# 1NC

### OFF

#### Undisclosed new affs are a voter---deck pre-round prep and clash---disclosing them solves. Even if it’s not a voter, we get infinite condo, process counterplans, 2NC counterplans, and everything else.

### 1NC

#### CON CON CP:

#### The United States should call a strictly limited Constitutional Convention that restricts exemptions under foreign sovereign compulsion and international comity where the private party had autonomy to act competitively

#### Solves and avoids politics.

Neale 16, Specialist in American National Government (Thomas H., 3-29-2016, “The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress”, *Congressional Research Service*, pg. 12, https://sgp.fas.org/crs/misc/R42589.pdf)

The Limited Convention

The concept of a limited convention has commanded considerable support in the debate over the Article V alternative. A range of constitutional scholars maintains that, contrary to Charles Black’s assertion, quoted earlier, a convention may be limited to a specific issue or issues contained in state applications; in fact, some observers maintain that it must be so limited. A fundamental assumption from their viewpoint is that the framers did not contemplate a general or large-scale revision of the Constitution when they drafted Article V. The late Senator Sam Ervin, who supported the Article V alternative and championed advance congressional planning for a convention, expounded this point of view:

... there is strong evidence that what the members of the [original constitutional] convention were concerned with ... was the power to make specific amendments.... [The] provision in article V for two exceptions to the amendment power42 underlines the notion that the convention anticipated a specific amendment or amendments rather than general revision.43

Another commentator, championing state authority in the convention issue, asserted that the founders’ intention in establishing the alternative amendment process was to check the ability of Congress to impede proposal of an amendment that enjoyed widespread support. He claimed that a convention limited to an issue specified by the states in their applications would be constitutional, but that a convention could be limited by the states, but not by Congress:

Congress may not impose its will on the convention.... The purpose of the Convention Clause is to allow the States to circumvent a recalcitrant Congress. The Convention Clause, therefore, must allow the States [but not Congress] to limit a convention in order to accomplish this purpose.44

The primacy of the states in this viewpoint thus suggests that a convention could be open and general, or limited, depending on the applications of the legislatures.

### 1NC

#### FTC fraud prevention is funded now---unexpected demands trade off

Bilirakis et al. 21 (Gus Michael Bilirakis is an American lawyer and politician serving as the U.S. Representative for Florida's 12th congressional district since 2013; Hon. Noah Joshua Phillips is a Commissioner at the Federal Trade Commission; Hon. Lina Khan is the Chair of the Federal Trade Commission, “Transforming the FTC: Legislation to Modernize Consumer Protection,” *Committee on Energy and Commerce*, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Gus Bilirakis (3:12:44): Thank you. Our committee has worked extensively in a bipartisan manner to protect consumers from fraud and scams. Mr. Carter's Combating Pandemic Scams Act was enacted at the beginning of the year thanks to all of our leadership here. Representive Blunt Rochester's Fraud and Scam Reduction Act, as well as Representative Kelly's Protecting Seniors from Emergency Scams Act both cleared our chamber with bipartisan support this year. My bill, HR 2672, the FTC Reports Act, would require the FTC to report on fraud against our seniors. Commissioner Philips, how important is the work the FTC staff does to protect Americans from scams? Noah Josuha Phillips (3:13:33): Congressman, thank you for your question. The work we do to protect American consumers against frauds and scams, is our bread and butter as an agency. There is no work that makes me feel better as a commissioner, when we watch our ability to find bad guys, or taking money from American consumers, dipping into their life savings, and get that money back to them. So the work that you have done on the committee to provide funding, to provide tools for us to go after scam artists, is critical. And I think that needs to continue with the agency. Gus Bilirakis (3:14:05): Thank you, and Chair Khan, again, as you pursue other initiatives, when staff and resources be shifted away from the fraud program, which is so essential in preventing bad actors from harming our constituents? That's the question, please. Lina Khan (3:14:22): Sorry, could you repeat the question - when should services be shifted... Gus Bilirakis (3:14:26): Yes, of course. As you pursue other initiatives, when staff and resources be shifted away from your fraud program, which is so essential in preventing bad actors from harming our constituents? Lina Khan (3:14:40): Well, of course, we're always limited by the appropriations bills when it comes to thinking through how we're delegating resources across the agency. In certain instances, I think there are exigent needs that can arise in certain aspects. Gus Bilirakis (3:14:54): But you don't anticipate moving money from the fraud program, is that correct? Lina Khan (3:15:00): Not especially, but I mean, I think overall, we are trying to look through the prism of managerial efficiency and trying to understand how we can best use our resources, especially given some of the exigent circumstances and so we'll be continuing to make those determinations. Gus Bilirakis (3:15:15): I suggest that you not because this is such a very important program. Commissioner Wilson, can you elaborate on why the FTC Reports Act would also prove beneficial to increasing much needed transparency and the flow of information within the commission?

#### Unplanned expanded enforcement drains finite resources from existing priorities

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Fraud funds terror operations

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

2. TERRORIST FINANCING AND THE INTERNET

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

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

#### Nuclear war---cash is key

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

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

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

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

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

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

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

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

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#### The United States federal government should restrict exemptions under foreign sovereign compulsion and international comity where the private party had autonomy to act competitively on the grounds that doing so is required to promote the general welfare and secure the blessings of liberty to our posterity. The penalties attached to these prohibitions ought to be identical to those of core antitrust statutes.

#### Solves the case---AND CP alone sets a legal precedent requiring the protection of future generations

L. Orgad 10. Radzyner School of Law, The Interdisciplinary Center Herzliya. 10/01/2010. “The Preamble in Constitutional Interpretation.” International Journal of Constitutional Law, vol. 8, no. 4, pp. 714–738.

The preamble refers to the people as the source of authority23 and outlines six lofty goals: “To form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare; and secure the Blessings of Liberty.” Despite its central role in education and in the public debate, courts have rarely been inclined to rely upon the preamble only rarely. Empirical studies show that from 1825 to 1990, the sections of the preamble that refer to justice, general welfare, and liberty were independently mentioned by Supreme Court justices only twentyfour times, mostly in dissenting opinions (83.3 percent of all references), while only four justices (Black, Douglas, Burton, and Field) were collectively responsible for half of those references.24 Courts have rejected, repeatedly, the argument that constitutional rights or limitations can be inferred directly from the preamble. The classic case establishing its nonbinding nature was decided in 1905. In this case, a convicted defendant challenged the constitutionality of a statute adopted by the state of Massachusetts that, in his view, contradicted rights protected by the preamble. Rejecting this argument, Justice Harlan noted: Although that Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution, and as such as may be implied from those so granted.25 Justice Harlan stripped the preamble of any legal force without providing any historical evidence or textual explanations. While he noted that individuals have no constitutional rights derived directly from the preamble, he neither stated, expressly, that the preamble has less significance than other constitutional provisions nor did he assert that it does not form a binding part of the Constitution. Yet, evidence suggests that the framers anticipated the role the preamble would play in constitutional interpretation.26 Alexander Hamilton even stated that the Bill of Rights was not necessary since the preamble was able to function as one.27 Joseph Story argued that the preamble “is a key to open[ing] the mind of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished.”28 James Monroe , similarly, stated that the preamble is “the Key of the Constitution. Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally exercised and ought to be resisted.”29 These views, however, were not shared by everyone, and a dispute arose over the preamble’s role. James Madison, for one, expressed his reservations about the preamble’s power. “The general terms or phrases used in the introductory propositions,” he said, “were never meant to be inserted in their loose form in the text of the Constitution.”30 A debate started over whether and in what manner the Constitution’s preamble should be used by the Court.31 Nevertheless, U.S. courts have invoked the preamble in constitutional interpretation. Although the references are inconsistent, rhetorical, and far from conferring independent constitutional rights, they still provide the preamble with some constitutional weight. Courts have used the term “We the people” to define the boundaries of the Constitution’s applicability,32 hold the powers of the federal government,33 indicate that the people—and not the states—are the source of the federal government’s power,34 challenge sovereign immunity,35 and define who is a citizen.36 Similarly, the phrase to “establish Justice” has been invoked to expand federal jurisdiction37 and to support invalidation of legal tender legislation.38 The phrase to “provide for the common defense” has likewise been used to broaden congressional power39 and uphold exclusion from citizenship.40 In addition to its interpretive role, the preamble exerts a meaningful, although indirect, influence of congressional decision making.41 In spite of these references, the U.S. preamble is not, by and large, a decisive factor in constitutional interpretation. Its relatively meager use in constitutional adjudication has been criticized. “It is regrettable that law professors rarely teach and that courts rarely cite the Preamble,” Sanford Levinson notes, as it is “the single most important part of the Constitution.”42 For Levinson, the preamble is “the equivalent of our creedal summary of America’s civil religion.”43 For Mark Tushnet, the “thin” Constitution of the United States is anchored in the principles of the Declaration of Independence and the preamble.44 Milton Handler, Brian Leiter, and Carole Handler charge the courts with ignoring the preamble: “we can discern no reason why [its] rules of construction should not obtain in the constitutional context.”45 They mention that disregard of the preamble conflicts with the status of recital clauses of contracts, legislative declarations of purpose in statutes, and preambles to international treaties46—all of which do guide the court in judicial decision making.47 For them, the preamble ought to play a more significant role in constitutional decisions.48 Other scholars have argued that courts should accord the preamble legal force for the sake of future generations. In referring to Roe v. Wade, Raymond Marcin has claimed that the question of yet-to-be-born descendants requires a solution that finds its foundation in the preamble—the blessings of liberty for the people but also for posterity—which includes fetuses, as well.49 While the preamble is written in a manner that appeals to many, it remains difficult to persuade jurists of its superior legal status.50 Although Justice Harlan stripped the preamble of its legal force, its occasional use in constitutional adjudication indicates that while it is not an independent source of rights neither is it constitutionally irrelevant.51

