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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 whether or not platforms are bad based on weighing evidence—not a declaration of illegality without inquiry — their own evidence concedes this that’s 1AC Hovenkamp

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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#### Status quo cooperation coming now is necessary to prevent runaway global warming

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When President Trump announced his intentions to formally withdraw the United States from the Paris Climate Accord, dozens of major companies stepped into the breach, promising to still work toward meeting the Paris emissions [\*221] targets. 5 Such a position--business leaders joining concerted international action in rebuke of a sitting President--was once unprecedented. Milton Friedman, the influential architect of free market economic theory, warned that business leaders should not act as "unwitting puppets of the intellectual forces" that promote desirable social ends, such as pollution reduction. 6Corporate executives were supposed to ignore "the catchwords of the contemporary crop of reformers" and instead focus on "mak[ing] as much money as possible." 7This shareholder profit paradigm persisted for decades, fueling the conditions that led to the Great Recession 8and even making for-profit companies liable for not putting shareholder profits above all else. 9But now that obligation is changing, and not a moment too soon. By the time the Business Roundtable, an association of major company executives, formally acknowledged that corporate purpose needed to consider benefits to communities and employees in addition to shareholders, 10 the writing had been on the wall for quite some time. Corporations were speaking up in previously unexpected ways and focusing on more than just profit, encouraged by major voices in the business community. 11For example, major tech companies leapt into action when Indiana passed a 2015 bill widely seen as discriminatory against LGBT persons, denouncing the law and threatening boycotts of the state. 12The cloud-computing giant Salesforce, which had between 2,000 and 3,000 employees in Indiana, 13exerted significant leverage in forcing an amendment to the law by cancelling all company programs in and travel to Indiana. 14More corporate boycotts greeted North Carolina and Georgia [\*222] when they passed similar anti-LGBT legislation. 15Additionally, in the wake of recent mass shootings, Dick's Sporting Goods 16and Walmart 17cut back sales of certain firearms and ammunition, arguably doing more in a single decision to address the gun violence epidemic than Congress has been able to do in decades. 18 The growth of corporate activism can be traced to broader societal changes, such as the increased connectivity of people and markets in the Internet age. 19At the same time, governmental gridlock and increasing political polarization have undermined the capacity of government institutions to function efficiently and greatly weakened public trust in government. 20 Corporations are filling this gap as traditional government services become increasingly privatized. 21The growing corporate role in society has fed on itself, with increased stakes and visibility of corporate activism resulting in outsized political power and legal rights. Corporate-associated spending on politics has reached unprecedented, jaw-dropping levels. 22 It is increasingly clear that America cannot address the existential reality of climate change without corporate buy-in, if not corporate leadership. It is beyond the scope of this Article to discuss the extent of the climate crisis or the necessary corporate response; it is enough to say that each passing week brings bad news about the extent of already irreversible damage from climate change. 23 While the future costs of climate change will be immense, the costs of acting now to limit warming to habitable levels are also significant, on the measure of $ 3.5 trillion a year. 24While governments around the world are expected to lead the necessary spending, a large portion of those costs will inevitably fall on [\*223] companies, either through direct taxes like a carbon tax or increased costs of compliance, such as ending reliance on coal. 25Even as global governmental efforts falter, 26 corporations are committing to act, both together 27 and independently. 28The high costs of corporate climate engagement, both to the companies themselves and to our society, 29have to be worth the last best chance to mitigate catastrophic climate change.

#### BUT perceptions of new unpredictable, antitrust prohibition will crush cooperation essential to stop runaway climate

ICC 20 International Chamber of Commerce, COMPETITION POLICY AND ENVIRONMENTAL SUSTAINABILITY1 26 November, 2020, <https://iccwbo.org/content/uploads/sites/3/2020/12/2020-comppolicyandenvironmsustainnability.pdf>

The solution to sustainability “collective action” problems is appropriate coordination.10 Coordination may be most efficient if in the form of environmental (or social) regulations, carbon emissions taxes, emission rights trading systems, rules for responsible sourcing and support for innovation including permanent extraction of carbon from the atmosphere. The problem is that regulation and taxation are often politically controversial, uncoordinated amongst governments, delayed, inadequate, or ineffective. For instance, environmental taxes are less than the net present social costs of pollution, and emission rights trading systems for the time being exist only in a limited number of jurisdictions, cover only a small portion of the economy, and are traded at a price well below the social cost of carbon. 3.2. In this light, if we want to have a chance to limit the temperature increase to 1.5 degrees Celsius above the pre-industrial level (as per the objective at the United Nations Framework Convention on Climate Change in 2015 i.e. the Paris Agreement) or to achieve the UN SDGs, the private sector must do its part, and cooperate where appropriate. Many firms will be reluctant to cooperate for fear of running foul of competition law or for fear of restrictive or unpredictable enforcement of competition law.

#### There is no fear now BUT that is predicated off of the federal judiciary consistently and predictably reducing antitrust prohibition now

Crane 21 Daniel A. Crane Frederick Paul Furth, Sr. Professor of Law, University of Michigan 1-28-2021 Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

#### Warming causes extinction — it’s a conflict multiplier.

Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### 1NC — K

#### 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).

#### 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 — CP

#### Text: The 50 United States and relevant subnational entities should enact and enforce substantial legislation removing plaintiffs’ heightened burden of proof in platform markets.

#### 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 — T

#### “The” refers to a group as a whole

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### Private sector means all non-governmental persons or entities, including non-profits

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1> , date accessed 9/10/21)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Topical affs must change a universally-applied standard, like the CWS [Consumer Welfare Standard]

Phillips 18, commissioner on the Federal Trade Commission. (Noah J. November 1, 2018, Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Violation: the aff applies exclusively to conduct in a specific segment of the private sector.

#### Vote neg:

#### FIRST---limits and ground---the number of potential subsets is infinite---any industry, product, single companies, individuals---undermines clash. Only big affs have link uniqueness.

#### SECOND----precision---our interp has intent to define, exclude and is in legislative context.

## 1NC — Platforms

### 1NC — T/L

#### Aff can’t solve the internal link — 1AC Loo lists “difficulty in obtaining a federal bank license” as an alt cause

#### Foreign fintech thumps or solves — 2nd Loo is about foreign licensing — UK blockchain solves.

#### Harrell and Rosenberg says the squo solves — newly developed analytic computer tech detect and stop sanctions evasion

New analytic computer technologies have increased the capacity of both U.S. government agencies and private-sector companies to detect and stop suspected sanctions evasion. Surveillance technologies have also improved

### 1NC — Turn

#### Sanctions cause NoKo to sell bioweapons because of revenue shortfalls

Jang, 18 — Sungku Jang is an ASAN fellow at the Center for the National Interest. (11-1-2018; *The Diplomat*:https://thediplomat.com/2018/11/beyond-denuclearization-dealing-with-north-koreas-other-wmds/ The Proliferation Challenge; //GrRv)

There is also a proliferation challenge associated with North Korea’s WMD capabilities. If it so chooses, Pyongyang can sell its BW and CW to a rogue state or terrorist group. International sanctions against North Korea have starved the country of cash, making illicit arms sales attractive to Pyongyang. Indeed, North Korea has supplied Syrian president Bashar al-Assad’s regime with parts and technical assistance for its chemical weapons program, which it has used to attack opposition forces repeatedly throughout the Syrian Civil War. Furthermore, given that North Korea and Iran already cooperate militarily and many North Korean arms dealers live in Tehran, it is possible that North Korea could help Iran obtain or improve BW and CW capabilities. If North Korea helps Iran develop an emerging biochemical ability, denuclearization negotiations with Tehran will become more complex and costly than before.

