[xiii]

The Attributes of National Security Science and Technology Power

From this, several key attributes and characteristics of science and technology as a form of national power can be identified. Foremost is the capacity for technology and science to be a significant, occasionally decisive, enhancer of a country’s military strength against enemies. Countries which develop innovative military technologies which effectively counter an adversary’s offenses or defensives, or against which an adversary has no means to protect itself, find themselves disproportionately advantaged on the battlefield. Indeed, technologies which upend dominant “status quo” warfighting paradigms – such as, historically, the introduction of the chariot, the tank, or nuclear weapons – are poised to significantly disrupt and reorder the geopolitical and military balance of power.[xiv]

To that end, science and technology power, particularly in the national security sphere, is developed and sustained through the adaption to, and more so through the anticipation of, revolutionary changes in military affairs, doctrine, and hardware. As Lieutenant Colonel Scott Stephenson noted in the influential “The Revolution in Military Affairs,” “those slow to adapt to military revolutions… are likely to suffer painful results. When the pace of change accelerates, the militaries that anticipate and adapt are likely to gain a massive advantage over potential enemies who are less agile.”[xv] That agility is, in large part, borne from innovations in science and the development of new technologies which lead to unanticipated, and therefore difficult to counter, doctrines.

A defining characteristic of science and technology power, then, is the continual quest for states to match, counter, and out-compete the technology of their adversaries. This continuing interplay between technology and national power, characterized by the sustained technological evolution and described often as an “offset,” has been a key focus for national security-related research and development throughout the Cold War and into the present. The United States’ deployment of nuclear weapons, for example, offset the numerical advantage held by the Soviet Union’s land forces in the early Cold War. Soviet parity in nuclear weapons catalyzed the development of guided weapon and integrated command and control as a counter, focusing on accuracy of targeted weapons systems independent of range.[xvi] The United States’ capacity to offset Soviet technology through innovative developments – and the Soviet bankruptcy borne from military expenditure that came as a corollary – was an important factor in maintaining a generally peaceful stable of power along with the country’s ultimate triumph in the Cold War. In the present-day, China and Russia’s focus on countering the systems and technologies which currently provide the United States’ military asymmetry is emblematic of this “offset” approach to science and technology power.

Paradoxically, however, national security-related technology in the present day has become as great an equalizer as it has historically been a separator of actors’ strengths. Technological superiority in the present may provide the United States’ unrivaled military strength, especially against foes (historically, state actors with large conventional forces) for which its national security technologies anticipated countering. Yet as the example of the Iraq and Afghani insurgencies amply demonstrated, technological superiority coupled with innovation focused on addressing hypothetical future battlefields may not be adequate to oppose or defeat all actors or all forms of warfare, regardless of the level of their sophistication.

Indeed, advanced technologies may be entirely vulnerable to actors utilizing doctrines with simple technologies that nonetheless exploit their weaknesses, as was the case with sophisticated – and expensive – American vehicles being destroyed by crude, homemade IEDs. Technology itself also creates weaknesses; the United States’ progressing economic and social reliance upon interconnected networks, for example, makes the country more vulnerable to potentially crippling attack. Despite advanced American cybersecurity technologies and techniques, non-state actors have still proven themselves capable of infiltrating, attacking, and even denying use of American cyber capabilities; considering recent trends, this vulnerable seems likely to continue, if not worsen.[xvii]

It may be that an attribute of science and technology power, borne more from the focus and perceptions of the technologists, theorists, and military leadership that employ it than from science and technology itself, is that it obscures other factors which equally dictate important developments in military, international, and geopolitical affairs. Political upheaval, social change, and economic development can change warfare dramatically, for example – and have nothing to do with “offset” strategies or war-room predictions of possible enemies’ future high-tech military hardware. As a product of the military-industrial complex that emerged in the Cold War United States to sustain continued technological development, Americans tend to be acutely – perhaps overly – sensitive to technological innovation among competitors and potential rivals. Fears during the Cold War and contemporary discussions of the “Third Offset” paint pictures of emerging, potential, and fanciful enemy weapon systems – which military planning and technology development was and is oriented toward countering.[xviii] This fixation on solutions entailing engineering and technological complexity blinds the national security technology apparatus to external trends that could definitively impact the future course of war – such as the collapse of the Soviet Union leaving the United States with a high-tech military and warfighting doctrine unsuited for the military pressures and asymmetric nature of counterinsurgency; the rise of radical terrorism with ideological underpinnings that condone unconventional guerilla tactics such as suicide bombings, which had great effect against high-tech targets; or the continuing crisis where lone-wolf gunmen using off-the-shelf rifles can commit massacres despite the government’s highly complex and pervasive surveillance and monitoring technology.

Similarities and Differences to Other Forms of National Power

With these attributes in mind, a comparison can be drawn between science and technology power and other forms of power which constitute a country’s comprehensive strength, such as the economic and diplomatic. Regarding the economic, science and technology power is similar in that the development of science and technology is driven by the same forces as economic growth. Like new economic products, services, and methods of operation, science and technology power relies upon the ingenuity of human actors predicting and anticipating future trends, possibilities, and human behavior. Innovation, iteration, and competitiveness are fundamental catalysts for the continued evolution and growth of both. The rapid proliferation and subsequent use of innovative technologies across the world quickly equalizes both the national security advantage and the economic advantage they provided their inventor.

Economic power, like national security technology, is a key element of a country’s warfighting capability – industrial might, strength in quality production, and capable infrastructure are crucial facets of a country’s ability to mobilize and project force. A fundamental difference between economic power and science and technology power, however, is competition. While economies naturally compete, there is incentive for states to specialize in the economic product or service most suited for it – their comparative advantage. Competing economies are not actively incentivized to counter the economic specialization of their rivals. With science and technology power for national security use, however, states decidedly hope to actively and explicitly counter the relative advantage of their adversaries.

Like diplomatic power, science and technology has a “soft power” element; other states and their societies may be influenced or compelled to action by the might, prestige, or cultural and technological hegemony of a country in possession of highly advanced and capable technologies.[xix] Diplomatic power occasionally experiences the same issue of science and technology policy in being blinded to unpredicted or external trends in the social, cultural, and economic spheres. The power of diplomacy, for example, did not anticipate and struggled to deal with the cultural, social, and political circumstances that led to a breakdown of order in post-invasion Iraq; just as national security technology was unprepared for the guerilla warfare of the Iraqi insurgency. Diplomatic power and science and technology power differ, though, in the fields of innovation and evolution. Whereas the military regime is constantly evolving and occasionally being upended by revolutions in security technology and associated doctrine, the Westphalian diplomatic order has remained largely similar through centuries – even as it has grown gradually more complex and interconnected. States do not tend seek to outcompete each other in the diplomatic sphere through revolutionary new approaches to diplomacy; negotiations, sanctions, deals, bi- and multilateral agreements, and the like have remained consistent “doctrines” employed by states in their dealings with international friends and foes.

Science and Technology Power’s Present and Future Importance

To return to Vannevar Bush’s assertion over half a century ago, science and technology is crucially important for a states’ economic growth and prosperity, the wellbeing of its citizens, and national security. This remains absolutely the case today. Despite the challenges facing innovation in the face of unanticipated adversaries and the proliferation of advanced, equalizing technologies among adversarial states and non-state actors, science and technology provides the United States’ unrivaled levels of security and military hegemony.

With the appearance of significant global challenges – refugee crises, environmental degradation, the possible emergence of a bi- or multi-polar world characterized by states with rough or equal technological parity, to name a few – the future importance of science and technology power cutting across all aspects of national security will undoubtedly redouble. Science and technology and its application as an element of the United States’ national power will need to be directed to address these challenges. While the exact characteristics that will define domestic and foreign national security technologies of the future – not to mention the economic and social – remain uncertain, the United States cannot afford to permit its current technological advantage to slip. Indeed, as revision states such as China continue to develop their technologies to directly counter the United States’ capabilities, it will likely become an imperative for the country to more actively engage in and support the development of innovative new security technologies and doctrines – lest, as history would suggest, the international order again be upended.

#### Alternative regulations fail and suppress competition.

Carrier and Tushnet 21, Michael A. Carrier Rutgers Law School Distinguished Professor, Rebecca Tushnet Harvard Law School Professor of Law (Iowa Law Review 2021 “An Antitrust Framework for False Advertising” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3593914)//ellie

False advertising liability alone cannot address the marketwide harms caused by deceptive behavior. This Section first addresses antitrust’s comparative advantage for marketwide harms. It then offers examples of antitrust properly targeting conduct that violates other, non-antitrust laws, demonstrating that antitrust’s treatment of false advertising is an outlier. It concludes by showing that false advertising’s remedies cannot fully protect competition on their own. 1. Antitrust’s Comparative Advantage An antitrust-based framework for false advertising claims is necessary because of the unique role that the discipline can play. When companies engaging in false advertising have monopoly power, they possess the ability to harm not only an individual competitor but also the market as a whole. The consequences can be significant, especially for nascent competitors not able to enter the market, as the deception of consumers deprives them of the opportunity to obtain lower prices, more options, or enhanced quality. One way to understand the harms of false advertising to the market as a whole is revealed by George Akerlof’s classic explanation of the market for lemons.99 As Akerlof explains, in the absence of some way to guarantee the truth of claims about products, such as a used car’s quality, consumers reasonably respond by discounting all such claims. This distrust means that producers with actually superior products cannot charge the amount consumers would pay if they believed the superiority claim, which pushes superior (but more expensive to produce) products out of the market. If truthful advertisers are not able to guarantee their claims, producers unable to compete on their product characteristics suffer. And consumers are harmed by an unattractive (and perhaps even harmful, in the case of false health or safety claims) mix of products. Meanwhile, many false advertising techniques can be readily repurposed for new uses, meaning that a false advertiser can go from success to success in the absence of false advertising liability.100 Regulation that suppresses false claims—especially where such claims are most likely to have an effect—thus does more than protect individual consumers from fraud. It allows truthful producers to compete on a level playing field. In other words, addressing false advertising protects competition, not just competitors. The Supreme Court relied on Akerlof’s insights when it endorsed the pro-competitive effects of restrictions on false advertising. In California Dental Ass’n v. FTC, the Court addressed a dental association’s attempts to restrict “false or misleading” advertising that imposed significant limits on advertising “low prices” or other general price claims.101 The Court rejected the idea that such limits were inherently anticompetitive. Especially where information is hard to evaluate, even broad restrictions with the aim of preventing false advertising can be procompetitive.102 When false advertising threatens harms to the market as a whole, antitrust liability offers advantages over false advertising law. For starters, antitrust offers a more powerful toolkit deterring this conduct. Although false advertising law allows recovery of damages (albeit not as a penalty) and disgorgement of the profits from false advertising, courts impose high barriers to disgorgement, including requiring a showing of willfulness. In addition, courts have required plaintiffs to show a robust connection to the harm suffered to receive damages or disgorgement of profits. As a result, courts have denied awards in precisely the cases of concern: where there are a small number of potential competitors and where some of the monopolist’s gains from false advertising likely came at the expense of the overall market rather than a single plaintiff, making it difficult to allocate false advertising-based damage awards.103 There are two key ways in which antitrust offers more powerful protection against monopolists’ false advertising than federal false advertising law: remedies and eligible plaintiffs. First, antitrust offers the more powerful remedies of treble damages and automatic (as opposed to the Lanham Act’s exceptional104) attorneys’ fees that promise to provide robust deterrence against companies considering this behavior. Antitrust also offers injunctive relief preventing the continuation of the conduct. While a Lanham Act false advertising injunction generally is limited to the specific false claims that have been proven, an antitrust injunction could more generally target false advertising and marketwide harm to competition.105 Antitrust offers a more expansive territorial jurisdiction.106

### Plan

#### The United States federal government should substantially increase prohibitions on false advertising by applying a presumption that monopolists engaging in false advertising violate antitrust law and are subject to Penalty Offense Authority enforcement by the Federal Trade Commission.

### FTC Advantage – 1AC

#### **FTC failure to prohibit false advertising is an existential threat to the agency. Invoking market-wide Section 5 penalty offense authority (POA) restores FTC credibility, boosts fraud deterrence, and reduces litigation**

Lee, 21 – Bethany, J.D. Candidate, University of Pennsylvania Law School. “Reviving the Power of the FTC,” The Regulatory Review, May 17, <https://www.theregreview.org/2021/03/17/lee-reviving-power-of-ftc/> -- Iowa

The Federal Trade Commission (FTC) may face an existential threat to its ability to hold corporate lawbreakers accountable. A pending U.S. Supreme Court case threatens the FTC’s ability to seek monetary relief from wrongdoers, while mounting public concerns about the adequacy of the FTC’s enforcement have led to a crisis of confidence in the agency.

The solution to this urgent crisis involves restoring a key FTC authority, according to a new paper by FTC Commissioner Rohit Chopra and his attorney advisor Samuel Levine.

After tracing the history of the FTC’s enforcement tools and explaining their current inadequacy, Chopra and Levine argue that reviving the FTC’s Penalty Offense Authority will improve the FTC’s effectiveness and regain public confidence by increasing deterrence and ensuring fairness for honest firms.

Established by the FTC Act, the FTC has a mission to “protect consumers and competition by preventing anticompetitive, deceptive, and unfair business practices.” Chopra and Levine, however, highlight the FTC’s concerning track record in fulfilling this mission.

In the 1980s, the FTC’s leadership viewed markets as self-correcting, and the agency shifted its focus from market-wide abuses to “small-scale criminal fraud.” Seeking to avoid the derisive label of a “national nanny,” the FTC began to disarm the administrative state by halving the agency’s staff, reversing rulemakings, and adopting policies restricting the agency’s own authority.

The FTC’s ideology of the 1980s had lasting consequences, according to Chopra and Levine. In the 1990s, the agency failed to challenge tobacco advertising directed at children. In the 2000s, the FTC took minimal enforcement action to prevent the mortgage meltdown, remaining largely idle as subprime lenders sold loans structured to fail. Congress responded by stripping the FTC of major authorities over the financial sector, such as rulemaking on mortgages and debt collection.

Chopra and Levine argue that the agency’s inaction over several decades has resulted in “massive harm for consumers, small businesses, and the economy.” They call for a shift toward “systematic efforts to combat widespread harms.”

A key step, say Chopra and Levine, involves resurrecting the agency’s Penalty Offense Authority. Codified in Section 5 of the FTC Act, this provision allows the FTC to correct and deter harmful practices.

Currently, the FTC largely relies on Section 13(b) of the FTC Act, which allows the agency to seek preliminary and permanent relief in federal court. But the use of Section 13(b) has been challenged in multiple cases, including in a pending U.S. Supreme Court case challenging the FTC’s authority to seek equitable monetary relief.

Even if courts uphold the use of Section 13(b), argue Chopra and Levine, this enforcement tool remains inadequate in correcting and deterring widespread harms. To seek monetary relief under Section 13(b), the FTC must approximate harms or unjust gains—a potentially difficult and costly calculation. As a result, the FTC often resorts to no-money settlements that do not adequately deter wrongdoing. In addition, corporate wrongdoers tend to be undeterred by equitable relief sought under Section 13(b) since the worst consequence merely involves returning their earnings.

Instead of overreliance on Section 13(b), Chopra and Levine advocate greater use of the Penalty Offense Authority under Section 5 of the FTC Act. Under this authority, the FTC can seek civil penalties if the agency issued a final cease-and-desist order determining that a practice is unfair or deceptive and if a party subsequently engaged in that practice, knowing that the practice was unfair or deceptive.

Chopra and Levine note that the Penalty Offense Authority provides “strong due process protections for defendants.” For example, parties cannot be held liable unless shown to have actual knowledge of the FTC’s determination. Defendants can also challenge the FTC’s prior determination that the conduct was unlawful.

Previously, the FTC deployed its Penalty Offense Authority to target whole industries, in a manner that one FTC commissioner described as “extremely effective and efficient.” Nevertheless, the agency’s use of this tool rapidly declined in the 1980s, and it was used only once in the last decade.

Calling for renewed use of the Penalty Offense Authority, Chopra and Levine outline three key benefits of such a resurrection. First, compared to equitable relief, civil penalties would more effectively punish and deter wrongdoers. Second, the use of the Penalty Offense Authority would reduce litigation risk for the FTC. Current overreliance on Section 13(b) creates uncertainty as court cases challenge the program, and seeking monetary relief under Section 13(b) requires risky and expensive attempts to quantify harm. Finally, the Penalty Offense Authority provides market-wide impact. By providing notice to firms across an industry, the FTC can correct market-wide practices—increasing compliance and reducing the need to bring similar enforcement actions repeatedly.

Chopra and Levine specifically advocate the use of the Penalty Offense Authority in areas where a harmful practice has been condemned by an FTC order but not forbidden by an agency rule. They identify five areas where the FTC could deploy the Penalty Offense Authority based on existing orders: for-profit college fraud, false earnings claims targeted at workers, online disinformation, deceptive data harvesting, and illegal targeted marketing.

Ultimately, Chopra and Levine call on the FTC to shed its “self-inflicted paralysis” by drawing on a broader set of tools to protect the public.

#### It’s try or die – only a broad FTC resurrection of POA saves it from total destruction

Chopra and Levine, 21 – Rohit Chopra was a Federal Trade Commissioner and is now head of the Consumer Financial Protection Bureau (CFPB). Samuel A.A. Levine is Acting Director of the Bureau of Consumer Protection. *The Case for Resurrecting the FTC Act’s Penalty Offense Authority*, Social Science Research Network (SSRN), Feb 16 last revised, originally published 11/3/20, [https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3721256](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256&download=yes) – Iowa

Deploying the Penalty Offense Authority should be part of a broader strategy to resurrect the FTC as a vigorous check against corporate malfeasance. This article has detailed how the authority can be used to notice whole industries of unlawful practices, and to seek remedies that not only reverse the effects of wrongdoing but also deter others from crossing the line. We have identified five areas where the Commission has already condemned practices that can be designated as penalty offenses. Going forward, as the Commission condemns new forms of misconduct, we believe it should include in its orders clear findings that can be served on other market participants.

In addition to increasing the agency’s ability to deter and correct wrongdoing, resurrecting the Penalty Offense **A**uthority would mitigate the ongoing gamesmanship around Section 13(b), showing the marketplace that the FTC has more than one trick up its sleeve, regardless of how the Supreme Court rules.