#### Binding general welfare clause solves extinction: environment and poverty

Arthur Lieber 15, teaching and working in non-profit educational organizations, his focus has been on promoting critical, creative, and enjoyable learning for students in informal settings, 3-22-2015, "Should the common good trump the Constitution?," Occasional Planet, http://occasionalplanet.org/2015/03/22/common-good-trump-constitution/

In June 1963, President John F. Kennedy addressed the nation, urging Congress to pass a comprehensive civil rights act. Setting the stage for the action that he wanted to take, he said, “We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.” This is the type of rhythmic prose that Kennedy and chief speech-writer Theodore Sorensen wrote. But a basic premise has to be questioned. How clear is the Constitution? If it was really clear, would we even need a Supreme Court to interpret it? Part of the answer is that Kennedy chose to wax poetic rather than to be precise in his language. The Constitution is not clear, and the confusion within it has contributed to everything from the American Civil War to the nearly 100 cases that the Supreme Court must adjudicate each year. Instead of looking at the Constitution as engraved in stone, we may more accurately view it as an organism that is constantly morphing. Everything is subject to review, and the motivations behind requests for change can be both noble and ignoble. The preamble to the Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. The catch-all phrase in the preamble is “promote the general Welfare.” A fair question to ask now is how helpful is our Constitution at promoting the general welfare. Since the Constitution enumerates the powers of the judicial branch (federal courts), legislative branch (Congress) and the executive branch (Presidency), there are numerous ways in which the general welfare can either be promoted, or in what seems to be more frequently the case, not promoted. If we are to analyze how the three branches of government are not succeeding in promoting the general welfare, we must establish what is the meaning of the largely interchangeable terms, general welfare and common good? A flip, but perhaps, reasonably accurate answer to the question is an adaptation of Supreme Court Justice Potter Stewart’s response to a question about pornography, “I know it when I see it.” And with the “common good,” we know it when we see it. This still leaves considerable uncertainty and confusion, but two recent Supreme Court cases have been decided ways that, to a reasonable, person are clearly deleterious to the common good. Whatever their “constitutionality” might have been is clearly superfluous to the “common good” needs that had to be met. The first case is the infamous Citizens United v Federal Election Commission ruling of 2010. In this instance, the Court was asked if there could be limitations on political spending, particularly by corporations, labor unions, and Political Action Committees (PACs). The Roberts Court essentially ruled that corporations are people and are free to donate as much as they want. Perhaps in an absolutist interpretation of the First Amendment, this was true. But we have always placed reasonable limits on the First Amendment, such as the prohibition from yelling “fire” in a crowded theater. The reason we do this is to protect the common good. It is quite clear that unlimited money in politics does four things that are detrimental to the common good: It distorts exposure of the candidates to the public, with priority going to those who have the most money. It favors candidates who are close to the moneyed interest It reinforces a system of individuals and corporations “buying” political favors from elected officials. Perhaps most insidiously, it favors candidates who are comfortable asking others for money. When people ask why we have such poor elected officials, the answer often is that we have “the best that money can buy,” but not the best that a real democracy can elect. The Citizens United ruling is clearly detrimental to the common good. The second Court case is Shelby County (AL) v. Holder. In this 2013 case, the Roberts court ruled that a key part of the Voting Rights Act of 1965 is “unconstitutional because the coverage formula is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.” In plain English, what this means is that there is no longer sufficient data to demonstrate that African-Americans face discrimination, particularly with regard to voter access. Since that ruling, many states have instituted modern day poll taxes against African-Americans, other minorities, and the elderly. If the absurdity of that notion wasn’t clear in 2013, it certainly is in 2015. The data that the Court used is clearly negated. Occurrences in Ferguson, MO and numerous other municipalities in the United States have shown that equal rights are hardly here. The Court’s decision clearly aided Republicans (whose constituency is largely made up of people who have few hurdles to clear to vote), rather than Democrats, who typically represent minorities, the poor, and the elderly. Virtually any case that goes before the Supreme Court involves difficult constitutional questions. There are plausible interpretations for either side. What we have seen most recently is a turn by the Court toward making decisions that are consistent with their individual political preferences. That is essentially what happened in Bush v. Gore in 2000, and Supreme Court Justice Sandra Day O’Connor as much as said so. The problem with that decision and many since is that the justices had a very conservative view of the common good, one that favored the wealthy over most of the rest of America. If the battles before the Court are going to be about what is the “common good,” then it is all the more important that the American people elect progressive presidents and members of the Senate so that the Court can work for America. The issues of poverty, inequity, environmental protection, health care, and many more are far too important to be left to the parsing of Supreme Court justices over a document that easily lends itself to contrary interpretations. The common good that progressives see is one that will be beneficial to all Americans, including the wealthy. The Supreme Court, as with the legislative and executive branches of our government, must change to view its work as promoting the common good. If that does not happen, we cannot expect the change that America needs.

#### Discounting future generations causes extinction – only formalizing a mechanism to weight their concerns solves

Jones et al 18 [Natalie Jones, Mark O'Brien, and Thomas Ryan, University of Cambridge, United Kingdom. Representation of future generations in United Kingdom policy-making. Futures Volume 102, September 2018, Pages 153-163. https://www.sciencedirect.com/science/article/pii/S0016328717301179#sec0005]

Global catastrophic and existential risks pose central challenges for intergenerational justice and the structure of our current democracy. The Global Challenges Report 2016 defines global catastrophic risk as risk of an ‘event or process that, were it to occur, would end the lives of approximately 10% or more of the global population, or do comparable damage’ (Global Challenges Foundation & Global Priorities Project, 2016). A subset of catastrophic risks are ‘existential’ risks, which would end human civilisation or lead to the extinction of humanity (Global Challenges Foundation & Global Priorities Project, 2016). Catastrophic and existential risks may be categorised in terms of ongoing risks, which could potentially occur in any given year (e.g. nuclear war; pandemics), versus emerging risks which may be unlikely today but will become significantly more likely in the future (e.g. catastrophic climate change; risks stemming from emerging technologies). Ongoing risks have existed for some time now and are generally well-understood. However, emerging risks, particularly those arising from technological developments, are less understood and demand increasing attention from scientists and policymakers. These technological developments include advances in synthetic biology, geoengineering, distributed manufacturing and artificial intelligence (AI) (Global Priorities Project, Future of Humanity Institute, Oxford Martin School, Centre for the Study of Existential Risk, 2014). Although the impact of these technologies is still very uncertain, expert estimates suggest a non-negligible probability of catastrophic harm.

In this article we rely on two main premises. The first is that future generations are under-represented in current political structures partly due to political ‘short-termism’ or ‘presentism’ (Thompson, 2010). Governments primarily focus on short-term concerns, which mean that they may systematically neglect global catastrophic risks and, accordingly, future generations (Global Priorities Project et al., 2014). The problem of presentism transcends political divisions: people across the political spectrum are concerned about its effects, and should care about mitigating global catastrophic risks. This situation is exacerbated in that the good of mitigating global catastrophic and existential risks is typically global. Individual political actors (even whole countries) bear many costs in providing for such goods, whereas the benefits are dispersed globally. In addition to the benefits of mitigating existential risks being global, many of the beneficiaries are future people who do not exist presently and as such have no voice in the political process. There is a clear lack of incentives to mitigate such risks, and market failure should be expected (Beckstead, 2013).

The second key assumption is that we as a society consider the rights and interests of future generations to be important. It is beyond the scope of this paper to present a complete account of the philosophical arguments on this matter. It is sufficient to note that although significant philosophical problems have been pointed out, chiefly due to the fact that the actions of present people have a causal impact on the values, number and identity of future individuals (Parfit, 1984), there are several theories of intergenerational justice that may support this assumption (Gosseries, 2008).