#### Bioweapon proliferation causes extinction.

Millett, 17 — Piers Millett; PhD, Senior Research Fellow at the Future of Humanity Institute, where he focuses on pandemic and deliberate disease and the implications of biotechnology. Andrew Snyder-Beattie; Director of Research at the Future of Humanity Institute, University of Oxford. (August 1, 2017; "Existential Risk and Cost-Effective Biosecurity;" *PubMed Central*; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5576214/; //GrRv)

How worthwhile is it spending resources to study and mitigate the chance of human extinction from biological risks? The risks of such a catastrophe are presumably low, so a skeptic might argue that addressing such risks would be a waste of scarce resources. In this article, we investigate this position using a cost-effectiveness approach and ultimately conclude that the expected value of reducing these risks is large, especially since such risks jeopardize the existence of all future human lives.

Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world's population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization.

A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity's favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6

While these arguments point to a very small risk of human extinction, they do not rule the possibility out entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and the Western Abenaki (which suffered a staggering 98% loss of population).9

In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-21

Although these experiments had scientific merit and were not conducted with malicious intent, their implications are still worrying. This is especially true given that there is also a long historical track record of state-run bioweapon research applying cutting-edge science and technology to design agents not previously seen in nature. The Soviet bioweapons program developed agents with traits such as enhanced virulence, resistance to therapies, greater environmental resilience, increased difficulty to diagnose or treat, and which caused unexpected disease presentations and outcomes.22 Delivery capabilities have also been subject to the cutting edge of technical development, with Canadian, US, and UK bioweapon efforts playing a critical role in developing the discipline of aerobiology.23,24 While there is no evidence of state-run bioweapons programs directly attempting to develop or deploy bioweapons that would pose an existential risk, the logic of deterrence and mutually assured destruction could create such incentives in more unstable political environments or following a breakdown of the Biological Weapons Convention.25 The possibility of a war between great powers could also increase the pressure to use such weapons—during the World Wars, bioweapons were used across multiple continents, with Germany targeting animals in WWI,26 and Japan using plague to cause an epidemic in China during WWII.27

Non-state actors may also pose a risk, especially those with explicitly omnicidal aims. While rare, there are examples. The Aum Shinrikyo cult in Japan sought biological weapons for the express purpose of causing extinction.28 Environmental groups, such as the Gaia Liberation Front, have argued that “we can ensure Gaia's survival only through the extinction of the Humans as a species … we now have the specific technology for doing the job … several different [genetically engineered] viruses could be released”(quoted in ref. 29). Groups such as R.I.S.E. also sought to protect nature by destroying most of humanity with bioweapons.30 Fortunately, to date, non-state actors have lacked the capabilities needed to pose a catastrophic bioweapons threat, but this could change in future decades as biotechnology becomes more accessible and the pool of experienced users grows.31,32

### 1NC — No Impact

#### Material and situational constraints prevent a nuclear war with North Korea.

Horowitz and Saunders 18—Michael C. Horowitz, professor of political science and the associate director of Perry World House at the University of Pennsylvania, Elizabeth N. Saunders, associate professor of political science at George Washington University (“Why nuclear war with North Korea is less likely than you think,” *Washington Post*, May 24th, https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/03/why-nuclear-war-with-north-korea-is-less-likely-than-you-think/?utm\_term=.98624820ab22)

On Tuesday night, in response to North Korean leader Kim Jong Un’s claim to have a nuclear button on his desk, President Trump tweeted, “I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works!”

This is not the first time that things have gotten personal in the U.S.-North Korea standoff. Much of the rhetoric between the two leaders and media commentary about the risk of war focuses on the leadership of Trump and Kim — or “Little Rocket Man,” as Trump has called the North Korean leader.

But how much could these two singular leaders really propel us to a nuclear war? Trump’s tweets and other actions certainly can increase the risk of conflict — consistent with our research on how the decisions of individual leaders affect military conflict.

However, in this case, other factors, including geography and military capabilities, will matter more than tweets or the characteristics of leaders. And these factors reduce the likelihood of war.

Leaders can be important for international conflict

For the past few generations, political scientists who write about the outbreak of conflict mainly argued that leaders were irrelevant, focusing instead on international factors such as great power relations or domestic political factors such as whether the two countries involved had democratic institutions.

But more and more scholarship suggests that leaders make a large difference in determining whether and how countries go to war. And it’s not just in dictatorships such as that of North Korea; even more constrained leaders, such as U.S. presidents, matter. Leaders’ beliefs and experiences before coming into office can be critical in determining whether a country goes to war and what military strategy will be used in the event of war.

But structural forces are strong in this case

Even if leaders have discretion, they are constrained by material and situational constraints. No U.S. or North Korean leader can realistically change or avoid some of these constraints.

One constraint stems from the two sides’ formidable military capabilities, which mean that a general war with North Korea would be devastating, as Barry Posen argued last year. Even before North Korea acquired a nuclear capability, its artillery put tremendous pressure on South Korea. Add to that its missile arsenal — which, as nuclear experts have chronicled, can now probably deliver an intercontinental ballistic missile armed with a nuclear warhead against the United States.

A second unavoidable constraint is geography, which may make war less likely. North Korean artillery points directly at Seoul, just 35 miles from the demilitarized zone (DMZ). South Korea may oppose a war, which could influence U.S. behavior. North Korea also borders China, a powerful country whose economic support keeps North Korea afloat.

But China faces its own geographic reality with respect to North Korea, and China is increasingly frustrated with North Korea’s behavior. In the event of war, China does not want refugees flooding across the border into China. Yet China also does not want a unified Korean Peninsula with U.S. troops on its border.

Indeed, in the Korean War, the United States tested geographic constraints by pushing beyond the prewar dividing line, the 38th parallel, in an attempt to unify Korea. China intervened to prevent such an outcome, and the conflict stopped where it started.

All sides know that a war would be a huge and difficult military and political problem. So there are strong incentives to try to deter the other side, rather than escalate.

U.S. and North Korean leaders have reason to make war even less likely

Although the focus on Trump and Kim almost always suggests that their behavior increases the risk of war, they actually have strong incentives to reduce the prospect of war.

Despite rhetoric about North Korea’s irrationality, Kim’s pursuit of nuclear weapons and long-range missiles was rational. He wants to stay in power, and nuclear weapons constitute invasion insurance. But a war probably would spell the end of the regime, giving North Korea little reason to start a war.

