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#### “Prohibition” requires a declaration of per se illegality

Loevinger 61 (Honorable Lee Loevinger- Assistant Attorney General in charge of the Antitrust Division. “THE RULE OF REASON IN ANTITRUST LAW” , *Section of Antitrust Law* , 1961, Vol. 19, PROCEEDINGS AT THE ANNUAL MEETING, ST. LOUIS, MISSOURI, AUGUST 7 THROUGH 11, 1961 (1961), pp. 245-251, JSTOR accessed online via KU libraries, date accessed 9/13/21)

Running through the history of antitrust law are two contrapuntal themes: A prohibition of restraint of trade and a principle lately called the "rule of reason" which limits the prohibition. The legal rule against restraint of trade began in the 15th century in cases holding that a contract by which a man agreed not to practice his trade or profession was illegal.1 However, in the course of development of the common law, it became established that agreements which were ancillary to the sale or transfer of a trade or business and which were limited so as to impose a restriction no greater than reasonably necessary to protect the purchaser's interest.2

Thus, when the Sherman Act incorporated the common-law principles on this subject into federal statutory law 3 by adopting the concept of restraint of trade, it presumably imported both the principle that restrictions on competition are illegal and also the principle that in some circumstances a showing of reasonableness will legalize restrictions on competition. Nevertheless, when the question was first presented to the United States Supreme Court under the Sherman Act, it was clearly held (despite later disavowals4 ) that the justification of reasonableness was not available as a defense to a combination which had the effect of restraining trade.' Indeed, it was intimated that the question of reasonableness was not open to the courts in these actions at common law.6 However, when the Court reviewed this matter in Standard Oil Co. v. United States,7 it said in fairly explicit terms both that the Sherman Act prohibited only contracts or acts which unreasonably restrained competition and that the standard of reasonableness had been applied to all restraints of trade at the common law. The Court's assertion is somewhat weakened by the fact that it construed the rule of reason not as applying a standard for judging the character or consequences of the challenged conduct, but as a technique involving the application of human intelligence, or reason, to the problem of making a judgment about whether the conduct does restrain trade.'

#### The aff violates—they create a new legal standard for courts to decide worker welfare based on weighing evidence—not a declaration of illegality without inquiry

McKibben 85 (Michael D. McKibben-Vanderbilt University Law School, J.D., 1985, Vanderbilt Law Review, Associate Editor; Patrick Wilson Scholar. The Resale Price Maintenance Compromise: A Presumption of Illegality, 38 Vanderbilt Law Review 163 (1985), Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol38/iss1/3> , date accessed 9/13/21)

In United States v. Colgate & Co." the Court developed a major exception to Dr. Miles. The Colgate doctrine allows a weak form of RPM by manufacturers or wholesalers that have attempted unilaterally to set prices.6 Although the Colgate doctrine has lost much of its vitality due to years of restrictive interpretation, in Russell Stover Candies, Inc. v. FTC7 the United States Court of Appeals for the Eighth Circuit upheld Colgate against a challenge by the Federal Trade Commission. In addition, the Supreme Court, in Monsanto Co. v. Spray-Rite Service Corp.," recently intimated new-found support for the Colgate doctrine and a possible willingness to reconsider the Dr. Miles per se prohibition against RPM.9

The outcome of vertical pricing cases under section 1 has depended upon the perceived effects of RPM on competition. Current RPM decisions, however, rest on the principles of stare decisis and, therefore, do not depend upon political and economic theories that have developed since Dr. Miles.10 Early courts denounced vertical restraints as analogous to horizontal price fixing, which courts have assumed the drafters of the Sherman Act intended to prohibit per se. 11 Later cases, however, illustrate that the analogy between vertical and horizontal trade restrictions is not analytically sound, and the Supreme Court's attempt to maintain the per se approach to RPM has led to serious theoretical and practical problems. 12

This Note explores several problems with recent RPM decisions: (1) the effect of the per se rule on producers' rights to control their marketing strategies; (2) inconsistent use of the plural action requirement as a foil for avoiding or invoking the per se rule; (3) the suppression of benign or procompetitive activities because of the rule; (4) the difficulties with free rider marketing; and (5) the obstacles to advice and planning that recent decisions have created. This Note contends that a new standard, a rebuttable presumption13 against legality, would alleviate most, if not all, problems that the inflexible per se rule causes.

A rebuttable presumption, followed by rule of reason analysis 14 [[BEGIN FOOTNOTE 14]] 14. Under the rule of reason "the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition." Sylvania, 433 U.S. at 49. [[END FOOTNOTE 14]] in cases in which the defendant satisfies the threshold inquiry,15 would restore certainty and intellectual honesty to RPM cases. The rebuttable presumption would eliminate the need to reconcile contrary cases and the need to consider issues that parties now must address under the rule of reason. While the rebuttable presumption does not require that courts maintain or reject the Colgate doctrine,16 this Note argues that the Court could retain Colgate but primarily rely upon the guidelines and safeguards of the rebuttable presumption. This new line of inquiry would retain the benefits of the per se rule-efficiency and certainty-and would remain flexible enough to accommodate special cases in which RPM may be beneficial to the market. In many cases, the rebuttable presumption also would save society, courts, and litigants the protracted costs of rule of reason analysis.

Part II of this Note considers major RPM cases since the early 1900s, with special focus on Russell Stover and Filco v. Amana Refrigeration, Inc.,'17 cases which protect the defendant under the Colgate doctrine. Part III analyzes the weaknesses of the per se rule and the benefits that could inure to manufacturers and the marketplace under the rebuttable presumption. Part IV examines the strengths and weaknesses of the rule of reason and offers an improved rule of reason approach as the second part of the rebuttable presumption standard. Finally, Part V outlines a suggested analysis for RPM disputes using a rebuttable presumption of illegality. Part V also considers the effects of the presumption on federal antitrust laws.

II. THE CURRENT CONTROVERSY

A. Minimum Price Restrictions in the Supreme Court

Vertical price restrictions are written or oral directives setting a price above or below which a manufacturer wishes its distributors to sell. If the manufacturer establishes a price below which a distributor should not resell a product, the manufacturer is imposing minimum price RPM. Maximum price RPM-the setting of price ceilings- and minimum RPM are per se violations of section 1 of the Sherman Act."' Nonprice vertical restrictions, however, which include primarily territorial distributorship limitations, generally are reviewed under the rule of reason. 19

1. Dr. Miles: The Per Se Rule

Dr. Miles Medical Co. v. John D. Park & Sons Co.20 is the basis of much of the current academic criticism of the Supreme Court's RPM approach.2 ' The plaintiff Dr. Miles, a medicine manufacturer, required its wholesalers and retailers to adhere to a minimum resale price schedule. The plaintiff also required its wholesalers to maintain control over the retailers' subsequent resale prices. The defendant Park & Sons, a wholesaler that refused to purchase from Dr. Miles under the minimum price contract, bought Dr. Miles' medicines from third parties and resold them below the plaintiff's price schedule. The plaintiff charged the defendant with inducing the plaintiff's distributors to breach their contracts by reselling to a price cutter.22 The Court denied the plaintiff's request for relief and held that the plaintiff's contract provision was void under common law and the Sherman Act. 3

After determining that the agreement between Dr. Miles and its vendees fulfilled the duality requirement of the Sherman Act,24 the Court found that the plaintiff's resale price schedule eliminated competition by controlling the price at which all purchasers received the product.25 The Court refused to accept the defendant's argument that producers of patented products have a right ordinary sellers do not have-the right to dictate the destiny of their products.26 The Court inquired whether the plaintiff had a right to restrain trade. The Court held that generally a right to control alienation does not exist without an agreement.2 7 Applying the common-law rule that contractual restraints on alienation must be reasonable and limited to the necessity of the circumstances, 2 the Court found that Dr. Miles' agreement did not fit any of the common forms of acceptable restraints.29

The Court's final inquiry was whether the benefits that the plaintiff gained from its pricing restrictions were entitled to more protection than the property rights that the defendants had in the medicine.30 The Court's response to this issue forms the heart of the per se rule.31 [[BEGIN FOOTNOTE 31]] 31. Per se rules prohibit certain conduct without inquiry into possible justifications for the conduct. Courts impose per se rules when the interests of judicial economy outweigh other interests. See Note, Fixing the Price Fixing Confusion: A Rule of Reason Approach, 92 YALE L.J. 706, 708 (1983). [[END FOOTNOTE 31]] Although the Court never explicitly condemned all vertical price fixing agreements, it found that the effects of the Dr. Miles scheme were the same as the effects that could result from horizontal price fixing at the dealer level. The Court, therefore, held that both kinds of price fixing were illegal.3 2 The Supreme Court's focus on the effects of the alleged violative activity, without regard to its purposes or benefits, is characteristic of other Supreme Court per se decisions. 3

The breadth of the Dr. Miles decision is still unclear.3 4 A narrow interpretation of the holding is that express contractual provisions restraining resale prices violate the Sherman Act. The decision left open many further questions, the first of which the Court answered by creating the Colgate exception.

2. The Colgate Exception

The Court's 1919 decision in United States v. Colgate & Co.35 is still difficult for courts and commentators to harmonize with the Dr. Miles rule of per se illegality.3 6 In Colgate the prosecution charged the defendant under the Sherman Act 37 with forming an illegal combination to fix resale prices among the wholesalers and retailers of the defendant's soap and toilet products.3 8 Colgate circulated price lists, along with provisions for penalties to distributors that did not adhere to the defendant's price lists. Colgate also engaged in policing activities, such as obtaining information from other distributors concerning noncomplying dealers, and requesting assurances from nonuniform pricers that they would comply with the defendant's guidelines. 39

The trial court sustained the defendant's demurrer 40 and the Supreme Court affirmed on direct appeal. The Court permitted the defendant's pricing structure based on the trial court's finding that Colgate reserved no contractual rights in the goods after their sale to dealers. Colgate could enforce the price restrictions only by later refusing to deal with wholesalers and retailers that breached their contracts.41 According to the Court, because the contracts in Dr. Miles "undertook to prevent dealers from freely exercising the right to sell," Dr. Miles was distinguishable from Colgate.42 The Court then laid out the Colgate doctrine: "In the absence of any purpose to create or maintain a monopoly, the [Sherman Act] does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. 43 If the Court had employed the "effects only" logic that it used in Dr. Miles, Colgate would have been an inconsequential extension of the Dr. Miles progeny. By blending the section 1 duality requirement with common-law business principles, however, the Court created an exception to the per se rule.44

3. Narrowing Colgate

The Court quickly issued three decisions reaffirming the viability of Colgate, but in increasingly narrow circumstances. 45 Less than one year after Colgate, the Court decided United States v. A. Schrader's Son, Inc.46 Schrader's Son was factually similar to Dr. Miles,47 but the district court initially held for the defendant, reasoning that Colgate implicitly had overruled Dr. Miles.48 The Supreme Court reversed, stressing that its intent in Colgate was only to preserve the manufacturer's right to announce its pricing policy and cease to do business with dealers that failed to comply. 49

Based on this narrow interpretation of Colgate, the Court extended the scope of Dr. Miles to implicit agreements that attempt to make resale rates binding, including agreements "implied from a course of dealing or other circumstances." 0 The Court contrasted Colgate's holding with situations in which "the parties are combined through agreements designed to take away dealers' control of their own affairs and thereby destroy competition." 51 This language created a major expansion of the per se rule by shifting the Court's inquiry from "contract" to the less restrictive term "agreement." The Court's characterization of implicit agreements as section 1 violations is the basis of most criticism of the per se rule.52 Schrader's Son did not resolve the open distinction between implicit agreements that derive from dealer acceptance of fixed prices and unilateral declarations of terms that originate from a manufacturer's normal course of dealing.

The Supreme Court was quick to quell rumors of Colgate's early demise. In Frey & Son, Inc. v. Cudahy Packing Co.53 the trial court instructed the jury that the plaintiff could prevail despite the lack of an express or implied agreement or objections to the seller's pricing demands.5 4 The Supreme Court held that the jury instruction was insufficient to establish the defendant's liability under section 1. 55 Despite the Court's inability to draw a clear distinction between Dr. Miles and Colgate, the Court refused to extend the per se rule to prohibit inferential agreements.

#### VOTE NEG

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent.

#### “Per se” is the only shot at unique links—topical affs impose rules not standards

Crane 7 Daniel A. Crane is Assistant Professor, Benjamin N. Cardozo School of Law, Yeshiva University, Rules Versus Standards in Antitrust Adjudication, 64 Wash. & Lee L. Rev. 49 (2007), https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss1/3

In recent years, there has been a marked transition away from rules and toward standards in collaborative conduct cases. This occurred in an obvious way beginning in the 1970s as the Burger and then Rehnquist courts overruled Warren court precedents that had condemned a variety of business agreements as per se illegal. As common business practices such as vertical territorial allocations, 37 maximum resale price setting, 38 expulsions of members from industry associations, 39 and manufacturer acquiescence in a retailer's demand to terminate a competing retailer that was deviating from the manufacturer's MSRP40 went from the per se rule to the rule of reason, the domain of rules shrunk and the domain of standards grew. Significantly, the Court declined the Chicago School's call to move vertical restraints from per se illegality to per se legality. In State Oil, Justice O'Connor-who is also fond of balancing tests in constitutional law 4 -went out of her way to make clear that the Court was not holding "that all vertical maximum price fixing is per se lawful.' 42 Vertical restraints would still require scrutiny, but under the multi-factored rule of reason. The transition from rules to standards did not take place solely due to a juridical shift of particular business practices from one category to another. Instead, the entire judicial rhetoric of antitrust has moved in a more nuanced, standard-based direction over the past few decades. With few exceptions, 43 the courts have stopped creating new categories of per se illegal conduct, even though commercial circumstances and practices evolve over time and litigation frequently explores new areas of commercial behavior. Since the mid-1970s, the Supreme Court seems to have frozen the canon of per se illegal practices, without necessarily pushing all other behavior into rule of reason. Instead, arguably beginning with National Society of Professional Engineers v. FTC'4 in 1978, the Court adopted what later became known as the "quick look" approach. In subsequent cases like NCAA v. Board ofRegents45 and California 46 Dental Ass'n v. FTC, the Court described the quick look approach as involving an initial court determination, based on a "rudimentary understanding of economics, ' , 47 that the practice at issue has obvious anticompetitive effects, which puts the defendant to the burden of immediately putting forth a 48 procompetitive justification for the practice.

#### SECOND---Bidirectionality---rule of reason creates legally protected practices

Graglia 8 (Lino A. Graglia is the A. Dalton Cross Professor of Law at the University of Texas. “The Antitrust Revolution”, *Engage* Vol. 9, Issue 3, <https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/HfSHUKp1jnxxov80FkGORMCD5eojoela0HkiRejm.pdf> , October 2008, date accessed 9/14/21)

Although Section 1 of the Sherman Act prohibits “every contract, combination…, or conspiracy, in restraint of trade,”7 it was early and necessarily—since the purpose of every contract is to restrain—decided that it prohibited only “unreasonable” restraints on trade.8 Under the resulting “Rule of Reason,” only business practices found to be net anticompetitive and without efficiency justification were (and are) illegal. Some practices, however, have been declared to be always or almost always anticompetitive and without justification—and therefore are said to be illegal per se. Because a challenged practice’s anticompetitive effects and lack of justification are typically very difficult to show—largely because they characterize few business practices—the Rule of Reason tends to become a rule of legal per se.9 The Rule of Reason means that antitrust plaintiff s will rarely win and, therefore, that few antitrust suits will be brought. Th e liberal justices of the Warren Court dealt with the “problem” by tending to declare nearly all challenged practices illegal per se.

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#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

Parakkal & Bartz-Marvez 13, Raju Parakkal: Assistant Professor of International Relations, Philadelphia University. Sherry Bartz-Marvez: Visiting Assistant Professor, Department of Economics, University of Miami (Capitalism, democratic capitalism, and the pursuit of antitrust laws, *The Antitrust Bulletin*, Vol. 58, No. 4, Winter 2013, DOI: 10.1177/0003603X1305800409)

Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

Taking a global perspective, the idea that antitrust laws serve as a legislative bulwark against anticompetitive practices is not exclusive to the regulatory environment of the United States. Many other countries have adopted antitrust laws for the same goal, among others. And for the many developing and transition countries that adopted antitrust laws in recent decades, these laws are viewed as tools to promote economic development as well.

The view that antitrust laws are required to protect and promote competition has, however, been seriously contested, especially since the publication in 1978 of The Antitrust Paradox: A Policy at War with Itself by law professor and federal appellate court judge Robert Bork. 7 The subtitle to Bork’s highly influential book sums up the critique commonly leveled against antitrust laws: “[C]ertain of its doctrines preserve competition, while others suppress it, resulting in a policy at war with itself.”8 The fundamental problem stems largely from the difficulty in deciding which values should be ultimately promoted through the application of antitrust laws—consumer welfare or business efficiency? If the answer is both, then how much emphasis should be placed on each? Even if the goals are unambiguously certain and universally agreed upon, the question still remains as to what body of knowledge the courts can use consistently to adjudicate antitrust cases. 9

#### The affirmative’s constant push for competitiveness is simply a smokescreen and band-aid for capitalism’s constant and never-ending crisis

Bieler 18 — Andreas Bieler (Professor of Political Economy, University of Nottingham); “Agency and the Power Resources Approach: Asserting the Importance of the Structuring Conditions of the Capitalist Social Relations of Production;” Global Labour Journal, 2018, Vol. 9, No. 2, pg. 245-246 \*\*edited for gendered language, brackets denote change

The Agency of Resistance and the Structuring Conditions of Capitalism

We cannot conceptualise agency and its strategies of resistance without due regard to the structuring conditions of the social relations of production. As Karl Marx famously said,

~~Men~~ [People] [sic] make their own history, but they do not make it as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brains of the living (Marx, 1852/1984: 10).

In his critical engagement with the PRA, and here especially the ambiguous role of institutional power resources, Alexander Gallas has already attempted to combine a focus on agency with an emphasis on the structural setting. In his reflections on a strategic-relational model of class power, he argues that power resources depend on the strategic environment and the strategies adopted. “What is needed”, he argues, “is a conjunctural analysis of strategies and relations for forces. ‘Conjuncture’ here refers to a concrete constellation of strategies and relation of forces at a given time in a given space…” (Gallas, 2016: 305). Nevertheless, while he does incorporate a focus on the “relations of forces” between trade unions and employers’ associations as well as on the wider institutional setting underpinning labour relations and particular forms of state including political parties and government composition, he still overlooks the more fundamental structuring conditions of the capitalist social relations of production, resulting from the way in which production is set up.

Because of the way capitalist production is organised around wage labour and the private ownership of the means of production, three structuring conditions can be identified. First, it is not only workers who compete with each other for employment, but equally companies are in constant competition with each other over market share. Hence, there is an emphasis on competitiveness and the related pressure for further technological innovation in a relentless struggle for ever higher profit levels. As Marx (1867/1990: 381) noted, “under free competition, the immanent laws of capitalist production confront the individual capitalist as a coercive force external to him”. Nevertheless, what is logical for the individual capitalist is problematic for capital as a whole. When every capitalist attempts to produce more goods with fewer workers through the application of new technology, there will be fewer and fewer people who can actually buy those goods. Thus, there is a situation of a surplus of both capital and labour, which can no longer be brought together in a productive way within the capitalist social relations of production – a “state of overaccumulation” (Harvey, 1985: 132). It is this crisis tendency of capitalism which can be identified as the second structuring condition of capitalism. Finally, in order to overcome crisis, there is a structuring condition of constant outward expansion by capitalism, either in order to capture new markets or cheaper labour abroad or to re-commodify areas which had been moved outside the capitalist market, such as health services in many industrialised countries (Bieler and Morton, 2018: 38–41).

#### Trying to establish welfare via antitrust strengthens the hold of neoclassical economics over antitrust and multiplies class inequalities.

Britton-Purdy et al. 21, Jedediah Britton-Purdy: William S. Beinecke Professor of Law at Columbia Law School. Amy Kapczynski: Professor of Law at Yale Law School and cofounder of the Law and Political Economy blog. David Singh Grewal: Professor of Law at UC Berkeley School of Law (February 22nd, “How Law Made Neoliberalism,” *Boston Review*, <http://bostonreview.net/law-justice/jedediah-britton-purdy-amy-kapczynski-david-singh-grewal-how-law-made-neoliberalism>, Accessed 06-07-2021)

The role of law in weakening the welfare state and expanding incarceration is clear, but the shifts in law and legal logic that operate farther from the spotlight have largely been obscured. Take two examples from economic law: antitrust and labor law.

The Sherman Act, which regulates the level of concentrated ownership in any given industry, was passed and enforced on the theory that corporate concentration was a threat to democracy. Justice Louis Brandeis’s perhaps apocryphal claim that “we may have democracy, or we may have wealth concentrated in the hands of a few, but we can’t have both” could have served as a motto for the field. Beginning in the 1970s, under the influence of conservative scholars (including Professor, later Judge, Robert Bork), antitrust law abandoned this original theory. In its place, it refocused on the goal of low prices (called “consumer welfare”). Antitrust law followed neoclassical economics in assuming that behemoths are generally large because they are delivering good value, not because they are accumulating too much power. This conviction also presumed that corporate shortcomings would be revealed by new competitors, reinterpreting the waning of competition as attributable to the efficiencies of dominant business.

Now our banks are too big to fail, Amazon and Facebook are public infrastructures in private hands, and the super-concentrated meat industry is producing supply-chain breakdowns as COVID-19 devastates slaughterhouse workers. This regime is not serving the general welfare, let alone the purposes of freedom and democracy that were once its anchors.

#### That culminates in extinction from climate change, nuclear war, extreme inequality, and perpetual exploitation of the Global South

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is a global socialist movement.