The Commission’s overwhelming reliance on Section 13(b) is of recent vintage. In the 1970s, following widespread dissatisfaction with “scandalously weak” no-money orders,174 Congress armed the Commission with strong tools to meaningfully deter widespread lawbreaking. These tools include rulemaking powers backed by civil penalties, the ability to seek damages under Section 19, and the Penalty Offense Authority described here. However, these powers were largely abandoned after James C. Miller III took over the FTC in 1981, as the Commission shifted its focus to halting scams using Section 13(b).

The takeover and subsequent gutting of the Federal Trade Commission by Chairman Miller is an underappreciated milestone in our nation’s economic history.175 By shifting attention and resources away from scrutinizing emerging business practices that pose harm to households and honest businesses, Miller and his lieutenants architected a new paradigm for corporate oversight. The FTC abandoned its former role and began to duplicate the role of criminal law enforcers who tackle fraud rings, but without the authority to seek any criminal sanctions. The Commission’s new emphasis on shutting down “illegitimate” businesses created the guise of an active agency, when, in reality, it became increasingly irrelevant to commercial regulation across many sectors of the economy.

Since the Miller era, the Commission had essentially ceded its role as the government’s analytical engine of emerging commercial practices. The result has too often been an agency that is disconnected from pressing market problems. In recent decades, the Commission has failed to tackle some of the worst abuses facing consumers, ranging from subprime mortgage lending to predatory for-profit colleges. By 2010, as Congress stripped key authorities from the Commission, industries actively lobbied to remain under FTC jurisdiction, 176 an effort currently being replicated by tech titans in the privacy arena.177 This does not reflect well on the agency’s credibility as a watchdog.

For the architects of this ideological project to weaken the FTC, the current judicial threats to Section 13(b) could prove to be the most striking blow yet. They have long argued that Section 13(b) should be used only in cases involving “true fraudsters,”178 and they have offered a detailed blueprint to those wishing further limit the Commission’s remedial authority.179 Should they succeed, this would represent the culmination of their decades-long project to defang this once-storied agency, conceived of by Louis Brandeis to be a strong check on corporate power.

But if the FTC is rendered toothless, this is by choice. The agency can shed its self-inflicted paralysis by using the dormant powers granted by Congress. Regardless of how the Supreme Court rules, the Commission must close the chapter on its overreliance on Section 13(b), and deploy a broader set of tools to meet its mission. By deploying these tools, the Commission can reemerge as a vigorous watchdog, detecting and deterring systemic harm instead of playing whack-a-mole against small scams. Adopting this approach is essential to regaining the public’s confidence and realizing Brandeis’s vision of an agency that protects the public from abuse and misuse of corporate power.

#### The FTC approach to antitrust for false ads is incoherent – only the aff’s presumption against monopolists solves

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Federal law presumes that false advertising harms competition. Federal law also presumes that false advertising is harmless or even helpful to competition. Contradiction is not unknown to the law, of course. This contradiction, though, is acute. For not only are both regimes at issue designed to protect competition, but they are both enforced by the same agency: the Federal Trade Commission, which targets "unfair competition" through antitrust and consumer protection enforcement.

Courts' treatment of false advertising in antitrust cases makes no sense. While courts have reasonably evidenced concern that not all false advertising violates antitrust law, the remedy is not to abandon the false advertising/antitrust interface. Instead, the solution is to focus on the actors most likely to harm the market: monopolists and attempted monopolists.

This Essay proposes an antitrust framework for false advertising claims. It introduces a presumption that monopolists engaging in false advertising violate antitrust law and a rebuttal if the false advertising is ineffective. The framework also applies to attempted monopolization by incorporating factors such as falsity, materiality, and harm inherent in false advertising law, along with competition-centered issues like targeting new market entrants.

Antitrust has dismissed false advertising that entrenches monopoly power for too long. This Essay seeks to resolve the contradiction in the law by showing how false advertising threatens the proper functioning of markets. Such an approach promises benefits for false advertising law, antitrust law, and consumers.

#### Section 5 is the only avenue for fraud crackdowns

Olsen & Schultze 21, Christopher Olsen is a partner in the privacy and cybersecurity practice at Wilson Sonsini and Vice Chair of the Privacy and Information Security Committee of the ABA Antitrust Law Section, and former Deputy Director of the FTC’s Bureau of Consumer Protection; Stephen Schultze is an Associate in the privacy and cybersecurity practice at Wilson Sonsini, “FTC Authority Under Siege: Monetary and Injunctive Relief at Risk in Courts as Congress Contemplates a Response,” The Antitrust Source, April 2021, ABA

It is hard to imagine a favorable outcome for the FTC after this oral argument. The Court will probably limit 13(b) relief to injunctions, requiring the Commission to resort to cumbersome administrative proceedings to get any monetary relief. That would dramatically undermine the Commission’s work over several decades to build a robust fraud program.40 It would leave Section 5 and 19 as the only avenues for monetary relief under the FTC’s general consumer protection authority. Under Section 5, the Commission may impose monetary civil penalties under some limited circumstances.41 Under Section 19, the Commission may obtain monetary consumer redress or disgorgement but only after obtaining a final cease-and-desist order through administrative litigation and only after demonstrating that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”42 Moreover, Section 19 includes a statute of limitations whereas Section 13(b) does not.43 Thus, the FTC has strongly favored Section 13(b) actions. At oral argument, the FTC conceded that going directly to court is “more attractive in certain instances” and that the Commission brings “far more [consumer protection] cases” in court than through its own administrative proceedings.

#### Fraud crackdowns stop major terror attacks

Michael Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI), “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear terror causes nuclear war---cash is key

Dr. Peter J. Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University, “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

#### FTC penalty authority deters cyber attacks on critical infrastructure

Holland, 10-8-2021 – Mackenzie, citing Edward Felten, professor of computer science and public affairs at Princeton and former chief technologist at the FTC. "Senators want FTC to enforce a federal data security standard," SearchSecurity, <https://searchsecurity.techtarget.com/news/252507933/Senators-want-FTC-to-enforce-a-federal-data-security-standard> -- Iowa

U.S. Senators want to empower the Federal Trade Commission to become a stronger protector and enforcer of consumer data privacy and security.

During the second in a series of hearings focused on the importance of federal standards for data privacy and security, the U.S. Senate Committee on Commerce, Science and Transportation listened to experts who recommended development of a data security standard for businesses that's enforced by the FTC. The first hearing explored the creation of a federal data privacy law as well as creation of a data privacy bureau within the FTC.

The call for federal data privacy and security standards follows attacks on critical infrastructure companies, including the 2021 attack on Colonial Pipeline. That attack, which caused fuel shortages, was cited by committee chair Sen. Maria Cantwell, D-Wash., as a reason necessitating federal standards.

Cantwell and Sen. Roger Wicker, R-Miss., have introduced two separate bills that would set U.S. privacy and security standards for businesses: the Consumer Online Privacy Rights Act and the Setting an American Framework to Ensure Data Access, Transparency and Accountability (Safe Data) Act. The legislation would also give the FTC and state attorneys general the ability to enforce the standards.

"We believe that these companies don't invest enough for the fact that they have oversight of our precious data and information," Cantwell said. "We know that a stronger FTC will help, but we need to give the FTC the resources they need to do their job."

Experts make data security standard recommendations

James Lee, chief operating officer at San Diego-based nonprofit Identity Theft Resource Center, echoed Cantwell's concern that the U.S. needs a federal data security standard and to better outline national cybersecurity best practices.

Lee said a federal data security standard should require companies to address small but preventable flaws that lead to data breaches, such as unpatched software, as well as minimize consumer data that can be collected and stored by companies. Additionally, Lee said stronger enforcement measures would be necessary for companies that fail to meet the data security standard.

"Without enforceable minimal standards, there are no broad incentives beyond trying to avoid headlines or post-breach litigation to get people to actually make broad organizational changes," Lee said.

"We need better enforcement," he said. The FTC is "best equipped to be that enforcement agency."

Indeed, Jessica Rich, counsel at law firm Kelley Drye and Warren LLP and former director of the FTC Bureau of Consumer Protection, said current law fails to set clear standards for data security or provide adequate remedies.

"Most of the FTC's data security efforts are based on the FTC Act, a law that leaves wide gaps in protection and doesn't authorize penalties for first-time violations," she said. "While there are sector-specific laws with a data security component, and half the states now have their own data security laws, it's a messy and confusing patchwork."

Rich recommended a standard that's scalable to different types and sizes of companies and the volume and sensitivity of the data they collect. Otherwise the law could impose requirements ill-suited and unattainable for small business, she said. Rich also supported data minimization incentives or requirements.

Rich said to ensure accountability and deterrence, the data security standard should authorize strong remedies such as civil penalties and redress to businesses that fail to meet the data security standard.

Edward Felten, Robert E. Kahn professor of computer science and public affairs at Princeton University and former chief technologist at the FTC, said the FTC currently doesn't have the tools it needs to address today's data security enforcement challenges.

To further empower the FTC, Felten voiced support for allowing civil penalties for first-time violations of certain statutes within the FTC Act, such as Section 5, which states that unfair or deceptive practices affecting commerce are unlawful. The lack of first-time penalties makes the FTC Act a "weak deterrent," he said.

Additionally, Felten said Congress could authorize data security rulemaking so the FTC can clarify what is expected of companies, as well as funnel additional resources to the FTC for data security and technology initiatives.

"The successful FTC of the future is one that has stronger authority, increased resources and greater technological capability," Felten said.

#### Cyber attacks on critical infrastructure go nuclear and are uncontrollable

Orlov 20 [Vladimir, Founder & Director of the PIR Center, President of the Trialogue Club International, Head of the Center for Global Trends and International Organizations at the Diplomatic Academy, Ministry of Foreign Affairs of the Russian Federation, Co-Founder and Academic Supervisor of the International Dual Degree MA Program in Nonproliferation and Global Security Studies, MGIMO University, Professor at MGIMO University, author (or coauthor) of more than a dozen books and monographs and more than three hundred research papers, articles, and essays, publishes his views in Russian and foreign periodicals, “‘No Holds Barred’ and the New Vulnerability: Are We in for a Re-Run of the Cuban Missile Crisis in Cyberspace?,” SSRN Scholarly Paper, ID 3538078, Social Science Research Network, 02/14/2020, papers.ssrn.com, doi:10.2139/ssrn.3538078]

Not hundred per cent of the dialogue has been frozen, fortunately. Certain informal, mostly offthe-record, meetings of US and Russian experts on cyber agenda continue taking place, both through Track 2 and Track 1.5. One of the most intellectually stimulating meetings, with frank exchanges, took place in Vienna in December 2018. The report produced after the meeting stressed “the significant risk […] that cyber-attacks could conceivably lead to a military escalation that may further trigger a nuclear weapons exchange, a fact that became more explicit with the adoption of the current Nuclear Posture Review. This issue gets complicated given that third parties may have the capabilities to invoke a cyber conflict between Russia and the United States. Whether a country or a non-state actor, they could put the two countries on the verge of an armed conflict by attacking critical infrastructure of either of them and making it look as if the aggressor were the other one”[22]. However, one should have no illusion: such informal meetings may be fully fruitful only when their reports and policy recommendations are utilized by the governments. And for that, a warmer climate in bilateral relations is a must. So far, we see exactly the opposite: mercury falling to freezing levels.

Risk of cyber clashes growing into a chaotic global cyber war has been emphasized by the UN Secretary-General Antonio Guterres in his Agenda for Disarmament: “Malicious acts in cyberspace are contributing to diminishing trust among States… States should implement the recommendations elaborated under the auspices of the General Assembly, which aim at building international confidence and greater responsibility in the use of cyberspace.[23]” However, as the members of the US-Russian Track 1.5 working group on strategic stability recently concluded, “without a constructive dialogue on cyber issues between the United States and Russia, the world would most likely fail to agree on any norms of responsible behavior of states in cyber space”[24].

Do we really have to survive a cyber equivalent of the Cuban Missile Crisis to realize the importance of achieving some kind of agreement on cyber issues, and on the broader agenda of international information security?[25] Or is that kind of talk plain old alarmism?

I don’t want to sound a fatalist, but I am even less keen on sounding like an ostrich that’s buried its head in the sand. We cannot ignore the obvious: whether the world’s most powerful actors like it or not, the world is sliding to another major crisis like the one in 1962. The cyber war is already raging. There are no rules of engagement in that war. The uncertainty is high. The spiral of tension is getting out of control. The cyber arms race is gaining momentum. And there are no guarantees that the next crisis will be controllable, or that it will result in a catharsis as far as international information security regulation is concerned. There’s no telling what will happen once the cyber genie is out of the bottle.

#### Only robust penalty enforcement solves false ads – litigation and regulation fail

Tushnet and Carrier, 21 – Rebecca Tushnet is a Professor at Harvard Law School and former NDT Finalist. Michael Carrier is a Professor at Rutgers Law School. *An Antitrust Framework for False Advertising*, May, 106 Iowa L. Rev. 1841, p. Nexis – Iowa

The pharmaceutical industry has provided the setting for other examples of antitrust scrutiny of conduct that violates non-antitrust rules, particularly those relating to fraud. The Walker Process 121 line of cases holds that the fraudulent procurement of a patent or enforcement of a patent obtained by fraud can violate antitrust law. 122 Other cases involve the allegedly fraudulent [\*1869] listing of patents in the "Orange Book," 123 an annual compilation of drugs and their associated patents. 124 And courts have recognized antitrust liability when a brand company makes "repeated and allegedly false patent descriptions" to the FDA. 125

Despite these cases, one could conceivably argue that antitrust should not apply to actions that are also governed by a separate regulatory regime. In Verizon Communications v. Law Offices of Curtis V. Trinko, the Supreme Court indicated that where another regulatory regime is guaranteeing competition, there may not be a need for antitrust enforcement. 126 That case can only be fully understood, however, in relation to the industry in which it arose. The Court in the case was evaluating the Telecommunications Act, which provides the Federal Communications Commission ("FCC") with general - and effective - regulatory authority over the industry, including its competitive structure (e.g., restrictions on concentrated ownership and must-carry requirements). 127

Other settings require more robust antitrust enforcement. For example, the FDA has very specific authority over drugs and medical devices, but it does not pervasively regulate industry structure in the way that the FCC does. Instead, the FDA has concluded "that issues related to ensuring that marketplace actions are fair and do not block competition would be best addressed by the FTC, which is the Federal entity most expert in investigating and addressing anticompetitive business practices." 128 Much more similar to [\*1870] the FDA than FCC, false advertising regulation lacks the pervasive control and monitoring, including reporting requirements, of telecommunications law. 129

False advertising litigation cannot effectively stand in for the antitrust function. False advertising, unlike the FCC's jurisdiction, is broad rather than deep: it covers a wide variety of competitive situations, from mouthwash to specialized airline components, but only by barring falsity and deception rather than by pervasively dictating market structure. Of critical significance, moreover, false advertising law is itself underenforced. The FTC has substantial resource constraints. And consumers themselves are rarely able to sue for the harms they suffer. Consumer contracts typically contain mandatory arbitration provisions, making schemes like AT&T's market-shaping deception harder to fight. As a result, there is no "false advertising regime" that effectively fosters competition and negates the need for antitrust enforcement. 130

#### **Regs can’t address market-wide harms from false ads, only antitrust can**

Tushnet and Carrier, 21 – Rebecca Tushnet is a Professor at Harvard Law School and former NDT Finalist. Michael Carrier is a Professor at Rutgers Law School. *An Antitrust Framework for False Advertising*, May, 106 Iowa L. Rev. 1841, p. Nexis – Iowa

[\*1844] False advertising law allows consumers to receive some redress for the money they paid for "unlimited" data that wasn't, 5 but there's no obvious remedy for the damage AT&T caused to the market as a whole. Antitrust law has been kneecapped by the courts and thus is powerless to act. In short, the law's neglect of the injuries caused by false advertising threatens structural harm to competitive markets.

In this Essay, we address these problems. We do so by focusing on the actors most likely to harm the market: monopolists and attempted monopolists. These actors are a numerically small percentage of businesses (and of false advertising defendants), but they can do great harm. Our emphasis on monopolists and attempted monopolists addresses courts' concerns of overbroad enforcement, preventing false advertising from morphing automatically into an antitrust violation. And it carves out a critical role for antitrust while embracing - rather than neglecting - antitrust's partner in fighting unfair competition, false advertising law.

We begin by introducing the laws of antitrust and false advertising, explaining the regimes' objectives and methods. We then survey the antitrust caselaw, critiquing three approaches courts considering false advertising claims have taken. Finally, we introduce our antitrust framework for false advertising claims. At the heart of the framework is a presumption that monopolists engaging in false advertising violate antitrust law, with that presumption rebuttable if the defendant can show that the false advertising was ineffective. The framework also applies to cases of attempted monopolization by incorporating factors (falsity, materiality, and harm) inherent in false advertising law, along with competition-centered issues on targeting new market entrants and entrenching barriers to entry. To illustrate how our framework should work, we apply it to an important area: advertising for biosimilars, which are pharmaceutical products with a substantial and growing role in treating numerous diseases.

False advertising that exacerbates monopoly power has been dismissed by antitrust law for too long. This Essay seeks to resolve the contradiction in the law by showing how false advertising threatens the proper functioning of markets.

#### Recent FTC moves trigger every link but don’t solve any of *our* enforcement internals

Kerkhoff, 11-1 – John, attorney at Pacific Legal Foundation, “FTC tempts legal fate with power grab,” The Hill, <https://thehill.com/opinion/judiciary/579130-ftc-tempts-legal-fate-with-power-grab> -- Iowa

Lina Khan had not even graduated from law school when she came onto the antitrust scene advocating reform that would amount to nothing short of a legal revolution. A few years later, Khan would be sworn in as chair of the Federal Trade Commission (FTC), the powerful independent agency long focused on antitrust enforcement and consumer protection. And since confirmed, Khan has taken a sledgehammer to the antitrust status quo. That agency now plans to extend its tentacles into vast new sectors of the economy.