On the U.S. side, few wars probably have been war-gamed more than a conflict on the Korean Peninsula. U.S. decision-makers know how costly a war might be. Knowledge of these costs makes war less likely.

#### No US-China war

**Yoder, 19 -** Ph.D. in political science from the University of Virginia, is currently a research fellow at the Lee Kuan Yew School of Public Policy at the National University of Singapore specializing in international security and politics of China and East Asia (Brandon, “Uncertainty, Shifting Power and Credible Signals in US-China Relations: Why the “Thucydides Trap” Is Real, but Limited”, Journal of Chinese Political Science, https://doi.org/10.1007/s11366-019-09606-1

In recent years, a radical overcorrection appears to have taken place among many American scholars and policymakers, exemplified by Allison [1], who have expressed increasingly confident beliefs that China’s intentions are hostile to the US [5, 15, 19, 39, 58]. These beliefs are especially pronounced within the Trump administration, but have now also been expressed many foreign policymakers from previous administrations and more traditional experts on US-China relations.

This confident pessimism has two sources, neither of which is well-founded. The first is categorical assumptions about the behavior of rising states or authoritarian states in general. Many realist scholars assume that China’s intentions are hostile to US interests because the anarchic nature of the international system engenders inexorable zero-sum competition for power [40, 46], a logically-untenable claim that has been roundly refuted.12 Others assume that divergences in American and Chinese political values and regime types necessarily imply incompatible preferences for the international order at the systemic level [1, 17, 48, 52]. Yet as has been widely recognized, these particular variables are themselves indeterminate, and interact with many other domestic-level factors to determine China’s aggregate national preferences for the international order ([12, 41]:521; [60]:44). Indeed, China may very well (though not necessarily) prefer to maintain the status quo order from which it has so overwhelmingly benefitted ([7, 8]:xix; [26, 55, 56]).

Secondly, other observers have extrapolated from China’s increased “assertiveness” on regional territorial issues since 2009 to conclude that China’s intentions are broadly revisionist across all issue areas [5, 63]. The apparent rationale is that because China had previously exhibited cooperative behavior regarding the SCS and restraint toward Taiwan that its cooperation with the international economic order must similarly be misrepresenting its true goals [18, 43, 50]. As such, an increasingly common conclusion is that China’s initiation of new regional institutions such as the AIIB and BRI and its state-led industrial policies, large current-account surplus, sovereign lending, and expanding FDI are evidence of its preference for a less liberalized international economic order.13

This conclusion is unwarranted, however. Although the scholarly consensus now holds that China was previously misrepresenting its true goals on narrow regional territorial issues, China has yet to exhibit clearly revisionist behavior regarding the rules and norms of the liberal international order more generally, even as it has become more powerful [8, 47, 55, 57, 60, 62]. As Alastair Iain Johnston has convincingly argued, China’s “assertive turn” is almost entirely limited to the South China Sea, and does not extend to the broader international order: “one should be cautious about generalizing from these maritime disputes to Chinese foreign policy writ large...it is possible for a state to be newly assertive on some limited range of issues while leaving other major policies unchanged” ([31]:46). Furthermore, Christensen points out that even when China’s actions are noncooperative – e.g., by gaining advantageous financing from Chinese state-owned banks for foreign energy deals, stealing intellectual property, computer hacking, or “dumping” exports to gain market share – this does not constitute rewriting the existing rules of the international order. “It simply constitutes free-riding on existing rules, an entirely different kettle of fish” ([8]:57).

In short, in some issue areas – human rights policy and specific regional territorial issues in East Asia – the US and China clearly have real conflicts of interests. Yet this does not give us insights into the compatibility of US and Chinese interests on other issues, e.g., the global economic order and governing structure. On the latter issues, the goals of two countries might very well be more compatible. The likelihood of this depends on the credibility of China’s cooperative signals in these issue areas, which, in turn, depends in part on the degree of US hedging toward China.

Particularly in the economic realm, China has sustained and even increased its support for the rules and institutions that define the status quo order, continuing to champion economic liberalization even as American leadership has wavered under President Donald Trump. China’s institutional initiatives, such as the AIIB and BRI, as well as its increased influence in existing institutions, have so far served to augment the existing rules and norms of the U.S.-led order rather than challenge them. Furthermore, China has continued to pursue domestic economic reforms that would increase its cooperation regarding trade imbalances, intellectual property and cybersecurity [10, 11, 24, 49]. Again, this cooperation certainly does not imply that China’s long-term intentions are unambiguously benign on these issues – strong incentives to misrepresent have still obtained, particularly in the absence of US hedging – but in contrast to the territorial issues that are the subject of China’s “assertive turn”, China’s intentions on economic and institutional issues remain significantly uncertain.

Disturbingly, the Trump administration has overtly drawn on the flawed assumptions characterized above and expressed confident beliefs that China’s intentions are hostile. According to the 2017 US National Security Strategy, China is a “revisionist power” that “want[s] to shape a world antithetical to U.S. values and interests...seeks to displace the United States in the Indo-Pacific region, expand the reaches of its state-driven economic model, and reorder the region in its favor” and is “attempting to erode American security and prosperity” [64].14 Several of Trump’s most prominent foreign policy and economic advisers have written extensively on China’s hostility, cast China as the primary threat to US national security and economic wellbeing, and characterized war with China as inevitable and perhaps even desirable [39, 48, 51]. Correspondingly, the administration has begun to implement policies of economic containment toward China, levelling over 200 billion dollars of tariffs on Chinese imports (and counting), blocking Chinese FDI in the United States, and demanding that China increase imports of US goods to reduce the bilateral trade imbalance to specific thresholds.

Ironically, the Trump administration’s hedging strategy now lends considerable (though incomplete) credibility to China’s sustained economic and institutional cooperation. Yet that very hedging strategy is likely driven by unjustified and inflexible pessimism about China’s intentions, making it unlikely that the current leadership will draw appropriate lessons from China’s subsequent behavioral signals. To the extent that China continues to defend and advocate a rules-based liberal economic order in the face of Trump’s economic hedging, this constitutes a more credible signal of China’s benign intentions than did its previous cooperation under unconditional US accommodation.

Unfortunately, the Trump administration’s apparent confidence about China’s hostility, based on seriously flawed assumptions, does not portend that the current leadership is likely to positively update its beliefs should China continue its general cooperation within the existing international order. Nor does Trump’s narcissistic psychological profile or the track record of his administration, which has consistently twisted evidence to support preconceived beliefs and suppressed contrary opinions [44]. Thus, current US foreign policy turns the logic of hedging on its head: rather than hedging due to uncertainty, policymakers have assumed China’s hostility and adopted policies of containment in response. This implies that if the Thucydides trap produces preventive war between the US and a hypothetically benign China, it will not be due to rational uncertainty, but rather because American leaders fail to rationally update their beliefs in response to China’s cooperative signals and instead falsely assume China’s intentions to be hostile.

