# 1NC

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### 1NC — CP

#### The United States federal government should:

#### — substantially increase tax incentives and grants for technology research and development, immigration to the US, and STEM training programs; AND eliminate all restrictions on foreign trade.

#### — should abolish the presidency. The legislative branch of the United States should enforce laws.

#### Increase public and private investments in labor-market training, public employment services, and social services

#### Upgrade national rules and institutions relating to work

#### Increase public and private investment in labor-intensive economic sectors.

#### Prevent litigation of private parties’ contract through the ICT

#### Plank one invigorates innovation which solves the entire first advantage AND the slow growth scenario

Savchuk 19, journalist, MS in urbanization and development. Citing Nicholas A. Bloom, Professor of Economics, School of Humanities and Sciences @ Stanford. Senior Fellow, Stanford Institute for Economic Policy Research. (Katia, 10-7-2019, "The Five Best Policies to Promote Innovation — And One Policy to Avoid", *Stanford Graduate School of Business*, https://www.gsb.stanford.edu/insights/five-best-policies-promote-innovation-one-policy-avoid)

The Top Five Policies for Boosting Innovation

Outlined in a recent paper in the Journal of Economic Perspectives, here are five policies that Bloom and his colleagues say can effectively drive innovation:

1. Offer Tax Incentives for R&D

The research is clear: Government tax subsidies and grants are the most effective way to increase innovation as well as productivity. Studies show that reducing the price of R&D by 10% increases investment in innovation by 10% in the long run. The U.S. has one of the least generous tax credit policies among developed countries, only cutting the cost of R&D spending by around 5%. Countries like France, Portugal, and Chile are the most beneficent, slashing the cost of R&D spending by more than 30%.

2. Promote Free Trade

Existing evidence suggests that opening trade can spark innovation by increasing competition, allowing new ideas to spread faster and dividing the cost of innovation over a bigger market. For example, researchers who summarized the findings of more than 40 papers in 2018 concluded that freer trade generally increased innovation in South America, Asia, and Europe (results from North America are more mixed). This policy can bear fruit in the medium run and doesn’t cost much to implement, but can increase inequality.

3. Support Skilled Migration

Even if there’s more funding for innovation, you won’t see it unless you have more scientists to do the research. The most direct way to increase the supply of researchers is to allow more high-skilled immigrants into the country. One paper showed that increasing the population of immigrant college graduates in the U.S. by one percentage point increased patents per capita by up to 18%.

4. Train Workers in STEM Fields

Another way to increase the supply of researchers in the long term is to invest in training them domestically. One option is to promote programs that boost the number of people studying science, technology, engineering, and math (STEM). Another is to expose more would-be inventors from disadvantaged backgrounds to role models and mentoring.

5. Provide Direct Grants for R&D

Compared to tax incentives, government grants — often to university researchers — can target projects that are likely to have the most long-term benefits. Research shows that grants to academics in turn results in more patents filed by private firms. However, it’s tough to track the impact of grants, since it’s possible that private R&D funding would have stepped up in their absence.

#### Plank two solves democracy

Dupuy 18, a former Capitol Hill staffer, has written for The Atlantic, Fast Company, The L.A. Times, Vox and Mother Jones (Tina Dupuy, 8-10-2018, "Donald Trump broke the presidency. It's time to get rid of the job altogether.," USA TODAY, https://www.usatoday.com/story/opinion/2018/08/10/donald-trump-russia-election-inept-monarch-abolish-presidency-column/923543002/)

Abolish presidency to save democracy

In 1973, the idea came up again a few weeks after the second inauguration of Richard Nixon, when Pulitzer Prize-winning historian Barbara Tuchman wrote a piece in The New York Times asking “Should We Abolish the Presidency?” Tuchman argued that Congress is at fault for the executive branch becoming too powerful. “Responsibility must be put where it belongs: in the voter. The failure of Congress is a failure of the people.” Eighteen months later Nixon resigned. His successor gave Nixon a blanket pardon, ratifying that he was in fact above the law. Tuchman also touted the Swiss Republic’s use of a council in lieu of a hero-like dad figure. But I’m most inspired by Comedy Central’s "The President Show" starring comedian Anthony Atamanuik. With his searing Trump impersonation, Atamanuik is introduced as “the 45th and final president.” We can make that happen! My fear isn’t Trump; it’s that the next autocrat is most likely smarter and savvier than Trump. Every partisan from every niche of American politics should be alarmed. We have a branch of government that stinks so bad it’s wafted over the entire nation and its outer territories. The entire world sees it. We’re in trouble. The presidency is broken. Our little democratic experiment is in peril. We can amend our Constitution to save the republic. Abolish the presidency! Power to the people! Power to the Congress! Make the co-equal branches of government more equal. Give us a council of boring bureaucrats who will do their job, serve the people and leave after their term ends. Because, as our forefathers believed, democracy is worth fighting for — even if you have to fight a ~~mad~~ king for it.

#### Planks 3-5 solve growth

Ryder & Samans 19 –– Guy; Director-General, International Labour Organization. Richard; Director of Research, International Labour Organization. (“3 ways countries can boost social inclusion and economic growth” World Economic Forum. June 17, 2019. [https://www.weforum.org/agenda/2019/06/3-ways-countries-can-boost-social-inclusion-and-economic-growth/)](https://www.weforum.org/agenda/2019/06/3-ways-countries-can-boost-social-inclusion-and-economic-growth/)%20)

The commission recommended three practical steps – all of which involve investing more in people – that countries can take to improve social inclusion and economic growth simultaneously. Investing more in people is not only essential to strengthen countries’ social contracts with citizens at a time of rapid technological change. It can also form the basis of a new, more human-centered growth and development model that may be the best hope for sustaining the world economy’s momentum as the two growth engines on which many countries have relied for years or even decades – extraordinary macroeconomic stimulus and export-led industrial production – continue to lose steam.

First, countries should increase public and private investment in their citizens’ capabilities, which is the most important way they can durably lift their rate of productivity growth. Some governments chronically underinvest in access to quality education and skills development. But policymakers everywhere need to do more as populations age and automation disrupts both manufacturing, on which developing economies have traditionally relied to industrialize, and services, in which much advanced-economy employment is concentrated. The commission therefore called on countries to build a universal framework to support lifelong learning – including stronger and better-financed labor-market training and adjustment policies, expanded public employment services, and a universal social-protection floor.

Second, governments, together with employers’ and workers’ organizations, should upgrade national rules and institutions relating to work. These influence the quantity and distribution of job opportunities and compensation, and thus the level of purchasing power and aggregate demand within the economy. Specifically, the commission called for a Universal Labor Guarantee under which all workers, regardless of their contractual arrangement or employment status, would enjoy fundamental rights, an “adequate living wage” as defined in the ILO’s founding constitution 100 years ago, maximum limits on working hours, and health and safety protection at work.

Moreover, collective representation of workers and employers through structured social dialogue should be ensured as a public good and actively promoted by government policies. From parental leave to public services, policies need to encourage the sharing of unpaid care work in the home to support gender equality in the workplace. Strengthening female voices and leadership, eliminating violence and harassment at work, and implementing pay transparency policies are also important in this regard.

Third, countries should increase public and private investment in labor-intensive economic sectors that generate wider benefits for society. These include sustainable water, energy, digital, and transport infrastructure, care sectors, the rural economy, and education and training. The Business and Sustainable Development Commission [has estimated](http://businesscommission.org/news/release-sustainable-business-can-unlock-at-least-us-12-trillion-in-new-market-value-and-repair-economic-system) that achieving the UN Sustainable Development Goals could generate $12 trillion of market opportunities in four areas alone – food and agriculture, cities, energy and materials, and health and wellbeing – and create up to 380 million jobs by 2030. Capitalizing on these possibilities could help countries to compensate for the labor-displacing and potentially demand-suppressing effects of automation and economic integration.