Consider the FTC’s actions under Khan’s leadership. In July, the FTC threw a bipartisan Obama-era enforcement policy out the window, despite broad support, without providing new guidance. Khan also arrogated to herself the power to oversee fact-finding and rulemaking, and commissioners later axed a quarter-century-old practice on prior approval for mergers. Investigations, which traditionally went forward with support from a majority of commissioners, now need the sign-off of only one commissioner. The agency tossed the vertical merger guidelines (again without any replacement). And after the Supreme Court this year unanimously smacked down the FTC’s authority to obtain monetary penalties in federal court, the FTC plans to get around the court’s ruling by invoking other powers.

These moves have rattled the antitrust world. Chatter about disgruntled FTC staff — despite Khan’s attempt to muzzle the rank-and-file — has grown louder. A former commissioner has warned of the FTC’s Icarus moment. Even current commissioners have publicly pummeled the process used to make these changes.

## 2ac

### 2AC---Per-Se

#### “Business practices” include tactics or activities.

Free Dictionary ND, “Business Practice,” No Date, https://financial-dictionary.thefreedictionary.com/Business+Practice

Business Practice

Any tactic or activity a business conducts to reach its objectives. Ultimately, a business's objective is to make money. Business practices are the ways it attempts to do so in the most cost effective way. A company may have rules for business practices to ensure that its employees are efficient in their work and abide by applicable laws. See also: Business ethics.

#### ‘Prohibition’ includes restriction and means to forbid a particular practice.

Hadley ’9 [John Vestal; December 16, 1909; Justice on the Supreme Court of Indiana; Westlaw, “McPherson v. State,” 174 Ind. 60]

Furthermore, the word “prohibition” is close akin to “regulate, restrict, and control.” Its use in the body of the act is of little significance. To forbid the sale of liquor by those who have no license; to deny the licensee the right to sell on certain days, between certain hours, in certain places, in certain quantities—is, to some extent at least, qualified prohibition. It is prevention, interdiction. Such laws, however, are unquestionably regulations and restrictions of the liquor traffic. They operate as a check, as a restraint, upon the sale, not in absolute inhibition, and are in the strictest sense regulations. They regulate by prohibiting the sale at certain times, and to certain persons, and \*613 in certain places. Besides, to say the law prohibits the citizen from selling without a license, or that the law prohibits the licensed seller from selling on Sunday, is etymologically correct. In fact, the word was employed in this sense by the Legislature in framing section 4 of the Nicholson law (section 8327, Burns' Ann. St. 1908), which provides that obstructions to the street view shall not be set up in the selling room “during such days and hours when the sale of such liquors is prohibited by law.” So it is not so much the primary meaning of the word as sense in which it is popularly understood as applied to the manufacture and sale of spirituous liquors that must control.

Following are a few definitions of “prohibition” as specifically applied:

“Interdiction of the liberty of making and of selling, or giving away, intoxicating liquors for other than medicinal, scientific and religious purposes.” Anderson's L. Dict.; Bouvier, L. Dict. (Rawle's Rev.).

“The forbidding by law of the manufacturing and sale of alcoholic liquors.” English's L. Dict.

“The forbidding by law of the sale of alcoholic liquors as a beverage.” Webster's Int. Dict.

“The forbidding by legislative enactment of the sale of alcoholic liquors for use as a beverage.” Standard Dict.

The term has even a wider sweep than this. A prohibitory law, to be classed as such, must, at the same instant, in the same way, become effective to interdict the sale of liquors throughout all parts of the jurisdiction of the lawmaking power. Welsh v. State, 126 Ind. 71, 77, 25 N. E. 883, 9 L. R. A. 664; Shea v. City of Muncie, 148 Ind. 14, 46 N. E. 138; Paul v. Gloucester County, 50 N. J. Law, 585, 15 Atl. 272, 1 L. R. A. 86.

It seems absurd, because rationally inconceivable, that under the operation of a general prohibitory statute enacted by the General Assembly sales as a beverage may indefinitely continue to be lawfully made in many counties of the state. It is also equally incomprehensible how a law may be absolutely prohibitory and in itself provide the means and terms under which sales may be continued or resumed in any or all counties of the state. We are unable to perceive any distinction between the prohibition which results from remonstrance under former laws, which has uniformly been held to be regulation, and the prohibition arising under the act in question, with the sole exception as to the duration of the term of restriction, depending upon petition and election at the expiration of each biannual period. We therefore conclude that the object and purpose of the act before us is regulation, and not prohibition, of the liquor traffic, and that the subject is fairly deducible from the title, and not in conflict with section 19, art. 4, of the Constitution. Isenhour v. State, 157 Ind. 524, 62 N. E. 40, 87 Am. St. Rep. 228; Gustavel v. State, 153 Ind. 613, 54 N. E. 123; Burget v. Merritt, 155 Ind. 143, 57 N. E. 714; Clarke v. Darr, 156 Ind. 692, 60 N. E. 688; Republic Iron, etc., Co. v. State, 160 Ind. 379, 66 N. E. 1005, 62 L. R. A. 136; Maule Coal Co. v. Partenheimer, 155 Ind. 100, 55 N. E. 751, 57 N. E. 710.

### 2ac Regs Wake

#### Scope – only antitrust can access it – if the CP does then it links to the net benefit

Carrier and Tushnet 21, Michael A. Carrier Rutgers Law School Distinguished Professor, Rebecca Tushnet Harvard Law School Professor of Law (Iowa Law Review 2021 “An Antitrust Framework for False Advertising” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3593914)//ellie

A separate and independently compelling reason to use antitrust where appropriate is that, in antitrust law, it would be possible to consider false advertising as part of an overarching scheme used to harm a competitor, something false advertising law by definition can’t do. In fact, the inclusion of this behavior could push the range of conduct over the threshold of antitrust liability. For example, in In re Suboxone Antitrust Litigation, the court found that the plaintiff could not demonstrate that its claim that the defendant had refused to participate in a safety program required by the U.S. Food and Drug Administration (“FDA”) individually made out a violation of antitrust law.109 But it found that “a plaintiff can allege a series of actions that when taken together make out antitrust liability even though some of the individual actions, when viewed independently, are not all actionable.”110 Such global assessment can allow consideration of a monopolist software provider’s practices of promising “vaporware” that it couldn’t deliver to prevent customers from turning to competing software alternatives and of creating fear, uncertainty, and doubt about the competition as part of a larger constellation of anticompetitive activities.111 As the Third Circuit noted in LePage’s Inc. v. 3M, “courts must look to the monopolist’s conduct taken as a whole rather than considering each aspect in isolation.”112

### 2ac Gangster Antitrust DA

#### The divestment decisions have no basis in antitrust – no link

**1NC Singer 20** (Hal Singer – adjunct professor at Georgetown’s McDonough School of Business. <KEN> "Gangster Antitrust and the Conservative Fight to Burn Fossil Fuels," *American Prospect*. August 2020. <https://prospect.org/power/gangster-antitrust-and-the-conservative-fight-to-burn-fossil-fuels/>)

\*\*\*IOWA IS BLUE

The modern antitrust movement, as well as the original movements to break up the trusts, empower farmers, or disperse concentration of economic power generally, certainly reflects a political ideology. Conservative efforts to push back on antitrust enforcement and limit the scope of antitrust law, known as the “Chicago school” because of the origins of these efforts at the University of Chicago, reflect a political ideology as well. There is no escaping politics when it comes to antitrust.

While both strands are inherently political, and while the Chicago school arguably subverts the original intent of the Sherman Act and its successors, neither of these two movements necessarily reflects an abuse of antitrust law.

But a new strand of antitrust has emerged that is more dangerous than the Chicago school. Emanating from the right, the movement’s architects seek to enforce antitrust law to punish political enemies, cement the status quo, and preserve, rather than disperse, concentrations of economic power. It is a movement I call “gangster antitrust.” It is the perversion of antitrust.

In the last four years, antitrust actions have been used by the Department of Justice’s Antitrust Division (ATR) to attack marijuana growers because Attorney General William Barr doesn’t like marijuana; to threaten CNN because Donald Trump doesn’t like what it reports about him; and to harass carmakers cooperating with the state of California around emissions standards, because of Big Oil climate denialism. More subtle examples of gangsterism include ATR and the Federal Trade Commission labeling Uber drivers banding together to form a union “price fixing,” and ATR chief Makan Delrahim personally involving himself in completing the Sprint/T-Mobile merger.

A similar cloud of gangster antitrust recently wafted from the pages of The Wall Street Journal, in the form of a July 15 op-ed by C. Boyden Gray, a longtime oil-industry lobbyist and conservative intellectual. Gray suggests that a financial institution’s decision not to loan or invest in fossil fuel companies and projects may be “violating federal antitrust law” by representing “invitations to collude on a boycott of a critical segment of the U.S. economy.” He singled out decisions made in recent months by firms like BlackRock and Goldman Sachs to shift investments away from the riskiest fossil fuel sectors like coal mining and Arctic drilling and toward more sustainable assets.

As a matter of antitrust, Gray’s conspiracy theory holds no water, as each of the institutions likely arrived at the divestiture decision on its own. In 2000, the Department of Justice and Federal Trade Commission issued a set of guidelines spelling out the kinds of communications among rivals that are potentially anti-competitive, including the sharing of competitively sensitive information or entering agreements that facilitate collusion. Nothing alleged in Gray’s piece comes close to satisfying these criteria.

BlackRock, for instance, has stated unequivocally that its decision to divest from fossil fuel was based on independent analysis of the market. By Mr. Gray’s twisted logic, any sound business decision, individual or coordinated, that happens to come with climate benefits could be described as an “invitation to collude on a boycott.” Before it was thrown out, ATR’s bogus investigation into carmakers relied on a similar perversion of the rules against cartels. It claimed, incredibly, that by working with California to reduce tailpipe carbon emissions, carmakers were engaging in a conspiracy.

In contrast to Gray’s assertion, BlackRock’s divestment from coal producers, or Goldman Sachs’s decision to not fund coal or Arctic drilling projects, doesn’t require some grand conspiracy by Wall Street against the fossil fuel industry. It requires looking at a stock chart. In recent years, independent analyses have confirmed that environmental, social, and governance issues impact a company’s long-term profitability and therefore should be integrated into investment decisions. Sustainable funds and companies continue to outperform the S&P 500, a trend that was under way well before the pandemic and especially now.

It is, in fact, individually rational not to invest in fossil fuels. The industry was suffering long before banks began to restrict financing for certain segments of the coal and oil and gas sector. The industry has underperformed the S&P for 15 years and was indeed the worst-performing sector in the stock market over the last decade. Wells Fargo’s lending to fossil fuel companies makes up 3 percent of its portfolio, but accounts for nearly half of its outstanding unpaid loans. Even before COVID, the fossil fuel industry depended on razor-thin margins and huge amounts of junk debt; the Kansas City Fed has estimated that a small decrease in the price of oil would push 40 percent of oil and gas producers into bankruptcy. Since COVID, the industry is in even worse shape, as reported by Boston Consulting Group.

Gray’s argument also misses the fact that firms evaluate risk not only on whether a business is profitable (or not) today, but also in terms of long-term social and environmental risks. A bank’s support for a company that violates indigenous sovereignty or human rights, for instance, carries direct financial and legal risks, as well as broader reputational risks, as illustrated recently by the backlash to banks that financed the Dakota Access Pipeline.

In a 2020 letter to CEOs, BlackRock Chairman Larry Fink wrote: “These questions are driving a profound reassessment of risk and asset values. And because capital markets pull future risk forward, we will see changes in capital allocation more quickly than we see changes to the climate itself. In the near future—and sooner than most anticipate—there will be a significant reallocation of capital.”

This reallocation of capital away from fossil fuels is happening before our eyes. It reflects a series of independent business decisions, and it is a good thing for investors and the planet. It should not be thwarted by antitrust gangsters perverting the law.

#### Divestment increases emissions

Andreasson, 11/25/19 – Senior Lecturer in Comparative Politics, Queen's University Belfast [Stefan, “Fossil fuel divestment will increase carbon emissions, not lower them – here’s why”, theconversation, https://theconversation.com/fossil-fuel-divestment-will-increase-carbon-emissions-not-lower-them-heres-why-126392]//spencer

When it comes to oil and natural gas, however, the picture looks quite different. Oil is used for a much wider range of products and processes than is coal, while the cleaner reputation of natural gas gives it significant appeal as a “bridge fuel” to a zero carbon economy, whether rightly or not. As a result, the push for oil and gas divestment is likely to have unintended consequences. Divestment troubles The primary targets of the divestment movement are international oil companies (IOCs) – private corporations that are headquartered in Western countries and listed on public stock exchanges. ExxonMobil, Chevron, Royal Dutch Shell, BP, and Total are among the private oil “supermajors”. Recent research suggests that divestment can reduce the flow of investment into these companies. But even if the divestment movement were successful in reducing the economic power of these companies, IOCs currently only produce about 10% of the world’s oil. The rest is mostly produced by national oil companies (NOCs) – state-owned behemoths such as Saudi Aramco, National Iranian Oil Company, China National Petroleum Corporation and Petroleos de Venezuela, located mostly in low and middle income countries. Given that NOCs are less transparent about their operations than are IOCs, and that many of them are also headquartered in authoritarian countries, they are less exposed to pressure from civil society. As a result, they are “dangerously under-scrutinised”, according to the Natural Resource Governance Institute. As they are state-owned, they are also not directly exposed to pressure from shareholders. Even the imminent public listing of Saudi Aramco will only offer 1.5% of the company, and this will mainly come from domestic and emerging markets, which tend to impose much less pressure to value environmental issues. Environmental groups have urged Western multinational banks not to invest in the Saudi company. This means that while global demand for natural gas and oil is still rising, and investments are insufficient to meet future demand, divestment pressures are unlikely to impact the business plans of NOCs. As a result, instead of reducing global fossil fuel production, the divestment movement will simply force IOCs to cede market share to NOCs. If anything, this would cause CO₂ emissions to rise. The carbon footprints of NOCs per unit of fuel produced are on average bigger than those of IOCs. IOCs are also generally better placed and more willing than are NOCs to reduce the carbon intensity of their products and support the transition to renewable energy. They have, for example, led the way among oil companies in research into capturing and storing carbon, even if results have so far proven elusive. In a nutshell, the divestment movement will not reduce demand for oil and gas. It will transfer the supply of fossil fuel to companies that are more polluting, less transparent, less sensitive to societal pressures, and less committed to addressing the climate crisis.

#### No unique link – their ev is all descriptive of the squo – and says that there is a movement of people who are trying to influence antitrust law to their own populist ends, but not that they’ll be successful, and no semblance of a link argument

**1NC Wright and Portuese 20** (Joshua, Professor of Law and Director of the Global Antitrust Institute of Antonin Scalia Law School at George Mason University, Aurelien Portuese, Senior Lecturer in Law, St Mary’s University; Adjunct Professor of Law, George Mason University and University of Notre Dame Australia; Research Fellow, Catholic University of Paris, “Antitrust Populism: Towards a Taxonomy,” 25 Stan. J.L. Bus. & Fin. 131 (2020). Accessed 8/16/21, JMoore) \*brackets in original

\*\*\*IOWA IS BLUE

Antitrust populists fight the so-called “technocratic antitrust,”158 as Harvard Law Professor Einer Elhauge calls it, which is allegedly prone to under-enforcement. 159 Antitrust, with the economic-dominated perspective derived from the Chicago School, has become an area of law requiring economic expertise. The level of expertise in antitrust matters has continuously increased throughout the years. 160 With the populist attack on establishments from many alike – including scholars, journalists, media, and of course “experts,” the bone of contention revolves around how much place experts have taken out of politicians’ margin of maneuver. Antitrust populism pares down to anything against “technocratic antitrust.” 161 The economic approach to antitrust has paved the way for independent agencies that are staffed with experts, insulated as much as possible from party politics. 162 This was justified by the complexity of economic reasoning that conflicted with the apparent simplicity of political discourse (justified in alike manner as the case for independent monetary policies).

Today, given the rise of antitrust populism, “there is a growing risk that [antitrust matters] may be taken away from experts or that experts will yield to the pressure.”163 Of course, this criticism is raised on behalf of the voices of citizens who are allegedly deprived and who want to democratically influence antitrust matters. In an important speech revealing the tone of the moment, Acting Assistant Attorney General Renata Hesse of the Antitrust Division acknowledged that “antitrust is making headlines again” since “increased public interest in antitrust and competition is a good thing,” 164. He nevertheless also noted “some tension between the views of the general public and the views of those who practice antitrust professionally.” 165

Antitrust agencies are ideally independent from party-politics so that the most rational economic policy can be designed while being insulated from electoral considerations. This argument pertains to the economic rationale of agencies’ independence from governments in general. Inasmuch as a central bank should design its monetary policy independently from government as much as possible, antitrust agencies have historically gained independence incrementally in order to design antitrust policies that suit consumer welfare and innovation rather than political interests of policymakers. This traditional independence has been institutionally enshrined by agencies’ independence and politically bolstered by the law and economics movement in the United States and the “more economic approach” in the European Union. Antitrust populists agree with populists in general who “abhor restraints on the political executive”166 while willing to tame any economic (and political) power of big firms. “Populists’ aversion to institutional restraints extends to the economy, where exercising full control ‘in the people’s interest’ implies that no obstacles should be placed in their way by autonomous regulatory agencies, independent central banks, or global trade rules.” 167 Thus, more specifically, antitrust populists dislike independence of antitrust agencies, where political whim and regulatory interventionism can face institutional obstacles.

Consequently, antitrust agencies are subject to institutional threats from antitrust populists with respect to the agencies’ independence. For, in order to enshrine and enforce the political objectives of antitrust enforcement, not only must antitrust populism change antitrust laws for socio-political goals beyond the consumer welfare standard, but they also take control of these agencies by deteriorating their independence.

The political antitrust populism that we identified is legitimized and fortified only because the intellectual bedrocks for the stances voiced by politicians and some influential scholars are underpinned by some instrumental use of concepts of competition law. Indeed, the political antitrust populism is rendered possible only because scholars and writers vouch for these concepts to be twisted in a politicized manner: this is the populist use of antitrust concepts, or what we call conceptual antitrust populism. To illustrate this interaction between political antitrust populism and what we call conceptual antitrust populism, we shall scrutinize the two main concepts of competitions laws–market definition and consumer welfare standard–in order to demonstrate how they prompt political antitrust populism when applied to big tech cases exemplified by the Google cases in Europe.