The need to include explicit pathways in governance structures for accountability to the rights and needs of future generations has been noted (Global Priorities Project et al., 2014). Some thought has been put into how future generations may be represented in relation to environmental risks such as climate change, resource depletion and biodiversity loss; this research is reflected in the sustainable development literature (Brown Weiss, 1990). However, this problem has not been explored in relation to society’s burgeoning awareness of technology-related catastrophic and existential risks. In addition, such pathways have not been fully explored in the United Kingdom (UK) context. This policy paper hopes to fill this gap in the literature.

### OFF

T-Private Sector

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

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

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

#### Chinese Corporations are State Owned

Gatuzade 19 Amir Guluzade Chief Operating Officer, Private Wealth Institute, Ahmadoff & Co, 07 May 2019, <https://www.weforum.org/agenda/2019/05/why-chinas-state-owned-companies-still-have-a-key-role-to-play/>

China is home to 109 corporations listed on the Fortune Global 500 - but only 15% of those are privately owned. China’s SOEs are enormously bulky and therefore lack flexibility when responding to market demands.

#### Limits and ground---neg links are about the private sector and public ownership is a separate lit base.

### OFF

T-Per Se

**Only per se illegality is a prohibition.**

**Seita and Tamura 94** (Alex Y. Seita, Professor of Law, Albany Law School of Union University. B.S. 1973, California Institute of Technology; J.D. 1976, M.B.A. 1980, Stanford University, & Jiro Tamura, Associate Professor of Law, Keio University. B.A. 1981, M.A. 1983, Keio University; LL.M. 1985, Harvard University, [“The Historical Background of Japan's Antimonopoly Law,” 1994 U. Ill. L. Rev. 115, 177-178](https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WD60-00CW-508X-00000-00?page=177&reporter=8130&cite=1994%20U.%20Ill.%20L.%20Rev.%20115&context=1516831))

Upon the elimination of the restriction on undue substantial disparities in bargaining power, for example, economic concentration of power in and of itself was no longer a problem for business. The elimination of the prohibition against certain concerted activities meant that cartel behavior was no longer illegal per se. Most significantly, the authorization of depression and rationalization cartels under the Antimonopoly Law, with JFTC permission, legalized cartels under certain conditions. 418 Thus the rule of reason, rather than per se illegality, now governed cartel behavior. 419

#### The rule of reason is not a prohibition.

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

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#### The United States federal government should increase non-antitrust regulatory prohibitions that restrict exemptions under foreign sovereign compulsion and international comity where the private party had autonomy to act competitively

#### Solves, competes, and avoids the court and agency DAs.

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

A. Antitrust and Regulation as Policy Alternatives A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incen- tives and discipline necessary to keep prices low, output high, and innovation moving forward.8 But sometimes market forces alone cannot ensure efficiency and economic welfare—for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, in- novation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which “antitrust may help maintain com- petition.”9 Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through “skill, foresight and industry.”10 Thus, competition authorities like the FTC and the DOJ’s Antitrust Division review mergers, inves- tigate single-firm conduct, and prosecute collusion.11 Private plaintiffs can pur- sue civil antitrust liability through suits in the federal courts.12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm’s activity is “substantially to lessen competition, or to tend to create a monopoly,”13 or to constitute a “contract, combination, . . . or conspir- acy” in restraint of trade,14 or to “monopolize, or attempt to monopolize” any line of business.15 Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure—and Congress has often done so. With such statutory authority, “[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles.”16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers.17 The 1992 Cable Act gave the FCC authority to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry’s market structure.18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecom- munications industry. More recently, the FCC issued,19 and then repealed, 20 “network neutrality” regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition.21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries.22 In contrast to the case-by-case approach of antitrust, regulation typically im- poses ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone com- panies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to custom- ers of competing networks.23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency’s enforcement decision is usually on the regulated party. Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures.24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act.25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has “willful[ly]” acquired or maintained other than “as a consequence of a su- perior product, business acumen, or historic accident.”26 Alternatively, with au- thority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies,27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots.28

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The 50 United States and relevant subnational entities should increase prohibitions on anticompetitive business practices by the private sector by expanding the scope of its core antitrust laws to restrict exemptions under foreign sovereign compulsion and international comity where the private party had autonomy to act competitively

#### Solves the aff by using state law.

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Horse-trading DA

#### The plan only passes if it’s horse-traded for censorship prohibitions.

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

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

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

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

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

#### Extinction. Outweighs and encompasses all other threats.

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

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

### OFF

Security K

#### Security narratives based on symptom-focused crisis resolution prevent systematic transition---the current global order is unsustainable and it’s try or die to interrogate the 1AC’s representations.

**Ahmed 12** – Dr. Nafeez Mosaddeq Ahmed is Executive Director of the Institute for Policy Research and Development (IPRD), an independent think tank focused on the study of violent conflict, he has taught at the Department of International Relations, University of Sussex "The international relations of crisis and the crisis of international relations: from the securitisation of scarcity to the militarisation of society" Global Change, Peace & Security Volume 23, Issue 3, 2011 Taylor Francis