Moghadam 20, Professor of Sociology and International Affairs at Northeastern University, and former Director of the International Affairs Program (Valentine, April, Planetize the Movement! *Great Transition Initiative*, https://greattransition.org/images/Planetize-Movement-Moghadam.pdf)

The moment is ripe for an alternative. Labor unrest has grown around the world, encompassing industrial workers, teachers, health workers, janitors, and others across the Middle East and North Africa, in Latin America, and even in the US. Indeed, we may be nearing a classic Leninist “revolutionary situation,” which could be the culmination of “the world revolution of 20xx.”4 If so, the Global Left should be better prepared to meet the challenge.

The good news is that there is a “new Global Left” that enjoys a multitude of emerging movements, including climate justice groups led by young people.5 The rich array of activist groups and the dynamism and passion they display excite a sense of possibility. However, the very diversity of movements and their weak interconnection could constrain the Global Left’s ability to achieve meaningful change.6 Without consensus around a common agenda, how are we to make the great transition from an entrenched global system based on capitalist profit, top-down decisionmaking, war, and environmental degradation to a world where people and the planet take center stage in politics and policy? Surely we need not only resistance on a multiplicity of grounds, but also agreement on a clear, coherent, and feasible alternative to the unjust, undemocratic, and unsustainable status quo.

A Missing Global Actor The socialist and communist movements and parties of the nineteenth and twentieth centuries pinned their hopes on the capacity of a united working class, defined as a largely male industrial laboring class (“the proletariat”), to tame and challenge capitalism. In the latter part of the twentieth century and into the twenty-first, the nature of that class changed, now encompassing a broader spectrum of working people, such as those in public and private services (including care workers) who labor under the supervision of highly paid managers and administrators, along with the precariat and gig economy workers. On the Left, however, many do not regard that more inclusive working class as a central actor, despite its composition spanning race, ethnicity, religion, national origin, and gender.7 Instead, today’s movements—certainly in the US—seem to define actors based on particular identities and interests. Rather than the singular actor of yore (the working class), today there is a multiplicity of actors across numerous movements. The question arises as to whether such a multiplicity of actors can generate the necessary coordination and craft a strategy to challenge the powers-that-be—economic and political elites situated in national governments; in the financial, corporate, and military sectors; and in institutions of global governance. If those elites are so well connected, why is it so difficult for our numerous movements to coalesce around a shared identity and agenda? In my estimation, the Left has lost sight of the proverbial forest for the proverbial trees. It has gotten far too caught up in culture wars and battles over identity, forgetting the centrality of political economy to the hidden injuries not only of class, but also of race and ethnicity, women’s subordination, the destruction of the commons, and inter- and intra-state rivalries, violence, and war. This strategic shift away from political economy has removed the Left’s traditional constituency—the working class in all its breadth and diversity—from a meaningful role. The shift also has confused the Left’s priorities. For instance, we cannot truly address the problems of racism and discrimination without giving urgent attention to the systemic problems of class: low-income communities devastated by precarious employment, the loss of public investment, dirty air and water, poor-quality schooling, and bad health. The politics of class cannot be divorced from those of race and of sex, because class is imbued with race and sex, and race and sex are themselves imbued with class. Under patriarchal and racist capitalism, there is no class exploitation without racial and sexual oppression. The separation of the three intersecting dimensions across unconnected movements—often lacking in understanding of and solidarity with each other—is among the unfortunate outcomes of our times, caused to some degree by partial, segmented internal politics, but largely by the relentless and effective political, cultural, and ideological campaigns of the ruling elites.

Catalytic Action Now

In the wake of the global financial crisis, it became clear that the world needed a new economic system. Change did not come about, however. To offer a viable alternative to financialization and runaway “shareholderism,” movements need to stand for workplace democracy and shared management, and for long-term rational and people-oriented planning over short-term profit. Although breaking up huge corporations should be the goal, taxing them adequately and using the revenue for societal needs and rights, not for continued militarism, can steer society in the right direction in the interim.

At the same time, we also need to think bigger. Contrary to the conventional wisdom that socialist and communist experiments all ended in failure, I believe that there is a lot we can learn from them. Indeed, this “failure literature” lacks balance and historical accuracy. The great socialist, communist, and liberation movements of the past may not have accomplished all that they could have or intended to, but they were very effective providing education and culture for the poor and imparting the legacy of equality, economic justice, and women’s advancement. The Communist movement had its shortcomings, but it promoted women’s equality and racial equality, supported numerous liberation movements, and checked capitalist and imperialist expansion.

In contrast, our recent movements have failed even in the short run. They may have changed the subject—certainly OWS highlighted the problem of income inequalities and helped reintroduce capitalism and its flaws into the national conversation in the US—but they could not compel change of the system itself, much less dislodge its major actors and beneficiaries. Unlike the progressive movements of the late nineteenth century and much of the twentieth century that gave us socialism and social democracy, an end to British colonialism, Third World development, and the demise of authoritarianism in southern Europe, the movements of the twenty-first century have not been able to make headway in structural or systemic terms. Instead, the collapse of world communism—celebrated across the globe—actually generated new crises and chaos.

One response to the crisis has been the new municipalism, which aims to implement localized democratic practices and people-oriented resource allocation. In one promising example, the administration of the Communist mayor of Santiago, Chile, has created a “people’s pharmacy,” offered cheap eye-care and glasses, increased public housing, and embraced leftist approaches to community safety, among other progressive people-oriented initiatives.8 But localism is not enough, as many of our problems are global in nature. The recklessness of the financial sector has had ripple effects across borders; the obsession with economic growth and capital accumulation has generated a massive, global environmental crisis. That brilliant experiment in radical democratic feminist municipalism—Rojava in northern Syria—was overturned in October 2019 by a brutal Turkish invasion facilitated by the Trump administration. Thus, we must heed Dr. King’s message to “take the nonviolent movement international” and to planetize it.

The Global Left and its infrastructure remain fragmented and disconnected, except for periodic mass rallies against the most egregious actions of global capitalism and imperial states. But it wasn’t always so. Once, vibrant Internationals were organized to guide and promote a worldwide movement. The influential First International, initially called the International Workingmen’s Association, was formed in 1864, but contention between the anarchist and socialist wings led to its demise in the late 1870s. Its successor, the Second International, had great success, but fractured in the run-up to World War I. The Third International formed after the Russian revolution to unite socialist and communist groups from across Europe and Asia, but later, under Stalin, became corrupted into the highly centralized Comintern.9

Both the successes and the failures of these Internationals offer vital lessons: a powerful worldwide movement could be premised on both a global political organization with a strategy for change and the strength of plural and diverse movements that call the status quo into question. To move forward, we need to look back at the old Internationals and, at the same time, not give up on the World Social Forum. The crises and injustices of our times call for both a coordinated “united front” and a loosely aligned “popular front.”

Some say the language of the past—socialism, communism, planning—is outmoded and unlikely to resonate. And yet, many young people embrace the term socialism; in the US, they rallied around Bernie Sanders’s call for “democratic socialism,” and in the UK, they coalesced around the Labour Party’s left-wing faction, Momentum, and its leader, Jeremy Corbyn. In Tunisia, where young people are losing hope in capitalist democracy because of high unemployment and other economic difficulties, the left-wing student union UGET and the many young supporters of the Front Populaire call for planning and a strong welfare state. Around the world, women have come together around a more inclusive, transformative vision of feminism, which some call “feminism for the 99%.”10 The “left nationalism” of Scotland, Northern Ireland, and the Kurds is also part of the new Global Left and could help constitute a global movement against capitalism, militarism, and oligarchic states.

The world’s injustices as well as new possibilities for alliance have inspired calls for coordinated forms of organizing. The late Egyptian Marxist economist Samir Amin, for instance, called for a Fifth International.11 But to balance the complementary needs of global coordination and plural autonomy, two Internationals may be needed, one that remains horizontally based—the movement of movements—and the other vertically organized, drawing inspiration and lessons from the old Internationals.

What might this mean in practical, strategic terms? To start, we should revitalize the World Social Forum.12 It encompasses diverse grievances, identities, and interests; it remains the site for dialogic discussion and the cultivation of solidarity across movements; and it has resisted the authoritarian impulses and practices of capital and the state. It can remain an open space for dialogue among place-based and identity-expressive movements. Building up the Global Left and helping advance a Great Transition, however, requires a global political organization to do the necessary crossmovement “translation” work and deliver a plan for structural change at national, regional, and global levels. Accomplishing this will be an arduous task, but we can’t afford to wait.

Whether it is called the Fifth International, the United Front, the Progressive International, or the World Party, such an organization would be vertically organized, along the lines of the earlier Internationals but with the involvement of anti-imperialist feminist groups such as Code Pink, the Women’s International League for Peace and Freedom, Marche Mondiale des Femmes, and the new Feminist Foreign Policy Project. This planetized formation would encompass progressive parties, anti-neoliberal unions, and anti-war movements across the globe. It would practice democratic decision-making and offer a clear vision and mission of an alternative system of production, social reproduction, trade, and international relations. It would revive the 2011 Arab Spring call, “The people want the fall of the regime,” and create a powerful message demanding a re-enactment of what occurred in 1989/1990, but in reverse: “The people want the fall of the ruling capitalist elites.”

Such a plan calls for a renewed emphasis on the working class, expansively defined and represented. Unions could organize the unorganized, carry out the necessary political education work among their members, and create broad coalitions with progressive political parties and unions across borders.13 It is worth noting that unions of teachers and nurses have been taking to the streets and making demands in Morocco, Iran, Iraq, Tunisia, Chile, and France, as well as in the US. Such parallel developments are ripe for cross-fertilization and coordination.

We should take the best from the past—planning, coordinating, internationalism, and action— and move forward with a common agenda for systemic transformation. To move forward with an International, veterans of past, more centralized movements and organizations might take the lead in organizing an initial meeting, to convene in a country that has felt the devastating effects of neoliberalism, such as Argentina or Greece. Another venue could be Tunisia—now the only genuinely democratic country in the Middle East/North Africa region. Our movements need to coalesce to make the present moment of populism and hegemonic decline an advantageous one for a Great Transition—this time toward a global socialist-feminist democracy built through the synergy of a new International and a revitalized WSF.

### 1NC — DA

#### The plan only passes after it’s horse-traded with Republicans for censorship prohibitions

Perera 3-12-2021, veteran cybersecurity reporter, Data security & privacy reporter for MLex (Dave, “US antitrust legislation faces uphill battle despite unified Democratic government,” <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government>)

Renewed interest among US lawmakers in antitrust legislation is unlikely to produce radical policy shifts, notwithstanding the Democratic Party’s unified control of the federal government. Democrats promised a “big, bold agenda” after they captured the Senate by a hairsbreadth in January. Democratic lawmakers may very well stick to those ambitions and announce audacious legislative proposals. But the fate of those bills is at the mercy of a political dynamic ensuring that the more liberal the policy prescriptions, the less likely they are to become law. The most likely outcome over the next two years is more funding for enforcers at the Department of Justice and Federal Trade Commission, whether directly through appropriated funds, steeper merger notification filing fees, or both. It’s also possible Congress could incrementally tinker along the edges of antitrust. It might lower the threshold for challenging mergers, or mandate data portability requirements for social media companies. Those expecting — or fearing — more ambitious outcomes likely won’t see them enacted. So until America’s November 2022 election, scratch from the list of high probabilities reforms such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company. Put another way, unless a bill can attract significant Republican support, not even two years of unified Democratic government can guarantee reforms. — American exceptionalism — Single party control of both congressional chambers and the presidency is relatively rare in American politics. It has occurred in fewer than a third of legislative sessions since 1980. When it strikes, it doesn’t last long — typically just the two years between one congressional election and another. Historically, unified control is a fertile period for new regulations. President George W. Bush overhauled Medicare. President Barack Obama ushered in financial sector reforms and the Affordable Care Act. Indications are that President Joe Biden is emboldened by his party’s last-minute capture of the Senate. History, of course, isn’t a blueprint. Even a brief look at past episodes of unified control reveals that not even single-party capture of the executive and legislative branches of the US government can assure the enactment of a partisan agenda. For one thing, neither political party is a monolith. Although far more politically aligned than when Democratic conservatives found common cause in the 20th century with Republicans, the major American parties nonetheless are coalitions of centrist and activist wings. For Democrats, the tensions inherent in appeasing all sides became apparent earlier this month when centrists trimmed benefits in the $1.9 trillion coronavirus stimulus package. Neither is single party grip on power secure unless it commands an overwhelming majority in the Senate, thanks to a uniquely American institution: the filibuster. In the Senate, the rules mandate a three-fifths vote before debate over a bill is cut off. In recent decades, it’s become a weapon routinely wielded by the minority party to kill legislation. The upshot is that policy legislation needs supermajority support before it can proceed, meaning the 50 Democrats of today’s Senate have little choice but to resign themselves to the grind of finding Republican supporters. There are limited exceptions. Assuming Democrats stay in unison, they don’t need Republican votes to appoint judges, approve executive branch nominations or pass fiscal legislation such as the coronavirus stimulus that just became law. It’s within Democrats’ power to abolish the filibuster, but for now, the maneuver appears safe. Asked just days ago about the matter, White House spokeswoman Jen Psaki told reporters that the president’s preference is for it to stay in place. “The president is an optimist by nature,” Psaki added. — Hunting for bipartisan consensus — Not every bill introduced in Congress, nor even every bill approved by a committee or even an entire single chamber, makes it through the process because its sponsors believe it’ll become law. There are a host of bills drafted with the intent of sending a message to industry, to independent regulators, to donors, to constituents. There are bills that lawmakers view as setting out a position to influence an ongoing policy debate. Even if it won’t become law this year, it might the next year, or the next, reintroduced and refined along the way. Telltale signs of whether a bill is a serious attempt at law are the number of cosponsors, and whether that list of names includes members of both parties in good stead with their party’s leadership. Bipartisan support is important even in the House, where Democrats have the votes to completely bypass Republicans. Because the House doesn’t have the filibuster to contend with, those with the majority of seats control the chamber. House Democrats can and do pass bills in the face of absolute House Republican opposition, but — special exceptions for fiscal bills aside — those bills are dead on arrival in the Senate. As long as the filibuster exists or Democrats lack a Senate supermajority, the House Judiciary antitrust subcommittee must court Republican support if its intention is to make new law. Finding clues of what House Democrats might seriously achieve, then, may be little more difficult than looking up the policy prescriptions House Republicans favor: giving regulators more resources, shifting the burden of proof in merger cases and boosting data portability and interoperability. A report issued by now-ranking Republican Ken Buck as a rejoinder to last year’s Democratic House Judiciary antitrust subcommittee staff report on competition in digital markets allowed that the GOP shares other Democratic concerns, including predatory pricing, monopoly leveraging and control over marketplace platforms. That conciliatory signal also came weighted, with warnings that Congress should be wary of “handing additional regulatory to agencies in an attempt to micromanage.” Instead, try instead telling enforcers they should return to first principles, the Colorado lawmaker advised. Whether Republicans and Democrats in the Senate can find common cause is an even more fraught question. Unlike its House counterpart, the Senate Judiciary subcommittee on antitrust hasn't conducted a 16-month investigation into digital monopolization. The subcommittee’s senior Republican, Utah’s Mike Lee, is prone to touting the importance of the consumer welfare standard and rails against online platforms “eager to impose the ideological censorship called for by their political benefactors.” Lee also says he’s open to working with subcommittee Chairwoman Amy Klobuchar on strengthening enforcement, adding the caveat that current antitrust laws are sufficient. Klobuchar, a Minnesota Democrat, doesn’t need Lee to get a bill through her subcommittee, but failing to find consensus with Republicans imperils her chances of making law. The prospects for her Competition and Antitrust Law Enforcement Reform Act becoming law as current written aren't good. — 'Big tech is out to get conservatives' — A looming question hanging over any bill, even one tailored to win bipartisan support, is whether it could be derailed by Republican anger at online platforms for alleged anti-conservative bias. A right-wing trope especially spread by President Donald Trump during his last year in office — the belief that platforms use their content moderation powers to silence conservatives — has mainstream acceptance in Republican circles. It’s a refrain almost obligatory for Republican lawmakers to repeat when discussing any issue related to online platforms. “Big tech is out to get conservatives,” House Judiciary Committee ranking member Jim Jordan of Ohio has said more than once. Democrats have their own share of anger at online platforms’ content-moderation practices, to be sure. They accuse online platforms of circumventing consumer protections, undermining civil rights laws and not doing enough to stymie disinformation. It’s Republicans, though, who appear the angriest, and are the more likely to insist that any legislative reform touching online platforms address content moderation, with the intention of making it harder, not easier, for online platforms to remove users, potentially imperiling a compromise measure.

#### That allows the GOP to successfully weaponize misinformation---triggers epistemic decay and cements a perma-GOP government

Carpenter 21, contributing writer for The Nation. She received the James Aronson Award for Social Justice Journalism in 2018, and has been a finalist for the Livingston Awards and the National Awards for Education Reporting. Her writing has also appeared in Rolling Stone, Guernica, and various other publications (Zoe, “Misinformation Is Destroying Our Country. Can Anything Rein It In?,” *The Nation*, <https://www.thenation.com/article/society/right-wing-media-misinformation/>)