### 2ac Cap Generic

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

Hausfather 21 – a climate scientist and energy systems analyst whose research focuses on observational temperature records, climate models, and mitigation technologies. He spent 10 years working as a data scientist and entrepreneur in the cleantech sector, where he was the lead data scientist at Essess, the chief scientist at C3.ai, and the cofounder and chief scientist of Efficiency 2.0. He also worked as a research scientist with Berkeley Earth, was the senior climate analyst at Project Drawdown, and the US analyst for Carbon Brief. He has masters degrees in environmental science from Yale University and Vrije Universiteit Amsterdam and a PhD in climate science from the University of California, Berkeley. (Zeke, "Absolute Decoupling of Economic Growth and Emissions in 32 Countries," Breakthrough Institute, 4-6-2021, https://thebreakthrough.org/issues/energy/absolute-decoupling-of-economic-growth-and-emissions-in-32-countries, Accessed 4-11-2021, LASA-SC)

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

#### A plethora of indicators demonstrate that catastrophic climate change can be averted. The momentum exists, but capitalizing on it is key.

Wallace-Wells 21, \*David Wallace-Wells is deputy editor of New York magazine, where he also writes frequently about climate change and the near future of science and technology; (January 18th, 2021, “After Alarmism”, https://nymag.com/intelligencer/article/climate-change-after-pandemic.html)

The change is much bigger than the turnover of American leadership. By the time the Biden presidency finds its footing in a vaccinated world, the bounds of climate possibility will have been remade. Just a half-decade ago, it was widely believed that a “business as usual” emissions path would bring the planet four or five degrees of warming — enough to make large parts of Earth effectively uninhabitable. Now, thanks to the rapid death of coal, the revolution in the price of renewable energy, and a global climate politics forged by a generational awakening, the [expectation](https://climateactiontracker.org/global/temperatures/) is for about three degrees. Recent pledges [could bring us closer to two](https://climateactiontracker.org/publications/global-update-paris-agreement-turning-point/). All of these projections sketch a hazardous and unequal future, and all are clouded with uncertainties — about the climate system, about technology, about the dexterity and intensity of human response, about how inequitably the most punishing impacts will be distributed. Yet if each half-degree of warming marks an entirely different level of suffering, we appear to have shaved a few of them off our likeliest end stage in not much time at all.

The next half-degrees will be harder to shave off, and the most crucial increment — getting from two degrees to 1.5 — perhaps impossible, dashing the dream of avoiding what was long described as “catastrophic” change. But for a climate alarmist like me, seeing clearly the state of the planet’s future now requires a conspicuous kind of double vision, in which a guarded optimism seems perhaps as reasonable as panic. Given how long we’ve waited to move, what counts now as a best-case outcome remains grim. It also appears, miraculously, within reach.

In December, a month after Biden was elected promising to return the U.S. to the Paris agreement, the U.N. celebrated five years since the signing of those accords. They were five of the six hottest on record. (The sixth was 2015, the year the agreement was signed.) They were also the years with the highest levels of carbon output in the history of humanity — with emissions equivalent to what was produced by all human and industrial activity from the speciation of Homo sapiens to the start of World War II.

They have also been the five years in which the nations of the world — and cities and regions, individuals and institutions, corporations and central banks — have made the most ambitious pledges of future climate action. Most of them were made in the past 12 months, in the face of the pandemic. Or, perhaps, to some degree, because of it — because the pandemic demanded a full-body jolt to the global political economy, provoking much more aggressive government spending, a much more accommodating perspective on debt, and a much greater openness to large-scale actions and investments of the kind that might plausibly reshape the world. And because decarbonization has come to seem, even to those economists and policy-makers blinded for decades to the moral and humanitarian cases for reform, a rational investment. “When I think about climate change,” Biden is fond of saying, “the word I think of is jobs.”

There are two ways of looking at these seemingly contradictory sets of facts. The first is that the distance between what is being done and what needs to be done is only growing. This is the finding of, among others, the U.N.’s comprehensive [“Emissions Gap” report](https://www.unenvironment.org/emissions-gap-report-2020), issued in December, which found that staying below two degrees of warming would require a tripling of stated ambitions. To bring the planet in reach of the 1.5-degree target — favored by activists, most scientists, and really anyone reading their work with open eyes — would require a quintupling. It is also the perspective of Greta Thunberg, who has spent the pandemic year castigating global leaders for paying mere lip service to far-off decarbonization targets and who called the E.U.’s new net-zero emissions law “surrender.”

The second is that all of the relevant curves are bending — too slowly but nevertheless in the right direction. The International Energy Agency, a notoriously conservative forecaster, recently [called](https://www.carbonbrief.org/solar-is-now-cheapest-electricity-in-history-confirms-iea#:~:text=Source%3A%20IEA%20World%20Energy%20Outlook%202020.&text=Together%2C%20low%2Dcarbon%20sources%20would,up%20from%2019%25%20in%202019.) solar power “the cheapest electricity in history” and projected that India will build 86 percent less new coal power capacity than it thought just one year ago. Today, business as usual no longer means a fivefold increase of coal use this century, as was once expected. It means pretty rapid decarbonization, at least by the standards of history, in which hardly any has ever taken place before.

Both of these perspectives are true. The gap is real, and the world risks tumbling into it, subjecting much of the global South to unconscionable punishments all the way down. But in the months since the pandemic wiped climate strikers off the streets, their concerns have seeped into not just public-opinion surveys but parliaments and presidencies, trade deals and the advertising business, finance and insurance — in short, all the citadels presiding over the ancien régime of fossil capital.

This is not exactly a climate revolution; the strikers and their allies didn’t win in the way they wanted to, at least not yet. But they did win something. Environmental anxieties haven’t toppled neoliberalism. Instead, to an unprecedented degree, they infiltrated it. (Or perhaps they were appropriated by it. It’s an open question.) Climate change isn’t an issue just for die-hards anymore — it’s for normies, sellouts, and anyone with their finger in the wind. It will take time, of course, for voters to see empty rhetoric for what it is, and for consumers to learn to distinguish, say, between the claims of guiltless airline tickets, or between carbon-free foods in the supermarket aisle. Harder still will be sorting through the differences between real corporate commitments like Microsoft’s and more evasive ones, like BP’s. Already, there is considerable consternation among climate activists that the public doesn’t understand the tricky math of “net-zero” on which so many of these commitments have been made—it is not a promise of ending emissions, but of offsetting some amount of them, in the future, with “negative emissions,” sometimes called “carbon dioxide removal,” though no approach of that kind is ready to go at anything like the necessary scale. And while some amount of skepticism about those commitments is surely warranted, it is also the case that, according to [a recent Bloomberg review](https://www.bloomberg.com/graphics/2020-company-emissions-pledges/), of 187 corporate climate pledges made for 2020 in 2015, 138 will be met. (Many of those promises were quite modest, but it is a much better performance than has been managed by the 189 parties to the Paris agreement, of which only two — Morocco and Gambia — are today [judged](https://climateactiontracker.org/countries/) fully “compatible” with the 1.5-degree goal, and only six more with the 2-degree target).

In the political sphere, the uneasy alliance between activists and those in power will be tested, producing new conflicts, or new equilibria, or both. Consider, though, that Varshini Prakash, whose [Sunrise Movement](https://www.sunrisemovement.org/) gave Biden’s primary candidacy an F, later helped write his climate plan along with Alexandria Ocasio-Cortez. Climate expertise has been distributed throughout the incoming administration, as was promised during a campaign that closed, remarkably, with a climate-focused advertising blitz. During the transition, Biden’s pick for director of the National Economic Council, Brian Deese, was targeted by the environmental left for his time with BlackRock, but even this purported stooge had been married by Bill McKibben, one of the godfathers of modern climate activism.

Elsewhere in the world, where 85 percent of global emissions are produced, the great infiltration of climate concerns represents what the British environmental [writer](https://www.businessgreen.com/blog-post/4025199/2020-crisis-crossroads-alternative-histories) James Murray has called “an alternative history to 2020” and what the scientist turned journalist Akshat Rathi [has declared](https://www.bloomberg.com/news/articles/2021-01-05/climate-action-is-embedding-into-how-the-world-works) “a strong sign that climate action is starting to be ‘institutionalized’ — that is, getting deeply embedded into how the world works.” This is not about coronavirus lockdowns producing emissions drops or “nature healing.” It is instead about long-standing trajectories passing obvious tipping points in coal use and political salience; promises and posturing by powerful if compromised institutions; and policy progress almost smuggled into place, all over the world, under cover of pandemic night. In the U.S., in the second coronavirus stimulus, [$35 billion in clean-energy spending](https://nymag.com/intelligencer/2020/12/what-is-in-covid-stimulus-omnibus-climate-pell-grants-medical-billing.html) passed in the Senate 92-6 — an effective down payment, energy researcher Varun Sivaram has estimated, on the innovation spending needed for a full electrification of the country. Did you even notice?

Biden’s climate plan now faces the challenge of a filibuster, a skeptical Supreme Court, and the mood of Senator Joe Manchin of West Virginia, which means American climate action over the next four years is probably more likely to be delivered piecemeal — through appropriations and stimulus, executive action, and regulation — than through a landmark Green New Deal–style piece of legislation. That does limit what can be achieved, but it also means avoiding a protracted battle over climate as a referendum on the identity of the nation. And at least nominally, having been pressured by activists to do so, Biden is promising to multiply the green spending in that recent stimulus by a factor of 60.

The numbers are numbingly large — reminders that in the midst of pandemic turmoil, the rules of state spending have been dramatically revised and perhaps even suspended. Is this global free-spending binge the beginning of a new era or merely a crisis interregnum to be followed by a new new austerity? “We don’t know what the recovery packages of COVID are going to be,” Christiana Figueres, one of the central architects of the Paris accords, told me this summer. “And honestly, the depth of decarbonization is going to largely depend on the characteristics of those recovery packages more than on anything else, because of their scale. We’re already at $12 trillion; we could go up to $20 trillion over the next 18 months. We have never seen — the world has never seen — $20 trillion go into the economy over such a short period of time. That is going to determine the logic, the structures, and certainly the carbon intensity of the global economy at least for a decade, if not more.”

For those dreaming of a climate recovery, the first round of spending was not so encouraging. The E.U. was the gold standard, promising that 30 percent of its stimulus would be earmarked for climate. The U.S. and China each pledged only a fraction of that (and in each case, there was fossil stimulus, too). But in October, a team of researchers including Joeri Rogelj of the Imperial College of London [calculated](https://www.reuters.com/article/climate-change-stimulus/tenth-of-pandemic-stimulus-spend-could-help-world-reach-climate-goals-study-idUSKBN271098) that just one-tenth of the COVID-19 stimulus spending already committed around the world, directed toward decarbonization during each of the next five years, would be sufficient to deliver the goals of the Paris agreement and stop global warming well below two degrees. That analysis may be a touch optimistic, but the level of spending seems, now, doable.

When Donald Trump was elected, trashing Paris, climate hawks were left hoping that the world would hang on for the length of his administration — insisting that, in the long term, the crisis couldn’t be solved without America at the helm. But the past four years of missing leadership have produced astonishing gains.

The price of solar energy has fallen ninefold over the past decade, as has the price of lithium batteries, critical to the growth of electric cars. The costs of utility-scale batteries, which could solve the “intermittency” (i.e., cloudy day) problem of renewables and help power whole cities in relatively short order, have fallen 70 percent since just 2015. Wind power is 40 percent cheaper than it was a decade ago, with offshore wind experiencing an even steeper decline. Overall, renewable energy is less expensive than dirty energy almost everywhere on the planet, and in many places it is simply cheaper to build new renewable capacity than to continue running the old fossil-fuel infrastructure. Oil demand and carbon emissions may both have peaked this year. Eighty percent of coal plants planned in Asia’s developing countries have been shelved.

This summer, I heard the Australian scientist and entrepreneur Saul Griffith talk about what it would take to get the U.S. within range of a 1.5 degree world. He said it would mean that beginning in 2021, this year, every single person buying a new car would have to be buying an electric one. That seems unrealistic, I thought, making a note of it as a useful benchmark illustrating just how far we have to go.

Then, in the fall, the U.K. pledged to ban nonelectrics by 2030—a once-unthinkable law coming both too slow and much more quickly than seemed possible not very long ago. Similar plans are now in place in 16 other countries, plus Massachusetts and California. Canada recently raised its tax on carbon sixfold. Italy cut its power-sector emissions 65 percent between 2012 and 2019, and Denmark is now aiming to reduce its overall emissions 70 percent by 2030. “We set ourselves challenges that on paper looked almost impossible,” the country’s minister for the environment, Dan Jørgensen, told me recently. “And I think experts in many countries said, when looking at Denmark, ‘This is going to be too expensive, this is going to lower their living standards, this is going to hurt their ability to compete.’ But actually I’m proud to say that the opposite has happened. Now, of course, we have set even higher standards.”

In the midst of the pandemic, new net-zero pledges, far more ambitious than those offered at Paris, were independently made by Japan, South Korea, the E.U., and, most significant, China, the world’s biggest emitter, which promised to reach an emissions peak by 2030 and get all the way to zero by 2060. China’s promise is so ambitious it has inspired one wave of debate among experts about whether it is even feasible — given that it would require, for instance, roughly twice as much renewable power to be installed every year for the next decade as Germany has operating nationwide today — and another debate about whether it has revived the possibility of that 1.5-degree target, with economic historian Adam Tooze writing, just after Xi Jinping’s surprise announcement in September, that it single-handedly “redefined the future prospects for humanity.” Together, the new net-zero pledges may have subtracted a full half-degree from ultimate warming. Add Biden’s campaign pledge of net zero by 2050, and you’ve got about two-thirds of global emissions at least nominally committed to firm, aggressive timelines to zero.

These are all just paper promises, of course, and the history of climate action is littered with the receipts of similar ones uncashed. Plot the growth of carbon concentration in the atmosphere against the sequence of climate-action conferences and a distressing pattern emerges: the World Meteorological Conference of 1979, the U.N. framework of 1992, the Kyoto protocol of 1997, the Copenhagen accord of 2009, and the 2015 Paris accords, all tracking an uninterrupted trajectory upward for carbon from a “safe” level under 350 parts per million, past 400, to 414 today, and pointing upward from there. Before the industrial revolution, humans had never known an atmosphere with even 300 parts per million. Inevitably now, within a few years, the concentration will reach levels not seen since 3.3 million years ago, when sea levels were 60 feet higher. For all their momentum, renewables still only make up 10 percent of global electricity production.

But alarmists have to take the good news where they find it. And while mood affiliation is not always the best guide to the state of the world, in 2020, for me, there were three main sources of hope.

The first is the fact that the age of climate denial is over thanks to extreme weather and the march of science and the historic labor of activists — climate strikers, Sunrise, Extinction Rebellion — whose success in raising alarm may have been so sudden that they brought an end to the age of climate Jeremiahs as well. Their voices now echo in some unlikely places. Exxon was booted from the S&P 500 within months of Tesla making Elon Musk the world’s richest man. The cultural cachet of oil companies is quickly approaching that of tobacco companies. Jair Bolsonaro of Brazil aside, practically every leader of every country and every major figure in every corporate and industrial sector now feels obligated — because of protest and social pressure, economic realities, and cultural expectation — to at least make a show of support for climate action. It would be nice not to have to count that as progress, but it is. The questions are: How much does it matter? And what will follow? Disinformation and human disregard are not the only instruments of delay, and the age of climate denial is likely to yield first not to an age of straightforward climate deliverance but to one characterized by climate hypocrisy, greenwashing, and gaslighting. But those things, ugly and maddening and even criminal as they are, have always been with us. It is the other thing that is new.

The second source of good news is the arrival on the global stage of climate self-interest. By this I don’t mean the profiteering logic of BlackRock, which opportunistically announced some half-hearted climate commitments last year, but rather the growing consensus in almost every part of the globe, and at almost every level of society and governance, that the world will be made better through decarbonization. A decade ago, many of the more ruthless capitalists to analyze that project deemed it too expensive to undertake. Today, it suddenly appears almost too good a deal to pass up. (A recent McKinsey [report](https://www.mckinsey.com/business-functions/sustainability/our-insights/how-the-european-union-could-achieve-net-zero-emissions-at-net-zero-cost): “Net-Zero Emissions at Net-Zero Cost.”)

The logic may be clearest in considering the effects of air pollution, which kills an estimated 9 million people per year. In India, where more than 8 percent of GDP is lost to pollution, poor air quality is also responsible for 350,000 miscarriages and stillbirths every year. Globally, coal kills one person for every thousand people it provides power to, and even in the U.S., with its enviably clean air, total decarbonization would be entirely paid for, Duke’s Drew Shindell [recently testified](https://www.vox.com/energy-and-environment/2020/8/12/21361498/climate-change-air-pollution-us-india-china-deaths) before Congress, just through the public-health benefits of cutting out fossil fuels. You don’t even have to calculate any of the other returns — more jobs, cheaper energy, new infrastructure. Of course, countries all around the world are incorporating those considerations too, turning the page on a generation of economic analysis that said decarbonization was too costly and its benefits too small to sell to the public as upside.

A decade ago, capitalists deemed decarbonization too expensive. Suddenly, it appears too good a deal to pass up.

What is perhaps most striking about all the new climate pledges is not just that they were made in the absence of American leadership but that they were made outside the boundaries of the Paris framework. They are not the result of geopolitical strong-arming or “Kumbaya” consensus. They are, instead, plans arrived at internally, in some cases secretly. This has been eye-opening for the many skeptics who worried for decades about climate’s collective-action problem — who warned that because the benefits of decarbonization were distributed globally while the costs were concentrated locally, nations would move only if all of their peers did too. But a [recent paper](https://www.mitpressjournals.org/doi/full/10.1162/glep_a_00578) by Matto Mildenberger and Michaël Alkin suggests this shouldn’t be a surprise. In their retrospective analysis, they found that, despite much consternation about designing climate policy to prevent countries from “cheating,” there was basically no evidence of any country ever pulling back from mitigation efforts to take a free ride on the good-faith efforts of others. There was, in other words, no collective-action problem on climate after all. For a generation, the argument for climate action was made on a moral basis. That case has only grown stronger. And now there are other powerful, more mercenary arguments to offer.