#### Plank 6 solves advantage 1 — and patent courts are an alt cause [KU reads green]

Wayne Winegarden 3-4. Senior Fellow in Business and Economics at the Pacific Research Institute and the Director of PRI's Center for Medical Economics and Innovation. “Frivolous Patent Litigation Threatens The Technology Revolution” <https://www.forbes.com/sites/waynewinegarden/2021/03/04/frivolous-patent-litigation-threatens-the-technology-revolution/?sh=23668b9b408f>

Patent trolls have been a plague on innovators for too long. Patent trolls are entities that obtain patents (sometimes obscure patents) for the sole purpose of threatening or filing lawsuits in court and then using the prospect of costly litigation to extort unwarranted payouts from an innovative company. The risks and costs created by these entities are a clear and present danger to entrepreneurship and innovation. A goal of public policy should be to make it more costly for frivolous patent lawsuits to be filed, while still ensuring that legitimate patent rights are protected. Unfortunately, the current environment does not get this balance right, to the detriment of many cutting-edge firms and industries. The **tech**nology **industry**, **particularly** **companies inventing** and employing the next generation **5G** technologies, **is extremely vulnerable** **to** **this problem because a single IT product typically contains thousands of patents.** That is highly problematic for our economy. 5G technology enables higher capacity network connections that are faster, more reliable, and more responsive. The 5G revolution will improve the functionality of our current telecommunications system and facilitate significant business efficiencies that include faster communications and improved logistical operations. Through advances such as improved intelligence and new options for command and control, it will be invaluable for national defense. 5G technologies will also enable all types of new technologies to emerge, from self-driving cars to smart toothbrushes. The invention and rollout of 5G technologies are not cheap, however. The total spending on just the rollout of the cutting edge technologies runs into the trillions of dollars. **With so much on the line, it is** **imperative** that the **patent system** **protect the rights of patent holders** while preventing inappropriate patent litigation from becoming an unnecessary burden on the entrepreneurial companies driving the nation’s 5G revolution forward. Unfortunately, **the ability to launch litigation** through the U.S. International Trade Commission (ITC**) is throwing off this careful balance.** Take the current litigation between Ericsson and Samsung as an example. Ericsson and Samsung had a patent cross-license agreement for 5G technologies that recently expired. Such an arrangement is commonplace among high-tech companies that produce complex products. A renewal agreement does not require costly litigation. However, in practice, Ericsson has launched costly litigation against its contract partners each time an agreement is being re-upped. In the latest iteration of these tactics, Ericsson filed complaints right after the agreement expired in both the ITC and District Court in Texas, not to mention across Europe. The filing with the ITC is the most disconcerting, as its purpose seems to be to gain negotiating leverage. According to the ITC, its mission is to help domestic industries stave off problematic import competition, including “in proceedings involving imports claimed to injure a domestic industry or violate U.S. intellectual property rights”. The problem arises, however, because the scope of the complaints the ITC is willing to adjudicate is expanding, and the ITC’s failure to enforce the requirement of “legitimate domestic industry interests” means the hearings are unfairly tilted in favor of the complainant. In this case, Ericsson, a Swedish company, does not even make the products it is trying to block from the US market. As Bret Swanson from the American Enterprise Institute noted, the ITC can impose harsh penalties that include an “exclusion order” that would prohibit the respondent company from importing the infringing product into the U.S. until the dispute is resolved. The exceptionally large revenue losses that would result from a complete ban on the sale of a product pressure respondents to agree to terms that excessively favor the complainant. Not surprisingly, based on the ITC’s own data, **many patent trolls are using litigation** at the ITC **for precisely these goals.** According to the ITC data, non-practicing entities (NPEs, or entities that do not manufacturer products and many of whom are patent trolls) filed nearly one-fifth of all ITC investigations between 2007 and 2020. The incentives to use ITC litigation to gain leverage during licensing negotiations create large economic costs. Directly, **such litigation wastes millions of dollars** **that could otherwise be invested in** ushering in the **5G** revolution. Indirectly, the current litigation environment creates a feedback loop that encourages patent trolls to file more litigation. This obviously increases the amount of money wasted on frivolous litigation. **The risks from excessive litigation also hobble innovative firms** by causing them to operate in a manner that minimizes their litigation costs rather than maximizing their innovation efforts and technological efficiencies. Equally troubling, all the costs the ITC is currently imposing are unnecessary. The federal judiciary is well equipped to enforce the rights of valid patent holders. There is no reason to offer a second front to litigate private parties’ contract questions through the ITC, especially with the enormous risk of market preclusion hanging over the dispute. **Frivolous lawsuits have been a pall hanging over the innovative tech sector** for too long. Congress can help alleviate this problem by reforming ITC processes, limiting its scope, and increasing the costs for filing a frivolous lawsuit.

### 1NC — T

**Prohibition requires forbidding a practice—the plan is only a hindrance**

**Van Eaton** et al **17** (Joseph Van Eaton, Gail Karish Gerard Lavery Lederer, lawyers for BEST BEST & KRIEGER, LLP. Michael Watza, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, “BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C”, COMMENTS OF SMART COMMUNITIES SITING COALITION, March 8, 2017 , https://tellusventure.com/downloads/policy/fcc\_row/smart\_communities\_siting\_coaltion\_comments\_mobilitie\_8mar2017.pdf)

2. What are at issue legally are prohibitions and effective prohibitions, and not hindrances, as the Commission seems to suggest in its Notice. The term “prohibit” is not defined in the Act, but it has an ordinary meaning: to formally forbid (something) by law, rule, or other authority; or to “prevent, stop, rule out, preclude, make impossible.” A mere “hindrance” “is simply not **in accord with** the ordinaryand fairmeaning” ofthe termprohibit,104 and can provide no basis for additional Commission intrusions on local authority over wireless facilities. Much of what Mobilitie complains about is a “hindrance” at most (and usually a hindrance magnified by its own actions).

**Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’**

Stevens 90 (John Paul Stevens- Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals **assumed** that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the **per se rule** **prohibiting** such activity "is only a rule of 'administrative convenience and efficiency,' **not** a **statutory command**." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of **judicial** interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as **any other** **statutory** commands. Moreover, while the per se rule against price fixing and boycotts is indeed **justified** in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified **only** by such concerns. The **per se rules** also reflect a **long-standing judgment** that the **prohibited practices** by their **nature** have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are **agreements** whose nature and necessary effect are **so plainly anticompetitive** that **no** elaborate **study** of the industry is needed to establish their illegality -- they are 'illegal **per se.'** In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in **antitrust** law serve purposes analogous to per se restrictions upon, for example, **stunt flying** in congested areas or **speeding**. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps **most** violations of such rules **actually** cause **no harm**. No doubt many **experienced** drivers and pilots can operate much more safely, even **at prohibited speeds**, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be **enforced** against these skilled persons **without proof** that their conduct was **actually harmful or dangerous**.

In part, the justification for **t**hese per se rules is rooted in administrative convenience. They are also **supported**, however, by the observation that every speeder and every stunt pilot poses **some threat to the community**. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### The rule of reason is the opposite of a prohibition

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.'

#### 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. And bidirectionality---rule of reason creates legally protected practices, specifically true in their aff where they could increase or decrease suits post aff

#### “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---limits---they lead to a wave of legal standard affs that avoid generics

### 1NC — DA

#### The United States federal judiciary should decline to hear or rule on antitrust suits.

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

Balmer 20 Paul Balmer is an associate in Tonkon Torp’s Litigation Department. He graduated from the University of California, Berkeley, School of Law in 2020, where he was the Senior Articles Editor of Ecology Law Quarterly and Treasurer of the Election Law Society, ARTICLE: COLLUDING TO SAVE THE WORLD: HOW ANTITRUST LAWS DISCOURAGE CORPORATIONS FROM TAKING ACTION ON CLIMATE CHANGE, 47 Ecology L. Currents 219 Export Citation 2020 Reporter 47 Ecology L. Currents 219 \*

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 — T

#### Business practices are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97 (KERRY LYNN MACINTOSH-Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline accessed online via KU libraries, date accessed 8/27/21)

These new and revised articles reflect a strong trend toward choosing default rules4 that codify existing business practices.5 [[BEGIN FOOTNOTE 5]] 5. In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-205(2). [[END FOOTNOTE 5]] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### They violate — sham litigation is rare—even those that are worried about it say it’s “occasional”

Noah 95 (Lars Noah \*-\* Assistant Professor, University of Florida College of Law. B.A., 1986, J.D., 1990, Harvard University. ARTICLE: SHAM PETITIONING AS A THREAT TO THE INTEGRITY OF THE REGULATORY PROCESS, 74 N.C.L. Rev. 1, Lexis accessed online via KU Libraries, date accessed 10/31/21)

The author sent a short questionnaire to the general counsels of several federal agencies and to a number of private attorneys in Washington, D.C., who once served in and continue to practice before many of these same agencies. Twenty-two questionnaires were returned (some of which requested confidential treatment), and copies are on file with the author. Roughly half of the thirteen responses received from agency officials indicated that sham petitioning occurs "rarely" or "never," and that the participation by parties with economic interests delayed the agency's resolution of a pending matter only "insignificantly." The remaining responses suggested that sham petitioning occurs at least "occasionally" and may "moderately" increase delays. Of the nine responses received from the private attorneys, half indicated that sham petitioning occurs at least "occasionally," and all but one felt that participation by third parties increased agency delays "moderately" or "substantially."