#### OR Russia war – NATO’s stable, Putin cares about domestic issues, and conflict won’t be militarized

* Apocalyptic fears overblown
* Moscow believes NATO is strong enough
* Allies are increasing spending
* Putin is focused on domestic concerns
* He wants to expand ties
* At worst, conflict not militarized

Trenin 18 [Dmitri Trenin is director of the Carnegie Moscow Center. Fears of World War III are overblown. July 20, 2018. https://www.politico.eu/article/donald-trump-vladimir-putin-nato-crimea-fears-of-world-war-iii-are-overblown/]

Europeans fretted about the end of NATO. But seen from Moscow, the military alliance still appears to be very much alive. Trump's harsh words to his allies on spending haven't changed that. Russia is all too aware that the alliance is focused on its eastern flank, and not only rhetorically. Since it rediscovered Russia as a threat in 2014, there have been new deployments, a higher degree of mobility, and more military exercises along the Russian border, from the Barents to the Black Seas. Hardly a boon for Russia.

It was clear at last week's NATO summit that allies agree on the need to upgrade the bloc’s military efforts. Germany, Italy, France, the U.S. — they all agree members’ defense spending should go up. Whether by 2 percent of GDP as agreed in Wales, or by 4 percent as now demanded by Trump, is, of course, important. However, with Russia’s GDP often likened to that of Spain, or the state of New York, either figure is considered significant in Moscow, given that the money will be spent with Russia in mind.

NATO allies also worry about Trump’s comment this week that it is problematic for the U.S. to come to the defense of smaller NATO allies such as Montenegro. But let’s not forget that at the height of the Cold War it was never 100 percent certain what the U.S. would do in case of an attack on West Germany. Former Chancellor Helmut Schmidt would not have asked for U.S. medium-range missiles in Europe in the 1970s had he had full confidence in NATO's largest member. Nor is NATO enlargement off the table completely. Macedonia has just crossed a major hurdle in its push for membership.

Predictions that Trump would recognize Crimea at the Helsinki meeting were also overblown. There was never any question of the U.S. accepting Crimea’s status as part of Russia, or Washington leaning on Kiev to fulfill its side of the Minsk II accords. In Helsinki, Trump and Putin simply acknowledged the issue, and moved on. The U.S. continues to support both Ukraine and Georgia in their conflicts with Russia and to promote their eventual membership in NATO, which most in the West privately regard as increasingly dangerous.

NATO is still very much exerting pressure on Russia. It's considered more of an annoyance than an immediate threat in Moscow, but also keeps the country in permanent "war mode" vis-à-vis the U.S. Because Moscow is focused on Washington, this means Europeans usually get a pass.

As for Russia’s own intentions, two things are clear. There is no interest in Moscow in attacking the Baltic states or Poland. These countries are as safe now as they were before 2014. Suggestions otherwise simply point to the deep wounds in both nations' psyche, which will not be healed for many decades.

Should Ukraine's leaders decide to repeat Mikheil Saakashvili’s mistake in 2008 and launch a major offensive to retake Donbas — however unlikely — the Russian response could indeed be devastating and lead to Ukraine's loss of sovereignty, as Putin recently stated. But does this mean Russia will move on Ukraine unprovoked? Most certainly not.

Putin's main concerns are largely domestic. He has an ambitious program that logically calls for more economic ties with the West. To move forward, he is looking to ease tensions with the EU and the U.S. What Putin wanted to get out of Helsinki was mainly to start a dialogue with Washington.

Those hopes are now visibly going up in smoke. It is safe to bet that Russia will continue to face the same opposition from a coalition of U.S. and EU interests.

The first détente in the hybrid war between Russia and the West was indeed nipped in the bud by Trump's behavior and the vehemence of his domestic critics. So be it.

Moscow will not capitulate, and will indeed push back. But it's not likely to take the form of an aggressive, overt military attack. Fears of new wars are far from accurate.

## 1NC — Conduct

### 1NC — No Impact

#### No catastrophic AI impacts---their ev is flawed scholarship

Edward Moore Geist 15, MacArthur Nuclear Security Fellow at Stanford University's Center for International Security and Cooperation, 8/9/15, “Is artificial intelligence really an existential threat to humanity?,” <http://thebulletin.org/artificial-intelligence-really-existential-threat-humanity8577>

Superintelligence: Paths, Dangers, Strategies is an astonishing book with an alarming thesis: Intelligent machines are “quite possibly the most important and most daunting challenge humanity has ever faced.” In it, Oxford University philosopher Nick Bostrom, who has built his reputation on the study of “existential risk,” argues forcefully that artificial intelligence might be the most apocalyptic technology of all. With intellectual powers beyond human comprehension, he prognosticates, self-improving artificial intelligences could effortlessly enslave or destroy Homo sapiens if they so wished. While he expresses skepticism that such machines can be controlled, Bostrom claims that if we program the right “human-friendly” values into them, they will continue to uphold these virtues, no matter how powerful the machines become.

These views have found an eager audience. In August 2014, PayPal cofounder and electric car magnate Elon Musk tweeted “Worth reading Superintelligence by Bostrom. We need to be super careful with AI. Potentially more dangerous than nukes.” Bill Gates declared, “I agree with Elon Musk and some others on this and don’t understand why some people are not concerned.” More ominously, legendary astrophysicist Stephen Hawking concurred: “I think the development of full artificial intelligence could spell the end of the human race.” Proving his concern went beyond mere rhetoric, Musk donated $10 million to the Future of Life Institute “to support research aimed at keeping AI beneficial for humanity.”

Superintelligence is propounding a solution that will not work to a problem that probably does not exist, but Bostrom and Musk are right that now is the time to take the ethical and policy implications of artificial intelligence seriously. The extraordinary claim that machines can become so intelligent as to gain demonic powers requires extraordinary evidence, particularly since artificial intelligence (AI) researchers have struggled to create machines that show much evidence of intelligence at all. While these investigators’ ultimate goals have varied since the emergence of the discipline in the mid-1950s, the fundamental aim of AI has always been to create machines that demonstrate intelligent behavior, whether to better understand human cognition or to solve practical problems. Some AI researchers even tried to create the self-improving reasoning machines Bostrom fears. Through decades of bitter experience, however, they learned not only that creating intelligence is more difficult than they initially expected, but also that it grows increasingly harder the smarter one tries to become. Bostrom’s concept of “superintelligence,” which he defines as “any intellect that greatly exceeds the cognitive performance of humans in virtually all domains of interest,” builds upon similar discredited assumptions about the nature of thought that the pioneers of AI held decades ago. A summary of Bostrom’s arguments, contextualized in the history of artificial intelligence, demonstrates how this is so.

In the 1950s, the founders of the field of artificial intelligence assumed that the discovery of a few fundamental insights would make machines smarter than people within a few decades. By the 1980s, however, they discovered fundamental limitations that show that there will always be diminishing returns to additional processing power and data. Although these technical hurdles pose no barrier to the creation of human-level AI, they will likely forestall the sudden emergence of an unstoppable “superintelligence.”