The third cause for optimism is that, while the timelines to tolerably disruptive climate outcomes have already evaporated, the timelines to the next set of benchmarks is much more forgiving. This is why Glen Peters, the research director at the Cicero Center for International Climate Research, often jokes that while keeping warming below two degrees is very hard, perhaps even impossible, keeping it below 2.5 degrees now looks like a walk in the park.

This isn’t to say we’re on a glide path to safety. At current emissions levels, the planet will entirely exhaust the carbon budget for 1.5 degrees in just seven years — stay merely level, in other words, and we’ll burn through the possibility of a relatively comfortable endgame within the decade. We could buy ourselves a little more time by starting to move quickly, but not that much more. To decarbonize fast enough to give the planet a decent chance of hitting that 1.5-degree target without any negative emissions would require getting all the way to net-zero emissions by around 2035. Simply running the cars and furnaces and fossil-fuel infrastructure that already exists to its expected retirement date would push the world past 1.5 degrees—without a single new gasoline SUV hitting the road, or a single new oil-heated home being built, or a single new coal plant opened.

A two-degree target, by contrast, yields a much longer timeline, requiring the world to achieve net-zero by 2070 or 2080 — without even the help of negative emissions. We’d have to cut carbon production in half in about three decades, rather than one. That pathway will almost certainly prove harder than it looks. The good news is that we seem to be beginning, at least, to try.

#### COVID induced restructuring that prevents catastrophic future fallouts

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Reimagination A shock of this scale will create a discontinuous shift in the preferences and expectations of individuals as citizens, as employees, and as consumers. These shifts and their impact on how we live, how we work, and how we use technology will emerge more clearly over the coming weeks and months. Institutions that reinvent themselves to make the most of better insight and foresight, as preferences evolve, will disproportionally succeed. Clearly, the online world of contactless commerce could be bolstered in ways that reshape consumer behavior forever. But other effects could prove even more significant as the pursuit of efficiency gives way to the requirement of resilience—the end of supply-chain globalization, for example, if production and sourcing move closer to the end user. The crisis will reveal not just vulnerabilities but opportunities to improve the performance of businesses. Leaders will need to reconsider which costs are truly fixed versus variable, as the shutting down of huge swaths of production sheds light on what is ultimately required versus nice to have. Decisions about how far to flex operations without loss of efficiency will likewise be informed by the experience of closing down much of global production. Opportunities to push the envelope of technology adoption will be accelerated by rapid learning about what it takes to drive productivity when labor is unavailable. The result: a stronger sense of what makes business more resilient to shocks, more productive, and better able to deliver to customers. Reform The world now has a much sharper definition of what constitutes a black-swan event. This shock will likely give way to a desire to restrict some factors that helped make the coronavirus a global challenge, rather than a local issue to be managed. Governments are likely to feel emboldened and supported

by their citizens to take a more active role in shaping economic activity. Business leaders need to anticipate popularly supported changes to policies and regulations as society seeks to avoid, mitigate, and preempt a future health crisis of the kind we are experiencing today. In most economies, a healthcare system little changed since its creation post–World War II will need to determine how to meet such a rapid surge in patient volume, managing seamlessly across in-person and virtual care. Public health approaches, in an interconnected and highly mobile world, must rethink the speed and global coordination with which they need to react. Policies on critical healthcare infrastructure, strategic reserves of key supplies, and contingency production facilities for critical medical equipment will all need to be addressed. Managers of the financial system and the economy, having learned from the economically induced failures of the last global financial crisis, must now contend with strengthening the system to withstand acute and global exogenous shocks, such as this pandemic’s impact. Educational institutions will need to consider modernizing to integrate classroom and distance learning. The list goes on. The aftermath of the pandemic will also provide an opportunity to learn from a plethora of social innovations and experiments, ranging from working from home to large-scale surveillance. With this will come an understanding of which innovations, if adopted permanently, might provide substantial uplift to economic and social welfare— and which would ultimately inhibit the broader betterment of society, even if helpful in halting or limiting the spread of the virus.

#### They can’t solve global entrenchment of capital, and it’s especially entrenched in the US – their ev doesn’t say it will collapse, it says it will evolve

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The agents of the ‘neoliberal model of development’ have followed Keynes’ breakthrough praxis that theorised and then practically promoted the world’s first ‘model of development’, though in the opposite direction. The key shift is from ‘counteractive regulation’ to ‘proactive regulation’. In the era of the Keynesian–Fordist Long Boom counteractive regulation stabilised capitalism’s inherent instability by protecting countries from trans-national capitalist forces and thereby, enabling the former to pursue politically organised demand-led counteractive national regulation that facilitated stable nation-centric accumulation. In contrast, the neoliberal model of development institutes forms of ‘proactive’, that is, pro-capital and pro-market, regulation that confirm the inherently unstable logic of global capital accumulation both trans-nationally and nationally (Neilson & Stubbs 2016).

In brief summary, International Monetary Fund (IMF), World Bank (WB) and World Trade Organization (WTO) agents of the neoliberal model of development have encouraged the widespread adoption of its regulatory national template that opens up countries to the free movement of capital both within and across their borders. In aggregate effect, the widespread adoption of the national template has generated movement towards a global market ‘level playing field’ on which capital can move freely and for whom competition can come from anywhere. In turn, this level playing field has transformed countries into ‘competition states’ that must contest with each other to win a viable share of this moving capital by operating within global wage and productivity norms compatible with capitalist competitiveness and profitability (Cerny 2010; Hirsch 1997). This level playing field entails a win–lose contestation as its sporting analogy implies, but not just among capitalist players. This global market form of capitalism also disciplines and divides nation states and their labouring populations in competitive struggle. Capital’s capacity to move without regulatory impediment or discrimination across and within fixed national territories subordinates nation states and their labouring populations to the narrow priorities of capital. Capital, and the cosmopolitan elements of the capitalist and middle classes, have a world opened up for their free movement, while nation states and the immense majority of their labouring populations that are fixed in space must attract these free moving forces to be economically viable (Aglietta 1998).

This competitive power structure unleashed by the neoliberal model of development is at the heart of the perfect storm of contemporary capitalism’s interacting and mutually intensifying multi-dimensional crisis tendencies. They comprise planet-wide ecological degradation and destabilisation, recurring economic crises, intensifying uneven development between winner and loser countries linked with a dangerously regressive nationalist tendency towards neo-fascism, and now a global pandemic. At the same time, nation state viability is dependent on achieving a competitive place within the neoliberal-led global mode of accumulation. Global competition forces national specialisation, not just of whole products but also due to the ‘third international division of labour’s’ (Lipietz 1997) globally segmented production of single commodities, of parts of products, or global commodity chains (Foster & Suwandi 2020; Wallace et al. 2020). As a result, national economic viability within the terms of this crisis-ridden neoliberal model of development is dependent on achieving specialised export competitiveness and importing everything else. Inversely, nation state dependence on this unstable world of market competition and global production undermines local autocentric accumulation.

The connecting thesis focusing this article is that reversing contemporary capitalism’s crisis tendencies and putting in place a new sustainable and progressive trajectory requires a new cooperative model of development that can unite all countries of the world in the project to facilitate their ecologically sustainable economic self-sufficiency.

Neoliberal globalisation and ecocatastrophe

Intrinsic to the capitalist mode of production is the ‘exploitation’ of Nature that has been ‘absolutely’ extended by the neoliberal model of development. Especially in Marx’s ‘absolute surplus value’ sense of labour’s exploitation, capital’s wealth and power grows by destructively consuming or using up the living labouring population.1 In a parallel way, capital’s wealth and power grows by the ‘absolute exploitation’ of Nature (see Foster & Clark 2018). Capital accumulation by destructively consuming Nature includes the industrial exploitation of non-human sentient life for food, unsustainable consumption of non-renewable raw materials and relatedly, destruction of pre-existing ecologies that now are all culminating in the whole planet’s descent towards ecological crisis that is presently intersecting with economic and epidemiological crises (Foster and Suwandi 2020).

The neoliberal model of development has both extended and intensified capitalism’s absolute exploitation of Nature. Like absolute labour exploitation in that it is ‘extensive’, the exploitation of Nature under neoliberal-led global capitalism has spread to engulf the whole planet. This spreading also intensifies the ‘relative surplus value’ form of Nature’s exploitation as it goes hand in hand with a rising ‘organic composition of capital’ and the shift towards a global industrial scale of accumulation. Increasing the scale of accumulation that increases the physical distance between production and consumption, in turn ceteris paribus, directly increases the rate at which human and natural energy is consumed. Global accumulation increases the labour diseconomies of scale towards their natural planetary limit. As well, it leads to diseconomies and ‘dis-ecologies’ of natural resource consumption. Unless there is a fundamental reversal of the neoliberal model of development’s global market-competition-based regulatory architecture that has facilitated global scale capital accumulation, continuing escalation and compounding of present unsustainable levels of ecological destruction are guaranteed.

The global financial crisis and the enduring core truth of the Keynesian critique

The neoliberal model of development’s reversal of Keynes’ project to construct the transnational conditions that made organised and autocentric national economic development viable is central to the recurring national, regional and now global economic crises of the current era. While the recent global economic crisis took the form of an overaccumulation crisis that has its deep roots in the rising organic composition of capital, the immediate regulatory problem is that widespread proactive neoliberal regulation has created a patchwork of competition states overlaid by a single global market that systematically depresses global aggregate demand.

An enduring truth of Keynes’ project, and also central to the FRS’s explanation of the post-Second World War Fordist Long Boom, is that stable national economic growth depends on being able to deliberately coordinate demand to match increasing supply. More specifically, as the FRS argue, the key relationship underpinning the counteractively regulated stability of the advanced capitalist countries in the post-Second World War era of the Long Boom took the form of ‘class compromise’ based institutions that calibrated wage growth (including social wage growth) with productivity increases (Lipietz 1988). However, while Keynes’ demand-side analysis of how to create stable autocentric local accumulation is widely appreciated; there is less appreciation, first, of his supply-side advocacy of local accumulation:

A considerable degree of international specialisation is necessary in a rational world in all cases where it is dictated by wide differences of climate, natural resources, native aptitudes, level of culture and density of population. But over an increasingly wide range of industrial products, and perhaps of agricultural products also, I have become doubtful whether the economic loss of national self-sufficiency is great enough to outweigh the other advantages of gradually bringing the product and the consumer within the ambit of the same national, economic, and financial organisation [my emphasis]. (Keynes 1933)

Second, not so widely appreciated either is that Keynes was deeply aware that the viability of nation-centric accumulation depended on the existence of a transnational framework that could neutralise the demand-depressing logic of international capital mobility (Neilson 2020a).

From Keynes’ perspective, the current after-Fordist neoliberal-led crisis prone accumulation trajectory is completely expected. That is, capital’s global mobility that turns countries into competition states undermines local production and turns demand-led domestic economic management into economic suicide. In particular, by increasing the propensity towards increased local consumption of imported commodities, increasing wages undermines both countries’ export competitiveness and local production. In a classic private–public good dilemma, this narrow national interest in containing wage growth that has been forced on countries by the current framework of locational competition, directly conflicts with viable production at the local level and with stable demand at the transnational aggregate level. When productivity grows everywhere but demand is locally depressed everywhere, then there will be strong tendencies towards recurring ‘realisation’ crises, that is, where capital cannot turn surplus value into profit.

Ironically, given the moralistic hype of monetarist theory in the 1970s, the global market has been prevented from falling even more deeply and often by the massive increase of cheap credit-driven debt, and especially by the United States borrowing that enabled it to act as the ‘market of last resort’ (Van Elteren 2009). The fundamental instability of this model of growth expresses itself as a deepening disconnection between a rapidly growing ‘enchanted world’ of credit and the underlying reality of accumulation (Lipietz 1985).

For Marx, this overaccumulation crisis tendency where insufficient outlets for profitable capital investment leads to expansion in the ‘enchanted world’ of speculation and asset inflation, has its deep structural cause in the rising ‘organic composition of capital’ (Clark 1990; Marx 1976, 1981) defined as the increasing proportion of fixed capital to variable capital. On the production side, capitalist development and deployment of new fixed capital that do not generate at least an equivalent increase in the productivity of labour results in a declining rate of profit. On the consumption side, labour’s oversupply (‘relative surplus population’) due to increasing productivity that pushes down wage levels drives demand deficiency (Neilson & Stubbs 2011).

The Keynesian model of development’s form of regulation countered capitalism’s overaccumulation tendency on the demand-side, while the neoliberal model of development’s proactive regulation unleashes capitalism’s demand deficiency tendency on a global level. In this era, overaccumulation that begins with the collapse of speculative financial bubbles is underpinned by the zero-sum downwards spiral logic of competitive wage advantage viciously interacting with a rising organic composition of capital. Furthermore, the logic of competition between unequally equipped countries that leads to some countries crashing also contributes to the problem of insufficient global demand.

Uneven development and the race to the bottom

Contrary to a superficial reading of what Marx wrote in Capital Vol. 1’s preface, the long history of capitalism is one of uneven development (Neilson 2018a). Since Marx, and after Lenin, Bukharin and Trotsky as well, capitalism has gone through several mid-range variations in the form of its uneven development. The ‘World Capitalism’ approach offers a theory of capitalism’s uneven development that includes application to the preneoliberal stage of the era of the US Empire (e.g. Amin 1976; Wallerstein 2004). Their perspective on recent capitalist history is grounded in their analysis of the ‘second international division of labour’ that is coordinated by an ‘unequal exchange’ relationship. That is, industrial commodities produced by well-paid socially protected workers of the advanced capitalist countries in the core capitalist metropoles are exchanged with raw materials and primary products produced by poorly paid socially unprotected workers in the development enclaves of peripheral industrially undeveloped countries.2

This school has tended to view this unequal exchange relationship as resulting in an iron-law of ‘underdevelopment’. However, the successful industrialisation of some peripheral countries who have pursued low wage export-led competitiveness strategies has undermined this position (Lipietz 1987). In particular, the successful industrialisation of a cluster of East Asian ‘tigers’ during the terminal 1970s crisis stage of the Fordist or Keynesian model of development has demonstrated that low wages can be a key component of export competitiveness-led industrialisation for some peripheral countries. However, at the same time, the zero-sum logic of demand-depressed competition in the contemporary era of neoliberal-led global capitalism has brutally activated competitive industrialisation among peripheral countries. Such countries that are unequipped to be globally competitive but have been forcibly brought into the ambit of global capitalism by structural adjustment programmes have descended towards deep economic and social dislocation (Neilson 2020a).

This competitive logic interacts both with the ‘third international division of labour’ and ‘relative surplus population’ driven (un)employment effects. Interconnected sets of mutually dependent firms located across geographically remote national localities produce parts of single commodities are brought together for final assembly (Taylor 2008). Global capitalist firms technologically enabled by advanced systems of information and communication command this global supply-side-chain form of production. Simpler parts of the production process are sub-contracted to firms located in the industrially developing countries where high ‘formal subordination’ of labouring populations facilitates ‘absolute surplus value’ strategies. In turn, conception and the more technically advanced parts of the production process that Marx identifies with ‘relative surplus value’ are located in industrially advanced countries. In sum, a contractual chain of global capitalist coordination connects specialised production units across nationally diverse locations that enable global corporations to optimise surplus value by combining absolute and relative surplus value accumulation.

However, the terms of locational competition across unevenly developing countries are actually more complex. To begin with, the second international division of labour still exists, most extensively in the form of China’s belt and road initiative. As well, developed and developing countries move somewhat towards more hybrid two-speed national economies that include both low tech or low pay peripheral, and high tech or high pay metropolitan, sectors. In sum, neoliberal globalisation has unleashed a complex competitive advantage logic for countries that has led to their reduced self-sufficiency, and thus integrally, to their dependence on the global mode of accumulation.

Second, this neoliberal-led competition-driven version of uneven development has been intensified by the zero-sum logic implied by capital scarcity caused by a growing ‘relative surplus population’ (Marx 1976; Neilson & Stubbs 2011). An increasing relative surplus population driven by redundancy of industrial production workers in the advanced capitalist countries is being intensified, not just by the transfer of material production to the recently proletarianised workers of newly industrialising capitalist countries, but also by rapid automation. Simultaneously, by extending the ‘coercive whip of competition’ to the countryside of the Global South, the first wave of the relative surplus population tendency driven by peasant dispossession has been brutally activated across previously protected peasant modes of agriculture. For newly industrialising competition states, a necessary but not sufficient source of competitive advantage has been low wages enabled by labour’s high ‘formal subordination’ driven by a growing relative surplus population. In general, growing demand to facilitate employment – but hastening ecological destruction – is prevented by the demand-depressing effects of global market competition that is intensified by labour’s increasing oversupply that inversely increases the scarcity of capital.

Moreover, ‘relative surplus population’ employment logic has particular relevance to the present virus-led crisis because labour made redundant by increasing productivity in agriculture and industry spreads to the service sector (Neilson & Stubbs 2011). Although outside the core necessary economy in Marx’s sense, the service sector has become a significant source of employment and economic viability for many countries. With this neoliberal-led zero-sum terms of international competition, a significant proportion of service sector employment has become dependent on nation states’ capacity, in competition with other nation states, to attract overseas tourists. In turn, this process has unleashed a global movement of people that now spreads the virus.

Especially for countries struggling to retain or achieve international competitiveness, which is central to local employment, there is entailed an international race to the bottom in wages, working conditions and, relatedly, in ecological standards (Olney 2013). In sum, the neoliberal model of development has activated a zero-sum international competition for scarce capital, including money coming in through overseas tourists.

Regressive nationalism and the rise of neo-fascism

Defenders of the neoliberal model of development do their best to cast the ‘regressive nationalism’ of the Alt. Right as the antithesis of its cosmopolitan project. Actually, regressive nationalism is the degenerate effect of the neoliberal project’s competition-driven globalisation logic (Neilson 2020c). However, the deep causes of regressive nationalism that lie with the effects of the neoliberal model of development are mystified both by neoliberals and Alt. Rightists (Gray 2018).