#### Prefer it —

#### 1 — limits and ground — they can change any standard that has ever been used or could be used which leads to a new wave of standards affs that avoid core generics because they barely expand the scope of laws and don’t affect litigation. Infinite unpredictable affs make it try or die.

#### It’s a voter for fairness and education

### 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

#### 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 — T

#### Expand means increase scope

Spitz 91 (Justice SPITZ delivered the opinion of the court in Toys" R" Us, Inc. v. Adelman, 574 NE 2d 1328 - Ill: Appellate Court, 3rd Dist. 1991. Google scholar caselaw. Date accessed 7/12/21).

While there are other meanings of the word "expand" which have no apparent application to the case at bar, for the purpose of this case, "expand" means to increase the extent, number, volume, or scope of, to enlarge, or to extend. (Federal Electric Co. v. Zoning Board of Appeals (1947), 398 Ill. 142, 75 N.E.2d 359; Webster's Ninth New Collegiate Dictionary 436 (1990).) The word "facility" also has varying definitions, but the one which appears to have the most appropriate application to the case at bar is a thing, such as a hospital, "that is built, installed, or established to serve a particular purpose." Webster's Ninth New Collegiate Dictionary 444 (1990).

#### Requires making greater in size

Maine Supreme Court 2k (SAUFLEY, J. Opinion in Bangs v. Town of Wells, 760 A. 2d 632 - Me: Supreme Judicial Court 2000. Google scholar caselaw. Date accessed 7/12/21).

[¶ 19] Wells's interpretation of subsection 3(M) is not consistent with the plain language of the statute. See Kimball, 2000 ME 20, ¶ 18, 745 A.2d at 392 (explaining the rules of statutory construction). The plain meaning of the word "expand" means "to make or become greater in size."[9] WEBSTER'S II NEW RIVERSIDE DICTIONARY 241 (1996). Further, the language of the statute requires that municipalities give reasonable consideration to the expansion of existing "mobile home parks" as opposed to allowing "mobile home park lots" or "mobile home park density" to expand. Therefore, a logical and consistent reading of the statute encompasses mobile home parks' growth in physical area rather than merely in density. See Town of Madison, Dep't of Elec. Works v. Pub. Utils. Comm'n, 682 A.2d 231, 234 (Me.1996).

#### Violation — the aff reduces the scope of antitrust statutes

#### Prefer it

#### 1 — Bidirectionality — allows reducing antitrust capabilities in any area which explodes limits and destroys ground because we lose access to core generics about expanding scope like FTC and regs.

## 1NC — Innovation

### 1NC — AT: China

#### China won’t invade but needs the ability to threaten Taiwan to limit U.S. influence—If the U.S. got 5g control over Taiwan it would cause China to invade preemptively before that happened as a red linen because if the US had 5G dominance it could push for Taiwan independence—That is the only scenario that can trigger invasion

Westcott & Cheung 10/16/21, CNN analysts, (China isn't about to invade Taiwan. But the two sides are on a dangerous path, https://www.cnn.com/2021/10/15/asia/taiwan-invasion-us-china-tensions-intl-dst-hnk/index.html)

Rather than a prelude to an invasion, the increased Chinese flyovers are a symbol of Beijing's frustration and a reminder to Taiwan and the US not to cross China's "red lines," said Bonnie Glaser, director of the Asia Program at the German Marshall Fund of the United States. She said those red lines, which if crossed could spark a military escalation from Beijing, include campaigning for formal Taiwan independence or a decision to deploy large numbers of US troops to the island. "China wants to keep Taiwan in a box and it is using more and more coercion against Taiwan ... They want to intimidate Taiwan," she said. But Beijing's audience isn't only in Taiwan and the US -- it's also at home. By putting pressure on Taiwan, President Xi Jinping is trying to shore up support ahead of the 2022 Chinese Communist Party Congress. That's when Xi's second term ends, though it's almost certain he'll stay on as President. Wen-Ti Sung, a fellow at the Australian Centre on China in the World at the Australian National University (ANU), said Xi also wants to garner support ahead of a meeting of the Communist Party in November where a shortlist of candidates for higher office will be finalized. A strong policy on Taiwan could determine how many allies he can place in top positions for the next five years. "At a moment like this, using some show of force to drum up nationalist sentiment, create a 'rally around the flag' effect, is usually a good thing for the incumbent, for the commander-in-chief," he said. And the Communist Party has major priorities over the coming year which an invasion of Taiwan would dramatically complicate -- a smooth-running Beijing 2022 Winter Olympics in February and the imminent 20th party congress. China's 'peaceful reunification' goal One of the clearest signs of Beijing's reluctance to invade Taiwan came from an unusual source -- Xi himself. In a speech on October 9, the Chinese President emphasized his desire for "peaceful reunification" with Taiwan, and appeared to imply he was prepared to wait for the island to voluntarily comply. "When I read what Xi Jinping says about Taiwan I'm struck at the lack of urgency," Glaser said. Aiming for a peaceful resolution to the standoff over the Taiwan Strait makes sense -- experts have long said that any attempt by Beijing to forcefully take the island would be a hugely costly endeavor, with an uncertain outcome.

#### 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.

### 1NC — AT: Cyber

#### SolarWinds thumps

#### No cyber impact.

Lewis 20, PhD, a senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies in Washington, D.C. (James Andrew, 8-17-2020, "Dismissing Cyber Catastrophe", *CSIS*, https://www.csis.org/analysis/dismissing-cyber-catastrophe)

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With ~~man-made~~ actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

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

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

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

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

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

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

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

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often?

#### There is no internal link between internet-connected devices like cell phones and nuclear NC3 assets like their impact — the closest thing is “cyberspace” which is not the same as the internet

## 1NC — Petitioning

### 1NC — AT: Slow Growth

#### No impact to slow growth

Posen 16 Adam S. Posen, Government and Economics PhD from Harvard, economic advisor to the Congressional Budget Office, faculty of the World Economic Forum, consultant for the International Monetary Fund and the United States government. [Why We Need A Reality Check, Reality Check for the Global Economy, Peterson Institute for International Economics Briefing 16-3]

Greater confidence in the world economy’s resilience and near-term prospects is justified. Market fears about the ability of policy to stabilize growth and promote inflation, if understandable, are exaggerated or in some cases unfounded. All the more reason then not to allow ourselves to be distracted by a financial market tail wagging the macroeconomic dog. At a fundamental level, most of the major economies, starting with China and the United States, are growing more sustainably now than a decade ago, at their slower rates. That growth is not built on rising private or public leverage, with the notable exception of China—and even in China some restructuring is under way with ample savings to cushion the process. Even where the situation is not so rosy, many in the markets seem to be confusing strains and suboptimal situations with acute instability, not just for Italian banks and for Brazilian budgets but also for Latin America more generally or for trends in global trade. A more normal muddling through with poor but stable conditions is a far better bet. And where some in the markets moving prices fear that normal economic laws have been reversed—that monetary policy is ineffective or that low oil prices are on net harmful—they are likely to be proven clearly wrong, as they were previously on inflation and commodity prices. Having some clarity to distinguish between the more solid underlying economic outlook and the shadows thrown by financial puppetry is critical to making the right policy decisions to avoid an unnecessary recession. A combination of public policies and decentralized private-sector responses to the crisis have increased our economic resilience, diminished the systemic spillovers between economies, and even created some room for additional stimulus if needed. Large parts of the global financial system are better capitalized, monitored, and frankly more risk averse than they were a decade ago, with less leverage. The riskier parts of today’s global economy are less directly linked to the center’s growth and fi nancing than when the troubles were within the United States and most of Europe in 2008. Trade imbalances of many key economies are smaller, though growing, and thus accumulations of foreign debt vulnerabilities are also smaller than a decade ago. Most central banks are now so committed to stabilization that they are attacked for being too loose or supportive of markets, making them at least unlikely to repeat some policy errors from 2007–10 of delaying loosening or even excessive tightening. Finally, corporate and household balance sheets are far more solid in the US and some other major economies than they were a decade ago (though not universally), and even in China the perceptions of balance sheet weakness exceed the reality in scope and scale.