Natali Fierros Bock says she could feel this mass delusion calcifying in the wake of the election in Pinal County, a rural area between Phoenix and Tucson where she serves as co–executive director of the group Rural Arizona Engagement. “It feels like an existential crisis,” Bock adds. Many of the Sharpiegate claims online referred to Pinal County, and Gosar, whose district includes a portion of the area, was reportedly responsible for helping organize the January 6 “Stop the Steal” rally in Washington that resulted in the deaths of five people. Mark Finchem, a Republican who represents part of Pinal County in the statehouse, was also in Washington on January 6. The Capitol insurrection threw into relief the real-world consequences of America’s increasingly siloed media ecosystem, which is characterized on the right by an expanding web of outlets and platforms willing to entertain an alternative version of reality. Social media companies, confronted with their role in spreading misinformation, scrambled to implement reforms. But right-wing misinformation is not just a technological problem, and it is far from being fixed. Any hope that the events of January 6 might provoke a reckoning within conservative media and the Republican Party has by now evaporated. The GOP remains eager to weaponize misinformation, not only to win elections but also to advance its policy agenda. A prime example is the aggressive effort under way in a number of states to restrict access to the ballot. In Arizona, Republicans have introduced nearly two dozen bills that would make it more difficult to vote, with the big lie about election fraud as a pretext. “When you can sell somebody the idea that their elections were stolen, they’ve been violated, right? So then you need protection,” Bock says, explaining the conservative justification for the suite of new restrictions in her state. Voting rights is her organization’s “number one concern” at the moment. But Bock’s fears about political misinformation are more sweeping. Community organizing is difficult in the best of times. “But when you can’t agree on what is true and not true, when my reality doesn’t match the reality of the person I’m speaking to, it makes it more difficult to find common ground,” she says. “If we can’t agree on a common truth, if we can’t find a starting place, then how does it end?” Around the time of the 2016 election, Kate Starbird, a professor at the University of Washington who studies misinformation during crises, noticed that more and more social media users were incorporating markers of political identity into their online personas—hashtags and memes and other signifiers of their ideological alignment. In the footage from the Capitol she saw the same symbols, outfits, and flags as those she’d been watching spread in far-right communities online. “To see those caricatures come alive in this violent riot or insurrection, whatever you want to call it, was horrifying, but it was all very recognizable for me,” Starbird says. “There was a time in which we were like, ‘Oh, those are bots, those aren’t real people,’ or ‘That’s someone play-acting,’ or ‘We’re putting on our online persona and that doesn’t really reflect who we are in an offline sense.’ January 6 pretty much disabused us of that notion.” It was a particularly rude awakening for social media companies, which had long been reluctant to respond to the misinformation that flourished on their platforms, treating it as an issue of speech that could be divorced from real-world consequences. Facebook, Twitter, and other platforms had made some changes in anticipation of a contested election, announcing plans to label or remove content delegitimizing election results, for instance. Facebook blocked new campaign ads for the week leading up to the election; Twitter labeled hundreds of thousands of misleading tweets with fact-checking notes. Yet wild claims about election fraud spread virally anyway, ping-ponging from individual social media users to right-wing influencers and media. During the 2016 campaign, most public concern about misinformation centered on shadowy foreign actors posing as news sources or US citizens. This turned out to be an oversimplification, though many on the center and left offered it as an explanation for Hillary Clinton’s defeat in 2016; blaming Russian state actors alone ignored factors like sexism, missteps made by the Clinton campaign itself, and the home-grown feedback loop of right-wing media. In 2020, according to research done by Starbird and other contributors to the Election Integrity Project, those most influential in disseminating misinformation were largely verified, “blue check” social media users who were authentic, in the sense that they were who they said they were—Donald Trump, for example, and his adult sons. DONATE NOW TO POWER THE NATION. Readers like you make our independent journalism possible. Another key aspect in the creation of the big lie was what Starbird calls “participatory disinformation.” Trump was tweeting about the election being stolen from him months beforehand, but once voting got under way, “what we see is that he kind of relies on the crowd, the audiences, to create the evidence to fit the frame,” Starbird explains. Individuals posted their personal experiences online, which were shared by more influential accounts and eventually featured in media stories that placed the anecdotes within the broader narrative of a stolen election. Some of the anecdotes that fueled Sharpiegate came from people who used a felt-tip pen to vote in person, then saw online that their vote had been canceled—though the “canceled” vote actually referred to mail-in ballots that voters had requested before deciding to vote in person. “It’s a really powerful kind of propaganda, because the people that were helping to create these narratives really did think they were experiencing fraud,” Starbird says. Action by content moderators usually came too late and was complicated by the fact that many claims of disenfranchisement by individual users were difficult to verify or disprove. The Capitol riot led the tech giants to take more aggressive action against Trump and other peddlers of misinformation. Twitter and Facebook kicked Trump off their platforms and shut down tens of thousands of accounts and pages. Facebook clamped down on some of its groups, which the company’s own data scientists had previously warned were incubating misinformation and “enthusiastic calls for violence,” according to an internal presentation. Google and Apple booted Parler, a social media site used primarily by the far right, from their app stores, and Amazon stopped hosting Parler’s data on its cloud infrastructure system, forcing it temporarily offline. But these measures were largely reactions to harm already done. “Moderation doesn’t reduce the demand for [misleading] content, and demand for that content has grown during some periods of time when the platforms weren’t moderating or weren’t addressing some of the more egregious ways their tools were abused,” says Renée DiResta, technical research manager at the Stanford Internet Observatory. Deplatforming individuals or denying service to companies that tolerate violent rhetoric, as Amazon did with Parler, can have an impact, particularly in the short term and when done at scale. It reduces the reach of influential liars and can make it more difficult for “alt-tech” apps to operate. A notorious example of deplatforming involved Alex Jones, the conspiracy theorist behind the site Infowars. Jones was kicked off Apple, Facebook, YouTube, and Spotify in 2018 for his repeated endorsement of violence. He lost nearly 2.5 million subscribers on YouTube alone, and in the three weeks after his accounts were cut off, Infowars’ daily average visits dropped from close to 1.4 million to 715,000. But Jones didn’t disappear—he migrated to Parler, Gab, and other alt-tech platforms, and he spoke at a rally in Washington the night before the Capitol attack. One outcome of unplugging Trump and other right-wing influencers has been a surge of interest in those alternative social media platforms, where more dangerous echo chambers can form and, in encrypted spaces, be more difficult to monitor. “Isn’t this just going to make the extreme communities worse? Yes,” says Ethan Zuckerman, founder of the Institute for Digital Public Infrastructure at the University of Massachusetts at Amherst. “But we’re already headed there, and at least the good news is that [extremists] aren’t going to be recruiting in these mainstream spaces.” The bad news, in Zuckerman’s view, is that the far right is now leading the effort to create new forms of online community. “The Nazis right now have an incentive to build alternative distributed media, and the rest of us are behind, because we don’t have the incentive to do it,” Zuckerman explains. He argues that a digital infrastructure that is smaller, distributed, and not-for-profit is the path to a better Internet. “And my real deep fear is that we end up ceding the design of this way of building social networks to far-right extremists, because they are the ones who need these new spaces to discuss and organize.” In March, Trump spokesman Jason Miller said on Fox that the former president was likely to return to social media this spring “with his own platform.” A more fundamental problem than Trump’s presence or absence on Twitter is the power that a single executive—Jack Dorsey, in the case of Twitter—has in making that decision. Social media companies have become so big that they have little fear of accountability in the form of competition. “To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” concluded a recent report by the staff of the Democratic members of the House Judiciary Subcommittee on Antitrust. For now, the reforms at Facebook and other companies remain largely superficial. The platforms are still based on algorithms that reward outrageous content and are still financed via the collection and sale of user data. Karen Hao of MIT Technology Review recently reported that a former Facebook AI researcher told her “his team conducted ‘study after study’ confirming the same basic idea: models that maximize engagement increase polarization.” Hao’s investigation concluded that Facebook leadership’s relentless pursuit of growth “repeatedly weakened or halted many initiatives meant to clean up misinformation on the platform.” The modest “break glass” measures Facebook took during the election in response to the swell of misinformation, which included tweaks to its ranking algorithm to emphasize news sources it considered “authoritative,” have already been reversed. Tech companies could do more, as the election-time tweaks revealed. But they still “refuse to see misinformation as a core feature of their product,” says Joan Donovan, research director for the Shorenstein Center on Media, Politics and Public Policy at Harvard University. The problem of misinformation appears so vast “because that’s exactly what the technology allows.” There are some signs of a growing appetite for regulation on Capitol Hill. Democrats have proposed reforms to Section 230 of the Communications Decency Act, which insulates tech companies from legal liability for content posted to their platforms, such as requiring more transparency about content moderation and opening platforms to lawsuits in limited circumstances when content causes real-world harm. (GOP critiques of Section 230, on the other hand, make the false argument that it allows platforms to discriminate against conservatives.) Another legislative tactic would focus on the algorithms that platforms use to amplify content, rather than on the content itself. A bill introduced by two House Democrats would make companies liable if their algorithms promote content linked to acts of violence. Democratic lawmakers are also eyeing changes to antitrust law, while several antitrust lawsuits have been filed against Facebook and Google. But litigation could take years. Even breaking up Big Tech would leave intact its predatory business model. To address this, Zuckerman and other experts have called for a tax on targeted digital advertising. Such a tax would discourage targeted advertising, and the revenue could be used to fund public-service media. Held to account? Twitter CEO Jack Dorsey testified remotely before the Senate Judiciary Committee in November 2020. (Matt York / AP) Social media plays a key role in amplifying conspiracy theories and political misinformation, but it didn’t create them. “When we think of disinformation as something that appeared [only in the Trump era], and that we used to have this agreed-upon narrative of what was true and then social platforms came into the picture and now that’s all fragmented… that makes a lot of assumptions about the idea that everyone used to agree on what was true and what was false,” says Alice E. Marwick, an assistant professor at the University of North Carolina who studies social media and society. Politicians have long leveraged misinformation, particularly racist tropes. But it’s been made particularly potent not just by social media, Marwick argues, but by the right-wing media industry that profits from lies. “The American online public sphere is a shambles because it was grafted onto a television and radio public sphere that was already deeply broken,” argue Yochai Benkler, Robert Faris, and Hal Roberts of Harvard’s Berkman Klein Center for Internet and Society in their book Network Propaganda. The collapse of local news left a vacuum that for many Americans has been filled by partisan outlets that, on the right, are characterized by blatant disregard for journalistic standards of sourcing and verification. This insulated world of right-wing outlets, which stretches from those that bill themselves as objective sources, Fox News chief among them, to talk radio and extreme sites like Infowars and The Gateway Pundit, “represents a radicalization of roughly a third of the American media system,” the authors write. The conservative movement spent decades building this apparatus to peddle lies and fear along with miracle cures and pyramid schemes, and was so successful that Fox and other far-right outlets ended up in a tight two-step with the White House. Fox chairman Rupert Murdoch maintained a close relationship with Trump, as did Sean Hannity and former Fox News copresident Bill Shine, who became White House communications director in 2018. The backlash against Fox in the wake of the election hinted at a possible dethroning of the ruler of the right’s media machine. Its farther-right rival Newsmax TV posted a higher rating than Fox for the first time ever in the month after the election, following supportive tweets from Trump, and during the week of November 9 it passed Breitbart as the most-visited conservative website. But Fox quickly regained its perch. The network backpedaled rapidly during its post-election ratings slump, firing an editor who’d defended the projection of a Biden win in Arizona and replacing news programming with opinion content. According to Media Matters, Fox News pushed the idea of a stolen election nearly 800 times in the two weeks after declaring Biden the winner. The network’s ad revenue increased 31 percent during the final quarter of 2020, while its parent company, Fox Corporation, saw a 17 percent jump in pretax profit. The far-right media ecosystem has become so powerful in part because there’s been no downside to lying. Instead, the Trump administration demonstrated that there was a market opportunity in serving up misinformation that purports to back up what people want to believe. “In this day and age, people want something that tends to affirm their views and opinions,” Newsmax CEO Chris Ruddy told The New York Times’ Ben Smith in an interview published shortly after the election. Claims of a rigged election were “great for news,” he said in another interview. Trump’s departure from the White House won’t necessarily reduce the demand for this kind of content. Since the Capitol riot, two voting-systems companies have launched an unusual effort to hold right-wing outlets and influencers accountable for some of the lies they’ve spread. Dominion Voting Systems, a major provider of voting technology, and another company called Smartmatic were the subjects of myriad outlandish claims related to election fraud, many of which were used in lawsuits filed by Trump’s campaign and were repeatedly broadcast on Fox, Newsmax TV, and OAN. Since January the companies have filed several defamation suits against Trump campaign lawyers Sidney Powell and Rudy Giuliani, MyPillow CEO Mike Lindell, and Fox News and three of its hosts. Dominion alleges that as a result of false accusations, its “founder and employees have been harassed and have received death threats, and Dominion has suffered unprecedented and irreparable harm.” The threat of legal action forced a number of media companies to issue corrections for stories about supposed election meddling that mentioned Dominion. The conservative website American Thinker published a statement admitting its stories about Dominion were “completely false and have no basis in fact” and “rel[ied] on discredited sources who have peddled debunked theories.” OAN simply deleted all of the stories about Dominion from its website without comment. These lawsuits will not dismantle the world of right-wing media, but they have prompted a more robust debate about how media and social media companies could be held liable for lies that turn lethal—and whether this type of legal action should be pursued, given the protections afforded by the First Amendment and the fact that the powerful often use libel law to bully journalists. Alternative reality: Trump supporters in Maricopa County derided Fox for reporting on election night that Biden had won the state. (Hannah McKay / Pool / Getty Images) Ethan Zuckerman has been thinking about how to build a better Internet for years, a preoccupation not unrelated to the fact that, in the 1990s, he wrote the code that created pop-up ads. (“I’m sorry. Our intentions were good,” he wrote in 2014.) Still, he believes that framing misinformation as a problem of media and technology is myopic. “It’s very hard to conclude that this is purely an informational problem,” Zuckerman says. “It’s a power problem.” The GOP is increasingly tolerant of, and even reliant on, weaponized misinformation. “We’re in a place where the Republican Party realizes that as much as 70 percent of their voters don’t believe that Biden was legitimately elected, and they are now deeply reluctant to contradict what their voters believe,” Zuckerman says. Republicans are reluctant, at least in part, because of a legitimate fear of primary challenges from the right, but also because they learned from Trump the power of using conspiracy theories to mobilize alienated voters by preying on their deep mistrust of public institutions. It’s one thing for an ordinary citizen to retweet a false claim; it’s another for elected officials to legitimize conspiracy theories. But holding the GOP to account may prove to be even harder than reforming Big Tech. The radical grass roots have been empowered by small-dollar fundraising and gerrymandering, while more moderate Republicans are retiring or leaving the party. Writer Erick Trickey argued recently in The Washington Post that what undercut a similar wave of conservative crackpot paranoia driven by the John Birch Society in the 1960s was explicit denunciation by prominent conservatives like William Buckley and Ronald Reagan as well as Republican congressional leaders. But today’s party leaders have been unwilling to excommunicate conspiracy-mongers. In the aftermath of the Capitol riot, elected officials who spread rumors that the violence was actually the result of antifascists—including Arizona’s Paul Gosar and Andy Biggs—gained notoriety, while those critical of Trump were publicly humiliated. The embrace of conspiratorial narratives has been particularly pronounced in state GOP organizations. The Texas GOP recently incorporated the QAnon slogan “We are the storm” into official publicity media, and the Oregon GOP’s executive committee endorsed the theory that the riot had been a “false flag” operation. In March, members of the Oregon GOP voted to replace its Trump-supporting chairman with a candidate even farther out on the extremist fringe. Weaponized misinformation could have a lasting impact not only on the shape of the GOP but also on public policy. Republicans are now using the big lie to try to restrict voting rights in Arizona, Georgia, and dozens of other states. As of February 19, according to the Brennan Center for Justice, lawmakers in 43 states had introduced more than 250 bills restricting access to voting, “over seven times the number of restrictive bills as compared to roughly this time last year.” In late March, Georgia Governor Brian Kemp signed a 95-page bill making it harder to vote in that state in a number of ways. Many of the far-right extremists, politicians, and media influencers who spread misinformation about the presidential election are now pushing falsehoods about Covid-19 vaccines. The rumors, which have spread on social media apps like Telegram that are frequented by QAnon adherents and militia groups, among others, range from standard anti-vax talking points to absurd claims that the vaccines are part of a secret plan hatched by Bill Gates to implant trackable microchips, or that they cause infertility or alter human DNA. Sidestepping the craziest conspiracies, prominent conservatives like Tucker Carlson and Wisconsin Senator Ron Johnson, who has become one of the GOP’s leading purveyors of misinformation, are casting doubt about vaccine safety under the pretense of “just asking questions.” Vaccine misinformation plays into the longstanding conservative effort to sow mistrust in government, and it appears to be having an effect: A third of Republicans now say they don’t want to get vaccinated. These are the true costs of misinformation: deadly riots, policy changes that could disenfranchise legitimate voters, scores of preventable deaths. These translate into financial externalities: the additional expense of securing the Capitol, additional dollars devoted to the pandemic response. More abstract but no less real are the social costs: the parents lost down QAnon rabbit holes, the erosion of factual foundations that permit productive argument. The problem with the far right’s universe of “alternative facts” is not that it’s hermetically sealed from the universe the rest of us live in. Rather, it’s that these universes cannot truly be separated. If we’ve learned anything in the past six months, it’s that epistemological distance doesn’t prevent collisions in the real world that can be lethal to individuals—and potentially ruinous for democratic systems.

#### Disinformation undermines collective responses to existential threats

Roston 21, citing Bak-Coleman, PhD, postdoctoral fellow at the University of Washington Center for an Informed Public (Eric, “As Climate Change Fries the World, Social Media Is Frying Our Brains,” *Bloomberg News*, <https://www.bloomberg.com/news/articles/2021-06-29/as-climate-change-fries-the-world-social-media-is-frying-our-brains>)

Amid emergency heat, flooding, and famine, it’s even more critical that people recognize and agree at least on the big picture. And yet, as recent history has shown us time and again, they don’t. Much of that can be blamed on the pandemic of misinformation—concerning climate change, Covid-19, vaccines, and so much more— now running rampant on social media. It reminds Joseph Bak-Coleman of fish. Bak-Coleman is the lead author of a provocative new article in Proceedings of the National Academy of Sciences about scientists’ inability thus far to adequately inform policymakers about how digital technology is impeding efforts to solve climate change and other collective-behavior problems. Individual fish swimming in a school intuit each other so rapidly and clearly that they can instantaneously and in unison pivot away from whatever dangers they encounter. Insofar as that is true, they have a limited error margin for passing along bad information. “It costs energy when you get scared for no reason, and it also costs life if you don’t get scared when you should,” said Bak-Coleman, a University of Washington postdoctoral scholar with expertise in neuroscience and evolutionary biology. “Animal groups are highly tuned to do these really fantastic feats of behavior. But it’s all quite fragile.” The development of digital communications has eroded or vaporized community protections developed over millennia to ensure at least a minimally healthy flow of information, which leads to healthy decision-making. That loss, Bak-Coleman and his co-authors write, “combined with rapid distribution of falsehood, may present one of the larger threats to human well-being.” Think of it like this. If you wanted to make the most obvious statement in the world, you could do worse than: “Technology now allows people to communicate instantaneously and across great distances.” Yet if you wanted to elicit the most tortured answer in the world, you might ask something incredibly similar: “What happens when people can communicate instantaneously and across great distances?” The tension between the obvious statement and the unanswerable question—which holds within it just about all of the world’s large-scale problems, including climate change—is so great, Bak-Coleman and his colleagues propose a whole new academic discipline just to try to understand it. As physiology has medicine and climate science has emissions-mitigation and adaptation–planning, they argue, the digital-misinformation pandemic requires an applied science—or as they call it, a “crisis discipline.” The need for such a discipline is also urgent, they argue, because “given that algorithms and companies are already altering our global patterns of behavior for financial reasons, there is no safe hands-off approach.” Despite the many joys and productive uses of digital communication, it routinely conveys so many falsehoods, so quickly, that many people are left either unable to see or unwilling to fix existential dilemmas, leaving humanity overall in a precarious condition.

### 1NC — CP

#### Text: The 50 United States and relevant subnational entities should prohibit private sector business practices that violate an antitrust worker welfare standard.

#### State antitrust is enforceable and solvent.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

## 1NC — Inequality

### 1NC — Top

#### Soft power cannot exist at the same time as worker solidarity and rights — US hegemony and international dominance causes exploitation of the Global South — they cannot win a perm to the K

#### There is no brink to soft power — inequality has existed for ages and should’ve weakened the US’ resolve

#### Other factors thump — refugee camps, COVID management, instability in the US, the Capitol Riots, etc.

### 1NC — SD

#### No one would actually follow on the aff — courts take years, political will, Biden won’t, etc.

Hirsh 21 — Michael Hirsh (Senior Correspondent, Foreign Policy); “Big Talk on Big Tech—but Little Action;” Foreign Policy; April 6th, 2021; <https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/>

Problem is, that’s just about where the consensus ends. And even if you add more lawyers, antitrust cases move glacially, and federal judges are extremely cautious about punishing behavior deemed anti-competitive, especially in an era when antitrust experts disagree vehemently about remedies. Plus, now every case faces the prospect of being squelched by a very conservative Supreme Court.

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who [famously claimed](https://www.forbes.com/sites/michaeldelcastillo/2021/04/05/revenge-of-the-winklevii-facebook-winklevoss-bitcoin-nft-billionaire-revenge/?sh=543f9e791572) that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

But so changed is the political environment that U.S. President Joe Biden and some of his top regulators, such as Lina Khan, a Yale Law School wunderkind who was recently nominated to the FTC, might seek to break up the big tech firms. Biden, on the campaign trail, said that breaking up tech quasi-monopolies such as Facebook is “something we should take a really hard look at.”

That is almost certainly not going to happen: The political will simply isn’t there, even among many Democratic legislators influenced by Khan and other progressive thinkers.

“I don’t think Biden has the stomach for that,” said Herbert Hovenkamp, an antitrust expert at the University of Pennsylvania. The reason is simple: Today’s monopolistic abuses are quite unlike the monopoly power of old, when big cartels like John D. Rockefeller’s Standard Oil inflicted predatory high prices on consumers and political will was high to “bust trusts.” On the contrary: Most consumers love the fact that they can buy all kinds of inexpensive stuff on Amazon and have it delivered the next day, and that Facebook doesn’t charge them a cent, even as it makes a mint selling their private information to advertisers and market manipulators.

“The Democrats need to be cautious here,” Hovenkamp said. “Consumers are their constituency. And these companies are among the biggest producers of growth in the U.S. Biden certainly doesn’t want to ruin that.” Instead, the administration may well decide to focus more on smaller fish in other industries, as the FTC did last week by [challenging](https://www.barrons.com/articles/ftcs-challenge-of-illumina-is-a-boost-for-rivals-in-cancer-test-race-51617228262) Illumina’s $7 billion purchase of cancer test developer Grail. In a sign of how aggressive the FTC might be under Biden, it was the first time in decades that the commission sought to block a so-called vertical merger, alleging that ownership of Grail would incentivize Illumina, a gene-sequencing company, to raise costs on Grail’s competitors.

### 1NC — Soft Power

#### Impact ev is about America First not solving, BUT cooperation with allies does — Biden solves — if it doesn’t, nothing overcomes Trump’s destruction (1AC Nye — Their highlighting)

**Own ev says populism is inevitable, US led order doesn’t solve war, transition is inevitable BUT it solves war. [KU reads yellow]**

Richard N. 1AC Haass **and** Charles A. **Kupchan 21**. Richard N. Haass is President of the Council on Foreign Relations, was Director of Policy Planning for the United States Department of State and a close advisor to Secretary of State Colin Powell. Charles A. Kupchan is Professor of International Affairs at Georgetown University, a Senior Fellow at the Council on Foreign Relations, and was Director for European Affairs on the National Security Council. “The New Concert of Powers”. Foreign Affairs. 3-23-21. https://www.foreignaffairs.com/articles/world/2021-03-23/new-concert-powers