The volatility of national economic competitiveness under neoliberal globalisation implies employment insecurity and uncertainty for local populations, which is heightened further by importing overseas labour. In particular, both legal and illegal low-paid workers are imported from the relative surplus populations of competitively struggling countries into more economically successful countries. Both indirectly and directly, foreign forces and peoples can thus be cast as the cause of local economic insecurity and of undermining pre-existing cultural identities. Insecure local labouring populations are invited to release their anxiety as xenophobic anger towards scapegoated immigrant labour forces. In turn, the Alt. Right argue that the solution is to expel residing immigrant populations and halt further immigration.

In their aggressive pursuit of proactive regulation domestically, agents of the Alt. Right are degenerately vulgar neoliberals. However, they break more fundamentally with neoliberalism because they directly oppose both neoliberal cultural cosmopolitanism and neoliberal market globalisation. In particular, regardless of moral, legal or political implications, all strategies that may render a national advantage can be rationalised because there are no rules in their worldview of a primordial zero-sum war between warring nations fighting for survival. Therefore, they wilfully oppose and transgress the strictly prescribed and transparent rules of economic competition that define the project of the neoliberalised global market. As the world descends into recurring, escalating and viciously interacting crises, mistrust and economic competition fed by the primordial ideology and amoral practices of the agents of regressive nationalism threaten to spill over into direct forms of civil and international war.

The global pandemic

The global spread of COVID-19 is also related to limitations arising from the neoliberal model of development’s modes of regulation and accumulation. Its proactively capitalist mode of competitive regulation has been ideologically promoted, institutionally constructed and managed by key United Nations based regulatory agencies, and is now also embedded in the institutions and expectations of national agents. However, it is radically unsuited to the forms of international cooperation that are needed for controlling a global pandemic. Indeed, when such a global crisis occurs, the present mode of global regulation can trigger blaming, disorganisation and intensified competition. At the same time, national dependence on the global structure of the neoliberal mode of accumulation is highly destabilising. Specifically, because dependent on the global scale system of accumulation, nation states are in a weak position to be able to sustain themselves locally. This dependence manifests as a direct contradiction between maintaining national economic viability and stopping the pandemic’s spreading into a nation state from off-shore.

Directly contrary to the neoliberal ideology of self-sufficiency, national economic viability under the neoliberal mode of accumulation is dependent on achieving specialised export competitiveness within complex global commodity chains that now ‘are breaking in numerous places’ (Foster & Suwandi 2020: 9; Moody 2020). This dependence on their position within a disintegrating global system is in direct tension with the need to pursue economic localisation in order to stop COVID-19 entering the nation sate. A global crisis thus becomes a local crisis, but also a local economic crisis can have ripple effects across other countries.

The original breakout of a pandemic in one place is in-itself related to the destructive capitalism-led march of humanity into the wilderness (Wallace 2016; Wallace et al. 2020; WWF International 2020). The neoliberal model of development constitutes the perfect environment for the virus to spread rapidly from this particular locality to the whole of humanity because its forms of regulation and accumulation have generated unparalleled movement of people backwards and forwards across the planet. The global flow of things and people unleashed by the neoliberal model of development spreads the virus everywhere. Inversely, because of global market capitalist dependence and corresponding lack of local self-sufficiency, all nation states struggle to – but must – break from this global system if they are to avoid being overwhelmed by the contagion’s local invasion from off-shore.

In sum, this viral-led crisis is centrally related to capitalism’s neoliberal-led global form. On one hand, its intensification of human movement across and within national borders that now engulfs the whole planet is also what spreads the virus everywhere. It only stops spreading when we stop moving. On the other hand, as we struggle to stop moving to halt the virus, the prevailing global form of the capitalist mode of production upon which basic human existence now depends cannot be maintained. The shocking immediate choice confronting political actors is thus between containing the virus’ spread and avoiding economic breakdown. The worst case scenario is where neither goal is achieved, that is, where the spread of the virus is reactivated every time countries are driven to return to ‘business as usual’ before it has been properly stamped out. Thus, economic breakdown follows when a country locks down, and the spreading of the virus follows when a country re-opens.

The extremely unstable and inflexible nature of this form of the capitalist mode of production spreads COVID-19 to the whole world in an uneven process of refracted diffusion. This complicated transmission logic has interacting international, political and class dimensions. The movement of the virus into and within nation states initially spreads most rapidly among industrially advanced capitalist countries where the frequency and distance of human movement is highest. In contrast, spread of the virus is delayed and reduced for the shorter and less frequent moving of people and things that occurs in the non-developed countries of the Global South. With fewer economic reserves and less developed national health systems, non-developed countries have the least structural capacity to respond to this double-headed economic or health crisis. However, they do have the pre-existing advantage of more localised economies and they have time to learn from other national experiences and thereby more chance to implement successfully lockdowns and social distancing rules. Furthermore, regardless of the economic stage of capitalist industrialisation, countries with strong state capacity, decisive political leadership and a collectively responsible citizenry may be able to stop the virus by reducing citizens’ movement outside of their immediate locations while at the same time promoting ‘social distancing’.3

Despite complexly overdetermined form, a class process of diffusion overlaid by cultural inequalities is discernible. The virus is internationally carried, first, by the cosmopolitan members of the capitalist class and middle class who move freely for business and pleasure back and forth across countries. Second, it is carried by low-paid labour forces imported from poorer countries to richer countries to do informal, temporary, unskilled work in the industrial and service sectors of richer countries. Once landing in a new national territory, through cosmopolitan classes and imported labour, the virus spreads towards the local labouring population. In particular, the cosmopolitan classes who tour the world transmit the virus to low-paid service sector workers. Thus, the virus moves towards the strata of the ‘relative surplus population’, which is also overrepresented by subaltern ethnic groups. These strata are very vulnerable due to insecure, close and impoverished living conditions around working, food and housing. In the advanced capitalist countries, the virus spreads towards workers located in vulnerable parts of service and manufacturing sectors, and from there to more desperate segments of the relative surplus population including the homeless and the incarcerated. In the Global South, it spreads towards the street dwelling inhabitants of the city slums.

When the economies of the countries of the Global South are closed to stop the spread of virus, there is rapid loss in the survival capacity of those in the relative surplus population with only daily stores to meet their basic material needs. In this situation, the poor and the dispossessed confront an increasingly precarious double effect. Both as breakdown of their precarious employment based material existence, because living in vulnerable material circumstances without adequate public health, and perhaps already having compromised physical constitutions, these groups become simultaneously exposed and vulnerable to the virus while lacking the means to combat it (Foster & Suwandi 2020: 12; Onyishi et al. 2020).

Descent towards the terminal crisis of western capitalism

In one concentrated conjuncture of viciously interacting crises, the coronavirus brings to the surface symptoms of the terminal stages of the western capitalist project. The global capitalist organisation of material existence spreads the virus while undermining viable local economic responses that can contain it. Simultaneously, closing national economies in response to the virus is bringing on the deepest and most comprehensive economic crisis in human history. These manifesting contradictions that now threaten the whole of Gaia, also bring to the surface the spectre of the original epistemological and ontological contradictions of the western capitalist project’s ‘primitive’ ascendancy that have been reproduced to this day.

Especially in the United States, the present global exemplar and leader of the western capitalist project, all these viciously interacting contradictions are concentrated. The capitalist expression of Enlightenment theories that have legitimated Western capitalism’s absolute exploitation particularly through the destruction of Indigenous civilisations and the brutal industrial scale absolute exploitation of enslaved African peoples, live on to the present. Racist mentalities are reproduced across the major institutional forms centrally including labour market, education and the repressive apparatuses of the state that are also reflected in COVID-19 vulnerabilities (Pirtle 2020). Thus, there is destructive intersection of class and race oppressions (Saad-Filho 2020: 480). The present (as I write) social uprising united under the banner ‘Black Lives Matter’ may lead to a fundamental break with the institutions and mentalities of systemic racism. However, a last gasp backlash White supremacy movement, led in this case by the President, is promoting deepening social division and conflict.

Even more fundamentally, the destructively expansive logic of the capitalist mode of production, legitimated by the western modernist meta-narrative that celebrates humancentred exploitation of the natural world and that has been extended and intensified under the neoliberal model of development, now expresses itself as a steady march towards ecocatastrophe. Today, dynamically expanding material capital accumulation unleashed globally by the neoliberal model of development threatens Gaia as capital scours all the world in search of dwindling raw materials, as species go extinct daily and as the manifold effects of global warming undermine the most basic conditions of life on the planet. At the same time, the human component of Gaia is suffering, more or less, as a result of this ecological destruction, and by the relative-surplus-population-led descent of human civilisation into a chaotically disorganised ‘planet of slums’ ravaged by global viruses and deep social dislocation (Davis 2006, 2020; Foster & Suwandi 2020). In sum, the present conjuncture condenses the manifold contradictions of the western capitalist project in a terminal cycle of interacting crises.

#### The alternative model of social development is entirely consistent with regulating large capitalist entities and prosecuting fraud – justifies the perm 1NC Neilson

**Neilson 19** (David, Senior Lecturer in Sociology at the University of Waikato in New Zealand “Bringing in the ‘neoliberal model of development’.” Capital & Class, Vol 44, Issue 1, Published 6/12/19, https://doi.org/10.1177/0309816819852746, Accessed 8/27/21, JMoore)

The above discussion of neoliberal and Keynesian–Fordist eras is consistent with the FRS discovery that material security–based social progress requires capitalism’s counteractive regulation. This discovery is the enduring base on which the concept of model of development has been revised here by extending the scope of regulation and by adding in trans-national and praxis components. Specifically, this article has recast ‘model of development’ as a consciously designed and implemented national-trans-national mode of regulation that delivers a corresponding accumulation configuration. As such, both Keynesian–Fordist and neoliberal eras have models of development, but they are fundamentally different.

The aspiration of the Keynesian–Fordist model of development was stable and socially progressive capital accumulation via a trans-national project, the priority of which was to facilitate viable nation-centred accumulation for participating countries. In contrast, the neoliberal model of development is leading the world in the opposite direction by enlisting countries in the global unleashing of the capitalist mode of production that subordinates them to capitalist imperatives. Rather than material stability and social progress, the neoliberal model of development has delivered recurring global accumulation crises, deepening ecological instability, destructive zero-sum competition between unevenly developing nation states, and escalating social insecurity and inequality. This article adds a trans-national explanatory dimension to the existing discourse of national variegation. In particular, it draws attention to the specific mid-range logic of capitalism’s uneven development across countries unleashed by the neoliberal model of development.

At the same time, this article’s revised conceptualisation of model of development brings into the foreground the creative knowledge or praxis aspect that is central to making a better world. The socially progressive ideal model of development imagines a framework of collaborative positive-sum nationalism between cooperation states in a virtuous relation with universally stable and socially progressive modes of local production**.** The autocentric and pro-labour counter-regulatory emphasis of the Keynesian-led Fordist model of development resonates with the ideal model, but for a post-neoliberal model to be progressive, more than indirect constraint of capital’s power over the production process is required**.** In the present, capital’s production prerogative, expressed as a mutually reinforcing global competition-driven dynamic of profit and power, is systematically decimating locally sustainable self-sufficiency in agriculture and manufacturing, and is the power to which are being sacrificed social solidarity and people’s material needs. A post-neoliberal counter-hegemonic model of development needs to directly contest global production networks and zero-sum competition between countries by offering a stable and progressive localised alternative energised by international cooperation. Such a project requires the ideological inspiration of an alternative globalisation ethos of international mutual support and solidarity. This ethos needs to be politically reinforced by democratised institutions of global governance that are focused on the design of a model of development in which sustainable efficient local accumulation for each country can virtuously interact with its achievement for all countries.

## 1ar

### Case

#### POA action against for-profit colleges thumps DAs and proves POA can be revived

Stern, 10-11-2021, John E. Villafranco & Bezalel A. Stern. "Pushing the Boundaries of Existing Authority: Section 19 Post-AMG Capital Management," Ad Law Access, <https://www.adlawaccess.com/2021/10/articles/pushing-the-boundaries-of-existing-authority-section-19-post-amg-capital-management/> -- Iowa

It was an extraordinary week as the FTC continued to press the frontier of the post-AMG Capital Management landscape. On Friday, the Commission, making good on promises to creatively explore all of its options for enforcement, announced by a 3-2 vote that it had reached a settlement pursuant to Section 19 of the FTC Act with Resident Home LLC and its owner Ran Reske. At issue were allegedly false claims that the company’s imported mattresses are made from materials fully manufactured in the United States. As part of the settlement, Resident Home and Reske agreed to pay $753,000. This action follows the FTC’s announcement earlier in the week that it had notified 70 for-profit higher educational institutions that it intends to make use of its long dormant Penalty Offense Authority. As contemplated by the FTC, the Penalty Offense Authority would allow the Agency to obtain civil penalties when institutions make misrepresentations about their programs, and job and earnings prospects.

#### Antitrust is popular – at worst zero link

it has support from the public, Congress, media, and interest groups.

Robert Manduca 19, Assistant Professor, Sociology, University of Michigan, "Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities," The ANNALS of the American Academy Political and Social Science, Vol. 685, Issue 1, 09/10/2019, SAGE.

Among possible federal regional development policies, reinvigorated antitrust enforcement stands out in several ways that make its establishment as a policy more likely. First, it is salient and familiar to voters. Most voters have encountered monopolies in their daily lives, whether they be airlines, utilities, internet providers, or tech platforms. Almost everyone has had a negative experience with a company too large or omnipresent to avoid in the future. Breaking such companies up offers a response to angry customers who would otherwise not have any way to express their frustration.

Moreover, aggressive antitrust enforcement has a long history in the United States, and it was widely practiced within the lifetimes of many voters. It has been a stated principle of capitalist economics since Adam Smith (Smith 1827), albeit one that has often been honored in the breach. In the United States specifically, antitrust enforcement fits with a longstanding American skepticism toward “bigness” (Lemann 2016; Rosen 2016). Perhaps for these reasons, the current antitrust movement has managed to find support among both liberals and conservatives. A poll conducted in September 2018, for instance, found that 65 percent of Americans—and 54 percent of Trump voters—think the government “should do more to break up corporate monopolies” (Dayen 2018). And leading proponents of antitrust enforcement in Congress and the media are found on both sides of the aisle (Crane 2018).

Perhaps more important than its broad appeal among voters, antitrust enforcement has the potential to attract support, or at least avoid opposition, from a wide range of organized interest groups. Of particular note is the potential for corporate ambivalence on this issue. Unlike many progressive economic policies, many companies—including quite powerful ones—stand to benefit from a reinvigorated antitrust regime. Yelp, for instance, has been a major critic of Google’s abuse of its search monopoly for several years (Dougherty 2017). When AT&T attempted to acquire T-Mobile in 2010, some of the most vocal opposition came from competitor Sprint (Singel 2011), though that did not stop Sprint from initiating its own bid for T-Mobile recently. Even Walmart, the largest retailer in the country, recently joined with other brick and mortar retailers to call on the Federal Trade Commission (FTC) to examine “persistent oligopolies in other parts of the retail system,” specifically singling out the market power of Amazon and Google (Dodge 2019). Companies like these could potentially become strong supporters of specific antitrust enforcement actions or a new antitrust movement in general.

### K

#### Cap’s sustainable thanks to dematerialization and the alt’s transition fails.

McAfee, 20—cofounder and codirector of the MIT Initiative on the Digital Economy at the MIT Sloan School of Management, former professor at Harvard Business School and fellow at Harvard’s Berkman Center for Internet and Society (Andrew, “Why Degrowth Is the Worst Idea on the Planet,” <https://www.wired.com/story/opinion-why-degrowth-is-the-worst-idea-on-the-planet/>, dml)

Over that same span, an unexpected and encouraging pattern has emerged: The world's richest countries have learned how to reduce their footprint on Earth. They're polluting less, using less land and water, consuming smaller amounts of important natural resources, and doing better in many other ways. Some of these trends are also now visible in less affluent countries.

However, many in the degrowth movement seem to have trouble taking yes for an answer. The claims I just made are widely resisted or ignored. Some say they’ve been debunked. Of course, debate over empirical claims like these is normal and healthy. Our impact on our planet is hugely important. But something less healthy is at work here. As Upton Sinclair put it, “It is difficult to get a man to understand something when his salary depends upon his not understanding it.” Some voices in the conversation about the environment seem wedded to the idea that degrowth is necessary, and they are unwilling or unable to walk away from it, no matter the evidence.

But evidence remains a powerful way to persuade the persuadable. The one thing everyone agrees on is that the last 50 years have been a period of growth, not degrowth. In fact, growth has never been faster, except for the 25-year rebuilding period after World War II. The population and economic growth rates of the past half-century are remarkably fast by historical standards. Between 1800 and 1945, for example, the world’s economy grew less than 1.5 percent per year, on average. Between 1970 and 2019, that average increased to almost 3.5 percent.

It's natural to assume that, as this growth continued, every nation’s planetary footprint would only increase. After all, as people become more numerous and prosperous they consume more, and producing all the goods and services they consume uses up resources, takes over ecosystems, and generates pollution. The logic seems ironclad that our gains have to be the environment’s losses.

Easing Pollution, Not Exporting It

In some important areas, however, a very different pattern emerged after 1970: Growth continued, but environmental harm decreased. This decoupling occurred first with pollution, and first in the rich world. In the US, for example, aggregate levels of six common air pollutants have declined by 77 percent, even as gross domestic product increased by 285 percent and population by 60 percent. In the UK, annual tonnage of particulate emissions dropped by more than 75 percent between 1970 and 2016, and of the main polluting chemicals by about 85 percent. Similar gains are common across the highest-income countries.

How were these reductions achieved? The two possibilities are cleanup and offshoring. Either rich countries figured out how to reduce their “air pollution per dollar” so much that overall pollution went down even as their economies grew, or they sent so much of their dirty production overseas that the air at home got cleaner. The first of these paths reduces the total burden of human-caused pollution; the second just rearranges it.

The evidence is overwhelming that rich countries cleaned up their air pollution much more than they outsourced it. For one, a great deal of air pollution comes from highway vehicles and power plants, and rich countries haven’t outsourced driving and generating electricity to low-income ones. In fact, high-income countries haven't even offshored most of their industry. The US and UK both manufacture more than they did 50 years ago (at least until the Covid-19 pandemic sharply reduced output), and Germany has been a net exporter since 2000 while continuing to drive down air pollution. The rest of the world has been exporting its manufacturing pollution to Germany (to use degrowthers’ phrasing), yet Germans are breathing cleaner air than they were 20 years ago.