#### No LIO impact---it’s a myth.

Staniland 18, Associate Professor of Political Science and Chair of the Committee on International Relations at the University of Chicago. (Paul, 7/29/18, “Misreading the “Liberal Order”: Why We Need New Thinking in American Foreign Policy”, *Lawfare*; https://www.lawfareblog.com/misreading-liberal-order-why-we-need-new-thinking-american-foreign-policy)

Pushing back against Trump’s foreign policy is an important goal. But moving forward requires a more serious analysis than claiming that the “liberal international order” was the centerpiece of past U.S. foreign-policy successes, and thus should be again. Both claims are flawed. We need to understand the limits of the liberal international order, where it previously failed to deliver benefits, and why it offers little guidance for many contemporary questions.

First, advocates of the order tend to skim past the policies pursued under the liberal order that have not worked. These mistakes need to be directly confronted to do better in the future.

Proponents of the order, however, often present a narrow and highly selective reading of history that ignores much of the coercion, violence, and instability that accompanied post-war history. Problematic outcomes are treated as either aberrant exceptions or as not truly characterizing the order. One recent defense of the liberal order by prominent liberal institutionalists Daniel Deudney and G. John Ikenberry, for instance, does not mention Iraq, Afghanistan, Vietnam, or Libya. Professors Stephen Chaudoin, Helen Milner, and Dustin Tingley herald the order’s “support for freedom, democracy, human rights, a free press.” Kori Schake writes that Western democracies’ wars are “about enlarging the perimeter of security and prosperity, expanding and consolidating the liberal order.” Historian Hal Brands argues that the order has advocated “political liberalism in the form of representative government and human rights; and other liberal concepts, such as nonaggression, self-determination, and the peaceful settlement of disputes.”

Other analysts have persuasively argued that these accounts create an “imagined” picture of post-World War II history. Patrick Porter outlines in detail how coercive, violent, and hypocritical U.S. foreign policy has often been. To the extent an international liberal order ever actually existed beyond a small cluster of countries, writes Nick Danforth, it was recent and short-lived. Thomas Meaney and Stephen Wertheim further argue that “critics exaggerate Mr. Trump’s abnormality,” situating him within a long history of the pursuit of American self-interest. Graham Allison—no bomb-throwing radical—has recently written that the order was a “myth” and that credit for the lack of great power war should instead go to nuclear deterrence. Coercion and disregard for both allies and political liberalism have been entirely compatible with the “liberal” order.

The last two decades have been a bumpy ride for U.S. foreign policy. Since 9/11, we have seen the disintegration of Syria, Yemen, and Libya, a war without end in Afghanistan, the collapse of the Arab Spring, the rise and resurgence of the Islamic State, and the distinctly mixed success of strategies aimed at managing China’s rise. At home, the growth of a national-security state has placed remarkable power in the hands of Donald Trump. Simply returning to the old order is no guarantee of good results. Grappling openly with failure and self-inflicted wounds—while also acknowledging clear benefits of the order—is essential for moving beyond self-congratulatory platitudes.

### 1NC — AT: Democracy

#### No internal link between preventing petitioning in the US and solving Chinese and Russian authoritarianism

#### **Insurrection and a laundry list thump.**

Faiola et al. 21, \*Anthony, The Washington Post’s South America/Caribbean bureau chief. \*\*Shibani Mahtani, the Southeast Asia bureau chief for The Washington Post, covering countries that include the Philippines, Myanmar, Thailand and Indonesia. \*\*\*Isabelle Khurshudyan, foreign correspondent based in Moscow. (1-14-2021, "A siege on the U.S. Capitol, a strike against democracy worldwide", *Washington Post*, <https://www.washingtonpost.com/world/trump-capitol-attack-democracy-abroad/2021/01/12/5b544e3e-5135-11eb-a1f5-fdaf28cfca90_story.html>)

The attempted insurrection at the Capitol is threatening America’s historical role of promoting democracy around the world. The spectacle of Trump rallying supporters to march on the Capitol over baseless claims of election fraud as lawmakers certified President-elect Joe Biden’s victory has provided a propaganda coup for Washington’s enemies, undermined pro-democracy movements worldwide and offered a model for would-be autocrats. Four years of Trump had already dimmed the United States’ democratic bona fides. The 45th president embraced right-wing nationalists who flouted the rule of law, while backing a handful of pro-democracy movements that served expedient political purposes. A chorus of “no” went up against Venezuela, Cuba and Iran. But from Egypt to Honduras to Saudi Arabia to North Korea, Trump signaled tolerance for human rights abuses and offered authoritarians a new way to dismiss accountability by popularizing the term “fake news.” When asked in September about the alleged Russian poisoning of opposition figure Alexei Navalny, Trump essentially demurred. The House voted Wednesday to impeach Trump for inciting the riot at the Capitol. The Senate will hold a trial, and could bar him from returning to the presidency. But the international implications of the events in Washington last week — and its racial undertones that led the Times of India to dub its pro-Trump participants the “Coup Klux Clan” — are expected to reverberate far beyond Biden’s inauguration. “I think we will get through this, but our credibility as an example of governance is pretty seriously tarnished,” said Ian Kelly, the U.S. ambassador to Georgia from 2015 to 2018. “Let’s not forget that Trump had many enablers, and they’re still there … This president has reduced the coin of our realm.” The State Department said the events of Jan. 6 showed “once again that there is a right way and a wrong way for the citizens of a democracy to express themselves,” but did “not in any way diminish the power of our democratic history and the principles that we strive toward.” “Our democracy has been tested in the past, and it will be tested in the future,” the department said in a statement to The Washington Post. “These experiences make us stronger as we work to perfect our union and our democracy. That we are tested, however, should never cause anyone — allies, friends, or foes — to doubt the strength of America’s democratic institutions or our people.” The White House did not respond to a request for comment. The world’s populists are losing their White House ally, but global Trumpism is far from over Analysts now warn of a herculean task ahead for Biden. Global inequality, historic migration and deep polarization have driven satisfaction with democracy to disturbing lows. Biden could be weakened by the millions of Trump voters who still say his victory was illegitimate, giving adversaries such as Russia’s Vladimir Putin an opening to assail his mandate on the world stage. Meanwhile, any attempt to preach the rule of law to Brazil’s Jair Bolsonaro, Turkey’s Recep Tayyip Erdogan or Hungary’s Viktor Orban could draw calls for him to get his own house in order first. U.S. democracy promotion abroad has long faced accusations of hypocrisy. During the Cold War, Washington routinely coddled strongmen who pledged to oppose communism. Yet last week’s siege is likely to amplify accusations of a double standard, haunting U.S. diplomats and human rights activists as they press for the rule of law abroad. “A lot depends on what happens next,” said Jo-Marie Burt, an associate professor of political science at George Mason University. “If you’re going to allow impunity [in the United States], then that hurts the American experiment. Without accountability at home, we’re going down a path of saying, you know, stuff happens.” The copycat risk In Israel, some observers fear that the Trump model of insurrection, fueled by baseless conspiracy theories, could push the country’s own volatile politics toward a dangerous tipping point. In a country bitterly split by an ideological divide that has paralyzed the government for more than two years, Prime Minister Benjamin Netanyahu has emulated Trump, railing against “fake news” and decrying a “witch hunt” by prosecutors and courts trying him on corruption charges. Netanyahu, a close Trump ally, waited until a day after news organizations called Biden’s election victory to congratulate him, and lagged behind other Israeli politicians in condemning the riot at the Capitol last week. “The reason what happened at the Capitol can happen here is because we already have all the same ingredients,” Yaakov Katz, editor in chief of the Jerusalem Post, wrote in a commentary. “That is what happens when democracy — its values and its institutions — are consistently and systematically attacked, eroded and dismantled. Violence is a potential next step.” A propaganda coup Middle Eastern adversaries like Iran have seized on the chaos at the Capitol as evidence that U.S. democracy is deeply flawed. Allies such as the Gulf Arab monarchies will miss Trump, who declined to criticize their human rights abuses. Though they will seek close ties with a Biden administration, they now have an argument with which to dismiss U.S. advice on democracy. “It’s clear your democracy is in shambles, so please don’t come over here and lecture us,” said Abdulkhaleq Abdulla, a political science professor in Dubai. Belarusian strongman Alexander Lukashenko moved swiftly to spin last week’s events to his advantage. Lukashenko, in power since 1994, claimed a landslide victory for a sixth term last year in an election denounced by the United States and other countries as fraudulent. Belarus has been rocked since then by mass protests calling for his resignation. “I warned you: It’s bad when they walk down the street,” Lukashenko said after the Capitol siege. “It’s even worse when they walk into the courtyards. It will be unbearable when they come to your apartments.” Marina El Fadel, a 37-year-old protester who was stunned by the siege in Washington, sought to distance it from the peaceful demonstrations in Minsk. “I had no illusions about Trump and his policies, so the storming of the Capitol did not affect my attitude on America as a democracy,” she said. “It is a pity for the people who suffer because of the wrong policy of their president. That’s where we’re similar.” In China, the Capitol siege has provided a boost to the ruling Communist Party, which has long warned citizens that democracy is a recipe for chaos. “Chinese state media is already proclaiming the riots in Washington as the failure of democracy,” said Deng Yuwen, a former editor of a party newspaper. “This is a huge help to the Communist Party’s legitimacy.” China is having a field day with U.S. Capitol chaos State media concluded that U.S. democracy was “bankrupt” and “an embarrassment.” The People’s Daily, the official mouthpiece of the Chinese Communist Party, ridiculed what it described as America’s false sense of superiority amid years of attempting to export the model. “The gunshots at the U.S. Capitol make clear that the bitter fruit of ‘democracy’ must be swallowed by the one who sowed it,” the newspaper said. “Whether it is bitter or sweet, they will know.” Chinese Foreign Ministry spokeswoman Hua Chunying ­likened the mob in Washington to pro-democracy protesters in Hong Kong, which Beijing routinely described as “rioters.” Hua said she had “made a note” of the words U.S. officials and media used to describe the Capitol siege. “They all condemned it as ‘a violent incident’ and the people involved as ‘rioters,’ ‘extremists’ and ‘thugs’ who brought “disgrace,’ ” Hua said. Yet the protesters in Hong Kong were “democratic heroes.” “What’s the reason for such a stark difference in the choice of words?” she said. “Everyone needs to seriously think about it and do some soul-searching.” For pro-democracy movements, a bitter pill Indeed, analysts say the attempted insurrection has reduced Washington’s moral authority to back pro-democracy movements from Hong Kong to Caracas, Venezuela — some of which enjoyed the strong support of Republicans. Two of the Hong Kong activists’ greatest advocates were Sens. Ted Cruz (R-Tex.) and Josh Hawley (R-Mo.). Both men traveled to Hong Kong at the height of the protests to advocate democracy and became leading voices for sanctions against Chinese officials and their allies in Hong Kong. Their votes last week against certifying Biden’s win, and Hawley’s raised fist to the demonstrators outside the Capitol before they entered, have provided Beijing with an opening to rail against U.S. hypocrisy. “Aligning with some of these folks is going to be a lot more contentious moving forward,” said historian Jeffrey Ngo, a pro-democracy activist who has spent significant time lobbying Washington for support. Cruz’s office said the senator had merely called for “electoral integrity and democratic credibility.” “No one outside of the Establishment media and some Democrats believes that undermined America’s credibility on deliberation, elections, and democracy,” the office said in a statement. Hawley’s office did not respond to a request for comment. “The Trump years have made it difficult for pro-democracy activists to create alliances because people look to the president, and no matter who he is, he has tremendous power,” Ngo said. “After this week, it has become even more difficult.” The Trump administration this week added Cuba to the U.S. list of state sponsors of terrorism. In the Cuban and Venezuelan exile communities of South Florida, Trump’s actions last week deepened the divide between conservatives — some of whom held rallies in favor of Trump’s efforts to overturn the election — and liberals, who argued that they echoed the abuses that they or their families had fled. Trump “ceded moral authority to speak on domestic matters in another country, and that’s what’s so dangerous,” said Ana Sofía Peláez, co-founder of the Miami Freedom Project. “We lose our own voice for democracy when we don’t value [it] in our own country.”