The international system is at a **historical inflection point.** As Asia continues its economic ascent, two centuries of Western domination of the world, first under Pax Britannica and then under Pax Americana, are coming to an end. The West is losing not only its material dominance but also its ideological sway. Around the world, democracies are **falling prey** to illiberalism and **populist dissension** while a rising China, assisted by a pugnacious Russia, seeks to challenge the West’s authority and republican approaches to both domestic and international governance. U.S. President Joe Biden is committed to refurbishing American democracy, restoring U.S. leadership in the world, and taming a pandemic that has had devastating human and economic consequences. But Biden’s victory was a close call;on neither side of the Atlantic will **angry populism or illiberal temptations readily abate**. Moreover, even if Western democracies overcome polarization, beat back illiberalism, and pull off an economic rebound, they will not forestall the arrival of a world that is both multipolar and ideologically diverse. History makes clear that such **periods of tumultuous** **change** come with **great peril**. Indeed, **great-power** **contests** over hierarchy and ideology regularly lead to **major wars**. Averting this outcome requires soberly acknowledging that the Western-led liberal order that emerged after World War II cannot anchor global stability in the twenty-first century. The search is on for a viable and effective way forward. The best vehicle for promoting stability in the twenty-first century is a global concert of major powers. As the history of the nineteenth-century Concert of Europe demonstrated—its members were the United Kingdom, France, Russia, Prussia, and Austria—a steering group of leading countries can curb the geopolitical and ideological competition that usually accompanies multipolarity. Concerts have two characteristics that make them well suited to the emerging global landscape: political inclusivity and procedural informality. A concert’s inclusivity means that it puts at the table the geopolitically influential and powerful states that need to be there, regardless of their regime type. In so doing, it largely separates ideological differences over domestic governance from matters of international cooperation. A concert’s informality means that it eschews binding and enforceable procedures and agreements, clearly distinguishing it from the UN Security Council. The UNSC serves too often as a public forum for grandstanding and is regularly paralyzed by disputes among its veto-wielding permanent members. In contrast, a concert offers a private venue that combines consensus building with cajoling and jockeying—a must since major powers will have both common and competing interests. By providing a vehicle for genuine and sustained strategic dialogue, a global concert can realistically mute and manage inescapable geopolitical and ideological differences. A global concert would be a consultative, not a decision-making, body. It would address emerging crises yet ensure that urgent issues would not crowd out important ones, and it would deliberate on reforms to existing norms and institutions. This steering group would help fashion new rules of the road and build support for collective initiatives but leave operational matters, such as deploying peacekeeping missions, delivering pandemic relief, and concluding new climate deals, to the UN and other existing bodies. The concert would thus tee up decisions that could then be taken and implemented elsewhere. It would sit atop and backstop, not supplant, the current international architecture by maintaining a dialogue that does not now exist. The UN is too big, too bureaucratic, and too formalistic. Fly-in, fly-out G-7 or G-20 summits can be useful but even at their best are woefully inadequate, in part because so much effort goes toward haggling over detailed, but often anodyne, communiqués. Phone calls between heads of state, foreign ministers, and national security advisers are too episodic and often narrow in scope. Fashioning major-power consensus on the international norms that guide statecraft, accepting both liberal and illiberal governments as legitimate and authoritative, advancing shared approaches to crises—the Concert of Europe relied on these important innovations to preserve peace in a multipolar world. By drawing on lessons from its nineteenth-century forebearer, a twenty-first-century global concert can do the same. Concerts do lack the certitude, predictability, and enforceability of alliances and other formalized pacts. But in designing mechanisms to preserve peace amid geopolitical flux, policymakers should strive for the workable and the attainable, not the desirable but impossible. A GLOBAL CONCERT FOR THE TWENTY-FIRST CENTURY A global concert would have six members: China, the European Union, India, Japan, Russia, and the United States. Democracies and nondemocracies would have equal standing, and inclusion would be a function of power and influence, not values or regime type. The concert’s members would collectively represent roughly 70 percent of both global GDP and global military spending. Including these six heavyweights in the concert’s ranks would give it geopolitical clout while preventing it from becoming an unwieldy talk shop. Members would send permanent representatives of the highest diplomatic rank to the global concert’s standing headquarters. Although they would not be formal members of the concert, four regional organizations—the African Union, Arab League, Association of Southeast Asian Nations (ASEAN), and Organization of American States (OAS)—would maintain permanent delegations at the concert’s headquarters. These organizations would provide their regions with representation and the ability to help shape the concert’s agenda. When discussing issues affecting these regions, concert members would invite delegates from these bodies as well as select member states to join meetings. For example, were concert members to address a dispute in the Middle East, they could request the participation of the Arab League, its relevant members, and other involved parties, such as Iran, Israel, and Turkey. A global concert would shun codified rules, instead relying on dialogue to build consensus. Like the Concert of Europe, it would privilege the territorial status quo and a view of sovereignty that precludes, except in the case of international consensus, using military force or other coercive tools to alter existing borders or topple regimes. This relatively conservative baseline would encourage buy-in from all members. At the same time, the concert would provide an ideal venue for discussing globalization’s impact on sovereignty and the potential need to deny sovereign immunity to nations that engage in certain egregious activities. Those activities might include committing genocide, harboring or sponsoring terrorists, or severely exacerbating climate change by destroying rainforests. Policymakers should strive for the workable and the attainable, not the desirable but impossible. A global concert would thus put a premium on dialogue and consensus. The steering group would also acknowledge, however, that great powers in a multipolar world will be driven by realist concerns about hierarchy, security, and regime continuity, making discord inescapable. Members would reserve the right to take unilateral action, alone or through coalitions, when they deem their vital interests to be at stake. Direct strategic dialogue would, though, make surprise moves less common and, ideally, unilateral action less frequent. Regular and open consultation between Moscow and Washington, for example, might have produced less friction over NATO enlargement. China and the United States are better off directly communicating with each other over Taiwan than sidestepping the issue and risking a military mishap in the Taiwan Strait or provocations that could escalate tensions. A global concert could also make unilateral moves less disruptive. Conflicts of interest would hardly disappear, but a new vehicle devoted exclusively to great-power diplomacy would help make those conflicts more manageable. Although members would, in principle, endorse a norm-governed international order, they would also embrace realistic expectations about the limits of cooperation and compartmentalize their differences. During the nineteenth-century concert, its members frequently confronted stubborn disagreements over, for instance, how to respond to liberal revolts in Greece, Naples, and Spain. But they kept their differences at bay through dialogue and compromise, returning to the battlefield in the Crimean War in 1853 only after the revolutions of 1848 spawned destabilizing currents of nationalism. A global concert would give its members wide leeway when it comes to domestic governance. They would effectively agree to disagree on questions of democracy and political rights, ensuring that such differences do not hinder international cooperation. The United States and its democratic allies would not cease criticizing illiberalism in China, Russia, or anywhere else, and neither would they abandon their effort to spread democratic values and practices. On the contrary, they would continue to raise their voices and wield their influence to defend universal political and human rights. At the same time, China and Russia would be free to criticize the domestic policies of the concert’s democratic members and publicly promote their own vision of governance. But the concert would also work toward a shared understanding of what constitutes unacceptable interference in other countries’ domestic affairs and, as a result, are to be avoided. OUR BEST HOPE Establishing a global concert would admittedly constitute a setback to the liberalizing project launched by the world’s democracies after World War II. The proposed steering group’s aspirations set a modest bar compared with the West’s long-standing aim of spreading republican governance and globalizing a liberal international order. Nonetheless, this scaling back of expectations is unavoidable given the twenty-first century’s geopolitical realities. The international system, for one, will exhibit characteristics of both bipolarity and multipolarity. There will be two peer competitors—the United States and China. Unlike during the Cold War, however, ideological and geopolitical competition between them will not encompass the world. On the contrary, the EU, Russia, and India, as well as other large states such as Brazil, Indonesia, Nigeria, Turkey, and South Africa, will likely play the two superpowers off each other and seek to preserve a significant measure of autonomy. Both China and the United States will also likely limit their involvement in unstable zones of less strategic interest, leaving it to others—or no one—to manage potential conflicts. China has long been smart enough to keep its political distance from far-off conflict zones, while the United States, which is currently pulling back from the Middle East and Africa, has learned that the hard way. The international system of the twenty-first century will therefore resemble that of nineteenth-century Europe, which had two major powers—the United Kingdom and Russia—and three powers of lesser rank—France, Prussia, and Austria. The Concert of Europe’s primary objective was to preserve peace among its members through a mutual commitment to upholding the territorial settlement reached at the Congress of Vienna in 1815. The pact rested on good faith and a shared sense of obligation, not contractual agreement. Any actions required to enforce their mutual commitments, according to a British memorandum, “have been deliberately left to arise out of the circumstances of the time and of the case.” Concert members recognized their competing interests, especially when it came to Europe’s periphery, but sought to manage their differences and prevent them from jeopardizing group solidarity. The United Kingdom, for example, opposed Austria’s proposed intervention to reverse a liberal revolt that took place in Naples in 1820. Nonetheless, British Foreign Secretary Lord Castlereagh eventually assented to Austria’s plans provided that “they were ready to give every reasonable assurance that their views were not directed to purposes of aggrandizement subversive of the Territorial System of Europe.” A global concert would give its members wide leeway when it comes to domestic governance. A global concert, like the Concert of Europe, is well suited to promoting stability amid multipolarity. Concerts limit their membership to a manageable size. Their informality allows them to adapt to changing circumstances and prevents them from scaring off powers averse to binding commitments. Under conditions of rising populism and nationalism, widespread during the nineteenth century and again today, powerful countries prefer looser groupings and diplomatic flexibility to fixed formats and obligations. It is no accident that major states have already been turning to concert-like groupings or so-called contact groups to tackle tough challenges; examples include the six-party talks that addressed North Korea’s nuclear program, the P5+1 coalition that negotiated the 2015 Iran nuclear deal, and the Normandy grouping that has been seeking a diplomatic resolution to the conflict in eastern Ukraine. The concert can be understood as a standing contact group with a global purview. Separately, the twenty-first century will be politically and ideologically diverse. Depending on the trajectory of the populist revolts afflicting the West, liberal democracies may well be able to hold their own. But so too will illiberal regimes. Moscow and Beijing are tightening their grip at home, not opening up. Stable democracy is **hard to find** in the Middle East and Africa. Indeed, **democracy is receding,** not advancing, worldwide—a trend that could well continue. The international order that comes next must make room for ideological diversity. A concert has the necessary informality and flexibility to do so; it separates issues of domestic rule from those of international teamwork. During the nineteenth century, it was precisely this hands-off approach to regime type that enabled two liberalizing powers—the United Kingdom and France—to work with Russia, Prussia, and Austria, three countries determined to defend absolute monarchy. Finally, the inadequacies of the current international architecture underscore the need for a global concert. The rivalry between the United States and China is heating up fast, the **world is suffering** through a devastating pandemic, climate change is advancing, and the evolution of cyberspace poses new threats. These and other challenges mean that clinging to the status quo and banking on existing international norms and institutions would be dangerously naive. The Concert of Europe was formed in 1815 owing to the years of devastation wrought by the Napoleonic Wars. But the lack of great-power war today should not be cause for complacency. And even though the world has passed through previous eras of multipolarity, the advance of globalization increases the demand for and importance of new approaches to global governance. Globalization unfolded during Pax Britannica, with London overseeing it until World War I. After a dark interwar hiatus, the United States took up the mantle of global leadership from World War II into the twenty-first century. But Pax Americana is now running on fumes. The United States and its traditional democratic partners have neither the capability nor the will to anchor an interdependent international system and universalize the liberal order that they erected after World War II. The absence of U.S. leadership during the COVID-19 crisis was striking; each country was on its own. President Biden is guiding the United States back to being a team player, but the nation’s pressing domestic priorities and the onset of multipolarity will deny Washington the outsize influence it once enjoyed. Allowing the world to slide toward regional blocs or a two-bloc structure similar to that of the Cold War is a nonstarter. The United States, China, and the rest of the globe cannot fully uncouple when national economies, financial markets, and supply chains are irreversibly tethered together. A great-power steering group is the best option for managing an integrated world no longer overseen by a hegemon. A global concert fits the bill.

#### US led international order fails

Glaser 19 (Charles Glaser is a professor in the Elliott School of International Affairs and the Department of Political Science at George Washington University. He directs the Elliott School’s Institute for Security and Conflict Studies, April 29 2019, A Flawed Framework. Why the Liberal International Order Concept Is Misguided, tkk) \*added spaces between conjoined words because yes

To improve analysis and debate of U.S. foreign policy, scholars, policy ana-lysts, and policymakers should discontinue use of the term “liberal interna-tional order” and its variants, including “hegemonic liberal order.” First, forreasons discussed above, the LIO concept provides little analytic leverage; it isinward looking, and certain of its arguments are theoretically weak.Second, the LIO discourse is a source of signiªcant confusion about both theevolution of global politics and U.S. policy. As I argued at the outset, scholars and commentators do not have an agreed understanding about what the LIOincludes. More important, the LIO terminology clouds analysis of interna-tional policy by obscuring what is actually occurring. Consider, for example, the common observation that the LIO faces growing threats as a result ofChina’s rise and Russia’s assertive foreign policies. These dangers, however, have actually strengthened U.S. alliances and, in turn, the LIO. At least until the Trump administration, China’s rise was increasing the depth and cohesionof U.S. alliances in Northeast Asia. Similarly, Russia’s increasingly aggressive behavior in Ukraine and elsewhere was helping reinvigorate NATO. In short, the United States is facing growing threats to its security, not to the LIO. Al-though perhaps counterintuitive, it was the early post—Cold War decades that posed the greatest threat to the security elements of the LIO — the lack of major power threats to U.S. security weakened U.S. alliances. It should also be notedthat China is much more integrated into the international economy, including importantly via the WTO, than the Soviet Union ever was. Whether China’s economic inclusion is a net positive for the United States remains an openquestion, but it certainly strengthens the economic pillar of the LIO.Third, framing analysis of U.S. policy in terms of the LIO builds in asigniªcant status quo bias. Much of the discussion of the LIO starts from the premise that it is desirable and needs to be preserved.95During periodsInternational Security 43:4 8295. Porter, “A World Imagined,” pp. 15—18. of signiªcant change in the distribution of power, however, the United States should be reconsidering whether to preserve its international commit-ments and exploring how best to achieve its fundamental interests in the de-cades ahead.96Fourth, by viewing the LIO as an unalloyed good, U.S. leaders risk failing toappreciate fully that adversaries of the United States view central pillars of theLIO — its alliances, in particular — as a source of competition and threat. For ex-ample, the LIO perspective contributed to U.S. enthusiasm for expanding NATO eastward to spread democracy, while giving too little weight to Russia’s understanding of expansion’s negative implications. Similarly, it likely con-tributes to U.S. underappreciation of the threat that the U.S.-Japan alliance, es-pecially the broadening of Japan’s responsibilities in the alliance, poses toChina. These U.S. misperceptions increase the probability that the United States will misinterpret adversaries’ policies by failing to understand them as reactions to threatening U.S. policies. The LIO’s status quo bias and its contribution to these U.S. misperceptions are potentially dangerous, because they encourage the United States to exag-gerate the threats it faces and to pursue unduly competitive policies. FramingChina as a threat to the LIO reºects and combines both of these dangers, andthereby unnecessarily aggravates U.S.-China relations.97For all of these reasons, scholars and policymakers should use LIO terminol-ogy, at most, for descriptive purposes. The LIO would simply refer to the inter-national situation, including the key international institutions, the rules that support them, and the regime types of its members. It would not imply desir-ability or the ability to generate, even contribute to, speciªc international out-comes, beyond those generated by its individual elements. Even this usage hasdisadvantages, among others that there is no agreement on which elements theLIO includes.

## 1NC — Modeling

### 1NC — AT: Populism

#### They have a bunch of evidence that US antitrust is modelled now, but zero reverse causal evidence that it is modelled post affirmative OR their new standard is — there should be extremely high threshold for solvency

#### Populism is thumped — Trump, Boris Johnson, conservatism writ large, etc.

#### There is no brink to the Philippines scenario — we’ve had the CWS for years and so has the Philippines — it should’ve happened by now

#### No impact to populism---institutional checks

Nicola Mai & Peder Beck-Friis 19, 2-13-2019, Nicola Mai is an executive vice president in the London office and a sovereign credit analyst in the portfolio management group; Dr. Peder Beck-Friis is a vice president and portfolio manager in the London office, "EU Elections: Populism’s Threat May Be Overstated," Pacific Investment Management Company LLC, https://www.pimco.com/en-us/insights/viewpoints/eu-elections-populisms-threat-may-be-overstated/

It is unlikely that the eurosceptic parties will form a united anti-establishment front. The eurosceptic parties are heterogeneous, ranging from extreme left to extreme right, and they have diverging views on how Europe should be reformed. We think the probability that these parties coalesce into one political group is low.

Support for eurosceptic parties should remain well below 50%. This is important because even if these parties manage to form a united front, they will face the opposition of moderate parties, which will likely coalesce against them in parliamentary votes and obstruct radical proposals that could involve the dismantling or weakening of the European infrastructure.

The key decision-making process in the EU remains inter-governmental. All key European decisions need the approval of the European Parliament as well as the Council, with the most important decisions requiring unanimity of the Council. It is true that the parliament could block key initiatives set out by the Commission. But that would require the support of moderate parties, given the minority representation of the eurosceptic parties. Finally, in emergency situations, the Council has the ability to make decisions on a purely inter-governmental basis, bypassing the need to change EU law.

Nominations of key EU positions remain ultimately in the hands of the Council. Even in the unlikely event that a populist coalition emerges as the largest group in the parliament, it does not necessarily follow that the European Council will propose a populist candidate for president of the Commission. The Spitzenkandidat process is only a convention; the European Council could in principle nominate any candidate, and importantly, the nominee will still need to be approved by the parliament as a whole.

### 1NC — Rehighlighting

**Internal link to terror is just alt causes — low investor confidence, low formal education, sons of deceased terrorists, Covid-19 [KU reads yellow]**

Kenneth Yeo 1AC Yaoren **et al 21**. Kenneth Yeo Yaoren is a Research Analyst with the International Centre for Political Violence and Terrorism Research (ICPVTR) of the S. Rajaratnam School of International Studies at the Nanyang Technological University. Rueben Ananthan Santhana Dass is a Research Analyst with ICPVTR. Jasminder Singh is a Senior Analyst with ICPVTR. “Maritime Malice in Malaysia, Indonesia and the Philippines: The Asymmetric Maritime Threat at the Tri-Border Area”. International Centre for Counter-Terrorism – The Hague. April 2021. https://icct.nl/app/uploads/2021/04/maritime-terrorism-southeast-asia-policy-brief.pdf

The Sulu-Celebes Sea is one of the major shipping routes of Southeast Asia.64 Annually, US$40 billion worth of goods pass through the Sulu-Celebes Sea, creating great economic opportunities for inhabitants of the region in logistics management, ship maintenance, and other complementary sectors.65 Moreover, its marine biodiversity66 generates economic opportunities for eco-tourism67, fish farming, and reef-sourced biomedical products.68 However, the threats arising from crime, piracy and terrorism have significantly impacted investors’ confidence in that region. Notwithstanding these opportunities, the labour force participation rate of the Bangsamoro Autonomous Region of Muslim Mindanao (BARMM) is only 62.3 percent for individuals who are above 15 years old, signalling a high unemployment figure despite the reported 3.8 percent unemployment rate. 69 More critically, low levels of formal education in the BARMM have led to limits on workforce development.70 Non-Governmental Organisations have identified coastal **poverty71** **and relative economic depression72** as the **key factors** that may induce grievances and lead to a sense of relative deprivation and injustice for which affected individuals feel the need to rebel against. This then drives **individuals into engaging in illicit activities and political violence.**73 While comprehensive data on the youth unemployment rates in the region is unavailable, the high intensity of conflict and low formal education attainment reduces economic opportunities among youth. Based on the youth bulge theory, spaces with high youth population and high youth unemployment are more prone to civil conflict.74 The poor economic outlook, coupled with existing political grievances, facilitates the continuous recruitment of disgruntled youth **into militancy**.75 The coasts of the Sulu-Celebes Seas has observed high proportion of youth participating in Abu Sayyaf activities. This includes the infamous Ajang Ajang unit, which comprised sons of deceased Abu Sayyaf members. Much of the Abu Sayyaf militant strength is derived from its youth. Notable leaders like Isnilon Hapilon (49 years old when killed), leader of the Islamic State’s East Asian Wilayah, participated in militancy since he was 17.76 Amin Baco (35 years old when killed), who was touted to succeed Hapilon, participated in Islamist insurgencies since he was 16.77 Nonetheless, more research onto this topic is required to investigate the relationship between the high youth recruitment and economic deprivation at the region. The COVID-19 pandemic has decimated the economies of the TCA member states. Youth unemployment for the Philippines, Indonesia, and Malaysia has risen significantly as a result of measures to curtail the spread of the virus.78 This trend **worsens the existing socio-political grievances** of the population, thereby **increasing** youth **participation in regional militancy**.79 Ultimately, governments must adopt both hard and soft power to build lasting peace in the region.

**Internal link is poor port security — aff can’t solve [KU reads yellow]**

Abhijit 1AC Singh **18**. A former naval officer, Senior Fellow, heads the Maritime Policy Initiative at ORF. A maritime professional with specialist and command experience in front-line Indian naval ships, he has been involved the writing of India's maritime strategy (2007). “Maritime terrorism in Asia: An assessment” https://www.orfonline.org/research/maritime-terrorism-in-asia-an-assessment-56581/

The terrorism-piracy nexus and port security

In assessing the nature of maritime terrorist activity **in Asia**, it is important to study the terrorism-piracy nexus – not least because pirates have in the past financed terrorist activity.[59]Evidence of a linkage between the terrorists and pirates first emerged in May 2003, when the M/V Pen rider, a Malaysian-registered oil tanker, was attacked off the coast of Malaysia, and three crew members were taken hostage.[60] After ship owners paid $100,000 to free the crew, it emerged that the attackers were associated with the Free Aceh Movement, an insurgent group operating in Indonesia. The receipt of a ransom of $1.2 million by the Somali pirates to free a Spanish fishing vessel and 26 hostages in 2008 provided more proof of a possible link between terrorists and pirates; reportedly, the Al-Shabaab had received a five-percent cut. A year later, when the terror group hired pirates to smuggle in members of Al Qaeda to Somalia, the terror-piracy linkage seemed virtually **certain**.[61]

In recent years, **terrorists and pirates have appeared to draw closer**, even if the exact nature of their collaboration is not clear. Somali pirates and terrorists are said to have worked together in arms trafficking, and Al-Shabaab is said to have even have trained pirates for ‘duties’ at sea.[62]An investigation by the United Nations (UN) in 2017 found evidence of collusion between pirates and the Al Shabaab, including the possibility that pirates helped the latter smuggle weapons and ammunition into Somalia.[63] As discussed earlier, in Southeast Asia, the Abu Sayaff’s turn to piracy has resulted in millions earned via ransom payments.[64] Its cadres have used the **revenue** earned for pirate activity **to expand the radical organisation’s presence** in Southeast Asia.

The terror-piracy linkage is important because it highlights the causal mechanism behind rising **violence** at sea. The task of maritime security agencies becomes harder, however, when the lines between terrorism and piracy begin blurring, particularly in Southeast Asia, where the Abu Sayyaf has alternated between piracy and terrorism. Today’s pirates are trained fighters onboard speedboats, armed not only with automatic weapons, hand-held missiles and grenades but also and global positioning systems; professional mercenaries that loop effortlessly between rent-seeking and violent acts. Their objectives are as much ideological, as they are material.

ISPS code and littoral security

While most discussions around maritime terrorism presume a threat to sea-borne assets, port security constitutes the bigger challenge. Terrorists have long had **seaports on their crosshairs**, because of the latter’s role in **trade and economic development**. In recent years, there has been a significant increase in freight traffic, with key ports in Asia transformed into global trading hubs. In keeping with the growing importance of port-enabled trade, regional governments have taken better measures to protect ships and onshore facilities. In many ports, authorities have increased guards, gates, and security cameras, even introducing identification card programs to screen those with access to critical port infrastructure. The installation of radiation detectors has been particularly helpful in screening critical cargo and identifying suspicious shipments.