The risks of self-improving intelligent machines are grossly exaggerated and ought not serve as a distraction from the existential risks we already face, especially given that the limited AI technology we already have is poised to make threats like those posed by nuclear weapons even more pressing than they currently are. Disturbingly, little or no technical progress beyond that demonstrated by self-driving cars is necessary for artificial intelligence to have potentially devastating, cascading economic, strategic, and political effects. While policymakers ought not lose sleep over the technically implausible menace of “superintelligence,” they have every reason to be worried about emerging AI applications such as the Defense Advanced Research Projects Agency’s submarine-hunting drones, which threaten to upend longstanding geostrategic assumptions in the near future. Unfortunately, Superintelligence offers little insight into how to confront these pressing challenges.

#### Their internal link evidence for cyber is bunk —

#### 1 — it’s from 2003, so past attacks should thump

#### 2 — it’s about computers being mostly run on Microsoft Windows causing attacks — that’s an absurd claim and also INEVITABLE

#### Cyber-attacks are good---key to enhanced precision in crisis bargaining.

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Instead, we question the idea that nations should look to formal treaties and rules to produce lasting limits on war. Despite the recent deterioration in the Syrian civil war, nation-states have generally refrained from the use of chemical weapons against each other since the end of World War I. They have followed the Geneva Conventions on prisoners of war, though not consistently. Nations have observed other norms in the breach, chief among them the immunity of the civilian population and resources from attack. World War Il not only saw the aerial bombing of cities and the nuclear attacks on Japan, but the years since have seen precision targeting of terrorists off the battlefield, attacks on urban infrastructure, and the acceptance of high levels of collateral damage among civilians. International lawyers and diplomats may proclaim that nations follow universal rules, either because of morality or a sense of legal obligation, but the record of practice tells a far different story. Efforts to impose more specific and demanding rules, such as limiting targeted drone attacks, banning cyber attacks, or requiring human control of robotic weapons, will similarly fail because they cannot take into account unforeseen circumstances, new weapons and military situations, and the immediate exigencies of war. Just as new technology led to increases in economic productivity, so too has it allowed nations to make war more effectively.

Nations will readily adhere to humanitarian standards when they gain a benefit that outweighs the cost, as when protecting enemy prisoners of war secures reciprocal protection for a nation's own soldiers taken captive by the enemy. Limitations on the use of weapons will follow a similar logic. Nations will be most inclined to respect legal restraints on new weapons when their use by both sides would leave no one better off or would provide little advantage. Cyber and robotic weapons do not bear the same features as the weapons where legal bans have succeeded, as with use of poison gas on the battlefield. Cyber and robotic weapons need not inflict unnecessary suffering out of proportion to their military advantages, as do poisoned bullets or blinding lasers. Rather, these weapons improve the precision of force and thereby reduce human death and destruction in war.

Nor have these new weapons technologies yet sparked a useless arms race. Nuclear weapons eventually became opportune for arms control because larger stockpiles provided marginal, if any, benefits due to the destructive potential of each weapon and the deterrence provided by even a modest arsenal. Mutual reductions could leave both sides in the same position as they were before the agreement. Today, the marginal cost of nuclear weapons for the U.S. and Russia so outweighs their marginal benefit that it is not even clear that a binding international agreement is needed to reduce their arsenals. Russia, for example, reduced its arsenal below New START's ceilings of 1,550 nuclear warheads and 700 strategic launchers even before the U.S. approved the deal. 45 The United States likely would have reduced its forces to those levels even if the Senate had refused to consent to the treaty, a position the executive branch also took in 2002 with the Treaty of Moscow's deep reduction in nuclear weapons. Today's new weapons do not yet bear these characteristics. The marginal gains in deploying these weapons will likely be asymmetric across nations insofar as some nations will experience much greater gains in military capability by developing cyber and drone technology. Put differently, prohibition or regulation of these new weapons will not have equal impacts on rival nations. Indeed, we do not even now have enough information to understand which nations will benefit and which will not, which makes any form of international ban even less likely.

#### No large-scale cyberattacks---attribution deters AND complexity overwhelms despite technical advancements.

Miguel Alberto N. Gomez, 11-6-2018 - senior researcher at the Center for Security Studies at ETH Zurich; "In Cyberwar, There Are Some (Unspoken) Rules," Foreign Policy, https://foreignpolicy.com/2018/11/06/in-cyberwar-there-are-some-unspoken-rules-international-law-norms-north-korea-russia-iran-stuxnet/

Unlike conventional instruments, cyberoperations do not come with a return address. Technical evidence such as an IP address provides victims with a possible source but not necessarily the identity of the attacker. Furthermore, the presence of certain artifacts does not confirm the intent of the aggressor. Malicious code for use in espionage can just as well be employed as a first step for later, more damaging operations. Taken together, these factors would seem to encourage instability within cyberspace, as Wheeler argues. However, when viewed through the lens of preexisting strategic interactions and interests, the opposite may in fact be true.

Attribution becomes less of an obstacle when judgments are informed by tactical and strategic analysis. For instance, the appearance of individuals in unmarked uniforms carrying modern Russian weaponry in Ukraine were attributable to Russia, given the characteristics of these individuals as well as the surrounding context that preceded their appearance.

Different actors behave in a distinct manner that allows analysts—private threat assessment organizations and national intelligence services alike—to identify and classify individuals and groups. When analyzed alongside the prevailing political, economic, and military environment, both the identity and intent of the supposedly nonattributable actor usually become clearer. The intent of those deploying Stuxnet limited the pool of suspects to those with both the intent and the capabilities to execute this operation. Without the benefit of anonymity, aggressors are less inclined to engage in activities that significantly alter the current military balance for fear of provoking the opposite party.

For example, the long-running series of defacements and denial-of-service operations between India and Pakistan reflects this dynamic. Given the stable nature of this rivalry, both sides have opted for a tit-for-tat approach with respect to disruptive behavior. The defacement of an Indian website is met with the defacement of a corresponding Pakistani website in a matter of days with neither side opting for a more vigorous response to the provocations of the other.

The aftermath of Stuxnet prompted Iran to act more aggressively in cyberspace in the years following its discovery, but Tehran’s operations did not do much damage. Furthermore, with states reserving the right to respond with conventional military means to cyberthreats, the necessity for restraint becomes even greater.

Because decision-makers know the risks, cybercapable states routinely punch below their weight or decide to employ cyberoperations in a limited manner. A review of cyberoperations from 2006 to 2016 highlights that despite the advancements of numerous actors, operations capable of causing physical damage are limited. More recently, the announcement that the United States would deter Russia from interfering in its midterm elections by calling it out rather than using more aggressive means underlines this point.