#### Numerous alt causes — Russian election meddling, intervention in Ukraine, etc.

#### Democracy doesn’t solve war

Campbell et al. 18, \*Doctoral Candidate in Political Science, Ohio State University. \*\*Carter Phillips and Sue Henry Associate Professor of Political Science at the Ohio State University. \*\*\*Associate Professor of Political Science, Pennsylvania State University. (\*Benjamin W., \*\*Skyler J. Cranmer, \*\*\*Bruce A. Desmarais, September 13, 2018, “Triangulating War: Network Structure and the Democratic Peace”, *Cornell University*, Accessible at: <https://arxiv.org/pdf/1809.04141.pdf>)

Conclusion

The dyadic understanding of the democratic peace has become ubiquitous in International Relations. By looking beyond simple dyadic analysis, accounting for the embededness of states in a much more complex network, we found the democratic peace may not be as robust as previously thought. Our results demonstrate that after accounting for the tendency for like-regime states with common enemies not to fight one another, the effect of the democratic peace not only vanishes, but jointly democratic dyads seem to be *more* conflict prone than mixed dyads. These results are consistent across operationalizations of the outcome variable, our triadic closure predictor, measurements of joint democracy, and a variety of other factors. We believe this explanation for the democratic peace is not a mechanism for understanding the democratic peace, but instead, an alternative. What we have shown here is that conflict between democracies indeed exists and the peaceful relations occasionally found are not necessarily a function of the affinity of democratic states, or intrinsic attributes of democratic states, but instead, a function of the strategic inefficiencies of fighting a state with a shared enemy. While regime type may influence the interests of states, we find that it does not directly influence the probability that any two states fight one another.

There are three major implications to our research. First, scholars should be hesitant to consider dyadic conflict in isolation, as there are network dependencies informing whether a state engages or joins a MID. Second, preferences operating in addition to network interdependencies and collaboration explain much of the democratic peace. Third, when studying conflict, scholars and practitioners should consider the cost structure of collaboration, and how these dynamics inform not only conflict initiation, but conflict escalation. Particularly interesting is that the theoretical mechanism at work here is dramatically simpler than any of the established justifications for the democratic peace. We do not rely on arguments about institutions or norms, but just the simple and intuitive proposition that it does not make much sense for two states fighting a third to also fight each other. What the existing literature seems to have missed, usually theoretically and almost always empirically, is that dyadic conflicts do not occur in isolation, but in the context of a complex network of relations.

# 2NC

## T — Business Practices

#### It has to be enduring over time AND done uniformly — the aff is distinct

Ori Pomson & Yonatan Horowitz 15, Pomson has an LLB, Hebrew University of Jerusalem; Horowitz is a Legal Intern at S Horowitz & Co, LLB Interdisciplinary Program of Law and Economics, Hebrew University of Jerusalem, “Humanitarian Intervention and the Clean Hands Doctrine in International Law,” 48 Isr. L. Rev. 219, Lexis

[\*222] The state practice element requires general and uniform conduct for a certain period of time. 20 Generality concerns the number of states that have participated in a course of conduct. It requires wide-spread, although not necessarily universal, practice. 21 However, the generality of the conduct is relative, whereas the practice 'must have been applied by the overwhelming majority of states which hitherto had an opportunity of applying it'. 22 Thus, the conduct of states most affected by a potential norm, and thereby having the greater opportunity to apply the norm, is most pertinent. 23

Uniformity relates to the essence of the term 'practice', which is defined as 'habitual action or performance'. 24 Although not universally accepted, 25 in assessing habitualness a variety of forms of conduct are relevant, including statements. 26 Thus, the statements of states in their written and oral pleadings before courts and tribunals constitute relevant conduct in assessing the existence of state practice. 27

The time element of custom also relates directly to the concept of habitualness inherent in the term 'practice'. However, in reality the time element is flexible. 28 Considering that the duration element of custom relates to the habitualness of the conduct, a short passage of time may be compensated for by the uniformity of the conduct. 29

#### Repeated, customary, or the usual mode—a singular act cannot constitute a practice

Ohio Court of Appeals 59 (YOUNGER-judge. Opinion in City of Defiance v. Nagel, 108 Ohio App. 119 - Ohio: Court of Appeals 1959, Google scholar caselaw, date accessed 8/25/21)

As used here, the noun, "practice," means an actual performance habitually engaged in; often, repeated, or customary action; usage; habit; custom; or the usual mode or method of doing something. Therefore, in this instance, the practice of doing something cannot be proved by the proof of or the admission of one single act. Criminal statutes and ordinances are to be strictly construed.