Yet, not even the best ports in Asia are able to track and monitor large containers comprehensively. With a rising quantum of cargo to be handled every day, port authorities find it impractical to scan each and every container being offloaded from cargo ships.[65]Container scanning in many ports is in fact a largely random exercise, with authorities insisting that shippers provide manifests of what is contained in cargo bins.[66]

The lack of effective checks on ports brings up the possibility of the use of containers as weapons to smuggle in arms, explosive materials or the terrorists themselves. While terrorists would not possibly target cargo ships directly, the latter could be used to transport weapons or to sabotage commercial operations. **A dirty-bomb** in an illicit cargo container of a cargo ship could cause a port shutdown and huge commercial disruption.[67] Even a failed attempt to smuggle a device into a major transshipment hub would significantly impact port operations.

After the 9/11 incident in the United States, the International Maritime Organization (IMO) had established the International Ship and Port Facility Security (ISPS) Code—a set of maritime regulations designed to help detect and deter threats to international shipping. The code subjects ships to a system of survey, verification, certification and control to ensure that the security measures prescribed by the IMO are implemented by member countries. It also provides a standardised, consistent framework for evaluating risk and gauging vulnerabilities of ships and ports facilities, laying down principles and guidelines for governments, port authorities and shipping companies, making compliance mandatory.[68]

The code, however, has not been effective in a way originally intended.[69]Firstly, the code is based on the experience of 9/11 and early piracy activity off Somalia. No amendments or revisions have been made with regard to new types of security threats encountered in recent years. The exclusion of vessels less than 500 tonnes, and all fishing vessels regardless of their size, is a further impediment in the code’s implementation, as terrorists have sought to use smaller boats to smuggle weapons and ammunition rarely subject to regulation.[70]

Another shortcoming is that the code does not include official monitoring procedures for security matters. Unlike the International Safety Management Code (ISM) that prescribes office audits by internal and external sources, the ISPS enumerates general guidelines and precautions—a standardised template for evaluating risks on many different types, sizes and categories of vessels and facilities.[71] The code also does not specify ways to strengthen capability to protect against new forms of terrorism, such as drone attacks.[72] With no legal obligation to implement regulations, port authorities are unwilling to make necessary investments in security measures.

The lack of national legislation/guidelines is another hurdle in the code’s implementation. Regional governments have neither enacted necessary domestic legislation to fight terrorists nor allotted resources to implement security measures.[73] In India, for instance, there is no comprehensive maritime security policy for protection of the commercial maritime infrastructure and supply chains.[74]A new Merchant Shipping Bill[75] in 2016 improved transparency and effective delivery of services, but has failed to address security concerns.

Given the complicated mix of variables contributing to port security, a study of security measures adopted by the civil aviation industry might offer some useful pointers. The latter’s efforts to prevent hijackings of commercial aircraft over the past four decades has been widely hailed as a success. Developed in the late 1960s, the international legal regime governing civilian flight operations was significantly upgraded after the attacks of 11 September 2001. The United States’ efforts to bring in legislation to regulate foreign airlines and flights from foreign airports have been particularly helpful. In concert with other international conventions drafted by the UN International Civil Aviation Organization (ICAO), the regulatory regime has deterred terrorists and criminals from targeting aircraft.[76]

This may hold important lessons for port security; in particular, approaches used in the international legal regime governing civil aviation to eliminate safe havens for pirates and terrorists by ensuring legal accountability. A study of security in the aviation sector could offer important tips on how port security systems could be mobilised to encourage best management practices; the importance of freezing assets of those who fund piracy enterprises; and the utility of enhancing communication and coordination among the various stakeholders relevant to the fight against piracy and terrorism.[77]

A next terrorist attack: Gauging the odds

To design policies that help combat maritime terrorism it is important to assess the likely nature of future attacks and their probable targets. Future terrorist attacks could be directed against four kinds of targets: warships, supertankers, passenger ships and port facilities. The most vulnerable and attractive targets remain tankers out at sea. The recent attacks on tankers in the Persian Gulf revealed that the threat is evolving and could now include unmanned vehicles.[78] More damaging would be the seizure and sinking of an oil-carrying tanker in a congested space, crippling the flow of maritime traffic. To get a sense of the extent of damage such an attack would cause, the Limburg incident in 2002 caused a massive spillage of oil (almost 90,000 tonnes) that took many weeks to clear.[79]

Another kind of attack could be on cruise ships out at sea. Big cruise ships are a lucrative target since they are lightly defended and relatively easily accessible.[80]An enquiry into the Achille Lauro incident in October 1984 highlighted fundamental deficiencies in safety procedures. Apparently, checks on passengers in the run-up to that fateful incident had not been foolproof. Despite acting nervously and even displaying anti-social behaviour, the Palestinian hijackers did not arouse the suspicions of passengers and crew.[81] While safety procedures have since improved, security procedures at ports and aboard cruise ships (with certain exceptions) are far from immaculate. During the Super Ferry incident in the Philippines in 2004, Abu Sayyaf operatives disguised as tourists smuggled 20 sticks of explosives that were stored inside an emptied out TV set.[82] There is some evidence that cruise shipping companies in Asia and Africa continue with the same lax approach that enabled that devastating attack.

The most likely venue of a future terrorist strike, however, might be inside a port facility, and it could possibly involve a ‘lone wolf’ with a loose affiliation to a bigger terrorist group. Ports are an attractive target because many of the tactical problems that terrorists face in orchestrating attacks on ships in the high seas do not apply to harbors, ports, or shore-based maritime facilities. Terrorists realise that the containerised supply chain is complex, and creates many opportunities for isolated acts of terrorism. An ineffective point of check, for instance, could allow a jihadi inside a container **to detonate a** vast quantity of explosives or a low-grade **nuclear device**; inadequate surveillance in a vessel could lead a jihadi diver to plant an explosives improvised explosive device (IED). While many ports have installed radiation detectors to combat the threat of IED, the pace of installation has been slow, and smaller ports remain vulnerable.

### 1NC — Terror

#### No theft

Leonard Weiss 15, visiting scholar at the Center for International Security and Cooperation at Stanford University and member of the National Advisory Board of the Center for Arms Control and Non-Proliferation, March/April 2015, “On fear and nuclear terrorism,” Bulletin of the Atomic Scientists, Vol. 71, No. 2, p. 75-87

Stealing nukes. Nothing is better protected in a nuclear weapon state than the weapons themselves, which have multiple layers of safeguards that, in the United States, include intelligence and surveillance, electronic locks (including so-called “permissive action links” that prevent detonation unless a code is entered into the lock), gated and locked storage facilities, armed guards, and teams of elite responders if an attempt at theft were to occur. We know that most weapon states have such protections, and there is no reason to believe that such protections are missing in the remaining states, since no weapon state would want to put itself at risk of an unintended nuclear detonation of its own weapons by a malevolent agent. Thus, the likelihood of an unauthorized agent secretly planning a theft, without being discovered, and getting access to weapons with the intent and physical ability to carry them off in the face of such layers of protection is extremely low—but it isn’t impossible, especially in the case where the thief is an insider.

The insider threat helped give credibility to the stories, circulating about 20 years ago, that there were “loose nukes” in the USSR, based on some statements by a Soviet general who claimed the regime could not account for more than 40 “suitcase nukes” that had been built. The Russian government denied the claim, and at this point there is no evidence that any nukes were ever loose. Now, it is unclear if any such weapon would even work after 20 years of corrosion of both the nuclear and non-nuclear materials in the device and the radioactive decay of certain isotopes.

Because of the large number of terrorist groups operating in its geographic vicinity, Pakistan is frequently suggested as a possible candidate for scenarios in which a terrorist group either seizes a weapon via collaboration with insiders sympathetic to its cause, or in which terrorists “inherit” nuclear weapons by taking over the arsenal of a failed nuclear state that has devolved into chaos. Attacks by a terrorist group on a Pakistani military base, at Kamra, which is believed to house nuclear weapons in some form, have been referenced in connection with such security concerns (Nelson and Hussain, 2012). However, the Kamra base contained US fighter planes, including F-16s, used to bomb Taliban bases in tribal areas bordering Afghanistan, so the planes, not nuclear weapons, were the likely target of the terrorists, and in any case the mission was a failure. Moreover, Pakistan is not about to collapse, and the Pakistanis are known to have received major international assistance in technologies for protecting their weapons from unauthorized use, store them in somewhat disassembled fashion at multiple locations, and have a sophisticated nuclear security structure in place (see Gregory, 2013; Khan, 2012).

However, the weapons are assembled at times of high tension in the region, and, to keep a degree of uncertainty in their location, they are moved from place to place, making them more vulnerable to seizure at such times (Goldberg and Ambinder, 2011). (It should be noted that US nuclear weapons were subject to such risks during various times when the weapons traveled US highways in disguised trucks and accompanying vehicles, but such travel and the possibility of terrorist seizure was never mentioned publicly.)

### 1NC — No !

#### No impact — it’s about detonating a single nuke at a port.

#### Terrorism is a moral panic – justifies an ongoing State of Exception and results in more terror

Walsh 16 – Dr. James Walsh received his Master of Arts and PhD in Sociology from the University of California, Santa Barbara. Before joining the University of Ontario Institute of Technology, he served as a Visiting Assistant Professor at the University of Richmond in Virginia, as well as a Postdoctoral Fellow at the University of Pennsylvania’s Social Science and Policy Forum.  (James, “Moral panics by design: The case of terrorism,” March, [Current Sociology](https://www.researchgate.net/journal/0011-3921_Current_Sociology) 1(5), DOI: 10.1177/0011392116633257) jbb

Disproportionality As the primary indicator of moral panics’ emergence disproportionality also represents a ‘central problematic of the moral panic literature’ (Goode and Ben-Yehuda, 2010: 29). Several critics have argued it is often impossible to definitively prove the revealed Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 8 Current Sociology extent of a problem is incommensurate with societal reactions (Ungar, 2001; Waddington, 1986), dynamics uniquely applicable to ‘future-oriented’, unquantifiable, and potentially catastrophic threats like terrorism. While risk assessments and forecasts indicate societal reactions are disproportionate (Mueller, 2006), they neglect that, more than sources of harm, terrorist acts augur deeper, more prevalent threats. While many folk devils are conjured solely through media and political campaigns, terrorists actively cultivate uncertainty and manufacture a deferred future haunted by the quotidian possibility of violence. Nonetheless, while terrorism produces a frightening and unpredictable landscape, the available evidence suggests official and popular **reactions are unwarranted** when compared to more harmful issues. For example, between 1969 and **2013 5755 Americans, domestically and internationally, died in terrorist attacks,** a figure dwarfed by deaths from domestic gun violence in **2013 alone** (33,636 [CDC, 2014]). Given this information, surely terrorism’s characterization as a civilizational threat and expenditures in excess of US$1 trillion on homeland security are disproportionate and exaggerated. In terms of specific manifestations, official responses to terrorism frequently entail punitive rhetoric and policies that **provoke irrational fear**. To be clear, state responses are not preordained and remain contingent upon, among others, regime type, public sentiment, the severity of the perceived threat, and elite interests. Although many governments have adopted hardline orientations, others have responded with measured assessments and reactions.4 Nonetheless, the historical record reveals government reactions frequently represent ‘extreme example[s] of … disproportion[ality]’ (Hunt, 2011: 59). Severe responses to terrorism are often **informed by precautionary logics, preemptive measures, and the exploitation of anxiety regarding future devastation.** Through allusions to shadowy threats and worst-case scenarios state managers have frequently manipulated genuine public concern for political purposes, whether boosting legitimacy, achieving consent, or advancing initiatives (military interventions, immigration restriction, political repression, heightened surveillance and policing, etc.) previously lacking the requisite support (Altheide, 2006; Walsh, 2015). Around the turn of the 20th century governments throughout Europe and North America exaggerated the menace of Anarchist violence, advancing claims of a global network and conspiracy in which Anarchists were secretly ‘lurking all over the continent’ (Miller, 2013: 114). Alongside promoting labor repression, for several countries, such assertions galvanized support for mass round-ups and deportations of foreign radicals associated with ethnic and religious minorities. At present, ‘the … impossibility of estimating the terrorist risk has enabled political elites to circulate decidedly fanciful claims’ regarding the threat of radical Islam (Mythen and Walklate, 2006: 387). In justifying the WOT’s politico-legal architecture, Vice President Cheney emphasized terrorism’s unknown and potentially cataclysmic nature, noting ‘If we make the wrong choice, the danger is that we will get hit again … in a way that is devastating’ (Altheide, 2006: 415). President Bush echoed such sentiments, claiming, ‘We cannot wait for the final proof … in the form of a mushroom cloud’ (Welch, 2006: 23). In terms of institutional responses, terrorism, like other moral panics, typically **inspires escalations of social control and discipline**, whether police repression, the Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 Walsh 9 **abrogation of human rights, techniques of social defense, or the bending, suspension, and circumvention of the law** (Cohen, 2002: 66–72, 140–145). Such measures are often exceedingly elastic and based on group-based profiles where shared social characteristics (nationality, phenotype, religion, etc.) incite suspicions of malevolence and criminality. While visible in several cases, whether the Red Scare or the Battle of Algiers (Crenshaw, 1972; Miller, 2013), these dynamics are especially conspicuous at present. With its appeals to ‘infinite justice’ and global conflict without clear adversaries and parameters, the WOT has provided an alibi for creating a fluctuating net of enforcement that can be ‘cast over any form of resistance to sovereign power’ whether activists, domestic minorities, foreigners, or other suspect populations (Gregory, 2003: 319). Such trends are uniquely applicable to the contemporary climate of Islamophobia. Specifically, terrorism’s interpretation through registers of racial and religious difference has incited ‘signification spirals’ (Hall et al., 1978) in which fears and threats stemming from small-scale subversive and antagonistic groups (jihadists) **result in the construction of entire collectivities** (Muslims in general) as folk devils that are inherently risky, dangerous, and other. Volatility Traditionally conceived as ‘eruptive … and quick to subside’ (Hunt, 2011: 57), it is increasingly acknowledged that moral panics vary in ‘intensity, duration, and impact’ (Garland, 2008: 13). While many are transient and ephemeral, others, whether regarding drugs, street crime, or terrorism, represent persistent sources of unease. When coupled with the rise of a globalizing mass media and 24-hour news cycle these developments have tr**ansformed moral panics from brief eruptions into enduring states of anxiety and insecurity** (Carrabine, 2008). For terrorism, while the hysteria it produces may abate, it **displays long-lasting repercussions**, whether a lingering sense of vulnerability that can quickly transmutate into full-blown panic or the entrenchment of intensified policing and securitization. Creating crisis and orchestrating alarm: Terrorists’ role in engineering moral panics A central task for terrorism scholars is explaining how ‘groups with little or no … political power … can achieve effects … out of all proportion to their numerical or [military] power’ (Wardlaw, 1989: 3). While their weapons are often primitive, their asymmetrical tactics – ‘the use of directed terror … [and] widespread panic’ – are quite sophisticated (Wardlaw, 1989: 3). Specifically, terrorists believe their efforts will produce an ‘illusionist’s trick’, injecting them with an authority and influence they previously lacked (Fromkin, 1975: 685). Informed by these issues, this section assesses terrorism’s strategic dimensions and elaborates their role in initiating moral panics. In doing so it identifies a fourth model of emergence – provocateur – not captured in the existing typology of grassroots, interest group, and elite-engineered. As detailed below, while societal reactions embody moral panics’ core dimensions, for modern terrorist organizations, such responses are desired, Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 10 Current Sociology anticipated, and central to their calculations and designs. Rather than exogenous targets whose threatening status is constructed by publics, states, and moral entrepreneurs, terrorists’ strategic logic and practices are endogenous to moral panics’ orchestration. Specifically, when carrying out attacks terrorists utilize three tactics that facilitate moral panics: (1) the deployment of affective violence; (2) the exploitation of the mass media; and (3) efforts to incite disproportionate overreaction. Affective violence Terrorists represent specialists in affective violence or forms of aggression oriented towards evoking particular moods and emotional states. While warfare is physical and instrumental, terrorism constitutes a symbolic and gruesome form of political dramaturgy (Alexander, 2004). Its first-order objectives are not to kill or destroy but, through scenes of devastation, whether of corpses, mangled transportation, or collapsed buildings, to instill unremitting fear. While the extent of physical destruction is typically miniscule, terrorism’s social and psychological effects – irrational panic, collective alarm, and ‘intrusive, repetitive recollection’ – are often profound and long-lasting (Schmid and Jongman, 1988: 19). Terrorism’s unsettling character stems from its effects on citizens’ interior landscapes and sociopolitical order. By producing perceptions of vague, unpredictable, and ubiquitous threats, terrorism is acutely unnerving and evokes visceral feelings of personal danger and vulnerability. Exemplifying these dimensions, the Algerian National Liberation Front’s (FLN) official journal, El Moudjahid, claimed the organization’s campaign of random and intermittent attacks on pied noirs sought to deliver an ‘incontestable psychological shock’ and foster ‘panic, insecurity … and fear in the enemy camp’ (Crenshaw, 1972: 386). According to Feraoun, an Algerian novelist and schoolteacher, this strategy instilled ‘panicky fear without a precise object, without foundation’, an imminent, but unspecified, sense of catastrophe (Crenshaw, 1972: 388). Indistinguishable from ordinary citizens (they lack uniforms and insignia), terrorists subvert distinctions between the battlefield and everyday life and exist as ‘predatorial unmarked strangers’ (Valier, 2002: 321) that render security a chimerical task. Moreover, at present, mundane and seemingly innocent objects (shoes, backpacks, underwear, Stanley knives, the mail, etc.) are appropriated as weaponry and transmogrified into sources of fear, uncertainty, and potentially unspeakable destruction. Consequently, terrorism displays a spectral quality, establishing pervasive unease and conjuring ‘imaginaries of eschatological dimensions’ (Miller, 2013: 5). Terrorists also exploit modern societies’ defining properties to unsettle political order and sociality. Terrorism transforms the ‘open society’ from a mark of distinction into a liability. Despite their military prowess, economic power, and political influence, highly complex, differentiated, and densely populated societies are exceedingly difficult to defend against unconventional attacks. Consequently, terrorism shatters myths regarding the state’s capacities of security, sovereignty, and order enforcement, thereby reintroducing the very element of disorder – the bellum omnium contra omnes – it emerged to domesticate. Further, the anxiety terrorism produces often stems from its targeting of the spaces and infrastructures of daily life, including mass-transit, zones of entertainment Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 Walsh 11 and consumption (shopping districts, hotels, cafes, theaters, etc.), and sites of worship. Beyond denuding social life of its pacific stability, attacking such areas supplants trust and interdependence with suspicion and paranoia. According to Savitch (2014: 53), ‘Once people … interpret normal activities as “a dare”, they have converted personal trepidation into a nub of civic distrust.’ When everyone appears potentially threatened and threatening, and no one knows what behavior to expect from others, communal bonds and associations collapse into a mass of anxious and atomized individuals (Wardlaw, 1989). Threat amplification Alongside its role in moral panics’ promulgation, the mass media double as a crucial component of terrorism. Terrorists seek and utilize media coverage to publicize their struggle, maximize their audience, and facilitate deviancy amplification in which media coverage distorts and exacerbates their threatening status. Accordingly, modern terrorism would never have assumed the prominence it has without the media, a situation leading scholars to label it ‘mass-mediated violence’ (Weimann, 2008; cf. Wardlaw, 1989). According to Carlos Marighella’s Mini-Manual, a sourcebook for dissidents across the world, ‘the war of nerves … the psychological war’ hinged on the effective ‘use of the mass-media’ (1982: 87–90). Reflecting this statement, groups ranging from the Tamil Tigers to the Red Army Faction (RAF) have devoted entire wings of their organizations to publicity and media relations (Hoffman, 2006). The terrorism–media relationship is one of reciprocal exploitation and dependence (Tuman, 2009). Terrorists routinely orchestrate attacks that evidence a sophisticated grasp of the nature of mass communications and audience dynamics. Seemingly aware that media representations are not mirrors that objectively reflect ‘reality’ but, by providing ‘images … much sharper than reality’ (Cohen, 2002: 43), enter directly into its constitution, terrorists have often fashioned and staged their violent methods, whether in terms of their symbolism, victimization, or spectacular nature, to meet the media’s ‘institutionalized “need” for moral panics’ (Goode and Ben-Yehuda, 2010: 90). Given the drama of horrific violence and accompanying ‘images of pantomime villains, Hollywood styled attacks, and heart-wrenching victims’, terrorism is a media spectacle of the first order and clearly embodies the melodramatic nature of media events identified by Cohen (Vertigans, 2013: 38). As noted by one former member of the German RAF and Italian Red Brigades, ‘We give the media what they need: newsworthy events … [they] are very invested in our actions … [which are often] planned for the media’ (Schmid, 2005: 147). As the quote suggests, while the media are integral to terrorism, terrorism also facilitates the news media’s ceaseless efforts to boost ratings amid the ‘rigors of intense … globalized competition’ (Reiner, 2013: 149), and shock, captivate, entertain, and otherwise affect the emotions of increasingly voyeuristic audiences (Altheide, 2002). For terrorists, mass communications drastically expand the size of the ‘witnessing public’ (Coleman and Ross, 2010). Without media, terrorism’s impact would only affect those in the attack’s immediate vicinity. Even before the age of electronic media, European Anarchists embraced the press’s strategic significance, believing the publicity it generated would ‘create a myth of global revolutionary pretensions … stimulat[ing] Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 12 Current Sociology fears and suspicions disproportionate to its actual impact’ (Hoffman, 2006: 7). Facilitated by technological advancements (portable cameras and satellite uplinks) terrorist acts increasingly represent globally legible events with mass-psychological effects for spatially dispersed publics. For Black September’s hostage-taking and murder at the 1972 Munich Olympics, approximately 800 million individuals witnessed the events on television, leading the group to claim the incident was ‘like painting the name of Palestine on a mountain’ visible ‘from the four corners of the earth’ (Hoffman, 2006: 70). For September 11, the attacks – whether their nature, targets, or timing – were designed to maximize media coverage. According to an Al-Qaeda training manual, by targeting ‘sentimental landmarks’ the organization sought to acquire ‘intense publicity’ and produce pervasive fear (Nacos, 2003: 4–5). Terrorists also exploit media outlets’ appetite for dramatized coverage and how it distorts perceptions of risk and danger. With the drift towards ‘infotainment’ the grammar and symbolic representations of media coverage are crafted in ways that offer simplistic narratives and privilege formats that are ‘visual, brief, action-oriented, and dramatic’ at the expense of in-depth analysis and ‘referentially derived information’ (Altheide, 2002: 47). As publics are increasingly sensitized to accept stylized and stereotypical accounts as more arresting and factual than dispassionate journalism, sensationalist media narratives not only resonate with, but sharpen, public sentiment (Altheide, 2006). Through editing and the inclusion of high-production sound, music, and graphics, the news media relay scenes of spectacular violence, stunning visual imagery, alarming threats to collective security, and moral conflicts between good and evil. As demonstrated in New York, Madrid, and London, vivid repetitive coverage of attacks and their aftermath reverberated throughout the televisual landscape, priming ‘the cognitive and emotional processes that help[ed] create a disproportionate sense … of vulnerability’ (Breckenridge and Zimbardo, 2007: 123). Ultimately, by selecting and organizing content in ways that shape audience assumptions about terrorism, the media promulgate a ‘fear narrative’ defined by ‘the pervasive communication … awareness, and expectation that danger and risk are … central feature[s] of the effective environment’ (Altheide, 2006: 114). Moreover, like crime, media depictions of terrorism conform to the ‘law of opposites’ in which coverage accentuates extreme, shocking incidents at the expense of more routine offenses (Surette, 2014). While terrorist episodes are typically quantitatively small in frequency and injury, the volume and tenor or media coverage makes otherwise obscure organizations appear more menacing, capable, and effective than they actually are, thereby perpetuating myths about ‘twenty foot tall’ and ‘all-knowing, all-seeing terrorist[s]’ (Friedman, 2004: 36; cf. Tuman, 2009). Researchers have demonstrated that, since the 1980s, Americans have routinely identified terrorism as a leading source of concern, eclipsing other social problems that, to the extent they can be objectively ascertained, are far more devastating (Breckenridge and Zimbardo, 2007). 5 Provoking punitiveness Beyond generating fear and publicity, terrorism frequently represents a strategy of provocation in which weaker actors turn their opponents’ military and coercive superiority Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 Walsh 13 into liabilities (Parker, 2007). Under such arrangements terrorists exploit the symbiotic relationship between folk devils and social control agents in which each responds to, feeds on, and magnifies the other. Here the essential idea is that vengeful unrestrained reprisals will erode the targeted regime’s legitimacy, exposing its true colors as a despotic force and sharpening the contradictions of the established order. Accordingly, to create terror and carnage they are incapable of effectuating on their own, terrorists rely on an inherent hazard of counter-terrorism: mimesis and imitation. For Agamben (2001: 45) **a security-obsessed state** ‘is a fragile organism; it **can always be provoked by terrorism to become itself terroristic’**. Ultimately, strategies of provocation seek to induce conflict and polarization. Whether operating domestically or transnationally, terrorists stand to benefit as harsh reactions may alienate important constituents, inflame tensions, radicalize moderates, destabilize societies, and diminish democracy, outcomes which embolden terrorists and exacerbate the root causes of political violence (Juergensmeyer, 2000). By increasing the resonance of terrorists’ claims regarding their struggle and adversary, overwrought responses provide ‘propaganda capital’ (Wardlaw, 1989: 70) allowing them to mobilize valuable resources, whether ideological support, additional recruits, or weapons and financial assets. Accordingly, through repressive responses ‘states “socially construct” more resilient … terrorist organizations’ and, as such, may become ‘their own worst enemies’ (Parker, 2007: 155–156). As a strategy, provocation is rooted in 19th-century Anarchism. Drawing on the notion of ‘propaganda by deed’ several figures, whether Most, Kropotkin, or Nechayev, embraced agitational violence as a necessary catalyst to seize the masses’ attention and impel the state’s organs of coercion into indiscriminate brutality. According to the Russian Anarchist Kropotkin, **terrorist acts were designed to generate ‘savage repressions’** that would succeed in uniting the masses, ‘awaken[ing] the spirit of revolt’, and ‘driving the rebels to heroism’ – a strategy which has since been embraced by numerous thinkers and organizations, including Carlos Marighella, Regis Debray, the FLN, the Tupamaros, and Al-Qaeda (Townshend, 2011: 57). Gripped by shock, vulnerability, and outrage, rather than carefully calibrated responses in proportion to the injury sustained, there is an intense desire among victimized groups to pursue retributive and cathartic responses. Following 9/11, a New York Times poll uncovered widespread support for military action against terrorists even if ‘many thousands of innocent people’ were killed (Breckenridge and Zimbardo, 2007).6 Ultimately, all-consuming demands for social defense exonerate drastic expansions in state sovereignty and a turn to ‘gloves-off crime control’ (Hudson, 2003: 45). Historically, manifestations of counter-terrorism, whether expansions in policing power, preventive – and often indefinite – detention, secret trials, warrantless searches, intrusive surveillance, torture and ‘enhanced interrogation’, assassinations, or aggressive military strikes and pre-emptive wars, embody forms of ‘counter-law’ (Ericson, 2008); governmental practices that operate with impunity and are institutionalized in the absence of political deliberation, legal oversight, and public consent. While state repression may facilitate their liquidation, history is replete with examples of provocation advancing terrorists’ proximate and long-term objectives. For nationalist and anti-colonial groups, the spiral of violence produced by terrorist attacks has often Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 14 Current Sociology succeeded in estranging and alienating colonial subjects from the metropole. In 1940s Palestine, Britain’s response to the Irgun, whether curfews, checkpoints and partitions, executions, or martial law, created ‘an image of the army and police as oppressors rather than protectors’, dynamics contributing, in part, to Israel’s eventual independence (Hoffman, 2006: 52). For Algeria, provocative violence was central to the FLN’s strategy and eventual victory. France’s response, which included torture, public assassinations, and mass round-ups and forced relocation, backfired catastrophically, transforming FLN members into martyrs, galvanizing opposition among native Algerians, and outraging public opinion in France (Fromkin, 1975). Moreover, in both contexts, government responses established sympathy beyond each organization’s theater of operation, transforming local struggles into global issues commanding the international community’s attention (Rapoport, 2002). In Europe, IRA attacks against Britain’s security forces in the early 20th century were conducted, in part, to elicit violent and politically useful reactions (English, 2003). Their response came in the form of the Black and Tans, special constables whose indiscriminate attacks ‘did more than anything … to undermine the British effort to keep Ireland within the UK’ (Townshend, 2011: 125). More recently, the IRA and ETA coordinated attacks on police, military, and security forces in the hopes of provoking excessive repression (Zirakzadah, 2002). For the former, the Thatcher government’s policies of internment and coercive interrogation failed to effect its operational capacity, while reinforcing Republicans’ legitimacy and producing a flood of recruits, money, and weapons (White, 1989). Similar strategies were visible for revolutionary groups, like the RAF, whose campaign of kidnappings and bombings sought to enrage the state and ‘make fascism visible’ in West Germany (Vertigans, 2013). Finally, provocation represents a central strategy of radical Islamist groups. Although the precise objectives of organizations like Al-Qaeda remain opaque, the available evidence suggests their actions represent a calculated effort to elicit extreme responses, thereby **facilitating their broader goals of mobilizing, uniting, and radicalizing the world’s Muslim population** (Nacos, 2003). In orchestrating their attacks Al-Qaeda seems to have appreciated that, given its hawkish militarism and aggressive unilateralism, **the Bush administration was susceptible to provocation**.7 Ultimately, the organization hoped American reprisals could be framed as an anti-Islamic crusade and cosmic war between good and evil, believers and infidels. While Al-Qaeda’s objectives remain unfulfilled, America’s response has proven counter-productive. Alongside torture, prisoner abuse, and drone strikes, Operation Iraqi Freedom in particular ‘breathed new life into the organization’, vindicating its claims of Western imperialism and inspiring a sustained insurgency (Byman and Pollack, 2008: 56). Producing approximately 500,000 civilian causalities and 2 million refugees, the war served as a major recruitment tool and source of radicalization in the Middle East, Western Europe, and elsewhere (Welch, 2006). Moreover, America’s actions eroded international support, particularly in the Muslim world, while support for Al-Qaeda, indicated through funding and recruitment levels, rose considerably.8 Consequently, ‘far from shrinking, the spaces of lawlessness, the training grounds for global terrorism, expanded to unheard of dimensions’ (Bauman, 2013: 102). Further, domestic reactions, whether enhanced surveillance, racial profiling, or revanchist nationalism evidenced in Downloaded from csi.sagepub.com at UOIT Campus Libraries on March 10, 2016 Walsh 15 Islamophobia, racism, and hate crimes, have bred mistrust, discrimination, and harassment, thereby facilitating the radicalization of pockets of domestic minorities, and validating claims regarding Western opposition to Islam.9 Although it remains unclear if such outcomes are intended or desired, their effects – treating entire populations as threats and folk devils – have amplified and entrenched the very tensions and divisions on which terrorists depend and feed (Morgan and Poynting, 2012).