3. From securitisation to militarisation 3.1 Complicity This analysis thus calls for a broader approach to environmental security based on retrieving the manner in which political actors construct discourses of 'scarcity' in response to ecological, energy and economic crises (critical security studies) in the context of the historically-specific socio-political and geopolitical relations of domination by which their power is constituted, and which are often implicated in the acceleration of these very crises (historical sociology and historical materialism). Instead, both realist and liberal orthodox IR approaches focus on different aspects of interstate behaviour, conflictual and cooperative respectively, but each lacks the capacity to grasp that the unsustainable trajectory of state and inter-state behaviour is only explicable in the context of a wider global system concurrently over-exploiting the biophysical environment in which it is embedded. They are, in other words, unable to address the relationship of the inter-state system itself to the biophysical environment as a key analytical category for understanding the acceleration of global crises. They simultaneously therefore cannot recognise the embeddedness of the economy in society and the concomitant politically-constituted nature of economics. Hence, they neglect the profound irrationality of collective state behaviour, which systematically erodes this relationship, globalising insecurity on a massive scale - in the very process of seeking security.85 In Cox's words, because positivist IR theory 'does not question the present order [it instead] has the effect of legitimising and reifying it'.86 Orthodox IR sanitises globally-destructive collective inter-state behaviour as a normal function of instrumental reason -thus rationalising what are clearly deeply irrational collective human actions that threaten to permanently erode state power and security by destroying the very conditions of human existence. Indeed, the prevalence of orthodox IR as a body of disciplinary beliefs, norms and prescriptions organically conjoined with actual policy-making in the international system highlights the extent to which both realism and liberalism are ideologically implicated in the acceleration of global systemic crises. By the same token, the incapacity to recognise and critically interrogate how prevailing social, political and economic structures are driving global crisis acceleration has led to the proliferation of symptom-led solutions focused on the expansion of state/regime military-political power rather than any attempt to transform root structural causes.88 It is in this context that, as the prospects for meaningful reform through inter-state cooperation appear increasingly nullified under the pressure of actors with a vested interest in sustaining prevailing geopolitical and economic structures, states have resorted progressively more to militarised responses designed to protect the concurrent structure of the international system from dangerous new threats. In effect, the failure of orthodox approaches to accurately diagnose global crises, directly accentuates a tendency to 'securitise' them - and this, ironically, fuels the proliferation of violent conflict and militarisation responsible for magnified global insecurity. 'Securitisation' refers to a 'speech act' - an act of labelling - whereby political authorities identify particular issues or incidents as an existential threat which, because of their extreme nature, justify going beyond the normal security measures that are within the rule of law. It thus legitimises resort to special extra-legal powers. By labelling issues a matter of 'security', therefore, states are able to move them outside the remit of democratic decision-making and into the realm of emergency powers, all in the name of survival itself. Far from representing a mere aberration from democratic state practice, this discloses a deeper 'dual' structure of the state in its institutionalisation of the capacity to mobilise extraordinary extra-legal military-police measures in purported response to an existential danger. The problem in the context of global ecological, economic and energy crises is that such levels of emergency mobilisation and militarisation have no positive impact on the very global crises generating 'new security challenges', and are thus entirely disproportionate.90 All that remains to examine is on the 'surface' of the international system (geopolitical competition, the balance of power, international regimes, globalisation and so on), phenomena which are dislocated from their structural causes by way of being unable to recognise the biophysically-embedded and politically-constituted social relations of which they are comprised. The consequence is that orthodox IR has no means of responding to global systemic crises other than to reduce them to their symptoms. Indeed, orthodox IR theory has largely responded to global systemic crises not with new theory, but with the expanded application of existing theory to 'new security challenges' such as 'low-intensity' intra-state conflicts; inequality and poverty; environmental degradation; international criminal activities including drugs and arms trafficking; proliferation of weapons of mass destruction; and international terrorism.91 Although the majority of such 'new security challenges' are non-military in origin - whether their referents are states or individuals - the inadequacy of systemic theoretical frameworks to diagnose them means they are primarily examined through the lenses of military-political power.92 In other words, the escalation of global ecological, energy and economic crises is recognised not as evidence that the current organisation of the global political economy is fundamentally unsustainable, requiring urgent transformation, but as vindicating the necessity for states to radicalise the exertion of their military-political capacities to maintain existing power structures, to keep the lid on.93 Global crises are thus viewed as amplifying factors that could mobilise the popular will in ways that challenge existing political and economic structures, which it is presumed (given that state power itself is constituted by these structures) deserve protection. This justifies the state's adoption of extra-legal measures outside the normal sphere of democratic politics. In the context of global crisis impacts, this counter-democratic trend-line can result in a growing propensity to problematise potentially recalcitrant populations - rationalising violence toward them as a control mechanism. Consequently, for the most part, the policy implications of orthodox IR approaches involve a redundant conceptualisation of global systemic crises purely as potential 'threat-multipliers' of traditional security issues such as 'political instability around the world, the collapse of governments and the creation of terrorist safe havens'. Climate change will serve to amplify the threat of international terrorism, particularly in regions with large populations and scarce resources. The US Army, for instance, depicts climate change as a 'stress-multiplier' that will 'exacerbate tensions' and 'complicate American foreign policy'; while the EU perceives it as a 'threat-multiplier which exacerbates existing trends, tensions and instability'.95 In practice, this generates an excessive preoccupation not with the causes of global crisis acceleration and how to ameliorate them through structural transformation, but with their purportedly inevitable impacts, and how to prepare for them by controlling problematic populations. Paradoxically, this 'securitisation' of global crises does not render us safer. Instead, by necessitating more violence, while inhibiting preventive action, it guarantees greater insecurity. Thus, a recent US Department of Defense report explores the future of international conflict up to 2050. It warns of 'resource competition induced by growing populations and expanding economies', particularly due to a projected 'youth bulge' in the South, which 'will consume ever increasing amounts of food, water and energy'. This will prompt a 'return to traditional security threats posed by emerging near-peers as we compete globally for depleting natural resources and overseas markets'. Finally, climate change will 'compound' these stressors by generating humanitarian crises, population migrations and other complex emergencies.96 A similar study by the US Joint Forces Command draws attention to the danger of global energy depletion through to 2030. Warning of ‘the dangerous vulnerabilities the growing energy crisis presents’, the report concludes that ‘The implications for future conflict are ominous.’97 Once again, the subject turns to demographics: ‘In total, the world will add approximately 60 million people each year and reach a total of 8 billion by the 2030s’, 95 per cent accruing to developing countries, while populations in developed countries slow or decline. ‘Regions such as the Middle East and Sub-Saharan Africa, where the youth bulge will reach over 50% of the population, will possess fewer inhibitions about engaging in conflict.’98 The assumption is that regions which happen to be both energy-rich and Muslim-majority will also be sites of violent conflict due to their rapidly growing populations. A British Ministry of Defence report concurs with this assessment, highlighting an inevitable ‘youth bulge’ by 2035, with some 87 per cent of all people under the age of 25 inhabiting developing countries. In particular, the Middle East population will increase by 132 per cent and sub-Saharan Africa by 81 per cent. Growing resentment due to ‘endemic unemployment’ will be channelled through ‘political militancy, including radical political Islam whose concept of Umma, the global Islamic community, and resistance to capitalism may lie uneasily in an international system based on nation-states and global market forces’. More strangely, predicting an intensifying global divide between a super-rich elite, the middle classes and an urban under-class, the report warns: ‘The world’s middle classes might unite, using access to knowledge, resources and skills to shape transnational processes in their own class interest.’99 Thus, the securitisation of global crisis leads not only to the problematisation of particular religious and ethnic groups in foreign regions of geopolitical interest, but potentially extends this problematisation to any social group which might challenge prevailing global political economic structures across racial, national and class lines. The previous examples illustrate how secur-itisation paradoxically generates insecurity by reifying a process of militarization against social groups that are constructed as external to the prevailing geopolitical and economic order. In other words, the internal reductionism, fragmentation and compartmentalisation that plagues orthodox theory and policy reproduces precisely these characteristics by externalising global crises from one another, externalising states from one another, externalising the inter-state system from its biophysical environment, and externalising new social groups as dangerous 'outsiders\*. Hence, a simple discursive analysis of state militarisation and the construction of new "outsider\* identities is insufficient to understand the causal dynamics driving the process of 'Otherisation'. As Doug Stokes points out, the Western state preoccupation with the ongoing military struggle against international terrorism reveals an underlying 'discursive complex", where representations about terrorism and non-Western populations are premised on 'the construction of stark boundaries\* that 'operate to exclude and include\*. Yet these exclusionary discourses are 'intimately bound up with political and economic processes', such as strategic interests in proliferating military bases in the Middle East, economic interests in control of oil, and the wider political goal of 'maintaining American hegemony\* by dominating a resource-rich region critical for global capitalism.100 But even this does not go far enough, for arguably the construction of certain hegemonic discourses is mutually constituted by these geopolitical, strategic and economic interests — exclusionary discourses are politically constituted. New conceptual developments in genocide studies throw further light on this in terms of the concrete socio-political dynamics of securitisation processes. It is now widely recognised, for instance, that the distinguishing criterion of genocide is not the pre-existence of primordial groups, one of which destroys the other on the basis of a preeminence in bureaucratic military-political power. Rather, genocide is the intentional attempt to destroy a particular social group that has been socially constructed as different. As Hinton observes, genocides precisely constitute a process of 'othering\* in which an imagined community becomes reshaped so that previously 'included\* groups become 'ideologically recast' and dehumanised as threatening and dangerous outsiders, be it along ethnic, religious, political or economic lines — eventually legitimising their annihilation.102 In other words, genocidal violence is inherently rooted in a prior and ongoing ideological process, whereby exclusionary group categories are innovated, constructed and 'Otherised' in accordance with a specific socio-political programme. The very process of identifying and classifying particular groups as outside the boundaries of an imagined community of 'inclusion\*, justifying exculpatory violence toward them, is itself a political act without which genocide would be impossible.1 3 This recalls Lemkin's recognition that the intention to destroy a group is integrally connected with a wider socio-political project - or colonial project — designed to perpetuate the political, economic, cultural and ideological relations of the perpetrators in the place of that of the victims, by interrupting or eradicating their means of social reproduction. Only by interrogating the dynamic and origins of this programme to uncover the social relations from which that programme derives can the emergence of genocidal intent become explicable. Building on this insight, Semelin demonstrates that the process of exclusionary social group construction invariably derives from political processes emerging from deep-seated sociopolitical crises that undermine the prevailing framework of civil order and social norms; and which can, for one social group, be seemingly resolved by projecting anxieties onto a new 'outsider' group deemed to be somehow responsible for crisis conditions. It is in this context that various forms of mass violence, which may or may not eventually culminate in actual genocide, can become legitimised as contributing to the resolution of crises.105 This does not imply that the securitisation of global crises by Western defence agencies is genocidal. Rather, the same essential dynamics of social polarisation and exclusionary group identity formation evident in genocides are highly relevant in understanding the radicalisation processes behind mass violence. This highlights the fundamental connection between social crisis, the breakdown of prevailing norms, the formation of new exclusionary group identities, and the projection of blame for crisis onto a newly constructed 'outsider' group vindicating various forms of violence.

## Advantage 1

### 1NC---Solvency

#### Extra-territorial application prevents cartel crackdowns

Murray 17, J.D., 2017, and Stein Scholar, Fordham University School of Law; B.A., 2010, Vassar College (Sean, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj)

Other calls for restraint have also emerged. In its amicus brief for Empagran, the DOJ maintained that US antitrust extraterritoriality as it pertains to private litigation, and with it the treble damage feature, may deter leniency applicants that greatly aid cartel prosecution.104 Consequently, the agency argues, cartel crackdown efforts would suffer because the threat to cartels from leniency-applicant turncoats deters more cartels than would higher penalties.105 Others have cautioned against negative consequences of overregulation, which in turn may harm efficiency and consumers as much as the anticompetitive behavior antitrust laws proscribe.106 The growth of effects jurisdiction has expanded the number of different jurisdictions in which regulatory claims must be satisfied.107 This proliferation increases the cost of doing business internationally: firms must spend more time and money crafting and maintaining antitrust compliance programs, defending in lawsuits alleging illegal anticompetitive conduct, and completing cross-border transactions subject to merger reviews.108

#### Courts circumvent.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC---!D---ABR

#### ABR is gradual, slow, and will be addressed---reject scary-sounding headlines

Smith 16, PhD molecular biologist, former R&D director at MicroPhage and SomaLogic. (Drew, 6-14-16, “The Myth Of The Post-Antibiotic Era”, <https://www.forbes.com/sites/quora/2016/06/14/the-myth-of-the-post-antibiotic-era/#db027696fa83>)