**What makes practices distinct from actions is that they refer to ongoing courses of conduct.**

James E. **Seibert 7**, US Magistrate Judge, US District Court, Northern District of West Virginia, “Wagner v. St. Paul Fire & Marine Ins. Co.,” 2007 U.S. Dist. LEXIS 117369, Lexis

Possible Ambiguities in Plaintiffs' Deposition Notice

Defendants argue paragraph a of the deposition notice is ambiguous. That paragraph stated testimony would be taken about Defendants' "claims handling and business practices utilized with respect to the insurance claims of plaintiffs in the underlying bodily injury [\*14] case." Defendants argue the term "business practices" is unclear. They also seek clarification regarding what "insurance claims" Plaintiffs made in the underlying case. Plaintiffs argue the "business practices" is not vague, but is rather well-established under West Virginia state law. Plaintiffs did not address Defendants' arguments about which insurance claims they made.

The Court agrees with Plaintiffs that the term "business practices" is **not vague or ambiguous** under West Virginia law. To succeed on a third party bad faith claim such as this one, Plaintiffs must demonstrate Defendants violated the law with **such frequency** as to **demonstrate** the conduct constituted a **general** business practice. Jenkins v. J.C. Penney Cas. Ins. Co., 167 W. Va. 597, 610, 280 S.E.2d 252, 260 (1981). The West Virginia Supreme Court later **defined** what **constitutes a** general **business practice** by holding that a plaintiff must prove

that the conduct in question constitutes **more than a single violation** of W. Va. Code § 33-11-4(9), that the violations arise from **separate, discrete acts** or omissions in the claim settlement, and that they arise from a **habit, custom, usage, or business policy** of the insurer, so that, viewing the conduct as a whole, the finder of fact is able to conclude that the **practice** or **practices** are [\*15] **sufficiently pervasive or sufficiently sanctioned by the** insurance **company** that the conduct can be **considered a** "general **business practice**" and can be **distinguished by fair minds from an isolated event**.

Holloman v. Nationwide Mut. Ins. Co., 217 W. Va. 269, 273, 617 S.E.2d 816, 820 (2005) (quoting Syl. Pt. 4, Dodrill v. Nationwide Mut. Ins. Co., 201 W. Va. 1, 491 S.E.2d 1 (1997)); see also Jackson v. State Farm Mut. Auto. Ins. Co., 215 W. Va. 634, 645-46, 600 S.E.2d 346, 357-58 (2004) (discussing how a plaintiff may show a general business practice). It is necessary for Plaintiffs to demonstrate a **business practice** in order to succeed on their claims. In giving notice of this topic for the deposition, Plaintiffs merely seek to find information to prove this element.

**Our ev has intent to exclude---single transactions are NOT ‘practices’**

Conrad L. **Rushing 2**, Judge, California Court of Appeal, 6th District, dissenting opinion in “MALLERY-FEINER CO. v. TERSOL,” 2002 Cal. App. Unpub. LEXIS 11874, Lexis

The majority concludes that because the evidence showed that Mallery-Feiner violated Business and Professions Code section 7159, he [\*22] thereby engaged in unfair competition. The majority cites no authority for its proposition that one, isolated unlawful act can support a violation of Business and Professions Code section 17200. In fact, the contrary is apparent from the legislative intent of Business and Professions Code section 17200. In enacting this section, ' 'The Legislature . . . intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context this activity might occur. . . . The section was intentionally framed in its broad, sweeping language, precisely to enable judicial tribunals to deal with the innumerable ' 'new schemes which the fertility of man's invention would contrive.' ' [Citation.] . . .' [Citation.]' (Cel-Tech., supra. 20 Cal.4th at p. 181, italics added.) 'The use of the phrase **'business practice'** in section 17200 indicates that the statute is directed at **ongoing** wrongful conduct. [Citations.] As the California Supreme Court explained: 'The **'practice'** requirement envisions something **more than a single transaction** . . .; it contemplates a **'pattern** of conduct' [citation], **'on-going** . . . conduct' [citation], [\*23] 'a **pattern** of behavior' [citation], or 'a **course** of conduct.' . . . ' [Citation.]' (Hewlett v. Squaw Valley Ski Corp. (1997) 54 Cal.App.4th 499, 519 [Squaw Valley Ski Resort's incidents of cutting trees to build ski runs over three different time periods constituted an ongoing business practice, not one single episode or event].) The case **here** involved **one** incident, **not 'ongoing' conduct** or a **'scheme**.' There was no evidence whatever that Mallory-Feiner failed to enter into a written contract as a matter of **business practice**. **A single act does not a practice make.**

**Without exception**, **all** of the cases on which the majority relies involve **ongoing** business practices, **not** an **isolated** act. For example, Barquis v. Merchants Collection Assn., supra, 7 Cal.3d 94 involved systematic conduct by a collection agency which, in pursuit of a business goal, systematically filed its consumer collection complaints in distant counties in order to increase the number of default judgments. Although defendant argued that wrong venue is not unlawful and that the defendants had a statutory right to change venue to the county of their residence, the Supreme Court found that this [\*24] pattern and practice may be enjoined whether or not it is unlawful. In Cel-Tech, supra, 20 Cal.4th 163, the defendant marketed cellular phones and service at less than cost. The defendant argued that because there was no anti-trust violation involved and thus no violation of law, Business and Professions Code section 17200 was inapplicable. Once again, the Supreme Court held that this otherwise lawful pattern and practice may violate Business and Professions Code section 17200 if the result is unfair, anti-competitive or deceptive. Thus under these cases, a lawful act which is **repeated** so as to show an **ongoing** unlawful **business practice** violates the terms of Business and Professions Code section 17200.

#### Repeated acts of a similar kind

California Court of Appeals 88 (WOODS—judge. Opinion in People v. Sanford, 202 Cal. App. 3d 1 - Cal: Court of Appeal 1988, Google scholar caselaw, date accessed 8/25/21)

\*4 Penal Code section 158 defines barratry as "the practice of exciting groundless judicial proceedings." (Italics added.) (2b) The plain language of section 158 refutes the contention that filing one groundless judicial proceeding is barratry. By defining the crime as the "practice," rather than the "act," of exciting groundless judicial proceedings, the Legislature made clear its intent that there be multiple suits. (3) The word "practice" is defined as "Repeated or customary action; habitual performance; a succession of acts of similar kind; ..." (Black's Law Dict. (5th ed. 1979) p. 1055, col. 1.) (2c) Furthermore, the Legislature has specified that the crime is the practice of exciting groundless judicial proceedings, in the plural form, not proceeding, in the singular, as appellant contends.

## CP — Advantage

#### Severs, a VI for NEG ground: the “core antitrust laws” means Sherman, Clayton, and FTC acts. The preamble is not one of those.

**FTC ND**. “The Antitrust Laws.” 2013. Federal Trade Commission. June 11, 2013. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

## Adv — Innovation

#### 3---no motivation.

Lewis 18, PhD, a senior vice president at the Center for Strategic and International Studies (CSIS). (James Andrew, 1-1-2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States”, pg. 7-9, <https://www.jstor.org/stable/resrep22408.5?seq=1#metadata_info_tab_contents>) \*language edited---brackets

The most dangerous and damaging attacks required resources and engineering knowledge that are beyond the capabilities of nonstate actors, and those who possess such capabilities consider their use in the context of some larger strategy to achieve national goals. Precision and predictability—always desirable in offensive operations in order to provide assured effect and economy of force—suggest that the risk of collateral damage is smaller than we assume, and with this, so is the risk of indiscriminate or mass effect.

State Use of Cyber Attack Is Consistent with Larger Strategic Aims

Based on a review of state actions to date, cyber operations give countries a new way to implement existing policies rather than leading them to adopt new policy or strategies. State opponents use cyber techniques in ways consistent with their national strategies and objectives. But for now, cyber may be best explained as an addition to the existing portfolio of tools available to nations.

Cyber operations are ideal for achieving the strategic effect our opponents seek in this new environment. How nations use cyber techniques will be determined by their larger needs and interests, by their strategies, experience, and institutions, and by their tolerance for risk. Cyber operations provide unparalleled access to targets, and the only constraint on attackers is the risk of retaliation—a risk they manage by avoiding actions that would provoke a damaging response. This is done by staying below an implicit threshold on what can be considered the use of force in cyberspace.

The reality of cyber attack differs greatly from our fears. Analysts place a range of hypothetical threats, often accompanied by extreme consequences, before the public without considering the probability of occurrence or the likelihood that opponents will choose a course of action that does not advance their strategic aims and creates grave risk of damaging escalation. Our opponents’ goals are not to carry out a cyber 9/11. While there have been many opponent probes of critical infrastructure facilities in numerous countries, the number of malicious cyber actions that caused physical damage can be counted on one hand. While opponents have probed critical infrastructure networks, there is no indication that they are for the purposes of the kind of [devastating] crippling strategic attacks against critical infrastructure that dominated planning in the Second World War or the Cold War.