This applies to the targeting of critical infrastructure, such as power grids and water treatment facilities, managed by industrial control systems that are demonstrated to be vulnerable to relatively simple exploits. When a state decides to target industrial controls, it does so with a specific intent that is informed by its strategic objectives. These objectives are discernible through its actions in other domains. These constraints even apply to perceived rogue states such as North Korea.

A review of North Korean cyberoperations from 2008 to 2014 illustrates that most of Pyongyang’s attacks caused low-level disruptions to private and nonmilitary systems of adversaries, which include the United States, Japan, and South Korea. In addition, these often coincided with significant historical, political, or military events. The same is true in the case of Iran. The nature and timing of these incidents is telling, as a similar pattern is observed with respect to the physical domain. North Korean behavior, barring its invasion of South Korea in 1950, has not been severe enough to invite a massive response. Provocations such as missile tests or the shelling of a South Korean-held island have invited international condemnation or a limited military response—but no more and with limited impact on North Korean behavior.

Although the 2014 Sony Pictures hack, which leaked confidential information and later involved physical threats against cinemas that screened The Interview, may appear to be a departure from this behavior, the operation did not disrupt the current strategic balance between North Korea and its adversary, in this case the United States. Nor did the U.S. government seem to think the hack merited a more vigorous response other than the recent complaint filed by the U.S. Justice Department. For the most part, the intent of the Sony hack appears to have been meant to signal the North Korean regime’s displeasure through a display of its prowess in cyberspace but no more. Even with the more recent WannaCry ransomware attack, its effects, while broad in scope, had no lasting strategic implications that might have resulted in escalation.

Countries that have invested significant resources in cyberspace don’t lack the ability to act more effectively within this domain. They are making a conscious decision to rely on less sophisticated operations based on their strategic calculus—the same calculus that leads a government such as North Korea’s to employ violent rhetoric and limited military operations to signal its displeasure without risking direct confrontation.

If critical industrial control systems are so easily compromised, one would expect governments to target these vulnerable systems more frequently rather than resort to mere disruption. While reports do suggest that North Korea has the capability to disrupt critical infrastructure such as power grids, acting on this is another matter altogether—much in the same way that having significant conventional military power does not merit its immediate use. There would be grave consequences.

Cybercriminals and script kiddies may see in these vulnerable systems an opportunity for profit or mischief. But attributional analysis that looks beyond technological features and includes tactical and strategic attributes can help distinguish between state-associated and independent criminal actors.

There is a vast body of experience in dealing with cases of cybercrime. While the corresponding institutions and legislation are far from perfect, they do offer a course of action if actors are classified under this category. Subjecting state-associated actors to this form of punishment, however, may not be as effective in deterring malicious behavior in this domain. Previous indictments against Chinese hackers appear to have had limited effect in deterring economic espionage. It is too early to tell if recent legal actions against North Korea, Russia, and China will have any noticeable effects in cyberspace.

Wheeler correctly presents cyberspace as a vulnerable domain that continues to lack a set of norms that regulates aggressive tendencies. But that doesn’t mean that state actors will immediately take the opportunity to fully exploit this situation to further their interests. They are acutely aware of the consequences of overly aggressive cyberoperations and therefore actively attempt to limit the impact of their activities by either narrowing the scope of their operations or resorting to techniques that do minimal damage and are easily contained.

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## 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 drives cyber conflict and escalation BUT socialist organization solves

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ORGANIZATIONAL So far we have suggested how opposition to cyberwar could emerge as part of wider movements contesting a capitalism whose globally totalizing yet nationally competitive logic drives the militarization of networks. We now make a brief digression to consider issues of political organization that bear on the formation of countermovements against the new wartimes. In particular, we look at some implications of cyberwar for the controversy about parties and networks, verticalism and horizontalism. The “vanguard party,” the form of political organization most famously (or notoriously) associated with Marxism, has an obvious military reference. This martial derivation is implicit in the metaphors Marx and Engels ([1848] 1964) use in The Communist Manifesto to describe the party leading the “line of march” of proletarian movements. Such metaphors were grounded in the actuality of mid-­ nineteenth-­ century revolutionary uprisings, whose military aspects deeply interested Engels. It was, however, in the context of Russian Marxism that Lenin ([1902] 1969), an enthusiastic reader of Clausewitz, fully articulated the latent concept of the vanguard party (Kipp 1985; Boucher 2017). This party was forged in a context of revolutionary terrorism and Tsarist counterinsurgency. Then, in the midst of world war, it seized power by armed insurrection and held it through civil war and foreign invasion. The authoritarian aspects of militarized vanguardism were, from their inception, denounced not just by anarchists but also by the Marxist ultraleft, but Bolshevik victory gave it the sanction of success. Subsequently, in other times and regions, vanguardism would adapt to contexts very different from the European conflicts in which it originated, as, for example, in Maoist concepts of “people’s war” (Mao [1938] 1967). Yet, however remodulated, the concept of the party as quasi-­ military formation leading progressive advance, and, if necessary, fighting for it under actual war conditions, remained a defining element of twentieth-­ century Marxist imagination and practice. After the fall or retreat of state socialist regimes in 1989, vanguardism was widely discredited. In the aftermath of world-­ historical defeat, digital networks encouraged the concept of a multiplicitous and horizontal left whose self-­ organization would be achieved without special leadership cadres. Some proposing this path were entirely antipathetic to the armed struggle lineage of Leninism. For others, the issue was not so much a disavowal of military models (at least at the metaphoric level) as a resort to hopes for a different form of war, waged without centralized command. Such ideas figured largely among autonomists, including one of the authors of this book (Dyer-­ Witheford 1999), and other ultraleft Marxists associated with turn-­ of-­ the-­ century alter-­ globalism, with its independent media centers, hacktivism, and electronic civil disobedience. The subsequent adoption of network-­centric warfare by state powers, however, relays back to anticapitalist movements lessons more complex than any straightforward vindication of horizontalism over verticalism, network over party. For what today’s cyberwars demonstrate is that though networks complicate hierarchy, they are not antithetical to it. The Pentagon, Kremlin, and other state cyberwar practitioners now integrate hacker proxies, digital militias, and semiautonomous special operations units within top-­ down command strategies. Indeed, sometimes these networked collocations generate new vertical chains of command.