Right now, drug resistant infections are mainly a threat to those that are already sick and/or in medical facilities. But, if we continue down this path, mundane infections in the otherwise healthy could someday morph into life-threatening ordeals, and simple medical procedures and surgeries may be skipped to avoid risk of infection. However, while this threat is real, it’s important to keep in mind that this is an ongoing, gradual challenge; it’s extremely unlikely that a single event will herald with complete certainty the abrupt end of modern medicine as we know it. In this context, those scary headlines are inappropriate, if not numbing and counterproductive. In May, Ars wrote about some alarmist and inaccurate news stories dealing with a newly identified type of drug resistance—one that makes bacteria resistant to a last-resort antibiotic called colistin and can spread between bacteria easily. The headlines blared that it was the “first” time such a dastardly microbe had seeped into the US—which is not true. And they suggested that it would certainly mark the end of antibiotics—also not true. This week, scientists provided updates on tracking that type of resistance, and of course some alarmist headlines followed. Yet, the new data actually suggests that a tempering of concerns about this particular resistance may be in order. It turns out that this “dreaded,” “scary,” “nightmare” of a drug-resistant microbe has been in the US for more than a year and elsewhere in the world since as far back as 2005—it’s just that nobody noticed it. And nobody noticed it because so far it hasn’t been the dreaded, scary nightmare some have feared. “It’s not a huge cause for concern,” Mariana Castanheira, lead author of one of this week’s resistance updates, told Ars. Castanheira is the director for Molecular and Microbiology at JMI Laboratories, a private company that monitors drug resistance microbes in hospitals and medical settings. They and others are finding this new type of resistance now simply because they’re looking for it, she said. Castanheira explains that people initially started digging for this new type of drug resistance—a gene called mcr-1—out of concern that it makes bacteria resistant to the antibiotic colistin, which is a relatively toxic drug used only when nearly all others have failed against a multi-drug resistant infection. Bacteria have shown up with colistin resistance before—in fact, many times in the US and elsewhere around the world. But in those cases, the genes were embedded in the bacteria’s chromosomes and generally passed down through generations. The mcr-1 resistance gene, on the other hand, seems to always sit on a plasmid, a small loop of DNA that bacteria can readily pass around to neighbors. If colistin-resistant bacteria shared their mcr-1 plasmid with others that are already resistant to lots of antibiotics, they could create a long-feared invincible germ—a “pan-resistant” bacteria. “Doesn’t scare me” So far that doesn’t seem to be happening, though, Castanheira said. In more than a decade of skulking around, mcr-1 has made its way into bacteria in animals, people, and soil all over the world. Yet, all of the mcr-1 carrying microbes examined have been susceptible to at least one antibiotic—and often several.

### 1NC---!D---Disease

#### No extinction from disease.

Barratt 17, PhD in Pure Mathematics, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute. (Owen Cotton-Barratt et al, “Existential Risk: Diplomacy and Governance”, pg. 9, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>)

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### 1NC---!D---Bioterrorism

#### No bioterrorism---empirics and technical barriers.

Blum & Neumann 20, \*former Head of Laboratory at the Organisation for the Prohibition of Chemical Weapons. He holds a PhD in Biochemistry from the University of Frankfurt, \*\*Professor of Security Studies at King’s College London, and served as Director of its International Centre for the Study of Radicalisation from 2008-18.. (Marc-Michael & Peter, 6-22-2020, "Corona and Bioterrorism: How Serious Is the Threat?", *War on the Rocks*, https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/)

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are teeming with talk about “biological warfare.” ISIL even called the virus “one of Allah’s soldiers” because of its devastating effect on Western countries. According to a recent memo by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks.

How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the technical challenges associated with weaponizing biological agents have proven insurmountable. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy.

A History of Failures

Biological warfare, which uses organisms and pathogens to cause disease, is nearly as old as war itself. The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat).

Among terrorists, however, the use of biological weapons has been rarer, although groups from nearly all ideological persuasions have contemplated it. Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. No one died in any of these instances.

The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to buy, steal, or develop biological agents. For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop.

Yet none of these efforts succeeded. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that none of the toxin had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose only fatality was the hamster on which it was tested. Of the tens of thousands of people that jihadists have murdered, not a single one has died from biological agents.

It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as Bruce Ivins, a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents.

Technical Challenges

Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a technical level, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be isolated and disseminated. But this is more difficult than it seems. As well as advanced training in biology or chemistry, isolating the agent requires significant experience. It also has to be done in a safe, contained environment, to stop it from spreading within the terrorist group. Contrary to what al-Qaeda said in one of its online magazines, you can’t just make a (biological) weapon “in the kitchen of your mom!”

In addition, there is the challenge of dissemination. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in perfect conditions. In the case of the bacterium anthrax, for example, only spores of a particular size are likely to be effective in certain kinds of weather. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is unlikely that terrorist groups possess the resources, stable environment, and patience to do likewise.

### 1NC---Pharma Low

#### Pharma innovation failing

Gaffney 15 [Adam, M.D. Instructor in Medicine at Harvard Medical School, Secretary of Physicians for a National Health Program, MD from New York University “Your Wallet or Your Life: A lifesaving drug’s overnight price hike shows why we must fight for a radically different health care system” 9-22-15 http://www.pnhp.org/news/2015/september/your-wallet-or-your-life]

Some notable exceptions notwithstanding, pharmaceutical development in recent years has been rather disappointing. In a 2012 article in the British Medical Journal, health policy scholars Donald Light and Joel Lexchin laid out this criticism well, arguing that the pharmaceutical industry’s flawed approach towards drug development produces “mostly minor variations on existing drugs” that are usually “not superior on clinical measures.” The pursuit of truly innovative new molecules, in other words, is discarded in favor of highly lucrative, derivative drugs — a consequence of a “hidden business model,” as they describe it, that spends an estimated $19 on marketing for every $1 on basic research.

#### No link – pharma has a self-interested bias in saying that profits are needed for R&D

McCanne 12 [Don McCanne received his B.A. at the University of California at Riverside in 1959 and his M.D. from the University of California at San Francisco in 1963. After serving two years as a medical officer in the U.S. Army, he practiced as a family physician for over thirty years in San Clemente, California. He was a Charter Diplomate of the American Board of Family Practice, and a Charter Fellow and Life Member of the American Academy of Family Physicians. 8-10-2012 http://pnhp.org/blog/2012/08/10/pharmaceutical-rd-its-cost-and-what-it-delivers/]

Pharmaceutical research and development: what do we get for all that money?

By Donald W Light, Joel R Lexchin

BMJ, August 7, 2012

Data indicate that the widely touted “innovation crisis” in pharmaceuticals is a myth. The real innovation crisis, say Donald Light and Joel Lexchin, stems from current incentives that reward companies for developing large numbers of new drugs with few clinical advantages over existing ones.

The “innovation crisis” myth

The constant production of reports and articles about the so called innovation crisis rests on the decline in new molecular entities (defined as “an active ingredient that has never been marketed . . . in any form”) since a spike in 1996 that resulted from the clearance of a backlog of applications after large user fees from companies were introduced. This decline ended in 2006, when approvals of new molecular entities returned to their long term mean of between 15 and 25 a year.

The real innovation crisis

More relevant than the absolute number of new drugs brought to the market is the number that represent a therapeutic advance. Although the pharmaceutical industry and its analysts measure innovation in terms of new molecular entities as a stand-in for therapeutically superior new medicines, most have provided only minor clinical advantages over existing treatments.

How much does research and development cost?

Although the pharmaceutical industry emphasises how much money it devotes to discovering new drugs, little of that money actually goes into basic research. Data from companies, the United States National Science Foundation, and government reports indicate that companies have been spending only 1.3% of revenues on basic research to discover new molecules, net of taxpayer subsidies. More than four fifths of all funds for basic research to discover new drugs and vaccines come from public sources. Moreover, despite the industry’s frequent claims that the cost of new drug discovery is now $1.3bn (£834m; €1bn), this figure, which comes from the industry supported Tufts Center, has been heavily criticised. Half that total comes from estimating how much profit would have been made if the money had been invested in an index fund of pharmaceutical companies that increased in value 11% a year, compounded over 15 years. While used by finance committees to estimate whether a new venture is worth investing in, these presumed profits (far greater than the rise in the value of pharmaceutical stocks) should not be counted as research and development costs on which profits are to be made. Half of the remaining $0.65bn is paid by taxpayers through company deductions and credits, bringing the estimate down to one quarter of $1.3bn or $0.33bn. The Tufts study authors report that their estimate was done on the most costly fifth of new drugs (those developed in-house), which the authors reported were 3.44 times more costly than the average, reducing the estimate to $90m. The median costs were a third less than the average, or $60m. Deconstructing other inflators would lower the estimate of costs even further.