Similarly, the popular idea that opponents use cyber techniques to inflict cumulative economic harm is not supported by evidence. Economic warfare has always been part of conflict, but there are no examples of a country seeking to imperceptibly harm the economy of an opponent. The United States engaged in economic warfare during the Cold War, and still uses sanctions as a tool of foreign power, but few if any other nations do the same. The intent of cyber espionage is to gain market or technological advantage. Coercive actions against government agencies or companies are intended to intimidate. Terrorists do not seek to inflict economic damage. The difficulty of wreaking real harm on large, interconnected economies is usually ignored.

Economic warfare in cyberspace is ascribed to China, but China’s cyber doctrine has three elements: control of cyberspace to preserve party rule and political stability, espionage (both commercial and military), and preparation for disruptive acts to damage an opponent’s weapons, military information systems, and command and control. “Strategic” uses, such as striking civilian infrastructure in the opponent’s homeland, appear to be a lower priority and are an adjunct to nuclear strikes as part of China’s strategic deterrence. Chinese officials seem more concerned about accelerating China’s growth rather than some long-term effort to undermine the American economy.6 The 2015 agreement with the United States served Chinese interests by centralizing tasking authority in Beijing and ending People’s Liberation Army (PLA) “freelancing” against commercial targets.

The Russians specialize in coercion, financial crime, and creating harmful cognitive effect—the ability to manipulate emotions and decisionmaking. Under their 2010 military doctrine on disruptive information operations (part of what they call “New Generation Warfare”). Russians want confusion, not physical damage. Iran and North Korea use cyber actions against American banks or entertainment companies like Sony or the Sands Casino, but their goal is political coercion, not destruction.

None of these countries talk about death by 1000 cuts or attacking critical infrastructure to produce a cyber Pearl Harbor or any of the other scenarios that dominate the media. The few disruptive attacks on critical infrastructure have focused almost exclusively on the energy sector. Major financial institutions face a high degree of risk but in most cases, the attackers’ intent is to extract money. There have been cases of service disruption and data erasure, but these have been limited in scope. Denial-of-service attacks against banks impede services and may be costly to the targeted bank, but do not have a major effect on the national economy. In all of these actions, there is a line that countries have been unwilling to cross.

When our opponents decided to challenge American “hegemony,” they developed strategies to circumvent the risks of retaliation or escalation by ensuring that their actions stayed below the use-of-force threshold—an imprecise threshold, roughly defined by international law, but usually considered to involve actions that produce destruction or casualties. Almost all cyber attacks fall below this threshold, including, crime, espionage, and politically coercive acts. This explains why the decades-long quest to rebuild Cold War deterrence in cyberspace has been fruitless.

It also explains why we have not seen the dreaded cyber Pearl Harbor or other predicted catastrophes. Opponents are keenly aware that launching catastrophe brings with it immense risk of receiving catastrophe in return. States are the only actors who can carry out catastrophic cyber attacks and they are very unlikely to do so in a strategic environment that seeks to gain advantage without engaging in armed conflict. Decisions on targets and attack make sense only when embedded in their larger strategic calculations regarding how best to fight with the United States.

There have been thousands of incidents of cybercrime and cyber espionage, but only a handful of true attacks, where the intent was not to extract information or money, but to disrupt and, in a few cases, destroy. From these incidents, we can extract a more accurate picture of risk. The salient incidents are the cyber operations against Iran’s nuclear weapons facility (Stuxnet), Iran’s actions against Aramco and leading American banks, North Korean interference with Sony and with South Korean banks and television stations, and Russian actions against Estonia, Ukrainian power facilities, Canal 5 (television network in France), and the 2016 U.S. presidential elections. Cyber attacks are not random. All of these incidents have been part of larger geopolitical conflicts involving Iran, Korea, and the Ukraine, or Russia’s contest with the United States and NATO.

There are commonalities in each attack. All were undertaken by state actors or proxy forces to achieve the attacking state’s policy objectives. Only two caused tangible damage; the rest created coercive effect, intended to create confusion and psychological pressure through fear, uncertainty, and embarrassment. In no instance were there deaths or casualties. In two decades of cyber attacks, there has never been a single casualty. This alone should give pause to the doomsayers. Nor has there been widespread collateral damage.

## Adv — Petitioning

# 1NR

## DA — Climate

#### Warming’s a conflict multiplier.

Scheffran 16, Professor at the Institute for Geography at the University of Hamburg and head of the Research Group Climate Change and Security in the CliSAP Cluster of Excellence and the Center for Earth System Research and Sustainability, et al (Jürgen, “The Climate-Nuclear Nexus: Exploring the linkages between climate change and nuclear threats,” <http://www.worldfuturecouncil.org/file/2016/01/WFC_2015_The_Climate-Nuclear_Nexus.pdf>)

Climate change and nuclear weapons represent two key threats of our time. Climate change endangers ecosystems and social systems all over the world. The degradation of natural resources, the decline of water and food supplies, forced migration, and more frequent and intense disasters will greatly affect population clusters, big and small. Climate-related shocks will add stress to the world’s existing conflicts and act as a “threat multiplier” in already fragile regions. This could contribute to a decline of international stability and trigger hostility between people and nations. Meanwhile, the 15,500 nuclear weapons that remain in the arsenals of only a few states possess the destructive force to destroy life on Earth as we know multiple times over. With nuclear deterrence strategies still in place, and hundreds of weapons on ‘hair trigger alert’, the risks of nuclear war caused by accident, miscalculation or intent remain plentiful and imminent. Despite growing recognition that climate change and nuclear weapons pose critical security risks, the linkages between both threats are largely ignored. However, nuclear and climate risks interfere with each other in a mutually enforcing way. Conflicts induced by climate change could contribute to global insecurity, which, in turn, could enhance the chance of a nuclear weapon being used, could create more fertile breeding grounds for terrorism, including nuclear terrorism, and could feed the ambitions among some states to acquire nuclear arms. Furthermore, as evidenced by a series of incidents in recent years, extreme weather events, environmental degradation and major seismic events can directly impact the safety and security of nuclear installations. Moreover, a nuclear war could lead to a rapid and prolonged drop in average global temperatures and significantly disrupt the global climate for years to come, which would have disastrous implications for agriculture, threatening the food supply for most of the world. Finally, climate change, nuclear weapons and nuclear energy pose threats of intergenerational harm, as evidenced by the transgenerational effects of nuclear testing and nuclear power accidents and the lasting impacts on the climate, environment and public health by carbon emissions.