Rich countries have reduced their air pollution not by embracing degrowth or offshoring, but instead by enacting and enforcing smart regulation. As economists Joseph Shapiro and Reed Walker concluded in a 2018 study about the US, “changes in environmental regulation, rather than changes in productivity and trade, account for most of the emissions reductions.” Research about the cleanup of US waters also concludes that well-designed and enforced regulations have successfully reduced pollution.

It is true that the US and other rich countries now import lots of products from China and other nations with higher pollution levels. But if there were no international trade at all, and rich countries had to rely exclusively on their domestic industries to make everything they consume, they’d still have much cleaner air and water than they did 50 years ago. As a 2004 Advances in Economic Analysis and Policy study summarized: “We find no evidence that domestic production of pollution-intensive goods in the US is being replaced by imports from overseas.”

The rich world’s success at decoupling growth from pollution is an inconvenient fact for degrowthers. Even more inconvenient is China's recent success at doing the same. China’s export-led, manufacturing-heavy economy has been growing at meteoric rates, but between 2013 and 2017 air pollution in densely populated areas declined by more than 30 percent. Here again the government mandated and monitored pollution declines and so decoupled growth from an important category of environmental harm.

Prosperity Bends the Curve

China's progress with air pollution is heartening, but it's not surprising to most economists. It's a clear example of the environmental Kuznets curve (EKC) in action. Named for the economist Simon Kuznets, EKC posits a relationship between a country's affluence and the condition of its environment. As GDP per capita rises from an initial low level, so too does environmental damage; but as affluence continues to increase, the harms level off and then start to decline. The EKC is clearly visible in the pollution histories of today's rich countries, and it's now taking shape in China and elsewhere.

Also consider air pollution death rates around the world. As the invaluable website Our World in Data puts it, “Rates have typically fallen across high-income countries: almost everywhere in Europe, but also in Canada, the United States, Australia, New Zealand, Japan, Israel and South Korea and other countries. But rates have also fallen across upper-middle income countries too, including China and Brazil. In low and lower-middle income countries, rates have increased over this period.”

The EKC is a direct refutation of a core idea of degrowth: that environmental harms must always rise as populations and economies do. It's not surprising that today's degrowth advocates rarely discuss the large reductions in air and water pollution that have accompanied higher prosperity in so many places around the world. Instead, degrowthers now focus heavily on one kind of pollution: greenhouse gas emissions.

The claims made are familiar ones: that any apparent reductions in greenhouse gas emissions in rich countries are due to offshoring rather than actual decarbonization. Thanks to the Global Carbon Project, we can see if this is the case. GCP has calculated “consumption-based emissions” for many countries going back to 1990, taking into account imports and exports, yielding the greenhouse gas emissions embodied in all the goods and services consumed in each country each year.

For several of the world's richest countries, including Germany, Italy, France, the UK, and the US, graphs of consumption-based carbon emissions follow the familiar EKC. The US, for example, has 22reduced its total (not per capita) consumption-based CO2 emissions by more than 13 percent since 2007.

These reductions are not mainly due to enhanced regulation. Instead, they've come about because of a combination of tech progress and market forces. Solar and wind power have become much cheaper in recent years and have displaced coal

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for electricity generation. Natural gas, which when burned emits fewer greenhouse gases per unit of energy than does coal (even after taking methane leakage into account), has also become much cheaper and more abundant in the US as a result of the fracking revolution.

To ensure that these greenhouse gas declines continue to spread and accelerate, we should apply the lessons we've learned from previous pollution reduction success. In particular, we should make it expensive to emit carbon, then watch the emitters work hard to reduce this expense. The best way to do this is with a carbon dividend, which is a tax on carbon emissions where the revenues are not kept by the government but instead are rebated to people as a dividend. William Nordhaus won the 2018 Nobel Prize in economics in part for his work on the carbon dividend, and an open letter advocating its implementation in the US has been signed by more than 3,500 economists. It's an idea whose time has come.

How We Learned to Lighten Up

Tech progress and price pressure aren't just leading to the demise of coal. They're also causing us to exploit the planet less in many other important ways, even as growth continues. In other words, EKCs are not just about pollution any more.

A good place to start examining this broad phenomenon of getting more from less is US agriculture, where we have decades of data on both outputs—crop tonnage—and the key inputs of cropland, water, and fertilizer. Domestic crop tonnage has risen steadily over the years and in 2015 was more than 55 percent higher than in 1980. Over that same period, though, total water used for irrigation declined by 18 percent, total cropland by more than 7 percent. That is, over that 35-year period, US crop agriculture increased its output by more than half while giving an area of land larger than Indiana back to nature and eventually using a Lake Champlain less water each year. This was not accomplished by increasing fertilizer use; total US fertilizer consumption in 2014 (the most recent year for which data are available) was within 2 percent of its 1980 level.

The three main fertilizers of nitrogen, potassium, and phosphorus (NKP) are an interesting case study. Their total US consumption (once other uses in addition to agriculture are taken into account) has declined by 23 percent since 1980, according to the United States Geological Survey. Yet some within the degrowth movement find ways to argue that these declines are also an illusion. These materials thus serve to clearly illustrate the differences in methodology, evidence, and worldview between ecomodernists like myself and degrowthers.

The USGS tracks annual domestic production, imports, and exports of NKP and uses these figures to calculate “apparent consumption” each year. Consumption of each of the three resources has declined by 16 percent or more from their peaks, which occurred no later than 1998. This seems like a clear and convincing example of dematerialization—getting more output from fewer material inputs.

As I argue in my book More From Less, dematerialization doesn’t happen for any complicated or idiosyncratic reason. It happens because resources cost money that companies would rather not spend, and tech progress keeps opening up new ways to produce more output (like crops) while spending less on material inputs (like fertilizers). Modern digital technologies are so good at helping producers get more from less that they're now allowing the US and other technologically sophisticated countries to use less in total of important materials like NKP.

Forest products provide another clear example of dematerialization in the US. Total annual domestic consumption of paper and paperboard peaked in 1999, and of timber in 2002. Both totals have since declined by more than 20 percent. Could these be mirages caused by offshoring that’s not properly captured? That’s highly unlikely, as the country is now onshoring more than it’s offshoring. The US has been a net exporter of forest products since 2009 and is now the world’s largest exporter of these materials.

Is the US economy also dematerializing its use of metals? Probably, but it’s hard to say for sure. The USGS tallies do show dematerialization in steel, aluminum, copper, and other important metals. But these figures don’t include the metals contained in imports of finished goods like cars and computers. America is a net importer of manufactured goods, so it could be that we’re using more metal year after year, but that much of this consumption is “hidden” from official statistics because of imports of heavy, complex products. However, my estimates indicate that this is extremely unlikely and that the country is in fact now reducing its overall consumption of metals.

Constructing a Weak Argument

Degrowth exponent Jason Hickel responds to this broad evidence of dematerialization by making once again the shopworn argument that there are no real environmental gains; there’s only globalization of harms. Hickel has argued repeatedly that once offshoring is properly taken into account, dematerialization vanishes. How can this be, when tallies take into account imports and exports of raw materials like NKP, timber, and paper? Because, he contends, they don't take into account the true “material footprint” of production around the world.

At this point the degrowth argument departs from reality. I mean literally. As “The Material Footprint of Nations” (the main paper Hickel cites) states, material footprint measures do “not record the actual physical movement of materials within and among countries.” Instead, they’re derived from a “calculation framework [that] … enumerates the link between the beginning of a production chain (where raw materials are extracted from the natural environment) and its end.”

Material footprint models estimate the total weight of all the materials disturbed by humans around the world as they produce the goods they eventually consume. All of the ores mined to make metal, the rock quarried to make gravel, the sand scooped up to make glass and microchips—all of these are estimated by country by year in the material footprint calculation framework.

A nation’s material footprint, then, is always higher than its direct material consumption (DMC). This is straightforward enough. What’s puzzling is that according to “The Material Footprint of Nations,” some rich countries are seeing their footprint go up even as their consumption goes down. The paper shows that many countries are now dematerializing. DMC has been trending downward for some time in the US, UK, and Japan and may recently have peaked for the European Union and OECD as a whole. Yet in all these cases, the material footprint continues to rise.

How can this be? It’s not because the material footprint models do a better job than the USGS of accounting for the metals and other materials in finished goods imports. The technical annex for the global material flows database notes that, as is the case with the USGS tallies, “complex manufactured items are largely excluded.” Instead, the paper notes, “the main reason in most cases was increased indirect use of (dependency on) construction materials.”

This is problematic, because those materials are so poorly tracked. As the appendix states, “Many countries have no data on extraction of non-metallic minerals primarily used for construction … When they are available, they are often unreliable, partial, and underreported.” It’s a poor strategy to use sparse, low-quality data to overturn conclusions based on uniform, high-quality data, yet this is what Hickel is doing when he argues that material footprint calculations show dematerialization is an illusion.

There’s one other serious problem with this argument. It’s based largely on the estimated “raw material equivalents” of Chinese exports of construction minerals, yet China is not at all a big exporter of these minerals. Instead, China’s main exports are electrical and mechanical machinery, plastics, furniture, apparel, and vehicles. None of these contain a lot of sand, gravel, stone, or clay.

So then how do such huge quantities of these and other construction minerals end up somehow being counted among China’s exports? Because China is building a lot of factories, railroads, highways, and other industrial infrastructure each year. The materials footprint calculation framework estimates how much tonnage of construction minerals all this building requires, then allocates about one third of this tonnage to exports. So by this logic, the smartphones and solar panels the US imported from China in, say, 2018 “contain” some of the stone and gravel used to build up China that year. By that same logic, if my neighbors bring me a cake the same year they renovate their house, then my consumption of lumber, drywall, and copper pipe goes up as soon as I have a slice.

Hickel doesn’t stand on any firmer ground when he moves from conclusions to recommendations. He has often claimed that 50 billion tons is the maximum weight of global resource extraction that Earth can sustainably handle and that we’re already well past this limit. In the face of this alleged crisis, he maintains that “the only fail-safe strategy is to impose legally binding caps on resource use and gradually ratchet it back down to safe levels.” However, the paper he cites to support his views contains a frank admission: “There is still no hard scientific evidence of causal relationship between human-induced resource flows and the possible breakdown of life-supporting functions at continental or global scale from which … targets [like a 50 billion ton limit] could directly be derived.” Before taking the unprecedented step of setting up a central resource planning bureaucracy, it doesn’t seem like too much to ask for hard scientific evidence that it’s actually necessary.

Let’s Keep Climbing

Throughout our history, we humans have been climbing a difficult path toward longer, healthier, more prosperous lives. As we climbed that path, we turned the environment around it brown and gray. Our mania for growth was in many ways bad news for the planet we all live on.

Recently, however, we have figured out how to make our path a green one, how to continue to grow while reducing our impact on Earth. The world’s richest countries are also putting more land and water under conservation, reintroducing native species into ecosystems from which they had been hunted into oblivion, and improving Earth in many other ways.

For reasons that I don't understand well, and that I understand less the more evidence I look at, degrowthers want to make us turn around and start walking back down the path, away from higher prosperity. Their vision seems to be one of a centrally planned, ever-deepening recession throughout the rich world for the sake of the environment.

Thanks to Covid-19, we have an inkling of how this would feel. A “degrowth recession” wouldn't have the virus’ deaths and sickness, and it wouldn't require us to practice social distancing. But it would have all the economic contractions’ job losses, business closures, mortgage defaults, and other hardships and uncertainties. And it would have them without end—after all, growth can't be allowed to restart. Corporate and government revenue would decrease permanently, and therefore so would innovation and R&D.

How many of us would be willing to accept all of this in exchange for somewhat less pollution and resource use? To sharpen the question, how many of us would be willing to accept this recession if it wasn’t necessary—if it were clear that we could get environmental improvements while continuing to grow and prosper?

The ecomodernist argument is that that is in fact clear. Unlike the degrowth argument, it's supported by a great deal of evidence. What's at least important is that it will be supported by a great deal of the world's people, who will eagerly sign up to climb our new green path to prosperity.

#### No overaccumulation---dematerialization is globally true!

Lokshin, 21—Lead Economist with the Office of the Chief Economist for Europe and Central Asia, World Bank (Michael, “Dematerialization, degrowth, and climate change agenda,” <https://blogs.worldbank.org/developmenttalk/dematerialization-degrowth-and-climate-change-agenda>, dml)

These are not isolated examples of the intensity of modern agriculture. The total crop tonnage in the United States tripled since the 1970s, but the cropland area shrunk from about 472 million to 390 million hectares by the 2010s, saving an area three times larger than the United States’ total urban area. Productivity gains in animal agriculture dramatically reduced the environmental footprint of livestock production in the US. Similar reductions in farmland accompanied by large increases in output are seen in countries of Europe, Latin America, and East Asia. The global footprint of agriculture has “started decreasing in size during the past two decades.”

US agriculture, having a positive trade balance, consumes 25 percent less fertilizer than it did in 1999, and the volume of water used for irrigation has decreased by 22 percent since then. Raising the average world farm productivity to the levels seen among US farmers would allow enough food to be grown to feed 10 billion people an American-type diet on half the land currently used for farming. The land released would exceed the area of Amazonia (7 million square kilometers).

Most developed countries are now in the stage of “forest transition,” when a country gains forest area. Europe is greener now than it was 100 years ago; the size of US forest resources remained constant over the 20th century and increased over the last decade. China is adding almost 2 million hectares (about 1 percent) of forests a year. And rates of global forest loss have been slowing since 1980.

At the same time, forestry has become more productive. Shifting wood harvest from the north to the southeast, where the forests are twice as productive, decreased the United States’ logged area by 3.1 million hectares. Forest plantations are much more productive than unmanaged forests: Brazilian eucalyptus plantations provide at least 10 times more timber per hectare per year than northern forests do. The consumption of wood is also declining. Ships and railroads are no longer built of wood. Globally, the use of wood for fuel and construction dropped sharply since the 1960s; the global demand for paper has been stagnant, decreasing across the developed countries over the last two decades. The footprint of the developed world on the planet, as an area occupied by human activities, is shrinking.

There has also been a marked decline in US consumption of the most economically important minerals. According to the US Geological Survey (USGS), since the end of the 20th century, US consumption of metals has fallen by 15 percent for steel, 30 percent for aluminum, and 40 percent for copper. The decline reflects increased efficiency. Aluminum soda cans are six times lighter than they were in the early 1960s, and cars weigh 30 percent less than they did. The introduction of high-strength steel framing, reinforced concrete, and stronger and lighter glass have reduced consumption of cement, stone, sand, and gravel in construction. US energy use has plateaued for more than a decade. Similar trends are observed in the UK, which began to reduce its consumption of physical resources between 2001 and 2003. Even individual caloric intake is falling in the UK, mainly because of the decline in most environmentally damaging meat consumption.

Off-shoring could affect the local consumption of national resources. Country statistics, which rely on a territorial perspective of material use, might fail to account for the global patterns of material consumption. What looks like “green growth” might be just an artifact of globalization. For example, some intermediate metal consumption might be hidden in imported finished merchandise like cars or trucks. While these are valid concerns, the reduction of materials used in agriculture, forestry, and construction appears to be largely isolated from such measurement issues. Actual consumption of these materials in developed countries is dropping; whether the material is imported or not is irrelevant.

The concept of dematerialization refers to an absolute or relative reduction in the quantity of materials required to serve economic functions in society. Unlike the traditional `end-of-pipe’ measures, dematerialization is an input-oriented strategy intended to reduce environmental damage at the source. The production and consumption of products, the so-called “industrial” and “social metabolisms,” could harm the environment. Reducing the volume of material and energy used to produce goods and services diminishes the environmental impact. But in contrast with the degrowth movement, which is based on the premise that environmental damage rises with population and economic growth, the proponents of dematerialization argue that societal metabolism might exhibit an inverted U-shaped relationship with economic growth

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. A country’s environmental impact rises as its national income grows but then declines after a (very) high level of GDP is reached. Similar argument is made by the recent literature on growth and pollution conversions.

If we believe these trends, the reduction (both relative and absolute) of material consumption observed in developed countries might have important policy implications. Growth in developed countries might not necessarily cause environmental distress and natural resource depletion. Advanced economies may be able to decouple economic growth and growing volumes of resource use. The new technologies are making the economic growth in developing countries greener and less material-intensive compared to the growth the now rich countries experienced at comparable income levels decades ago.

Several factors drive dematerialization. Technological progress improves efficiency and reduces the consumption of resources in manufacturing. The digital economy “swaps bits for atoms,” replacing physical goods and services with their digital versions; 3D printing shifts technologies toward custom-designed components with little or no waste. Competition encourages companies to cut costs and use less materials. Citizens and governments are increasingly putting premiums on the environment, embracing policies to reduce social metabolism.

#### Capitalism creates peace---economic development, similar interests, and globalization all disincentivize escalation.

Erik Gartzke 07. Erik Gartzke is Professor of Political Science and Director of the Center for Peace and Security Studies (cPASS) at the University of California, San Diego, where he has been a member of the research faculty since 2007. “The Capitalist Peace.” American Journal of Political Science , Jan., 2007, Vol. 51, No. 1 (Jan., 2007), pp. 166-191. https://www.jstor.org/stable/4122913

Capitalism as Pacifism

The security dilemma implies that insecurity is a durable facet of international affairs. War can result as each country fears for its own security, even when neither state in- tends aggression (Glaser 1997; Jervis 1978). Yet, insecurity is predicated on the expectation that at least some countries are revisionist powers. Even "pessimistic" conceptions of world affairs appear more sanguine as we relax the assumption that insecurity is ubiquitous and immutable. **The task before peace theorists, then, is to identify when and how nations are liberated from the security dilemma.** The argument here is that **capitalism resolves insecurity by creating "powerful pacifists"** (Lake 1992), countries possessing military strength ensuring that they are largely free from foreign influence or domination, but equally that they lack incentives to act aggressively abroad, at least under certain circumstances.26

Warfare results from two stages of interaction. First, states must possess the willingness and ability to compete. Second, states must be unable, or unwilling, to re-solve differences through diplomatic means.27 Capabilities constrain weak, distant states (Belize and Burundi do not fight each other), but weakness alone is often insufficient, given the relativity of power. Indeed, weakness is an attractive attribute in a target. For similar reasons, an unwillingness to fight must also be mutual. For the purposes of exposition, imagine that the motives for war are divided between zero-sum (private goods) and nonzero- sum (goods with public properties). Private goods competition involves things like attempts to conquer or control material resources (land, labor, minerals).28 Competition can also occur over efforts to influence or compel policies (norms, alignments, leaders).29 The allocation of resources is inherently conflictual; two states that claim the same territory must compromise, fight, or delay a decision. The allocation of policies may or may not generate significant friction, depending on whether, or to what ex- tent, state objectives are compatible. While it would be odd to speak of countries as having substantially compatible interests when drawing a common geographic boundary (cf. Collins and Lapierre 1997; Holbrooke 1998), it would be strange not to consider the existence (or absence) of common cause in assessing such topics as ideology, norm enforcement, terrorism, or the organization of the global or regional economy.