## 1NC — Democracy

### 1NC — Democracy Bad

#### Judicial activism is inevitable — the 6-3 conservative court guarantees activist decisions antithetical to democracy like the Texas Abortion laws OR the past term’s workers rights cases

**Democracy doesn’t solve war**

**Mousseau**, Poli Sci Prof @ University of Central Florida, **16**

(Michael, Grasping the scientific evidence: The contractualist peace supersedes the democratic peace, Conflict Management and Peace Science 1–18)

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, **may be spurious** and accounted for by **institutionalized market** ‘‘contractualist’’ **economy**. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the **profound implication** that the **spread of democracy will end war**. **New economic norms theory**, on the other hand, yields the contrary implication that **universal democracy will not end war**. Instead, it is market-oriented development that creates **a culture of contracting**, and this culture legitimates democracy within nations and causes peace among them. **The policy implications could hardly be more divergent:** to end war (and support democracy), the contractualist democracies should **promote the economies of nations at risk** (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, **the impact of democracy is zero** **regardless** of how **contractualist economy** or **interstate conflict** is measured. There is no **misinterpreted interaction term** in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an **erroneous research design**. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a **statistical artifact** since it does not exist among neighbors where everyone **has an equal opportunity to fight**.

#### Democracy causes great power nuclear war — backsliding solves

Muller 15, director of the Peace Research Institute in Frankfurt, professor of International Relations at Goethe University, (Harald, Democracy, Peace, and Security, Lexington Books pp. 44-49)

My own proposal for solving the problem. developed together with my colleague Jonas Wolff (Müllcr 2004. Muller/Wolff 2006). turns the issue upside down: We do not start with explaining mutual democratic peacefulness, but its opposite. the proven capability of democracies to act aggressively against non-democracies. We note that — apart from self-defense where there is no difference between democracies and non-democracies — — democratic states go to war — in contrast to non-democracies — to uphold international law (or their own interpretation thereof), to prevent anarchy through state failure, to “save strangers” when dictatorships massacre their own people, and to promote democracy. None of these acts is likely to find its target in a democracy. Since the use of force by democracies is hardly possible without public justification, even the rhetorical use of the said reasons will not stand public scrutiny when uttered against a democracy — people will not believe it, War other than for self-defense thus can only be fought by democracies against non-democracies because against a fellow democracy justification would fail. Because whether this is the case or not to a degree that justifies war as the ‘ultimate means” must rely on practical judgments. and practical judgments can differ among even reasonable people. democracies might disagree whether or not the judgment applies in specific cases. Democracies also show variance in that regard due (o a systematic. political-culturally rooted different propensity to judge situations as justifing war or not, and to participate in such wars (Gels et al, 2013). It should also be noted that, given the continuum between autocracy, anocracy and democracy, whether a given state is a democracy or not can be subject to interpretation. and this interpretation may even change over time (Oren 1995, Hayes 2013). The fact is that there are a couple of fairly warlike democracies, and that the democracies participating most frequently in military disputes (apart from the special case of Israel) are, by and large. major powers such as the United States, the United Kingdom. France. or India. This pattern is important to keep in mind when the question of the utility of democratic peace for today ‘s world problems is to be answered. Transnational terrorism, failed states, civil wars and the like dominate the international agenda on war and peace. At the classical level of international relations, in the relationships among major powers. developments arc undcr way which potentially pose an even greater threat than this diverse collection of non-interstate problems presently does. We are living in an era of rather rapid and disturbing power change (Tammcn et al. 2000). The United States are still the leading power of the world with unprecedented militany and economic poer. But others are coming closer: China. India. Braiil and Indonesia, China is at the top of this cohort, All major power changes chal lenge existing structures and thus contain the potential for great disturbance. The leading power may start to fear for its dominant position and take measures to ensure its position at the lop. These actions may frustrate emerging powers and even lead to the perception that their security is endangered. which would motivate counter-measures that further propel a political escala tion spiral. An increasingly focused competition in which a true power change appears increasingly possible. that is. a change of position at the top of the international hierarchy, has an even greater risk potential. If the inherent dangers are not contained — which remains always a possibility major power war may ensue defying all propositions that major war has become obsolete or that nuclear deterrence will prevent this calamity once and for all. Of course, states can grow peacefully into roles of higher responsibility. status and influence on the world stage. There arc no natural laws saving that changes in the world’s power structure must end in war, despite all distur bances and ensuing risks (Rauch 2014). The less conflict an emerging power experiences with established ones, and with peer challengers that emerge simultaneously, the better the chances that the rise will travel a peaceful trajectory. Looking through this lens. thc relations of only one emerging power with the present hegemon appear to be partially conflict-pronc. and seriously so: it concerns the pair China/United States. The Iwo great powers are rivals for preponderance in East and South East Asia and eventually for being the number one at the global level. There is also Chinese resentment stemming from the US role in China’s past as a victim of Western imperialism. On the other hand. China’s authoritarian system of rule and ensuing violations of human and political rights trigger the liberal resentment discussed in the first part of this chapter. which is rooted particularly strongly in US political culture. The Chinese — US relationship is thus thc key to a peaceful. tense or even violent future at the world stage. A small group of major powers. Including the United States and China, is interconnected today by a complex conflict system. China has territorial claims against Japan, South Korea, Vietnam. the Philippines. Brunci. and India which it pursues by a variety of means, not shying away from the limited, small scale usc of militan force in some cases, notably against obviously weaker counterparts (Ellcman ci al. 2012). China’s relation (o wards Japan is the one most burdened by China’s past as a victim of Japanese oppression and related cruelties, and the propcnsit of the conservative part of Japan’s elite to display cavalier attitudes towards this past or even sort of celebrate it (as through visits to the notorious Yasukuni shrine hosting the remnants of war criminals) only adds to anti-Japanese feelings in China (Russia. another great power. also openly pursues a revisionist agenda. as vividly shown in the recent Crimean move, but these territorial ambitions are not part of the most virulent conflict complex in Asia). Territorial claims are always emotionalized and dangerous. Territorial claims by a major power bear particular risks, because threatened countries look for protective allies which are, by necessity, major powers with the capability to project power into the region of concern. The great power claimant and the great power protector then position themselves on the opposite sides of the conflict. A classical constellation of great power conflict results that looks far more traditional than all the talk about post-modern global relations in which state power struggles fade into oblivion would suggest. In the Asian conflict complex that structures the shape of the US — Chinese contest (Foot/Walter 201 1). Japan. South Korea and the Philippines arc for mall allied ith the United Slates. India and Vietnam today entertain rda (ions ith the United States that can be depicted as cordial entente, already include military cooperation, and might move further towards an alliance. depending on deelopmens in Asia. The United States is also a protector of Taiwan. officially a Chinese province, factualh an independent political entity. and the main object of Chinese interest because of the unfinished agenda of national re-unification. Given the enormous asymmetries between China and Taiwan. the latter’s independence depends fully and unambiguously on the US guarantee. Russia and China have a fairly ambivalent relation with each other that is officially called a strategic partnership. Ambiguous as this relationship is, it is predictable that the more the West and Russia are at loggerheads, the closer the Russian — Chinese relations might become. On the other hand. Chi na is the stronger partner and harbors not completely friendly feelings to wards Moscow. as Russia took part in China’s humiliation during the imperi alist period no less than the United States did. Russian fears concerning covert immigration into Eastern Siberia and demographic repercussions and political consequences that might result therefrom add to the uneasiness. China and India arc natural rivals for regional preponderance in Asia (Gilbov/Hcginbotham 2012). Both arc developing rapidly. with China still ahead. Territorial disputes. India’s liospitalit Lo TibeLan exiles including the Dalai Lama. China’s close relation to Pakistan and a growing naval rivalry spanning the Indian Ocean from the Strait of Malacca to Iranian shores (Garofano/Dew 2013) run parallel to rapidly growing economic relations and ostensible efforts lo present the relationship if not as amiable then at least as partner-like. The United States, China, Russia and India even today conduct a multi- pronged nuclear arms race (Fingar 2011: Gangul /Thompson 2011: O’Neill 2013. Müllcr 2014). In this race, conventional components like missile de fense. Intercontinental strike options, space-based assets and the specter of cbcr war play their role, as does the issue of extended dcterrcncc The general US militar’ superiority induces Russia and China to improve their nuclear arsenals, while India tries not to be left too far behind the Chinese in terms of nuclear capability. Pakistan and North Korea ork as potential spoilers at the fringe of this arms race. They are not powerful but thc arc capable of stirring up trouble, whenever they move. In tems of the military constellation, the most disquieting development is the drafting of pre-emptive strategies of a first (most likely conventional) strike by the United States and China, on either side motivated by the per ceived need to keep the upper hand early in a potential clash close to Chinese shores (such as in the context of a Taiwan conflict). China is building up middle-range ballistic capabilities to pre-empt US aircraft carrier groups from coming into striking distance and to desiroy US Air Force assets in Okinawa. while the United States is developing means to neutralize exactly these Chinese capabilities. They are steering towards a hair-trigger security dilemma in which the mutual postures cry out for being used first before the enemy might destroy them (Goldstein 2013: Le Miôre 2012). It cannot be excluded that this whole conflict system might collapse into two opposing blocks one da the spark for a major violent cataclysm could even be lighted by uncontrolled non-state actors inside some of the powers. or — in analogy to the role of Serbia in 1914 — a ‘spoiler” state with a particularly idios ncralic agenda. Pakistan. North Korea or Tai an arc con ceivable in this role. Even Japan might be considered, if nationalism in Nippon grows further and seeks confrontation with the old rival China. If anything. this constellation does not look much better than the one which drove Europe into World War I a century ago. and it contains a nuclear component. To trust in the infallibility of nuclear deterrence in this mufti- pronged constellation needs quite a lot of optimism Can democratic peace be helpful

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in this constellation? Our conflict system includes democracies — the United States, India, Japan. Indonesia and non- democracies such as China. Russia, and Vietnam, but not necessarily on the same side. Should the European theater become connected to the Asian one through continuous US — Russian disputes and a Russian — Chinese entente. defective democracies like Ukraine and Georgia may feature rather importantly as potential triggers for a worsening of relationships. While democracy is useful in excluding certain conflict dyads in the whole complex, such as India and the United States. Japan and the United States. Japan and India. from the risk that they might escalate into a violent conflict, and as democratic peace is pacifying parts of the world. such as South America or Europe. it helps little in disputes between democracies and non-democracies. To the contrary: as discussed above, democracies have a more or less moral-emotional inclination to demonize non-democracies once they dis agree, and to feel a missionary drive to turn them democratic. This might exacerbate the existing, more interest-based conflicts between democracies and non-democracies, and it creates fears in the hearts of autocratic leaders that they might be up for democratization sooner or later. The close inter- democratic relations which democratic peace tends to produce, in turn, only exacerbate these fears as democracies tend to be rich, well organized, and powerful and dispose together of much more potent military capabilities than their potential non-dcnwcratic counterparts. Rather than helping with peace. the inter-democratic consequences of the democratic peace tend to exacerbate the security dilemma which exists between democracies and non-democracics an way. This non-peaceful dark side of democratic peace has escaped the attention of most academic writings on this subject and certainly all political utterances about democratic peace in our political systems. But democratic militancy is the Siamese twin of democratic peace as the Bush Administration unambiguously taught us (Gels et al. 2013: Müllcr 2014b).

# 2NC

## K — Cap

#### Globalization makes monopolization inevitable and circumvents anti-trust.

Kopf et al. 13, Jerry Kopf, Charles Vehorn, and Joel Carnevale: Radford University (Emerging Oligopolies in Global Markets: Was Marx Ahead of His Time? *Journal of Management Policy and Practice*, vol. 14(3), 2013)

REGULATION IN A GLOBAL WORLD

With firms branching out into global competition and countries lowering their trade barriers to promote such competition, the absence of effective global regulation once again raises Marx concerns. Because of strong federal governments, national governments were able to pass and enforce, through the uses of military or police force where necessary, laws that regulated externalities, such as pollution, and antitrust. At the moment there is no strong federal government at the global level and, therefore, no one to pass and enforce laws that effectively regulate externalities or antitrust. Epstein and Greve raise a Marx like concern, “when firms have international market power, one would expect them to behave as monopolists just like domestic firms with market power” (2004). Therefore, without any dominant form of regulatory governance, industry concentration could very well replicate what was seen in the late 19th century, though, globally instead of nationally. Carstensen & Farmer discusses this tendency towards M&A’s: The transformation of formerly regulated or noncompetitive industries to competition is closely linked with merger movements. The historical record demonstrates that once faced with competition, leading firms in these industries began to merge. This has been the pattern in airlines, banks, railroads, electric and gas utilities, health care and, with great prominence, telecommunications (2008).