#### Their cyber-threat construction causes over-reaction and turns case

Valeriano 15, Senior Lecturer at the University of Glasgow in Politics and Global Security. (Brandon, Cyber War Versus Cyber Realities: Cyber Conflict in the International System p. 2-4

Currently, the cyberspace arena is the main area of international conflict where we see the development of a fear-based process of threat construction becoming dominant. The fear associated with terrorism after September 11, 2001, has dissipated, and in many ways has been replaced with the fear of cyber conflict, cyber power, and even cyber war.' With the emergence of an Internet society and rising interconnectedness in an ever more globalized world, many argue that we must also fear the vulnerability that these connections bring about. Advances and new connections such as drones, satellites, and cyber operational controls can create conditions that interact to produce weaknesses in the security dynamics that are critical to state survival. Dipert (2010: 402) makes the analogy that surfing in cyberspace is like swimming in a dirty pool. The developments associated with Internet life also come with dangers that are frightening to many. In order to provide an alternative to the fear-based discourse, we present empirical evidence about the dynamics of cyber conflict. Often realities will impose a cost on exaggerations and hyperbole. We view this process through the construction of cyber threats. The contention is that the cyber world is dangerous, and a domain where traditional security considerations will continue to play out. A recent Pew Survey indicates that 70 percent of Americans see cyber incidents from other countries as a major security threat to the United States, with this threat being second only to that from Islamic extremist groups.2 This fear is further deepened by hyperbolic statements from the American elite. US President Barack Obama has declared that the "cyber threat is one of the most serious economic and national security challenges we face as a nation."3 Former US Defense Secretary Leon Panetta has gone further, stating, "So, yes, we are living in that world. I believe that it is very possible the next Pearl Harbor could be a cyber attack ... [that] would have one hell of an impact on the United States of America. That is something we have to worry about and protect against."4 United States elites are not alone in constructing the cyber threat. Russian President Vladimir Putin, in response to the creation of a new battalion of cyber troops to defend Russian cyberspace, noted, "We need to be prepared to effectively combat threats in cyberspace to increase the level of protection in the appropriate infrastructure, particularly the information systems of strategic and critically important facilities."\* The social construction of the cyber threat is therefore real; the aim of this book is to find out if these elite and public constructions are backed with facts and evidence. First, we should define some of our terms to prepare for further engagement of our topic. This book is focused on international cyber interactions. The prefix cyber simply means computer or digital interactions, which are directly related to cyberspace, a concept we define as the networked system of microprocessors, mainframes, and basic computers that interact at the digital level. Our focus in this volume is on what we call cyber conflict, the use of computational technologies for malevolent and destructive purposes in order to impact, change, or modify diplomatic and military interactions among states. Cyber war would be an escalation of cyber conflict to include physical destruction and death. Our focus, therefore, is on cyber conflict and the manifestation of digital animosity short of and including frames of war. These terms will be unpacked in greater detail in the chapters that follow. The idea that conflict is the foundation for cyber interactions at the interstate level is troubling. Obviously many things are dangerous, but we find that the danger inherent in the cyber system could be countered by the general restraint that might limit the worst abuses in the human condition. By countering what we assert to be an unwarranted construction of fear with reality, data, and evidence, we hope to move beyond the simple pessimistic construction of how digital interactions take place, and go further to describe the true security context of inter- national cyber politics. In this project we examine interactions among interstate rivals, the most contentious pairs of states in the international system. The animosity between rivals often builds for centuries, to the point where a rival state is willing to harm itself in order to harm its rival even more (Valeriano 2013). If the cyber world is truly dangerous, we would see evidence of these disruptions among rival states with devastating effect. Rivals fight the majority of wars, conflicts, and disputes (Diehl and Goertz 2000), yet the evidence presented here demonstrates that the cyber threat is restrained at this point.6 Overstating the threat is dangerous because the response could then end up being the actual cause of more conflict. Reactions to threats must be proportional to the nature of the threat in the first place. Otherwise the threat takes on a life of its own and becomes a self-fulfilling prophecy of all-out cyber warfare. Furthermore, there is a danger in equivocating the threat that comes from non-state cyber individuals and the threats that come from state-affiliated cyber actors not directly employed by governments. If the discourse is correct, non-state entities such as terrorist organizations or political activist groups should be actively using these malicious tactics in cyberspace in order to pro- mote their goals of fear and awareness of their plight. If the goal is to spread fear and instability among the perceived enemies of this group, and cyber tactics are the most effective way to do this, we should see these tactics perpetrated—and perpetrated often—by these entities. This book examines how state-affiliated non-state actors use cyber power and finds that their actual capabilities to do physical harm via cyberspace are quite limited. This then leaves rogue actors as the dangerous foes in the cyber arena. While these individuals can be destructive, their power in no way compares to the resources, abilities, and capabilities of cyber power connected to traditional states. The future is open, and thus the cyber world could become dangerous, yet the norms we see developing so far seem to limit the amount of harm in the system. If these norms hold, institutions will develop to manage the worst abuses in cyberspace, and states will focus on cyber resilience and basic defense rather than offensive technologies and digital walls. Cyberspace would therefore become a fruitful place for developments for our globalized society. This arena could be the place of digital collaboration, education, and exchanges, communicated at speeds that were never before possible. If states fall into the trap of buying into the fear-based cyber hype by developing offensive weapons under the mistaken belief that these actions will deter future incidents, cyberspace is doomed. We will then have a restricted technology that prevents the developments that are inherent in mankind's progressive nature.

#### Capitalism causes China war — promotes military competition and securitization.

He 19, Former Vice Minister of Foreign Affairs (Yafei, January 19th, “The Crisis of Capitalism and the Evolution of China-US Relations,” *China-US Focus*, <https://www.chinausfocus.com/society-culture/the-crisis-of-capitalism-and-the-evolution-of-china-us-relations>, Accessed 08-18-2021)

How will the crisis of capitalism, particularly the systemic decay of US capitalism, affect China-US relations? After all, China-US relations play such a pivotal role in the shaping of international relations in the 21st century.

First, China-US relations are in need of readjustment, which will make them even more uncertain. Since US capitalism has entered an extended period of turmoil and overhaul, the government is more inclined to play hardball in dealing with other countries. And since the US has already defined China as a “strategic competitor”, the two countries will also take an extended period to feel out each other strategically.

The telephone conversation by the two heads of state towards the end of 2018 was an important step in promoting progress in bilateral trade negotiations. Rhetoric from the two sides sounds more upbeat. But many still draw conclusions from Vice President Mike Pence’s October speech that the ongoing brawl in China-US relations meant more than just trade friction. Perhaps it is the beginning of a cold war. Still some likened China-US relations to the pre-WWI world, convinced that the “Thucydides Trap” is inevitable. Ancient Greek historian Thucydides blamed the Peloponnesian War on Athens’ “rise” and the “fear” it caused in the Spartans. In reality, history cannot repeat itself and such comparisons can only misguide. The evolution of China-US relations as we know them reflects nothing more than international changes since WWII, particularly the shifting dynamics of the global system.

Second, US capitalism has entered a new period characterized by a “combination of financial capital and technology monopoly”. It cannot resolve the inherent contradiction between capital and labor, resulting in convoluted problems that include the widening wealth gap, disintegration of the social fabric, and growing opposition between the elite and broad sections of people. China, on the other hand, has leapfrogged in development over the decades by acting within the existing international system and taking full advantage of globalization. The success of the Chinese path has increased the “strategic anxiety” of the US and dampened its self-confidence. It is quite logical for the US to go out looking for “foes” or “adversaries” to rally troops and restore morale. Therefore, future China-US relations will witness more ups and downs.