#### Perception of stricter antitrust enforcement by courts will chill corporate climate activism

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III. ANTITRUST SCRUTINY FRUSTRATES CORPORATE ACTION ON CLIMATE CHANGE, FROM DETERGENT TO CARS The chilling effect of looming antitrust scrutiny is especially concerning when it comes to climate change. Climate change is a unique problem, not only in that it requires uniform, ideally coordinated action, but the positive effects of addressing climate change are uniquely abstract, intangible, and distant. While the costs of climate change to business are not easily predicted, 52the benefits of slowing or stopping climate change are most easily understood as mitigating expected losses, not generating positive economic gains. For example, limiting carbon emissions does not directly result in cheaper goods, in general. 53This lack of clear consumer benefits leads to several distinct problems for corporate climate action. A 2011 European Commission case demonstrates the challenges facing firms that try to raise sustainability standards while still making a profit. 54Competitors Procter & Gamble (P&G) and Unilever were fined over €300 million for agreeing on price and market share for new, more environmentally sustainable laundry detergent products. 55The firms had launched a voluntary effort to reduce environmental impacts by reducing packaging material, size, and washing machine energy use by creating a concentrated detergent that worked well in cold water. 56Worried about a "first mover disadvantage" in a market where consumers did not necessarily understand the benefits of concentrated detergent, the companies coordinated on the new product launches and agreed on ideal pricing. 57Though reduced energy use and reduced packaging waste are facially beneficial for society, P&G and Unilever ran afoul of competition laws by trying to mitigate--not exploit for profit--the effects of the new products on the market. 58This example questions the exhaustive focus on consumer price. The P&G and Unilever judgment is an increasingly relevant example as [\*227] companies make investments and commitments--often with competitors--that raise their own costs even as they help the world address climate change. Will those companies be scrutinized for passing on some of those costs to consumers? Should they be? In 2019, four automakers--Ford, Volkswagen North America, Honda, and BMW--announced an agreement with California to continue to meet stringent fuel efficiency standards in the future, even as the Trump Administration mulled plans to roll back nationwide standards. 59California, which can set its own auto emissions standards, has eagerly used its position as a large consumer market with progressive values to advance climate change goals. 60According to the July 2019 deal, the automakers will produce fleets with an average fuel efficiency of fifty miles per gallon by 2026--nearly the target agreed to during the Obama Administration. 61The Trump Administration had previously announced plans to freeze fuel efficiency requirements at a thirty-seven miles per gallon fleet average in 2020, 62setting up a direct conflict. In September 2019, DOJ trumpeted an antitrust investigation into those four automakers, alleging that the agreement among rivals could violate competition law. 63Letters from the DOJ asked the four companies to meet with the Antitrust Division regarding the "formation" of the deal. 64Delrahim doubled down on the probe in congressional testimony 65and in a USA Today op-ed, insisted that the "moral aspirations" of an agreement among competitors do not matter if there are anticompetitive effects. 66Delrahim warned of consumer harm, via higher prices, that would result from the deal. 67And higher prices certainly seem like the necessary result of meeting the stricter efficiency standards, regardless of cost savings to the planet or even to the consumer over the long term. 68President [\*228] Trump also focused on consumer price, asserting that the new standards would raise the cost of a car by more than $ 3,000. 69 The DOJ probe was widely denounced as political retribution, with no legitimate antitrust case to be made. Nevertheless, the mere threat of antitrust scrutiny can have dangerous effects. Antitrust scholar Herbert Hovenkamp noted that the automaker deal could still constitute an "agreement" under the Sherman Act, even though DOJ would face "significant hurdles" in establishing an antitrust violation. 70If the automakers "had discussed the [fuel efficiency] standards with one another and then voted to implement them," that would satisfy the first element of an antitrust offense. 71There are strong arguments that such an agreement among competitors should be legal either as form of political advocacy 72or by virtue of the state action doctrine, which permits anticompetitive conduct that has been authorized and is supervised by a state. 73Hovenkamp argued that the automaker agreement would likely be legal because compliance would increase the costs for the firms to manufacture cars, but not increase consumer prices. 74But if the automakers were to instead pass that increased cost on to consumers, that could result in a finding of liability. It is all too easy to imagine that the four automakers would choose not to internalize the costs of compliance with the fuel efficiency standards, but instead would choose to raise car prices to commensurate with the increased manufacturing costs. 75And any agreement on car price--even to keep prices the same, as P&G and Unilever did--could easily be considered collusive price-fixing and per se illegal. The Supreme Court has been clear that the "reasonableness" of set prices cannot cure their illegality. 76Further, the agreement could have the result of deterring a "low-cost, high-emissions entrant [\*229] from entering the market," 77which could be considered a per se illegal exclusionary group boycott, even though the agreeing automakers lack market power to enforce a boycott. 78And even if analyzed under rule of reason, there is no guarantee that the agreement could be successfully defended on the grounds that reducing emissions are good for society. In fact, as explained above, such abstract and distant benefits are exactly the type of justifications courts reject as being too divorced from the goals of antitrust policy. Even though DOJ quietly dropped the investigation in February 2020, 79the market results of the probe itself were almost immediate and significant. In October 2019, just weeks after the antitrust investigation began, other major automakers joined the Trump Administration as parties in litigation over California's right to set its own vehicle emissions standards, 80even though automakers had once stood united behind the Obama Administration's higher fuel efficiency standards. 81DOJ's abandoned investigation had sent a clear message to automakers: do not collude on car standards that will raise prices for consumers, or you will be investigated. With the threat of antitrust enforcement off the table for now, the Trump Administration finalized its dramatically lower fuel efficiency rule in March 2020. 82 Despite the naked political motive and the arguably weak legal argument for antitrust enforcement against the four automakers in this case, the specter of antitrust liability will not be limited to the auto industry. At a time when companies are making serious commitments to address climate change, even the most progressive companies are likely to think twice about making commitments with competitors on any industry standard that could lead to higher consumer prices. Companies could be discouraged from moving forward on climate, at a time when bold action is needed most.

#### The creation of fear of antitrust enforcement and unpredictable courts will crush climate activism

ICC 20 International Chamber of Commerce, Making competition law part of the solution to the climate challenge News • Paris, 10/12/202, <https://iccwbo.org/media-wall/news-speeches/making-competition-law-part-of-the-solution-to-the-climate-challenge/>

Issued on the eve of the fifth anniversary of the landmark Paris Agreement, the paper highlights how competition law – and, more specifically, the fear of unnecessarily restrictive antitrust enforcement – currently inhibits companies from working together to reduce their carbon footprints. There are signs that many businesses are eager to partner on sustainability efforts – recognising that co-operation is vital to achieve meaningful scale in addressing climate change and other environmental challenges. However, a growing body of evidence suggests that perceived competition law risks ultimately deter them from doing so. Commenting on the release of the paper, Simon Holmes – a member of the UK Competition Appeal Tribunal and one of the lead authors of the ICC paper – said: “Companies want to do more, but the fear of unnecessarily restrictive or unpredictable competition law enforcement can discourage them from reaching their sustainability goals. Competition policy cannot solve everything, but it can play an important role in helping business be cleaner, greener and more socially responsible.”

#### Fear of antitrust enforcement chills cooperation

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>

Fear of competition law certainly seems to be a factor which deters or chills collaboration in this area. For example, the Fairtrade Foundation published a set of interviews showing that business executives see competition law (and potential enforcement) as a barrier to sustainable collaborative efforts.33 As another example, several firms find it helpful to state that any sustainable activities involving cooperation occur only in a “pre-competitive” phase.34

#### The courts are

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

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that.

#### Courts provide a shield against antitrust prohibition now

Hanley 21 Daniel A. Hanley is a policy analyst at the Open Markets Institute. April 6, 2021, How Antitrust Lost Its Bite And how to give it teeth again., https://slate.com/technology/2021/04/antitrust-hearings-congress-legislation-bright-line-rules.html

Comprehensive empirical analysis has revealed that the rule of reason has been a rubber stamp for even the most egregious antitrust conduct. A 2009 analysis revealed that 97 percent of cases analyzed under the rule of reason result in victories for defendants. That means corporations are effectively shielded from most antitrust violations.

#### Its unique—the courts are weakening antitrust enforcement now

Baer et al 20 Bill Baer visiting fellow in governance studies at The Brookings Institution, Jonathan B. Baker research professor of law at American University Washington College of Law, Michael Kades director for markets and competition policy at the Washington Center for Equitable Growth, Fiona Scott Morton professor of applied economics at the Massachusetts Institute of Technolog, Nancy L. Rose professor of economics at the Yale University School of Management, Carl Shapiro professor of the graduate school at the Haas School of Business and the Department of Economics at the University of California, Berkeley , and Tim Wu professor of law, science and technology at Columbia Law School. Restoring competition in the United States, https://equitablegrowth.org/wp-content/uploads/2020/11/111920-antitrust-report.pdf

Over the past 40 years, the federal courts have increasingly advanced a skeptical and cramped view of the antitrust laws. They often rely on economic assumptions that, at best, are no longer valid and, at worst, never were.10 As a result, the courts increasingly saddle plaintiffs with inappropriate burdens, making it unnecessarily difficult to prove meritorious cases and allowing anticompetitive conduct to escape condemnation.11 In two recent merger cases, for example, courts expressed doubt that a company would use its enhanced market power to increase its profits.12 Courts too often reject the best, direct evidence of anticompetitive harm, and instead require an elaborate analysis of indirect evidence of market definition, market share, and market power.13 In the recent Federal Trade Commission v. Qualcomm Inc. case, the U.S. Court of Appeals for the Ninth Circuit even concluded, bizarrely, that harm to customers is not a relevant anticompetitive harm.14 Together, flawed legal precedent and erroneous economic reasoning create a daunting hurdle to effective antitrust enforcement. The resulting harm goes far beyond the effects in individual cases. None of this is what Congress intended when it passed the Sherman Antitrust Act of 1890 and subsequent antitrust laws over the course of the 20th century. Without further legislative direction, the courts are almost certain to continue to narrow antitrust protections. Market power will increase. More consumers and companies will buy goods and services from dominant firms. More small business and workers will sell to, or work for, firms with monopsony power. Less innovation will occur. And the negative byproducts of market power—increased inequality, less diversity of voices, and increased concentration of political power—will worsen.