While some may argue that reaching that level of concentration is unlikely, one should consider current industries that hold a considerable global market share. “Although it may be more difficult to establish and maintain market power internationally, there is no reason to believe that it is impossible or, for that matter, rare. Industries such as pharmaceuticals, passenger aircraft, and software illustrate the phenomenon” (Epstein & Greve, 2004).

There are actually quite a few firms who have emerged into the global market that hold what can be considered a significant share within global industries, ranging from manufacturing, financial intermediation, and transport service along with other service industries. For example, The European Aeronautic Defense and Space Company and The Boeing Company combined hold more than 50% market share within the global civil aerospace products manufacturing industry. Goldman and Sachs hav[e] 20.20% market share within the global investment banking and brokerage industry and Vivendi holds 20.10% within the global music production and distribution industry. United Parcel Service holds 23.80%, within the global logistics – couriers industry (IBISW, 2011).

We do not intend to imply that the monopolization that had plagued the United States in the late 19th century has emulated itself at the global level, creating one dominant firm controlling an entire global industry. However, it does appear that a number of industries are starting to exhibit Marx, “inevitable move toward a monopoly.”

The increase in oligopoly power at the global level presents unprecedented challenges. Reaching a cross-country consensus on competition policy is a difficult. Epstein & Greve discuss some of the issues that arise when attempting to unite foreign and domestic competition policy. Competition policy embodies imprecise normative judgments that invite controversy and defection rather than consensus and commitment. Because its scope extends to such a wide range of economic activity, it has the potential to inflict significant costs on many transactors. In particular, competition policy tempts states both to impose nominally neutral policies that favor local producers and consumers at the expense of global welfare, and to administer their policies in a discriminatory fashion to similar ends” (2004).

While more and more countries are adopting competition policies, this seemingly positive step towards unification of trust law has its negative effects. “Nearly one hundred jurisdictions now have antitrust laws” according to Epstein & Greve, this raises increasing issues of “jurisdictional overlaps” since many countries will assert their “jurisdiction over extraterritorial conduct that has a domestic impact” (2004).

Antitrust enforcement agencies around the world have tried to cope with the increased power of global corporations by staying in regular and increasing contact with one another on individual merger cases as well as on general issues of mutual enforcement interest. Through instruments such as the 1995 Recommendation of the Organization for Economic Co-operation and Development (OECD) that its 29 members cooperate with one another in antitrust enforcement and bilateral agreements like that which exists between the United States and the European Community, the antitrust agencies notify one another when a case under investigation affects another's important interests and they share what information they can and otherwise cooperate in the investigation and resolution of those cases (1999).

Richard Parker, Senior Deputy Director of the Bureau of Competition FTC, presenting on global merger enforcement, discussed the implementation of the Organization for Economic Co-operation and Development (OECD) and concluded with examples of global merger enforcement. While attempts at unified standards of competition policy are underway, the efforts of the OECD are considered to have substantial limitations on enforcing global merger laws. Epstein and Greve state: Information sharing or “soft” cooperation has also been pursued at the Organization for Economic Co-operation and Development, which has generated several aspirational texts. None of these impose obligations on states, and they are not intended to do so. Their goals are modestly limited to improving communication on competition issues.

History shows us that even with a strong federal government with the ability to enforce laws through the use of force where necessary, such as the United States federal government has on its states, firms are very good at ignoring or getting around antitrust laws. If the U.S. government did not have strong federal power over states, and it was up to the states to reach agreements on antitrust laws, one can easily imagine that there would likely be problems resulting in less strenuous competition policy. Take for example state control over age discrimination laws. When these laws originated, states chose whether to enact policies aimed at protecting workers rights. By 1960 only 8 states had age discrimination laws until the federal government enacted such regulations as the Age Discrimination Employment Act of 1967 (ADEA). This, along with the Department of Labor in 1979 giving administrative authority to the U.S. Equal Employment Opportunity Commission (EEOC), established unified laws protecting individual employment rights (Lahey, 2007). Without this dominant authority of the federal government, fair employment practices may still continue to be a regionally dependent right. In the current era of globalization, where industry’s actions domestically can be felt by all corners of the globe and vice versa, without a global entity with strong “federal” powers capable of monitoring and enforcing competition policy, it seems reasonable to conclude that Marx may in fact be proven correct: the inevitable result of the efficient market is increasing concentration of power resulting in global oligopolies or, eventually, monopolies.

#### Capitalism turns solvency and no link turn – even the most successful anti-trust policy upholds a fundamentally unequal economy and perpetuates exploitation of the working class.

Bruenig 21, Founder of the People’s Policy Project (Matt, June 5th, “No, Small Isn’t Beautiful,” *Jacobin*, <https://jacobinmag.com/2021/06/small-business-monopoly-socialism-collective-ownership/>, Accessed 06-07-2021)

Once you understand that this is what motivates a lot of anti-monopoly types (some consciously, others unconsciously), a lot of the tensions and confusions circulating in that world get cleared up. Lynn’s “Open Markets” refers not to competition or tariff policy, but instead to the idea of making sure that the markets are open to small businesses. One of his frequent lines on this is that antitrust law has focused too much on the freedom of the consumer and not enough on the freedom of the producer, by which he means the freedom of small business owners to have and run a business. That freedom is dashed by competition from the big guys as that competition makes many inefficient small businesses non-viable.

I can understand the gut appeal of this perspective. It is the appeal of anarchism in many respects: the equality of socialism without the collectivist governing institutions — whether cooperative board, worker council, or parliament — that, in some minds, are themselves vehicles of unacceptable control and coercion.

But, for me, this gut appeal disappears when you move from abstraction to reality. Jefferson is the last guy whose ideas on this made some sense because Jefferson was talking about a yeoman farming freehold that was entirely or almost entirely insulated from capital markets, labor markets, and consumer markets. A subsistence farmer operating like that really does mostly live on an island not affected by the whims and desires of other economic actors.

But that is the only arrangement that works like that. After industrialization, everyone is producing for others, even self-employed small business owners who have no formal bosses but are ultimately jerked around by their clients and customers.

It is hard to imagine any economic arrangements based on our current level of technology that does not involve the vast majority of people working inside some kind of larger organization rather than being the owner-operator of a single-member firm. Even if anti-bigness advocates were extremely successful to the point where they managed to quadruple the number of firms in the country and spread production out across those firms, the vast majority of working people would be employees not owners.

Anti-bigness advocates sometimes acknowledge this and then try to claim that these workers would nonetheless be benefited by this new world in which they worked for a smaller firm, but this is pretty clearly not true, and also does not address the point that, by their own reasoning, those workers are experiencing unfreedom.

Finally, when you think about the governing mechanics that would be used to achieve anti-bigness, you see that it inevitably relies upon collective democratic institutions — namely, the state — to dig in and basically micromanage the economy in order to make sure everything stays small. The charm of decentralization and rule of none/self-rule is thus an artifice being built on top of an iron-fisted centralized state that must constantly quash things on behalf of the small proprietors.

This is not a problem in and of itself, but at the point at which you are relying upon a democratic central state to impose your system, you are relying upon the very collectivism — namely, the support of the electorate — that anti-bigness is supposed to provide refuge from, relative to socialism.

#### Capitalism fosters global class struggles and makes terrorism and violence inevitable

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By developing class theory of terrorism on the basis of the study of Boko Haram insurgency in Nigeria vis-a-vis historical method, this study has shown that the discursive frame of **terrorism cannot be** analysed and **understood in isolation of its class nature** and the socio-economic conditions that gave rise to it. In this sense, it was observed that **terrorism is an inevitable consequence** that will feature more prominently **in the capitalist mode of production** becausethe social contradiction (socio-economic crisis) that arises out of the **conflicts between the social relations** and productive forces **will usher a continuous struggle within classes** as Karl Marx’s Historical Materialism affirmed. Consequently, this perspective locates **the present root cause of all forms of terrorism** (individual and state terrorism) **at the behest of the antagonistic class struggle inherent in global capitalist system**. Therefore, state terrorism emerged as a result of the triumphant of capitalism over feudalism, and was sustained through the unending dynamics of capitalist social formation. Like in Nigerian case, the emergence of state terrorism stems from the forceful incorporation of world capitalist system through colonialism, and sustained through capitalist accumulation and capitalist class formation. This study has revealed that state terrorism is in large part, the historical product of class antagonism between the ruling class and other classes in the society. While individual terrorism was and still generated by the very same historical process that sustained state terrorism: the development of capitalism. The spread and triumphant of global capitalism was confronted with its internal/systemic crisis: deteriorating profitability, declining productivity, and stagnating demand, credit crunch, factory closures, massive unemployment and sacking of workers couple along with a regime of permanent austerity (cut in welfare and social spending) and attacks on living standards hit the broadest layer of the society very hard especially in developing countries. The responses of the people to the crisis culminated in class struggle among different classes in the society. Thus, makes class antagonism fiercer between the defenders of the capitalism (the ruling class) and the victims of capitalist crisis (the middle, working and lumpen classes) in the third world countries. While the Middle and Working classes engage in the use of strikes, protest, picketing and other methods in expressing grievances against the ruling class controlled state; the **lumpen class expresses their grievance through coordinated and uncoordinated method of individual terrorism**. The uncoordinated form of individual terrorism often results in the spontaneous rioting, arson, criminal activities. The coordinated forms of individual terrorism are expressed when a section of the lumpen class join or form sectarian groups, and use it to unleash individual terrorism as a way of lashing out at societal injustice and express displeasure about the policies of the ruling class and the state.

The Boko Haram insurgency as typified in this study, arose out of long standing grievances with the class structure of the Nigerian capitalist state specifically in the Northern Nigeria where Hausa/Fulani Oligarchic ruling class failed to develop the region, encouraged and entrenched patronage corruption in governance, and place more emphasizes on favoritism in terms of access to qualitative western education by the rich kids at the expense of children from poor background. These symptoms of capitalist under-development in Northern Nigeria heralded long neglect of Almajeri poor street children couple along with widespread poverty and attendant corruption within the entire Nigerian establishment, thus, provides a fertile ground for Boko Haram’s ideology to get support from the rank of lumpen class in society who is frustrated with the current state of affair. From the study, it has been revealed that the moment the ideas and campaign of these sects found an echo and support from a sections of disenchanted and frustrated member of lumpen class, the more the latter are willing to join the sects in large number, and thus become a political force capable of challenging the state and the ruling class in power through the use of individual terrorism. This is relevant not only in Nigerian case but also in Arab world. In Middle East for instance, the profound socio-economic problems of poverty, malnutrition, unemployment and others represent the weakest link of the capitalist system being practiced in that setting (McLaren and Farahmandpur, 2005: 203). Interestingly, this gives room for sectarian groups like Al-Queada and others to agitate for the abolition of capitalism and establishment of Islamic state to tackle the staring effect of capitalist crises. Therefore, the present trend of Individual terrorism in Nigeria, part of Africa and Middle-East is as a result of long decades of participation in the process of global capitalism that breed antagonist class relations over time. The use of individual terrorism by the sect(s) against the state as shown in this study will be resisted by the ruling class in power, who is better armed to engage in dangerous military assault against the former. In this regard, the use of state terrorism by the government (ruling class in power) will continue to be resisted by the combative sect until the latter retreated, defeated or compromise (dialogue and ceasefire agreement) are reached between the two actors. If compromises are not reached and the respective national government could not defeat the sects, the ruling class in power will be compelled to request for military assistance from foreign allies/government (who are equally a ruling class in their own society). The study of Boko Haram insurgency and the response of Nigerian government together with the support of foreign government, justify the critical theoretical argument that state also engages in terrorism against its own citizen (Gunning 2007; Silke 2009; Jackson, Smyth and Gunning 2009, Herring 2008). It is likely that if Boko Haram insurgency is resolved either through military actions or dialogue, the use of **individual terrorism by sectarian groups is likely to re-emerge** in the future **as long as the endemic socio-economic problems caused by global capitalism remained and unaddressed**. In as much as the socio-economic crisis remain, aggrieved members of the lumpen class who could no longer tolerate the series of frustration they suffer will find solution in joining or forming sectarian groups and resort to the use of individual terrorism as a response to the state of affairs .

**Their ev agrees — their whole aff is protecting workers from corporations who do bad stuff BUT not stopping those corporations, shielding them from litigation — insert this rehighlighting**

Clayton J. 1AC **Masterman 16**. 2019 graduate of the Vanderbilt University Ph.D. Program in Law & Economics. “The Customer Is Not Always Right: Balancing Worker and Customer Welfare in Antitrust Law” Vol. Vanderbilt Law Review. 69:5:1387. 2016. <https://law.vanderbilt.edu/phd/students/The-Customer-Is-Not-Always-Right-Balancing-Worker-and-Customer-Welfare-in-Antitrust-Law.pdf>

As this Note has already stated, the purpose of antitrust law is to protect competition, but the **meaning of competition is nebulous**.136 Regardless of whether total welfare or the consumer welfare standard is the appropriate measure of net competitive effect,137 a body of law that protects competition should **not allow firms to engage in conduct that restricts trade severely** in one part of the supply chain merely because it prioritizes end customer benefits.138 As a class of consumers, **workers also deserve protection from anticompetitive employer agreements.** Congressional intent **supports prioritizing the interests of workers** over customers when analyzing anticompetitive restraints in labor markets. Unions are inherently anticompetitive; a union is a combination of workers jointly setting wages and other work conditions, just as a cartel is a combination of firms setting prices together.139 As a result, the existence of unions increases the wages that firms pay their workers, which in turn results in price increases for customers.140 Nonetheless, labor law staunchly defends the ability of workers to create unions. When antitrust restrictions would deter union conduct, Congress has decided that **labor law carries more weight.**141 Thus, the labor exceptions to antitrust law142 demonstrate a congressional decision that the welfare gains to workers from increased wages and other improved terms of employment outweigh the costs to customers in the output market from the resulting increased prices. Given that Congress protects workers in one class of anticompetitive conduct, it is reasonable to **structure antitrust law to protect workers from conduct with parallel effects**. Restraints of trade in labor markets are the converse of unions, trading lower wages for lower prices. However, it is possible that Congressional intent extends only to weighing the interests of workers over customers in the special case of union activity. Even though unions engage in political activies, the aims of unions are primarily economic.143 Thus, Congress supports the economic mission of unions (advancing the welfare of workers despite the potential economic effects on firms and customers) by favoring them in antitrust law. Unions are only special in antitrust because Congress has expressed a legislative preference for workers over other economic actors. It is thus **appropriate for courts to weigh workers over other actors** when firms engage in conduct that affects workers at the expense of other groups. Further, the welfare economics of restricting competition in employment markets supports worker protection. Economists generally agree that individuals exhibit diminishing marginal utilities of wealth—that is, each additional dollar an individual receives makes them a little less well off than the previous dollar did.144 **Diminishing marginal utility of wealth** thus implies that when two individuals lose equivalent amounts of money, the individual for whom the loss was a greater portion of his or her wealth **suffers a greater loss**.145 Generally, the wages that workers lose as a result of anticompetitive conduct will be larger than the price cuts for customers.146 Where the monopsonist also has market power in the output market, the price decrease passed on to customers will be even smaller than in a competitive output market.147 Because wages likely represent a larger portion of workers’ wealth than the additional wealth consumers gain from lower prices, workers lose more welfare than customers gain. Moreover, behavioral economics suggest that the losses to workers from wage reductions will **hurt workers more** than the gains that customers will receive from lower prices.148 Behavioral economists have recognized that individual utility is relative to a reference point like the status quo; losses relative to that reference point **cause a welfare loss about twice the size of the welfare gain** from an equivalent gain.149 Put simply, losses hurt more than equivalent gains feel good. Because monopsonistic conduct results in losses for workers and gains for customers relative to the competitive equilibrium, the **total net effect on welfare that consumers experience is even more likely to be negative.** To be sure, behavioral economics has not been universally welcomed in antitrust law.150 But courts have entertained behavioral economics arguments in antitrust before, generally in cases where neoclassical economic analysis would sharply diverge from what the court believes a “real” customer would do.151 Here, it is unlikely that customers weigh price decreases in the same way that workers weigh wage increases because wages are the primary source of most workers’ incomes; as a result, equivalent economic losses to workers likely outweigh the gain.152

#### Financial supercycles mean collapse is inevitable and it’s inherently unsustainable

Durand 17 (Cédric, Prof of Economics and Development Theories @ U of Paris 13, Fictitious Capital: How Finance is Appropriating Our Future, p. 27-39)

Credit growth is capitalism’s Achilles heel. James Tobin1 What went wrong? The short answer: Minsky was right. Martin Wolf2 The simmering ﬁnancial crisis boiled over in 2007. On 18 August the Wall Street Journal invoked the name of an economist it would now become rather attached to: The recent market turmoil is rocking investors around the globe. But it is raising the stock of one person: a little-known economist whose views have suddenly become very popular. Hyman Minsky, who died more than a decade ago, spent much of his career advancing the idea that ﬁnancial systems are inherently susceptible to bouts of specula- tion that, if they last long enough, end in crises. At a time when many economists were coming to believe in the efﬁciency of markets, Mr. Minsky was considered somewhat of a radical for his stress on their tendency toward excess and upheaval. Today, his views are reverber- ating from New York to Hong Kong as economists and traders try to understand what’s happening in the markets.3 Indeed, the post-Keynesian’s name had already been circulating for some months among bank economists. In March, George Magnus published a study for UBS asking: ‘Have we reached a Minsky moment?”4 The Financial Times, the Guardian, and Le Mamie diplomatique each devoted articles to the Levy Institute economist’s analyses. Following this, heterodox economists invoked Minsky’s name to try to defend their own interpretation of the crisis, as against the dominant tendencies in the discipline. To understand this craze for Minsky — but also to identify the limits of his approach — we must ﬁrst outline his ﬁnancial instability hypotheses. THE INTRINSIC INSTABILITY OF FINANCE Finance markets radically differ from markets for goods and services. Whereas in normal times rising prices weaken demand in the real economy, the opposite is generally true of ﬁnancial securities: the ‘more prices increase, the more these securities are in demand. The same applies the other way around: during a crisis, the fall in prices engenders ﬁre sales, which translate into the acceleration of the price collapse. This peculiarity of ﬁnancial products derives from the fact that their purchase — dissociated from any use-value — corresponds to a purely speculative rationale; the objective is to obtain surplus-value by reselling them at a higher price at some later point. ~~Blinded~~ to the disaster of the inevitable reverse, agents take on more and more debt in order to buy the assets that the bubble is forming around. Moreover, the self-sustaining price rise fuelled by agents’ expectations is further exaggerated by credit. Indebtedness increases prices, and since the securities can serve as the counterpart to fresh loans, their increasing value allows agents to take on more debt. We ﬁnd this same mech- anism in most speculative episodes, from the seventeenth-century Netherlands to the subprime crisis. In the former case, the speculation was on tulip bulbs; in the latter case, on residential properties. The ﬁnancial instability hypothesis allows us to inscribe these speculation dynamics in an understanding of economic cycles. Minsky sets out from the recognition that capitalist economies experience periods of acceleration and inﬂation and periods in which they are caught in deflationary spirals in which debts become unsustainable. The 1960s and 1970s corresponded to the ﬁrst dynamic and the 1930s (paradigmatically so) to the second, as described by the economist Irving Fischer in 1933. The latter dynamic comes about when economic agents trying to meet the deadlines on their debt repayments are forced to sell what they have at discounted prices. This brings a general down- ward movement in prices and diminished revenues, and ultimately leads to a growth in the weight of debt relative to income. This in turn unleashes a self-sustaining movement toward depression, which only state intervention can interrupt. According to Minsky, this alternation of cycles cannot be explained by the play of real macroeconomic relations alone. Following Michal Kalecki, the post-Keynesian tradition supposes that, at the macro- economic level, companies’ proﬁts ﬂow from their own investment decisions (‘the capitalists earn what they spend’). Minsky himself adopts this hypothesis, but suggests that it must be complicated by taking ﬁnancial relations into account.6 The past, present and future are linked not only by accumulated capital and labour power, but also by credit: the inherent instability of capitalism is due to the way proﬁts depend upon investment,