**At least three mechanisms associated with capital- ism are capable of addressing the security dilemma and mitigating the causes of war**. States with similar policy goals have no need to fight to establish policy since little can be gained from victory, or lost in defeat. States al- ways have dissimilar interests when it comes to resource or territorial issues, but changes in modern economies often make these differences trivial, as resources can be had more easily through commerce. There can be no basis for agreement between two passersby about who should collect a quarter lying on the sidewalk, but fighting over 25 cents makes little sense. If, however, a sack of $100 bills falls from the sky, landing on the quarter, then it is entirely possible that a fight will ensue over who can collect their bag of riches. Yet, even the sack of money need not lead to violence if the passersby can agree on how to di- vide up the wind fall. States willing and able to fight can still avoid a contest if competitors are able to foresee the likely consequences of fighting and identify appropriate bargains.

Economic Development

Conflict is inherent in the allocation of resources among two or more parties, but need not result in violence if the stakes are literally "not worth fighting over" or when bargains preempt fighting. Imagine two countries attempting to divide up a bundle of goods (resources, territory). Comparison of available allocations is zero-sum; any shift from one allocation to another benefits one country only at the expense of the other country. In this framework, **a mutual preference for peace requires that the value of winning be small relative to the cost of fighting** (Morrow 1989; Powell 1999).

Peace advocates have long championed factors thought to **make war prohibitively expensive**

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. Cobden, for example, claimed optimistically that "Should war break out between two great nations I have no doubt that the immense consumption of material and the rapid destruction of property would **have the effect of very soon bringing the combatants to reason or exhausting their resources**" ([1867] 1903, 355). Yet, if war is a process where competitors inflict costs on one another, making war more expensive will affect who wins, or how long fighting lasts, but not whether a contest occurs (Levy and Morgan 1984)

War costs are also endogenous; if fighting is prohibitive, countries will make themselves a "nice little war."'3 In- creasing the cost of fighting, or alternately increasing the benefits of peace-even when possible-shape what each actor will accept in lieu of fighting, but do not tell us which bargains are forged before warfare, and which after. Even the prospect of nuclear annihilation did not deter disputes during the cold war (Schelling 1960).

If, on the other hand, the value of resources in dispute is small or varies with ownership, then states can be disinclined to fight. Nations have historically used force to acquire land and resources, and subdue foreign populations. War or treaties that shifted control of territory changed the balance of resources, and power. Sovereigns, and to a lesser extent citizens, prospered as the state ex- tended its domain. Development can alter these incentives if modern production processes de-emphasize land, minerals, and rooted labor in favor of intellectual and financial capital (Brooks 1999, 2005; Rosecrance 1996). If the rents from conquest decline, even as occupation costs increase, **then states can prefer to buy goods rather than steal them.**31 As the U.S. invasion of Iraq illustrates, occupying a reluctant foreign power is extremely labor intensive. If soldiers are expensive, then nations can be better off "outsourcing occupation" to local leaders and obtaining needed goods through trade.32

At the same time that development leads states to prefer trade to theft, developed countries also retain populations with common identities, cultural affinities, and political, social, and economic ties. These states may be reluctant to conquer their neighbors, but they are equally opposed to arbitrary contractions of their borders. Residents of Gibraltar, for example, prefer British rule, even while Spain, which has fought over this lump of rock for centuries, is today unwilling to provoke a war.33 The com- bination of a lack of motive for territorial expansion and continued interest in serving and protecting a given population ensures a decline in conflict among states with developed economies, especially where developed countries are geographically clustered (Gleditsch 2003). Since most territorial disputes are between contiguous states (Vasquez 1993), I hypothesize that developed, contiguous dyads are more powerful than either developing or noncontiguous dyads.34

HI: **Development leads contiguous dyads to be less likely to experience conflict.**

While development decreases incentives for territorial aggrandizement, it greatly enhances the technological ability of states to project power. Nations with ships and aircraft can engage in distant disputes inconceivable for poor countries. Development may also lead to increased willingness to pursue policy conflicts. If development is clustered and neighbors no longer covet territory, capabilities can be devoted to pursuing the nation's secondary or tertiary interests. Distributed production networks and greater economic, social, or political integration naturally also create incentives to seek to influence the foreign policies of other countries, sometimes through force. In contrast to the blanket assertion of classical political economists, I expect that development actually leads countries to be more likely to engage in conflicts far from home.35 Iraq invaded and occupied Kuwait in August 1990, intent on securing its "nineteenth province" and wresting Kuwaiti oil wealth from local leaders. The United States and its Coalition allies also invaded Kuwait, not to conquer and keep, but to return the Emirate to its previous leaders. While Coalition objectives were couched in moralistic rhetoric, the United States was clearly concerned about who governed Kuwait, while preferring not to govern the country itself. Similarly, European colonial powers have repeatedly intervened in Africa, Asia, and elsewhere to prop up or dethrone regimes, impose settlements, or otherwise meddle in the affairs of developing countries

Similar Interests

There is a second salient difference between the two sets of motives for invading Kuwait. Suppose that Iraq had the conquest of Kuwait would have had to be divided formed an alliance, like the U.S. Coalition. Spoils from up in some manner. Each new member of an Iraqi-led alliance would dilute the spoils, diminishing each member's "slice." By going it alone, Iraq kept all of the wealth of Kuwait to itself, at least for a little while. In contrast, U.S. objectives were not much diluted by the size of its coalition. Since there was no resource "pie" to distribute, the size of the Coalition was not a hindrance in allocating benefits, though reasons for reconstituting Kuwait differed markedly among the members, another source of tension that could have led to conflict (Baker 1995).

Students of war often treat state interests as largely uniform, and largely incompatible. International com- petition forces nations-large and small--to be security seekers (Waltz 1959, 1979), or to lust after power (Mearsheimer 2001). A different conception of interests comes from utilitarianism (Bentham [1781] 2000; Mill [1861] 1998) and rational theory (Black 1948; Downs 1957; Riker 1963), one in which interests are variable and are often logical primitives. Many countries may share to a greater or lesser extent compatible worldviews or objectives (cf. Keohane and Nye 1989). **Conversely, strong policy differences can lead to conflict, and possibly to war** (Bueno de Mesquita 1981, 1985, 1989; Morrow 1985). For example, World War II and the cold war were "ideological contests" which pitted coalitions of countries with in- compatible visions of an appropriate world order against each other. Since policy interests vary, while interests over resource allocations are more nearly constant (in their fundamental incompatibility), policy conflict should also vary. The range of policy issues over which state preferences might vary is literally innumerable. This article adopts an axiomatic approach, making the broadest theoretical claim, and then using a policy interest index to operationalize interest affinity in testing.

Globalization of Capital

**While policy differences or resource competition can generate conflict, they need not produce contests if states can resolve differences diplomatically.** Liberal theory emphasizes the pacifying effect of cross-border economic linkages. Markets are arguably most relevant as mechanisms for revealing information, however, rather than for adding to the risks or costs of fighting (Gartzke and Li 2003; Gartzke, Li, and Boehmer 2001). Competition creates incentives to bluff, to exaggerate capabilities or resolve. Anarchy makes it difficult for states to compel honest answers from one another except through the threat or imposition of harm. Contests inform by being costly, forcing actors to choose between bearing the burden of competition and backing down. Of course, one can signal by "burning money," expending valuable resources autonomously, but such acts create a relative as well as absolute loss. Tactics that impart costs only as a byproduct of imposing costs on an opponent can produce relative gains, while tactics such as burning money only harm the initiator. States with economies integrated into global markets face autonomous investors with incentives to reallocate capital away from risk. A leader's threats against another state become costly when threats spark market repercussions. Participants learn from watching the reactions of leaders to the differential incentives of economic cost and political reward. **Two economically integrated states can more often avoid military violence**, since market integration combines mechanisms for revelation and coercion. **An economically integrated target can be coerced by the threat of losing valuable exchange, but a nonintegrated initiator cannot make its threats credible or informative. Conversely, a globalized initiator can signal but has little incentive to hamper its own markets when a nonintegrated target does not suffer (Gartzke 2006b).**

#### Growth solves inequality---the world’s getting better---poverty and literacy rates prove.

Dylan Matthews 19. Senior Correspondent for Vox. "Bill Gates tweeted out a chart and sparked a huge debate about global poverty." Vox. 2-12-2019. https://www.vox.com/future-perfect/2019/2/12/18215534/bill-gates-global-poverty-chart

So the share of humanity in extreme poverty — measured at either a $1.90 a day or $7.40 line — is falling. People below either line are also doing better in terms of poverty; they have more money, are spending more, etc. But there’s more to life than measurable consumption, ending $7.40-a-day poverty will take many many decades, and there’s more we could do to speed up that process.

While not included in the Hickel-Kenny consensus document, I would note that Hickel agrees with Gates, Pinker, Roser, etc. that some material living standards outside of poverty and consumption have improved in recent decades. According to the UN Population Division’s numbers (compiled by Our World in Data, naturally), life expectancy in China rose from only 43 years in 1950 to 76 in 2015 (in a fact convenient to no one but Bob Avakian’s politics, it even grew while Mao was killing tens of millions of people). India’s life expectancy grew from 35 to 68 over the same period; in the Democratic Republic of Congo, it grew from 38 to 59. Likewise, literacy rates and years of schooling have increased.

“Yes, of course I agree that life expectancy has increased and child mortality has decreased,” Hickel wrote in an email to me. “Those data are not controversial, although I differ from Gates and Pinker in my assessment of the causes of those improvements. … As for the graphs on literacy and years of schooling: the data are accurate, but I believe these are very narrow indicators of education, and that a broader, more holistic view reveals a more complicated story.”

In his letter to Pinker, too, Hickel agrees that life expectancy and education have seen gains. “In your work you have invoked gains in life expectancy and education as part of a narrative that seeks to justify neoliberal globalization,” Hickel writes. “But ... that’s intellectually dishonest. What contributes most to improvements in life expectancy is in fact simple public health interventions (sanitation, antibiotics, vaccines), and what matters for education is, well, public education.”

So while there is obviously vociferous disagreement about what political narrative the facts on life expectancy and education supports, everyone appears to agree that the world has made major progress on both.

#### Innovation’s sustainable

Economist 13 — Economist, Has the ideas machine broken down?, 2013, [www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing](http://www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing)

The fountains of paradise

Closer analysis of recent figures, though, suggests reason for optimism. Across the economy as a whole productivity did slow in 2005 and 2006—but productivity growth in manufacturing fared better. The global financial crisis and its aftermath make more recent data hard to interpret. As for the strong productivity growth in the late 1990s, it may have been premature to see it as the effect of information technology making all sorts of sectors more productive. It now looks as though it was driven just by the industries actually making the computers, mobile phones and the like. The effects on the productivity of people and companies buying the new technology seem to have begun appearing in the 2000s, but may not yet have come into their own. Research by Susanto Basu of Boston College and John Fernald of the San Francisco Federal Reserve suggests that the lag between investments in information-and-communication technologies and improvements in productivity is between five and 15 years. The drop in productivity in 2004, on that reckoning, reflected a state of technology definitely pre-Google, and quite possibly pre-web. Full exploitation of a technology can take far longer than that. Innovation and technology, though talked of almost interchangeably, are not the same thing. Innovation is what people newly know how to do. Technology is what they are actually doing; and that is what matters to the economy. Steel boxes and diesel engines have been around since the 1900s, and their use together in containerised shipping goes back to the 1950s. But their great impact as the backbone of global trade did not come for decades after that. Roughly a century lapsed between the first commercial deployments of James Watt’s steam engine and steam’s peak contribution to British growth. Some four decades separated the critical innovations in electrical engineering of the 1880s and the broad influence of electrification on economic growth. Mr Gordon himself notes that the innovations of the late 19th century drove productivity growth until the early 1970s; it is rather uncharitable of him to assume that the post-2004 slump represents the full exhaustion of potential gains from information technology. And information innovation is still in its infancy. Ray Kurzweil, a pioneer of computer science and a devotee of exponential technological extrapolation, likes to talk of “the second half of the chess board”. There is an old fable in which a gullible king is tricked into paying an obligation in grains of rice, one on the first square of a chessboard, two on the second, four on the third, the payment doubling with every square. Along the first row, the obligation is minuscule. With half the chessboard covered, the king is out only about 100 tonnes of rice. But a square before reaching the end of the seventh row he has laid out 500m tonnes in total—the whole world’s annual rice production. He will have to put more or less the same amount again on the next square. And there will still be a row to go. Erik Brynjolfsson and Andrew McAfee of MIT make use of this image in their e-book “Race Against the Machine”. By the measure known as Moore’s law, the ability to get calculations out of a piece of silicon doubles every 18 months. That growth rate will not last for ever; but other aspects of computation, such as the capacity of algorithms to handle data, are also growing exponentially. When such a capacity is low, that doubling does not matter. As soon as it matters at all, though, it can quickly start to matter a lot. On the second half of the chessboard not only has the cumulative effect of innovations become large, but each new iteration of innovation delivers a technological jolt as powerful as all previous rounds combined.

#### No market complexity or financialization.

Hung Tran 19, nonresident senior fellow with the Atlantic Council and a former executive managing director of the Institute of International Finance, with; Jaime Caruana, former general manager at Bank for International Settlements, is a member of the board of directors at BBVA, 4/9/19, “Diversity builds financial resilience,” https://www.atlanticcouncil.org/blogs/new-atlanticist/diversity-builds-financial-resilience/

The diversity of financial institutions, with their differences in business models, liability structures, time horizons, and investment motivations could contribute greatly to financial resilience. Since the 2008 crisis, financial institutional diversity has helped sustain market liquidity while banks have curtailed their market-making activity [a readiness to buy and sell securities to accommodate their clients] due to regulatory changes and business strategies. Improving resiliency and liquidity in financial markets is critical to better finance the real economy, allocate risks properly, and support financial stability.

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Many financial institutions and practices, together with regulatory and accounting requirements, however, tend to exacerbate cyclical fluctuations in the economy by buying assets or extending credit in good times and cutting back in bad times. It is important, therefore, to promote financial diversity and foster counter-cyclical behaviors among institutions capable of doing so. This helps reduce the risk of market imbalances leading to liquidity crises and offset self-reinforcing dynamics in times of financial stress. This risk has become important to guard against as the International Monetary Fund’s just-released World Economic Outlook finds the global economy entering a synchronized slowing phase.

The idea is to exploit the natural differences in the balance sheet structures of financial institutions like banks and investment funds on the one hand, and insurance companies and pension funds on the other, and develop regulatory and accounting regimes that encourage diversity of behaviors.

Banks and investment funds have a positive duration gap in their balance sheets—meaning the average duration of their assets tends to be longer than that of their liabilities. Consequently, banks and investment funds tend to act in a pro-cyclical manner. When asset quality deteriorates, prices fall, and interest rates rise, the value of banks’ assets declines by more than that of their liabilities. Regulatory capital and liquidity requirements increase under those circumstances, pressuring banks to liquidate falling assets.

Investment funds can sell into falling markets to meet redemption demand, according to research by the Bank for International Settlements. Funds can also buy and sell at the same time if they use similar investment strategies, sharing economic and market views.

The pro-cyclical practices described above can be ameliorated to some extent by regulations requiring higher capital and liquidity ratios for banks as well as heightened liquidity risk management. Better capitalized banks with sufficient liquidity can arguably contribute less, but more reliable, market liquidity—compared with the very liquid pre-crisis market conditions driven by high leverage, which turned out to be illusionary. Funds can also maintain adequate cash positions to meet possible redemption demand. In any event, pro-cyclicality remains a natural tendency for those institutions and needs to be managed.

By contrast, insurance companies and pension funds have a negative duration gap in their balance sheets and, under some circumstances, could play a stabilizing role in mitigating selling pressure. As their average asset duration is much shorter than that of their liabilities, when rates rise, the value of their assets fall by less than that of their liabilities. This strengthens their solvency, allowing them to acquire assets having fallen in prices. They thus can act in a counter-cyclical manner. However, some research indicates that this counter-cyclical behavior may need to be further supported. The International Monetary Fund’s Global Financial Stability Report observed that life insurance companies—but not property and casualty insurers—and pension funds act counter-cyclically in liquidity crises, but pro-cyclically in solvency crises.

More recent empirical research, using recently available granular data on security-by-security holdings by EU institutional investors, shows that their behavior is more nuanced. Overall, insurers and pension funds behaved in a counter-cyclical manner, but the intensity of such effect has weakened since the pre-crisis period. Other preliminary research notes that the counter-cyclical behavior of insurers and pension funds can be observed for safe assets whose value can be discounted by the same risk-free rate used for liabilities. However, these institutions tend to pro-cyclically reduce holding of risk assets, including equities and corporate bonds, as their values tend to fall by more than liabilities in a market correction.

Regulators should encourage insurers and pension funds to make more use of the counter-cyclical measures provided in the EU insurance regulatory regime Solvency II—as highlighted by the European Insurance and Occupational Pension Authority. While interventions by government authorities are necessary to stabilize severe financial turmoil, more counter-cyclical behaviors by insurers and pension funds, many of which likely stay resilient in a crisis, can help reduce the frequency and severity of financial crises. Remember: during the Great Depression in the United States and its aftermath, some 7,000 banks failed but most of the insurers remained financially healthy.