Hidden business model

Although the industry’s vast network of public relations departments and trade associations generate a large volume of stories about the so called innovation crisis, the key role of blockbuster drugs, and the crisis created by “the patent cliff,” the hidden business model of pharmaceuticals centres on turning out scores of minor variations, some of which become market blockbusters.

Myth of unsustainable research and development

Complementing the stream of articles about the innovation crisis are those about the costs of research and development being “unsustainable” for the small number of new drugs approved. Both claims serve to justify greater government support and protections from generic competition, such as longer data exclusivity and more taxpayer subsidies. However, although reported research and development costs rose substantially between 1995 and 2010, by $34.2bn, revenues increased six times faster, by $200.4bn. Companies exaggerate costs of development by focusing on their self reported increase in costs and by not mentioning this extraordinary revenue return. Net profits after taxes consistently remain substantially higher than profits for all other Fortune 500 companies.

Towards more cost effective, safer medicines

What can be done to change the business model of the pharmaceutical industry to focus on more cost effective, safer medicines? The first step should be to stop approving so many new drugs of little therapeutic value. The European Medicines Agency (EMA) does Europe a disservice by approving 74% of all new applications based on trials designed by the companies, while keeping data about efficacy and safety secret. Twenty nine per cent of new biologicals approved by the EMA received safety warnings within the first 10 years on the market, and therapeutically similar drugs by definition have no advantages to offset their unknown risk of increased harm. We need to revive the Norwegian “medical need” clause that limited approval of new drugs to those that offered a therapeutic advantage over existing products. This approach led to Norway having seven non-steroidal anti-inflammatory drugs on the market compared with 22 in the Netherlands. Norway’s medical need clause was eliminated in 1996 when it harmonised its drug approval process with that in the EU. EU countries are paying billions more than necessary for drugs that provide little health gain because prices are not being set to reward new drugs in proportion to their added clinical value.

We should also fully fund the EMA and other regulatory agencies with public funds, rather than relying on industry generated user fees, to end industry’s capture of its regulator. Finally, we should consider new ways of rewarding innovation directly, such as through the large cash prizes envisioned in US Senate Bill 1137 (Sen. Bernie Sanders), rather than through the high prices generated by patent protection. The bill proposes the collection of several billion dollars a year from all federal and non-federal health reimbursement and insurance programmes, and a committee would award prizes in proportion to how well new drugs fulfilled unmet clinical needs and constituted real therapeutic gains. Without patents new drugs are immediately open to generic competition, lowering prices, while at the same time innovators are rewarded quickly to innovate again. This approach would save countries billions in healthcare costs and produce real gains in people’s health.

http://www.bmj.com/content/345/bmj.e4348

This important BMJ article by Donald Light and Joel Lexchin gives us the background that explains why we have the feeling that the pharmaceutical firms are gouging us with outrageous pricing, in spite of their excuse that these prices are necessary to support their research and development – an excuse that seems not to hold water.

The pharmaceutical industry wants less government involvement (except for the research money), when what we need is much more government involvement. Under a single payer system that included pharmaceuticals, prices would be negotiated based on truly legitimate costs plus fair profits, and not based on wasteful expenses such as product research designed primarily to reset the patent clock.

As Light and Lexchin explain, even the European nations would benefit with a greater regulatory role in improving value though such measures as determining medical need of new products. But just think how much better off we would be in the United States if we would just get past the concept that we must go all out to protect the sacred marketplace – a concept that has allowed the pharmaceutical firms to continue to plunder us.

## Advantage 2

### 1NC---Blocking Statutes

#### The plan causes Chinese blocking statutes and retaliation. That collapses trade and zeroes solvency

Kava 19, JD/MBA Candidate @ JU (Samuel, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization,” 15 J. Bus. & Tech. L. 135, Lexis)

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer’s ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

### 1NC---Trade Bad

#### Trade causes existential warming — increases emissions and deters policy solutions.

EIU 19 — The Economist Intelligence Unit (EIU) is the research arm of The Economist Group, publisher of The Economist. Contributors include: Conor Griffin – Project director; Diana Hindle Fisher – Project manager; Ailia Haider – Researcher; Kamala Dawar – Contributing researcher; Adam Green – Contributing author; Gareth Owen – Graphic designer; Professor Petros Mavroidis, Columbia University Assistant Professor; Antonia Eliason, University of Mississippi; André Sapir, Bruegel and Université libre de Bruxelles; Professor Robert Howse, New York University; Mark Sanctuary, IVL Swedish Environmental Research Institute; Professor James Bacchus, University of Central Florida. (Climate change and trade agreements Friends or foes? *The Economist*; <https://iccwbo.org/content/uploads/sites/3/2019/03/icc-report-trade-and-climate-change.pdf>; Accessed 03-04-2021)

Executive Summary

The Intergovernmental Panel on Climate Change (IPCC) has shone a spotlight on the devastating humanitarian consequences the world can expect if global warming exceeds 1.5°C. Despite the 2015 Paris Agreement, most countries’ climate policies show a chronic lack of ambition and the world remains on track for temperature increases of more than 3°C.

Against this backdrop, the world needs transformative solutions. In climate policy discussions, relatively little attention is paid to the global trade architecture. Bilateral, regional or World Trade Organisation (WTO) trade agreements could help to meet climate goals—for example, by removing tariffs and harmonising standards on environmental goods and services, and eliminating distortionary and poorly designed subsidies on fossil fuels and agriculture.

Despite the potential for trade–climate synergies, the weight of historical evidence is heavy in the other direction. Universal tariff reduction has increased trade in carbon-intensive and environmentally destructive products, such as fossil fuels and timber, more than it has for environmental goods. In some cases FTAs can also shrink the “policy space” available to countries to pursue environmental goals, for example if they prohibit, or are perceived to prohibit, a country’s ability to distinguish between products according to emissions released during their production.

This report assesses the degree to which the WTO and four contemporary free trade agreements (FTAs)—CPTPP, EU–Singapore, EU–Canada and Korea–Australia—support seven opportunities for boosting climate-friendly trade flows (see graphic below).

We find that the four contemporary trade agreements are more supportive of these climate goals than their traditional counterparts. For example, the EU-Singapore FTA recognises the need for parties take “proper account” of the need to reduce GHG emissions when designing subsidy systems. The CETA and CPTPP agreements permit parties to promote environmental standards and objectives in their tender specifications. However, overall, the agreements largely fail to support the seven opportunities. Most clauses are based on cooperation, consultation, and best endeavour. Specific or immediate actions are lacking. Transformative policies, such as border adjustment carbon taxes, are largely ignored.

We also find that the WTO’s efforts to pursue climate and environmental goals have largely stalled and its cooperation with international climate policy actors is limited. Post-Paris there is a real concern that ambitious climate policies will fall foul of WTO rules if they are perceived to arbitrarily or unjustifiably discriminate against third countries.

#### Warming leads to extinction.

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---War

#### Interdependence causes war---empirics and asymmetry---can’t overcome fundamental disagreements.

van de Haar 20 (Edwin, independent scholar specializing in the liberal tradition in international political thought. He has lectured in international relations and political theory at Brown University, PhD from Maastricht University (2008), a MSc in International Relations from the London School of Economics and Political Science (1997) and a MA in Political Science from Leiden University (1996), “Free trade does not foster peace,” 2020, DOI: 10.1111/ecaf.12405, DOA: 1-5-2020) //Snowball //strikethrough of rhetoric

The most obvious rebuttal of these arguments is empirical. It just did not happen. Countries trading with each other, all around the globe, have fought wars with one another, over and over again. Some recent examples are Russia and Georgia, Russia and Ukraine, and Saudi Arabia and Yemen. As Smith predicted, human nature is an important factor in the explanation. People will quarrel and fight: ultimately emotions rule reason. In the domestic situation, there is hardly anyone who thinks that people can do without police and judiciary, because some people simply will not obey the rules. The international system is without a court with enforcement powers. There are some structural constraints, but it remains a human affair. The fundamental insights of Smith and his contemporaries into human behaviour do not amount to some oldfashioned idea, long refuted by modern science. They are confirmed not only by modern economists such as Kahneman (2011) and international relations specialists such as Waltz (1954, pp. 16–79) and Donelan (2007), but also by theorists working on the border between evolutionary psychology and international affairs (Rosen, 2005; Rubin, 2002; Thayer, 2004).

The relationship between trade and economic interdependence is also far more complex. Economic interdependence matters sometimes, but it cannot trump power politics. As Copeland (2015, pp. 1–50, 428–46) makes clear, economic interdependence is sometimes a constraint on violent action by a state. Yet it could just as well be a cause of violent action, especially of a pre-emptive nature in the event that actors expect to be cut off from trade and other economic resources in the near future. In this way, the benefits of continued trade lose out against the expected economic vulnerability. Sobek (2009, pp. 107–27) adds that trade relations might lead to uneven power relationships, which may be a cause of war as well.