the validation of business debts depends upon proﬁts, and investment depends upon the availability of external ﬁnancing. But the availability of ﬁnancing presupposes that prior debts and the prices that were paid for capital assets are being val- idated by proﬁts. Capitalism is unstable because it is a ﬁnancial and accumulating system with yesterdays, todays, and tomorrows! Credit relations are far from simple, for bankers and ﬁnancial inter- mediaries are capitalists like any other: since they are in competition with one another and seek to make proﬁts, they must constantly innovate. The result is a complex web of ﬁnancial mechanisms that separate the ultimate owners of wealth from the managers of the enter- prises that control and exploit this wealth. Finance’s tendency toward increased sophistication leads to three possible systems of relations between income and debts. The ﬁrst corresponds to a situation in which economic actors’ incomes cover their repayment obligations: thus ﬁnancial relations are solid and pose no problems to the overall reproduction of the economy. The second possibility is the establish- ment of speculative relations in which some economic units keep their debt rolling (they can only repay the interest, but not the principal). Such a conﬁguration produces vulnerability, and the slightest cojunc- tural difﬁculty risks tipping the situation into the third possibility: the development of Ponzi structures, where income ﬂows are insufficient to repay either the principal or the interest on the debt. The conse- quence is that indebtedness can only increase, ultimately leading to bankruptcies. The stability of economies is largely dependent on the respective weights of these three types of ﬁnancing relations. Minsky enjoys a certain posthumous renown because he emphasised that across periods of prolonged prosperity, economies gradually evolve toward a ﬁnancing structure that makes the system unstable. Starting from a sit- uation where ﬁnancial relations covered by incomes are predominant, they move on to a situation in which speculative ﬁnancial activities, and then Ponzi systems, become increasingly important, to the point that the insolvability of a small number of agents will end up provoking a collapse in asset prices. As Figure 2 shows, during periods of rela- tive stability, the quest for proﬁt leads to the development of ﬁnancial innovations that accelerate credit circulation and reduce the quality of securities, which inevitably results in ﬁnancial crisis or even a crisis in the real economy. Falling asset prices and the contraction of credit feed one another: agents in ﬁnancial distress are forced to sell their holdings a whatever price they can; companies which are no longer able to obtain credit lay off staff, cut wages and lower the prices of their products; deflation leads to a growth in the weight of debts relative to less sustainable and threatens agents whose euphoric period becomes ever less sustainable and threatens agents whose economic situation had up till then seemed solid. THE PARADOX OF PUBLIC INTERVENTION Financial crises do not always result in economic collapses like those of the 1930s.8 Since the Second World War, the public authorities in the main capitalist countries have succeeded in avoiding a fresh Great Depression. They have done so by playing with two levers: on the one hand, the central bank acts as a lender of last resort, so as to limit chain-reaction bankruptcies and stabilise the ﬁnancial markets; on the other hand, the state allows soaring public deﬁcits and supports demand in order to offset the fall in investment and consumption — and, therefore, the fall in proﬁts. Certainly, in recent decades, eco- nomic performance in the rich countries — taken as a whole, in terms of growth and employment rates — has been far from marvellous; 2009 saw the ﬁrst contraction in the wealth produced worldwide since the Second World War. Europe even saw another fall in 2012–13. None- theless, economic policies have undeniably succeeded in their effort to keep the collapse under control: all the postwar ﬁnancial crises — including the major shock of 2007–8 — have been contained. There has been no generalised depression as brutal as that of the 1930s. Economic ﬂuctuations are not, therefore, only the product of capi- talist economies’ internal dynamics, whether real or ﬁnancial. They are also affected by the public authorities’ intervention mechanisms. On the one hand, state action greatly reduces the risks of proﬁts falling. on the other hand, it encourages expansionary phases.9 Moreover, the authorities contribute to deﬁning the control and organisation of the ﬁnancial markets. Crucially, however, the regulator is not immune to the excessive optimism that economic actors can sometimes get caught up in. The relaxation of rules of caution makes it possible for the rate of ﬁnancial innovations to accelerate. The result is that the longer the period of stability is, the greater the risks that are taken, and the greater the weakening of regulatory foolproofs.10 The interaction of the two levels of public intervention — the man- agement of currency and budgetary expenditure, and the regulation and supervision of ﬁnance — allows us better to understand the onrush of ﬁnancialisation that we have seen in recent decades. Indeed, the public authorities are all the more disposed to strip away ﬁnancial regulations the more conﬁdent they are in central banks’ and state budgets’ capacity to contain ﬁnancial crises. Meanwhile, for their part, ﬁnancial operators are all the more inclined to take risks the more they know that the central bank will do everything to prevent a systemic risk becoming reality. Figure 3 represents the paradox of government intervention. The effects of ‘learning-by-doing’ contribute to amplifying systemic risk. The memory of the Great Depression becomes ever more distant as capacities for crisis-management improve and ﬁnancial actors as well as regulators become more optimistic. These expectations encourage ﬁnancial innovation and looser regulation, both of which lead to an increasingly complex ﬁnancial system. This growing sophistication allows the expansion of credit, at the cost of degrading the quality of securities. This, in turn, leads to small crises which are rapidly over- come thanks to the improved capacity to handle them. This cumulative dynamic produces a ﬁnancial supercycle through which the accumu lated risks become increasingly large — that is, the relative weight of speculative ﬁnance and Ponzi ﬁnance constantly increases — whereas, with each ﬁnancial crisis, the public authorities have to devote even greater efforts to countering the depression spiral (Figure 4). THE CONTEMPORARY FINANCIAL SUPERCYCLE If we look at its narrowly ﬁnancial logic, the great crisis of 2007–8 can be interpreted as the outcome of a ﬁnancial supercycle. This is the argument supported by James Crotty in the Cambridge Journal of Economics: although problems in the US subprime mortgage market triggered the current ﬁnancial crisis, its deep cause on the financial side is to be found in the ﬂawed institutions and practices of the current ﬁnancial regime … [This] New Financial Architecture refers to the integration of modern day ﬁnancial markets with the era’s light government reg- ulation. After 1980, accelerated deregulation accompanied by rapid ﬁnancial innovation stimulated powerful ﬁnancial booms that always ended in crisis. Governments responded with bailouts that allowed new expansions to begin. These in turn ended in crises, which trig- gered new bailouts. Over time, ﬁnancial markets grew ever larger relative to the nonﬁnancial economy, important ﬁnancial products became more complex, opaque and illiquid, and system-wide leverage exploded. As a result, ﬁnancial crises became more threatening. This process culminated in the current crisis, which is so severe that it has pushed the global economy to the brink of depression. Fear of ﬁnan- cial and economic collapse has induced unprecedented government rescue efforts.11 The development of the ﬁnance markets since the 1970s thus results from the mutual reinforcement of two dynamics; on the one hand, the conﬁdence placed in the self-regulation of the ﬁnancial sector has opened the ﬂoodgates to ﬁnancial innovation; on the other hand, the experiences of the 1980s debt crisis in the countries of the global South, the 1987 market crash in the US, the 1994 Mexican crisis, the Asian and Russian crises of 1998 and the 2001 crisis in the new econo- mies have fed the sentiment that the authorities will be able to contain catastrophes. The actions of Alan Greenspan, FED president from 1987 to 2007, did much to give credence to this belief. The measures taken to save LTCM in 1998, and then the heavy interest rate cuts following the bursting of the dotcom bubble in 2001, comforted market actors in their conviction that the FED would always intervene to contain their losses. This idea has also been associated with the concept of a ‘Green- span put’. The notion of the ‘put’ — borrowed from the vocabulary of option contracts — emphasises an implicit central bank support for ﬁnancial values, equivalent to a ‘put’ option: that is, a guarantee that the price of ﬁnancial assets cannot fall beneath a certain level. Indeed, in reducing interest rates, the FED supported asset prices: with lower interest rates, investors could take on more debt, at less cost, and invest in the stock markets. Moreover, returns on ﬁnancial securities became more advantageous relative to the interest rate. This asymmetrical monetary policy — which limits the fall in stock prices but places no barriers to their rise — has led ﬁnancial actors to take greater risks. This is all the truer when it is combined with an active budgetary policy. Figures 5 and 6 show how monetary and budg- etary policies have come to the aid of stock prices and, in the 2000s, of real estate. They show how these policies helped prices to recover rapidly in the few years following the ﬁnancial collapse. If the budget deﬁcit fell as the markets took off at the end of the 1990s, monetary policy, conversely, remained accommodating; in the 2000s, both of these levers were pulled simultaneously, indeed forcefully so after the 2001 crash, encouraging not only market recovery but also the expan- sion of the real-estate bubble. The belief in the robustness of the ﬁnancial system grew at a similar pace - all the more so given that the proliferation of exotic ﬁnancial products seemed to promise a better dispersion of risks. Symptomat- ically, in July 2007, even as the ﬁrst manifestations of the crisis were appearing, some proclaimed that There [would] be no Big Crash because ‘the ﬁnance industry has undergone genuine revolutions since the late 1990s: its resistance against trend turnarounds has improved, reducing systemic risks’.12 The 2007–8 crash saw the adoption of public crisis-containment policies operating on an unprecedented scale. In the United States, interest rates were reduced to zero and the budget deﬁcit rose to close to 12 per cent of GDP in 2009. Budgetary and monetary policies in the other developed countries also developed in a similar direction, although they were generally rather less energetic. Given the extent of the threat posed, other instruments were also mobilised, such as the recapitalisation and partial or total national- isation of banks and insurance companies, as well as new channels facilitating and expanding the supply of liquidity across different banks. Monetary policy also ventured into unknown territories: for example, the quantitative easing ﬁrst implemented by the Bank of England and the FED led these institutions to buy hundreds of bil- lions of dollars’ worth of government bonds and mortgage products in order to keep overall interest rates at very low levels (see also Chapter 6). These policies may not have brought about any major recovery in the real economy, but they did halt the fall in real-estate prices and allowed a strong rise in stock prices: in 2013 US equities caught up with their pre-crisis level. Moreover, low interest rates encouraged investors to purchase riskier securities (like bonds issued by fragile companies, or even the public debt of developing countries) in order to achieve a return. In short, the policies adopted in response to the crisis certainly did limit ﬁnancial losses, but they also contributed to increasing risk-taking, and thus to heightening the systemic risk, in turn preparing the ground for the next ﬁnancial catastrophe. Neoclassical literature has grasped this problem by mobilising the notion of the ‘meta-moral hazard’13 or ‘systemic moral hazard’.14 This generalises the ‘too big to fail’ principle to all the actors involved in the system. In this reading, not only major institutions but ﬁnancial actors in general tend to take excessive risks because they know that the public authorities will intervene to limit their losses. The belief that the public authorities will take effective action when catastrophes occur is not mutually exclusive with the hypothesis that exaggeratedly optimistic forecasts will lead to an underestimation of risks.15 Moreover, we do not have to imagine a set of hyper-rational and opportunist economic agents taking advantage of implicit state guaran- tees in order to understand the cumulative effects when over-optimistic forecasts combine with the obligation on the authorities to intervene to avert systemic collapse. This was why Minsky’s contribution proved fundamental to understanding the properly ﬁnancial dynamic that led to the crisis of 2007-8. THE INSTRUMENTAL USE OF MINSKY Some of Minsky’s works proved remarkably prophetic. Such was the case with a 1987 note of his devoted to securitisation. In this text, he showed that this ﬁnancial technique ‘implies that there is no limit to bank initiative in creating credit’ and that the forces of ﬁnancial globalisation could connect with the forces of the mortgage market.16 Nonetheless, he did not draw from this the full set of conclusions that ought to have led him to revise his theoretical framework. Indeed, the surge in speculation did not take place where his canonical model supposed it would (that is, in the disproportion- ate extension of credit to non-ﬁnancial ﬁrms engaging in ultimately unproﬁtable investments). As we shall see in Chapter 4, the historical sequence in rich countries was characterised not by booming invest- ment, but, on the contrary, by its decline, except during a short period in the second half of the 1990s which ended with the bursting of the dotcom bubble. Spiralling indebtedness appeared not in the productive sector but in households, states, and above all in the ﬁnancial sector itself. This is a ~~blind~~spot of Minsky’s analysis, in large part ﬂowing from the historical context in which it took form. A second problem - perhaps a more serious one, and in any case a more political one — is the use to which Minsky’s works have been put in handling the crisis.17 To the extent that a ﬁnancial crisis manifests itself through a drastic reduction in liquidity (that is, the lack of buyers for ﬁnancial securities), the only two means of halting the crisis are, on the one hand, exceptional reﬁnancing by the central bank, or, on the other hand, an increase in the government bonds in circulation (indeed, these can be used as collateral for new loans and thus encour- age a credit revival). These two mechanisms require that the central bank and the government ‘validate’ the structure of the liabilities gen- erated by ﬁnancial innovations and boom-era speculation in order to prevent a depression. While this policy did indirectly contribute to halting the rise in unemployment, its more immediate effect was to accelerate the rise in inequalities, thanks to the rebound in stock values and the rise in the salaries and bonuses linked to ﬁrms’ now drip-fed proﬁts. Thus, in the United States, the richest 1 per cent hoarded some 95 per cent of proﬁts between 2009 and 2012; in the same period, the incomes of the 99 per cent stagnated (+0.4 per cent) whereas the 1 per cent’s incomes jumped 31.4 per cent.18 Even if Minsky’s intention was not to defend the enrichment of ﬁnance at the expense of the rest of society, he did nonetheless provide it with a comfortable means of extracting itself from the debacle it had inﬂicted on itself, without having to take responsibility for it. This helps us understand why ﬁnancial commentators were so enthusiastic about his analyses when they needed to justify the exorbitant salvation plans. The crisis solutions superﬁcially inspired by Minsky led to the social- isation of the costs of the ﬁnancial collapse — indeed, on a scale never previously imagined — without the working classes or the unemployed ever feeling the supposed beneﬁts of this ‘communism for capital’. We should remember the signiﬁcant sums involved: between autumn 2008 and the beginning of 2009, the total amount that states and central banks in the advanced countries committed to supporting the ﬁnancial sector (through recapitalisation, nationalisation, repurchasing assets, loans, guarantees, injections of liquidity) has been evaluated at some 50.4 per cent of world GDP!19

#### War chest---causes aggression.

Lucas **Hahn 16**. Bryant University. April, 2016. Global Economic Expansion and the Prevalence of Militarized Interstate Disputes.

3. Neo-Marxist Views on Asymmetrical Trade One of the most supported arguments against the notion that economic expansion promotes peace is that trade, brought about by economic expansion, actually increases MIDs. Many authors have in fact argued that increased economic interdependence and increased trade may have, in some ways, “cheapened war”, and thus made it easier to wage war more frequently (Harrison and Nikolaus 2012). Neo-Marxists and Dependency Theorists argue that the notion that trade promotes peace often depends on the balance of trade between two nations with a trading relationship. If the two nations have a symmetrical trading relationship, then both nations benefit from trade equally and may thus, engage in less conflict just as proposed by many liberal theorists. However, more often than not, the trading relationship between two nations may be asymmetrical. In this case, one nation benefits more than the other. Furthermore, one nation is often more dependent on trade with its partner than the partner is with it. These circumstances can breed violent conflicts (Barbieri and Schneider 1999). Barbieri’s (1996, 40) regression analyses have supported these claims. She found that when dyads (pairs of nation-states) are highly interdependent, they are nearly 25 times more likely to engage in armed conflict than when the dyads are not interdependent. Ultimately, she came to the conclusion that there seems to be a “hurdle effect”. Up to a point trade does seem to promote peace. However, after that point, the balance of trade often becomes disproportionate between two nations and as a result trade promotes conflict. 4. Interdependence Versus Interconnectedness The previous subsection alludes to the fact that there is a fundamental difference between economic interconnectedness and economic interdependence. Basically, interconnectedness involves a mutual and equal benefit between two economically connected nations. Interdependence involves an unequal benefit between two economically connected nations where one nation more extensively relies on the other. Gasiorowski (2007) argues, that growing interconnectedness brought about by globalization decreases MIDs. However, growing interdependence, also largely brought about by globalization, increases MIDs. In this case, when one nation is intrinsically dependent on another, they will be more sensitive and vulnerable to any changes in the economic policy of their major trading partner. Thus, depending on the relationships between different nations violent conflicts may either be increased or decreased by economic expansion.

# 1NR

## T — Per Se

#### The rule of reason is used *in place of* a per se prohibition, as a *distinct alternative*

De Vita 81 (Daniel F. De Vita-St. John's University, J.D., 1982. “The Facial Unreasonableness Theory: Filling the Void Per Se and Rule of Reason” , St. John’s Law Review, Number 4 Volume 55, Summer 1981, Number 4, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2357&context=lawreview> , date accessed 9/13/21)

The Sylvania case represents the first clear attempt by the Supreme Court to limit application of the per se rule. In Sylvania, the defendant television manufacturer used restrictive franchise agreements to limit the locations in which its products could be sold by retailers.130 Although these agreements clearly were illegal under Schwinn because the manufacturer tried to exercise control over its products after title and risk of loss had passed to the buyer, the Supreme Court refused to hold such conduct presumptively violative of section 1 of the Act. 31 Rejecting the Ninth Circuit's attempt to distinguish Schwinn,13 2 the Court reconsidered the applicability of the per se standard to vertical restraints. 33 Noting at the outset that the per se rule should apply only to "manifestly anticompetitive" conduct, the Court assessed the competitive effects of nonprice vertical restrictions.' Notwithstanding that such restrictions reduce intrabrand competition, the Court noted that they tend to increase interbrand competition.'3 5 Thus, because these practices do not have a "pernicious effect on competition,"'3' the Court declined to apply the per se label137[[FOOTNOTE 137 BEGINS]] 137 Id. at 58-59. The Court noted that Schwinn's "per se rule for sale transactions reflected the view that vertical restrictions are 'so obviously destructive' of intrabrand competition that their use would 'open the door to exclusivity of outlets."' Id. at 52. Conversely, the continued application of the rule of reason to nonsale transactions "reflected the view that [vertical restrictions] have too great a potential for the promotion of interbrand competition to justify complete prohibition." Id. at 53. Reviewing the rationale underlying the Schwinn decision, the Sylvania Court was unable to find support for the sale-nonsale distinction. Id. at 54, 56. The Court concluded that the distinction drawn in Schwinn between sale and nonsale transactions is not sufficient to justify the application of the per se rule in one situation and the rule of reason in another. Id. at 57. [[FOOTNOTE 137 ENDS]] and held that the rule of reason is the proper standard by which the legality of vertical restraints is to be determined.138

#### Their claim that they create guidelines that prohibit in certain circumstances is not a prohibition—creating time, place and manner restrictions on behavior are not restrictions—they establish standards

Adelide Law Rev 64 "Potato Marketing Act - Statutory Interpretation - Ultra Vires - Prohibition as Distinct from Regulation" [1964] AdelLawRw 9; (1964) 2(2) Adelaide Law Review 252 <http://classic.austlii.edu.au/au/journals/AdelLawRw/1964/9.html>

The theoretical extent of the term has been defined in previous cases, allthough actual decision on the validity of any particular measure as a regulation may be difficult, since the distinction which must be drawn between regulation and prohibition is a subtle one, essentially a matter of degree. All regulation involves some measure of prohibition; but where the effect of the prohibition is to preclude the subject-matter of regulation from coming into existence will it be invalid. The authoritative statement of the rule in this context is contained in the judgment of Dixon J. (as he then was) in Su;anhill Corporation v. brad bur^.^ "Prima facie a power to make by-laws regulating a subject matter does not extend to prohibiting it altogether, or subject to a dis cretionary licence or consent. By-laws made under such a power may prescribe time, place, manner and circumstance, and they may impose conditions, but under the prima facie meaning of the word they must stop short of preventing or suppressing the thing or conduct to be regulated."

#### It independently violates substantially—The aff sets conditions on when you can do anticompetitive behavior--Substantially means an unconditional prohibition

Dyke 6, Don Dyke, Chief of Legal Services Wisconsin Legislative Council, https://news.wisc.edu/archive/domesticPartnerBenefits/images/LegCouncil\_0206.pdf

“Similar” is defined as “having characteristics in common, very much alike, comparable,” “alike in substance or essentials,” or “one that resembles another, counterpart” [Webster’s Third New International Dictionary], or “nearly corresponding, resembling in many respects, somewhat like, having a general likeness, although allowing for some degree of difference.” [Black’s Law Dictionary.] “Substantially” is defined as meaning “essentially; without material qualification.” [Black’s Law Dictionary.] Thus, something can be said to be “substantially similar” if it is essentially alike something else.

#### Our definition is more contextual--In the resolution substantially is an adverb modifying the verb increase—In that context it refers to the manner of the increase not the amount or type of increase—Doing it unconditionally is the manner of the increase

Watson 2K JAMES L. WATSON, SENIOR JUDGEUNITED STATES COURT OF INTERNATIONAL TRADE, In GENESCO INC., : Plaintiff, : v. UNITED STATES, : Court No. 92-02-00084, https://www.cit.uscourts.gov/sites/cit/files/00-57.pdf

In T.D. 92-108, Customs notes: “[n]one of the definitions [submitted to Customs] actually quantify ‘substantial.’ It is always expressed in other terms which clearly convey the meaning. Certainly, a 40% encirclement is a substantial encirclement of the perimeter of the shoe in that it conforms exactly to the dictionary definitions of ‘substantial’ by being ample, considerable in quantity, significantly large and largely, but not wholly that which is specified.” 26 Cust. Bull. at 366. When the term “substantially” is used as an adverb preceding a verb, the term means “in a substantial manner: so as to be substantial.” Webster’s Third New International Dictionary of the English Language Unabridged (1968).

#### Prohibition doesn’t allow for exceptions

Supreme Court of Delaware 95 (VEASEY-Chief Justice. Opinion in Snell v. Engineered Systems & Designs, Inc., 669 A.2d 13 (Del. 1995).date accessed 7/13/21)

The interpretation of the statute is aided by the synopsis to a recent amendment to Section 2825. This synopsis states that the amendment "clarifies the limitations on the public use of the word engineering by those not authorized to practice engineering for the general public." 68 Del.Laws, c. 24 (emphasis added). Had the General Assembly intended to ban all uses of the word "engineer" by those not certified, it would have been more logical for it to have used the word "prohibition" (or the equivalent) rather than the word "limitations" in the synopsis.[7] Section 2825 must be analyzed, therefore, with the understanding that it bans only uses of the term "engineer" which would "lead to the 18\*18 belief that such person is entitled to practice **eng.ineering**" — i.e., a misleading use of any derivative of the word "engineer."

#### Synonymous with ban

California Court of Appeals 19 (SLOUGH-judge. Opinion in County of Riverside v. FREEDOM WON LLC, No. E069294 (Cal. Ct. App. Feb. 6, 2019). Google scholar caselaw. Date accessed 7/13/21)

Appellants urge, however, that the prefatory language in the ballot initiative demonstrates the purpose behind Proposition 64 and should therefore override the statutory language of the Act. Established principles say otherwise. Only when the statutory language is ambiguous do we look to the uncodified preamble of a ballot initiative, and we certainly may not rely on the latter to contradict the former. "[I]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (People v. Valencia (2017) 3 Cal.5th 347, 357 [interpreting Pen. Code provisions enacted by Prop. 47].) Here, the Act unambiguously allows counties to completely ban marijuana businesses, without the requirement of voter approval. (Cf. City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc. (2013) 56 Cal.4th 729, 762 [holding state law authorizing medical marijuana use and distribution does not "preempt[] the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions"].) Appellants attempt to create an ambiguity in the Act's language by arguing the word "prohibit" in section 26200 means something less than "ban." We are unpersuaded. Prohibit and ban are synonyms, but even if they weren't, the Legislature made its intention clear by qualifying prohibit with "completely." (§ 26200, subd. (a).) We find no merit to appellants' first claim of error, that RCO No. 348.4862 is invalid.[4]