#### 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,

#### Outweighs—Bioweapons cause extinction, BUT nukes don’t.

Singer, 1—Clifford Singer; Director of the Program in Arms Control, Disarmament, and International Security at the University of Illinois at Urbana—Champaign. Spring, “Will Mankind Survive the Millennium?” The Bulletin of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana-Champaign, 13.1, http://www.acdis.uiuc.edu/research/S&Ps/2001-Sp/S&P\_XIII/Singer.htm

In recent years the fear of the apocalypse (or religious hope for it) has been in part a child of the Cold War, but its seeds in Western culture go back to the Black Death and earlier. Recent polls suggest that the majority in the United States that believe man would survive into the future for substantially less than a millennium was about 10 percent higher in the Cold War than afterward. However fear of annihilation of the human species through nuclear warfare was confused with the admittedly terrifying, but much different matter of destruction of a **dominant** civilization. The destruction of a third or more of much of the globe’s population through the disruption from the direct consequences of nuclear blast and fire damage was certainly possible. There was, and still is, what is now known to be a rather small chance that dust raised by an all-out nuclear war would cause a so-called nuclear winter, substantially reducing agricultural yields especially in temperate regions for a year or more. As noted above mankind as a whole has weathered a number of mind-boggling disasters in the past fifty thousand years even if older cultures or civilizations have sometimes eventually given way to new ones in the process. Moreover the fear that radioactive fallout would make the globe uninhabitable, publicized by widely seen works such as “On the Beach,” was a metaphor for the horror of nuclear war rather than reality. The epidemiological lethal results of well over a hundred atmospheric nuclear tests are barely statistically detectable except in immediate fallout plumes. The increase in radiation exposure far from the combatants in **even a full scale nuclear exchange** at the height of the Cold War would have been modest compared to the variations in natural background radiation doses that have readily been adapted to by a number of human populations. Nor is there any reason to believe that global warming or other insults to our physical environment resulting from currently used technologies will challenge the survival of mankind as a whole beyond what it has already handily survived through the past fifty thousand years.

There are, however, two technologies currently under development that may pose a more serious threat to human survival. The first and most immediate is biological warfare combined with genetic engineering. Smallpox is the most fearsome of natural biological warfare agents in existence. By the end of the next decade, global immunity to smallpox will likely be at a low unprecedented since the emergence of this disease in the distant past, while the opportunity for it to spread rapidly across the globe will be at an all time high. In the absence of other complications such as nuclear war near the peak of an epidemic, developed countries may respond with quarantine and vaccination to limit the damage. Otherwise mortality there may match the rate of 30 percent or more expected in unprepared developing countries. With respect to genetic engineering using currently available knowledge and technology, the simple expedient of spreading an ample mixture of coat protein variants could render a vaccination response largely ineffective, but this would otherwise not be expected to substantially increase overall mortality rates. With development of new biological technology, however, there is a possibility that a variety of infectious agents may be engineered for combinations of greater than natural virulence and mortality, rather than just to overwhelm currently available antibiotics or vaccines. There is no a priori known upper limit to the power of this type of technology base, and thus the survival of a globally connected human family may be in question when and if this is [[1]](#footnote-1)achieved.

# 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

#### The aff isn’t close to a prohibition—they only lower the burden of proof for plaintiffs in the first step of the process—establishing that a firm did something anticompetitive—rule of reason is not a prohibition on anticompetitive actions because at step 2 the defense can argue that procompetitive benefits outweigh and at the 4th step the plaintiff has to win that anticompetitive effects outweigh procompetitive benefits—The restriction itself is not a prohibition on behavior because if a company wins that the benefits outweigh the costs they are allowed to continue the behavior and each firm is evaluated differently under Rule of reason

Stuche 9 Maurice E. Stucke, Associate Professor, University of Tennessee College of Law, Does the Rule of Reason Violate the Rule of Law? Univ of California Davis Law Review, <https://lawreview.law.ucdavis.edu/issues/42/5/articles/42-5_Stucke.pdf>

Above all other problems, the current “flexible” rule of reason provides little predictability to market participants. It subjects litigants and trial courts to the purgatory of “sprawling, costly, and hugely timeconsuming” discovery.35 For example, a per se price-fixing claim under section 1 of the Sherman Act requires proof of an agreement.36 But even under some lower courts’ more “structured” rule of reason, antitrust plaintiffs (including the federal antitrust agencies) and defendants must engage in an elaborate four-part minuet. As under the per se rule, plaintiffs must also prove an agreement under the rule of reason. But they must then, first, establish that the challenged restraint has had substantial adverse effects on competition, such as increases in price, or decreases in output or quality. In the absence of direct evidence of these anticompetitive effects, plaintiffs can demonstrate the likely anticompetitive effects of a restraint by showing the defendants’ “market power” as inferred from their high market share within a properly defined product and geographic market.37 Such a market definition, in turn, entails issues of cross-elasticity of demand,38 as well as supply substitutability into those markets, and ease of entry.39 But that is just the opening of a four-step routine. After plaintiffs meet their initial burden, the second step shifts the burden of production to defendants to provide a procompetitive justification for the challenged restraint (including the extent to which the restraint increased productive efficiencies, lowered marginal costs, and yielded procompetitive benefits to consumers).40 If the defendants offer procompetitive business justifications, plaintiffs can, in the third stage, respond by showing the defendants’ procompetitive justifications as pretextual, that lesser restrictive alternatives exist for the challenged restraint, or that the restraint is not reasonably necessary to achieve the procompetitive objectives.41 If plaintiffs’ rule of reason claims survive to this point, plaintiffs must, in a fourth step, show that the restraint’s anticompetitive effects outweigh its procompetitive benefits.42 The fact-finder then engages in a “careful weighing of the competitive effects of the agreement — both pro and con — to determine if the effects of the challenged restraint tend to promote or destroy competition.”43

#### Per se violations key

Stuche 9 Maurice E. Stucke, Associate Professor, University of Tennessee College of Law, Does the Rule of Reason Violate the Rule of Law? Univ of California Davis Law Review, <https://lawreview.law.ucdavis.edu/issues/42/5/articles/42-5_Stucke.pdf>

As this history makes evident, the development of antitrust doctrines has been long and contentious, dating back to the enactment of the Sherman Antitrust Act. The Court, over the years, has employed several different standards: per se illegality, quick-look standards, and the rule of reason. But since 1977, for a number of reasons, the rule of reason dominates. The Court has constricted its per se standard to some horizontal restraints like price fixing and market allocation. The quick-look has fallen into disuse, as litigants fear that the court will revert to the rule of reason. And the Court has repeatedly noted of late that its rule of reason is the prevailing, usual, and accepted standard for evaluating conduct under the Sherman Act. Although the rule of reason is approaching its 100th anniversary, it continues to suffer from the infirmities that President Taft and Justice Harlan’s dissent in Standard Oil identified: it is too fluid an analysis to create clear objective rules that business leaders and lawyers can follow. This raises fundamental questions as to whether the rule of reason can ever be reconciled with rule-of-law principles.

#### 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]

#### 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).

1. [↑](#footnote-ref-1)