Also relevant here is the fact that free trade does not normally result in bilateral interdependence, except for trade in the rarest goods. Free trade leads to multilateral trade relations, and consequently there may be more than one country where particular goods can be bought. Therefore, in times of war, it is relatively easy to switch to suppliers from country A to country B or C. In this way warfare may be a less costly option than is assumed by the idea of economic interdependence.

Public opinion is not automatically opposed to war, as Cobden painfully found out during the Crimean War (1853–56). This has been evident many times since, not least in the two world wars. So the idea of public opinion as a pacifying factor influencing decision-makers must be discarded. It must also be noted that the public in any case hardly ever influences foreign policy decisions on war and peace (Hill, 2003, pp. 250–82).

Trade is unable to foster peace, because it is unable to overcome many causes of war. Think about cultural and religious differences, geopolitical causes such as the fight for natural resources, including increasingly rare raw materials, or more traditional wars between great powers or their proxies over a border dispute. States may also act against their economic interest for some perceived higher goal (Coker, 2014). The causes of war are often multifaceted and complex. Wars happen because people have reasons to fight, in the form of goals and grievances, and possess enough resources and resolve (Ohlson, 2009). Trade relations are just one factor in the mix of causes of war, which include such coincidental factors as chance, luck, or reckless behaviour by individuals who happen to influence public policy. International commerce is simply not a “perfectly effective antiwar device” (Suganami, 1996, pp. 153–210). The best one can say is that the protection of trade relations is sometimes one of the factors in the decision not to wage war. Nothing less, nothing more.

To sum up, many of Adam Smith's arguments still stand, and are confirmed or complemented by modern research. There is no solid ground for the expectation that trade promotes, fosters, or leads to peace. Generally, international economic interests are not the crucial factors in decisions over war and peace. Too many other factors come into play. To believe that trade fosters peace was folly even hundreds of years ago. To still think so is to believe in fairy tales, to be ~~blinded~~ [confused] by the correlates computed by limited yet available datasets, or both.

# 2NC

## Preamble CP

### AT: Perm do Both

#### Threshold low---preamble must be the source of the law, any hint of alternative legal sources creates a chilling effect for preamble citation

Justin O. Frosini 17, BIO: \* Assistant Professor, Bocconi University, Milan; Adjunct Professor, Johns Hopkins University's School of Advanced International Studies ("SAIS") and Director of the Center for Constitutional Studies and Democratic Development ("CCSDD"), Bologna., 2017, "Symposium: Constitutional Preambles: More Than Just A Narration Of History," 2017 U. Ill. L. Rev. 603, Lexis

III. The Preamble to the Constitution of the United States

A.

"We the People ... .": the U.S. Prototype

The Preamble of the U.S. Constitution reads as follows:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. 6

The Preamble of the American Constitution bypasses the idea of representation by rendering the narrator and the listener one in the same. The Constitution is established by the people of the United States for the people of the United States. The fact that the speaker and the addressee are put on an equal footing is in stark contrast with the articled provisions of the U.S. Constitution, where the narrator becomes the legislature and no longer corresponds to the listener (the People). The legal scholar and philosopher James Boyd White, for example, talked of "the Two Voices of Authority and of Silence: Separating Powers and Establishing Trust." 7

It is interesting to underline the fact that, in terms of content, the Preamble of the U.S. Constitution is reminiscent of the Declaration of Independence of 1776. Indeed, the pursuit of happiness can be found in the expression "in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity." The notion of life can be found in the passage "provide for the common defence, promote the general Welfare," and the concept of freedom is enshrined in the part of the Preamble that talks of the need to "secure the Blessings of liberty to ourselves and our Posterity" (freedom). 8

B. The Debate Among American Scholars on Recourse to the Preamble

Legal scholars in the United States are clearly divided as to how Preambles (both of the Constitution and statutes) can be used in interpretation.

When the law is clear and unambiguous then certain authors argue that the no-recourse rule should be used, meaning no reference should be made to the Preamble; 9 whereas other authors give the Preamble a contextual role. In other words, they consider the Preamble to be part of the [\*607] constitution and therefore should be read and interpreted like any other article. 10

That said, most commentators do not believe the Preamble can be regarded as a source of law.

The Supreme Court's case law clearly shows that the rules of interpretation applied to the preambles of statutes are also employed with regard to the Preamble to the Constitution. Daniel Himmelfarb points out that the rules concerning the Preamble to the American Constitution "seem unexceptionable, and consistent with the principles of statutory construction." 11

Max Handler is extremely critical of the fact that the Preamble is used so little by the courts as a tool of interpretation. 12 He argues that given the fact that, like preambles to statutes, the Preamble to the Constitution is not considered a source of law has "chilled almost all reliance on the preamble in interpreting the Constitution." 13

#### Clarity doctrine: other grounds will be used whenever available because they are less ambiguous.

Anne Twomey 13. Professor of Constitutional Law, University of Sydney. 2013. “The Application of Constitutional Preambles and the Constitutional Recognition of Indigenous Australians.” International & Comparative Law Quarterly, vol. 62, no. 2, pp. 317–343.

United States

The preamble to the United States Constitution contains a list of over-lapping and potentially contradictory aspirations, such as establishing justice, insuring domestic tranquillity, providing for the common defence, promoting the general welfare and securing the blessings of liberty. It provides enormous scope for creative interpretation and the drawing of implications. Nonetheless, the United States Supreme Court has been largely restrained in its use of the Preamble to the United States Constitution.86 The primary authority is Jacobson v Commonwealth of Massachusetts87 where Harlan J observed:

Although that preamble indicates the general purposes for which the people obtained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless, apart from the preamble, it be found in some express delegation of power, or in some power to be properly implied therefrom.88

This much-cited passage has been used as authority for the proposition that the Preamble is not itself the source of substantive rights. Its use has primarily been confined to rhetoric or the interpretation of ambiguous provisions in the text of the Constitution. 89

The difficulty with using these aspirations in constitutional interpretation is that they are so broad and ambiguous in themselves that they can support practically any argument. For example, the object of securing ‘the blessings of liberty for ourselves and our posterity’ has been drawn upon to support the right to an abortion90 on the one hand and the right to life91 on the other. Moreover, these aspirations may also conflict. For example, the blessings of liberty may conflict with the common defence when it comes to anti-terrorism laws.

After undertaking a close analysis of the Supreme Court’s use of the preamble, Himmelfarb has concluded:

The preamble, in short, can be used to support both sides of almost any constitutional issue. This is so not only because the preamble’s language is so abstract and open-ended, and hence susceptible of more than one plausible interpretation, but also because the six objects of government enumerated in the preamble are often in conflict. Thus in addition to the problem of determining with any degree of confidence the precise meaning of “Justice” or “general Welfare,” there is the problem of deciding whether to uphold a law because the “common defence” requires it or to invalidate the law because it is inconsistent with the Blessings of Liberty.”92

Nonetheless, despite these interpretative issues (which might have been better dealt with by adopting the rule that resort may not be had to an ambiguous preamble) the preamble has been used relatively sparingly in the United States and is not regarded as a decisive factor in American constitutional interpretation.93 This may be because the Bill of Rights gives much greater and more legitimate scope for broad interpretation, so that there is no perceived need to use the Preamble in this manner.

#### Combo with statute is dicta---not binding

Cliff Gilley 12, Seattle University, 5-8-2012, "How could the Preamble to the US Constitution be used in legal arguments?," https://www.quora.com/How-could-the-Preamble-to-the-US-Constitution-be-used-in-legal-arguments

Preambles in general are not considered legally binding, regardless of the document in which they are contained - this goes for contracts, as well as laws, and of course the Constitution.  While they may be used to inform the intent of the following content, they have no legal power or authority in and of themselves, independent of the actual content that follows them.  They are the legal equivalent of "dicta" - comments by judges in opinions that are not directive, are not legally binding, but which may be used persuasively in arguing a matter or position that has other legal support behind it.

#### True even if the perm is formally binding---judges will assert the preamble is dicta to avoid having to cite it---but ONLY if they can point to something else as the holding

Josh Blackman 9, South Texas College of Law Houston, 6-8-2009, "Much Ado About Dictum; or, How to Evade Precedent Without Really Trying: The Distinction between Holding and Dictum by Josh Blackman," SSRN

From the birth of our Republic, starting with Chief Justice Marshall in Cohens v. Virginia, judges and scholars alike have grappled with the distinction between holding and dictum. However, neither the judiciary nor the academy has been able to come up with a consistent and workable definition of these two concepts. This article attempts to shine some light on this perplexing issue.

This article proceeds as follows. In Part I, I will discuss some of the simpler, yet unsatisfying definitions of dictum, and introduce some of the easy cases, where distinguishing dictum from holding is relatively straightforward. Next, I will chronicle the Supreme Court's erratic approach to dealing with dictum, and show how this uncertainty has left a gaping void in our jurisprudence. Next, I will discuss prior scholarly attempts to define dictum, and show why their approaches are inadequate, as they only focus on Supreme Court cases, and ignore how the inferior courts treat the distinction.

In Part II, I will confront the task where others have not ventured, and systematically survey and analyze over four hundred court cases that distinguish between dictum and holding. After explaining my methodology and framework, I will attempt to answer three critical questions. First, what is dicta worth? Second, whose dicta must/should/can courts follow? Third, how do courts define dicta? These three questions reveal clues to understanding how courts have treated dictum, and what the distinction means in practice.

In Part III, I will analyze the results from Part II. Based on the arbitrary nature with which courts define dictum, and the varying weight courts assign to dictum, even from superior courts, I conclude that the holding/dictum distinction is a standardless standard. Unlike generally accepted standards of review, labeling an opinion as holding or dictum is an entirely subjective process, which I argue enables judges to easily evade precedent without needing to justify the departure; or in the alternative create precedent where none existed before. Next, I analyze precedent, stare decisis, and dictum through the lenses two jurisprudential schools, legal formalism and realism. I conclude with a legal realist argument, that the distinction between dicta and holding is inextricably linked with a judge's views on precedent.

#### Rulings based on the preamble must be exclusive otherwise the precedent is merely aspirational

Heymann et al. 14. UCLA Fielding School of Public Health. 11/2014. “Constitutional Rights to Education and Their Relationship to National Policy and School Enrolment.” International Journal of Educational Development, vol. 39, pp. 121–131.

2. Methodology 2.1. Capturing constitutional rights to education The data on education rights contained in this study were obtained by reviewing the constitutions of 191 United Nations (UN) member states as amended to August 2007 and June 2011.1 Some countries either do not have awritten constitution or have a series of constitutional documents. In both cases, we identified and coded those documents that are considered to have constitutional status. If a constitution explicitly stated that other national laws were part of the constitutional order, we collected and coded those documents as well. To our knowledge,Myanmar was the only UN country without a constitution in force in August 2007, and Fiji was the only member state without any constitutional documents in force as of June 2011. Furthermore, the new state of South Sudan had not yet adopted its constitution at this time. Each constitutionwas read in its entirety, either in its original language or in an English, French or Spanish translation, by at least two coders. 2.1.1. Categorizing educational rights This study examines constitutional rights to primary, secondary and tertiary education. We considered primary education to be protected when constitutions granted the right to education, or specified that ‘general’, ‘primary’, ‘basic’, ‘fundamental’ or ‘elementary’ education was protected. Secondary education was coded as protected when constitutions granted the right to ‘secondary’ or ‘high’ school; guaranteed education until age 16 or for at least 11 years; or protected education ‘at all levels’. Finally, we coded protections of higher education when articles mentioned ‘tertiary’, ‘post-secondary’, or ‘higher’ education, or granted education ‘at all levels’. We also captured provisions on compulsory and free education at each level of education. Each education right that a constitution granted was recorded separately in our database and categorized according to the group protected. When the constitution specified that everyone, all citizens, or all children possessed a right, or when it stated generally that the government had a duty to provide a service or ensure the enjoyment of a right, we coded universal protections. We also captured rights that were specifically guaranteed based on gender, disability, religion, ethnicity, socioeconomic status or linguistic group. When constitutions granted an education right universally and additionally guaranteed equal rights based on these social characteristics, we considered the right to be protected for that group. 2.1.2. Categorizing levels of protection Although international agreements allow for the ‘progressive realization’ of education rights (UN General Assembly, 1989, 1966a), this study distinguishes among constitutions that explicitly phrased the implementation of education rights as dependent on the State’s resources or capacities, and those that granted these rights unequivocally. When constitutions specified that the enforcement of education rights depended on the availability of resources, we categorized the provisions as aspirations rather than guaranteed rights. We also coded an aspirational protection when a right was phrased as an aim, goal or objective, and when a state’s duty to protect citizens’ education was explicitly stated to be nonenforceable. In the rare cases when a right was only mentioned in a constitution’s preamble and the constitution did not contain a provision specifying that the preamble was an integral part of the constitution, we coded the right as an aspiration. Constitutional articles that protected education rights in authoritative language or phrased them unequivocally as a duty or obligation of the state were coded as guaranteed rights. In some cases, constitutions guaranteed equal education rights for specific groups but also outlined circumstances where exceptions could be made. We captured such ‘guaranteed rights with exceptions’ separately from rights that were granted unequivocally. Finally, when categorizing the rights of specific groups, we captured constitutional provisions that permitted or promoted positive action to ensure that individuals enjoyed education rights.

### AT: Perm do CP

#### 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.

#### The “core” antitrust laws are the Sherman Act, Clayton Act, and FTC Act—from the topic paper

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U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The core federal statutes are the Sherman Act,1 passed by Congress in 1890, and the Federal Trade Commission2 and Clayton Acts,3 both passed in 1914. The United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC” or “Commission”) (together the “agencies”) share enforcement of most areas of federal antitrust law but with some differences in the scope of their authority. The FTC has sole authority to enforce Section 5 of FTC Act, which prohibits (1) unfair methods of competition and (2) unfair or deceptive acts or practices. The FTC almost always pursues claims for anticompetitive conduct as unfair methods of competition and reserves charges of unfair or deceptive acts or practices for consumer protection violations. Though the FTC's authority to challenge unfair methods of competition goes beyond conduct prohibited by the Sherman and Clayton Acts, in practice the FTC brings most unfair methods of competition cases under the same standards that courts apply to Sherman Act claims. The most prominent exception is the invitation to collude offense, which falls outside the scope of the Sherman Act (if the invitation is not accepted, there is no agreement). The FTC challenges invitations to collude as so-called “standalone” violations of Section 5.4 The DOJ has sole authority to pursue criminal violations of the antitrust laws. Most states have their own state antitrust and unfair competition statutes. State law follows federal law to some extent, though as discussed below, may differ from federal law in meaningful ways that vary state to state. State attorneys general and private parties can also typically file suit to enforce both federal and state antitrust law.

#### Chamber of Commerce agrees (more topic paper ev)

COC 20—“Antitrust Laws.” 2020. U.S. Chamber of Commerce. July 7, 2020. https://www.uschamber.com/antitrust-laws.

Antitrust laws ensure competition in a free and open market economy, which is the foundation of any vibrant economy. And healthy competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation.

The core of U.S. antitrust law was created by three pieces of legislation: the Sherman Antitrust Act, the Federal Trade Commission Act, and the Clayton Antitrust Act. These laws have evolved along with the market, vigilantly guarding against anti-competitive harm that arises from abuse of dominance, bid rigging, price fixing, and customer allocation.

#### The Clayton and Sherman Acts are core antitrust statutes

Felsenfeld 93 (CARL FELSENFELD-Professor of Law, Fordham University School of Law. “Bank Holding Company Act: Has It Lived Its Life?” Villanova Law Review, Vol. 38, No.1, 1993, <https://core.ac.uk/download/pdf/144229861.pdf> , date accessed 9/4/21)

1. Core Laws

It is well established that, despite the "extensive blanket of state and federal regulation of commercial banking, much of which is aimed at limiting competition," 480 the United States' core antitrust statutes (the Sherman and Clayton Acts) apply to banks. 48 1 There is respectable opinion that "existing antitrust laws are fully adequate to guard against anticompetitive mergers or acquisitions, or other anticompetitive activity, in the banking industry." 482 A proposal to remove the BHCA, however, is not a suggestion that only the Sherman and Clayton Acts would impose antitrust limitations on banks. The other bank laws and regulations would continue in effect.483

Whether the antitrust laws are sufficient to curb bank abuse that is otherwise dealt with by the BHCA has been disputed. One relatively early opinion suggested that illicit bank behavior is "almost impossible to detect and prove in a court of law" and, consequently, explicit legislation, like the BHCA, which foreclosed banks from other fields was desirable.48 4 In contrast, a former Deputy Assistant Attorney General for Antitrust later opined that bank antitrust problems within the BHCA sphere are simply traditional antitrust issues that can be dealt with by those laws.485 He was countered by a then current Attorney General for Antitrust who believed the BHCA was essential to keep banks separate from commerce.486 Because these last two views were expressed in 1969 and 1970, one must assess current antitrust laws to analyze what view is valid today.4 7

There is a high degree of flexibility in the antitrust laws. One of the functions of the antitrust laws is to adapt their application to the particular industry under consideration and to the particular markets within which the industry operates. 488 The general approach of the antitrust laws towards a merger or consolidation of the sort that currently requires preapproval under the BHCA is to accept the industry in its existing form as the norm and then to establish the effects of the merger or acquisition in terms of its effects on that norm. The net effect is the antitrust laws' disposition in favor of the existing structure.

The Justice Department has the power under existing law to challenge banking mergers and acquisitions for violation of the antitrust laws even when the Fed has first found the BHCA's antitrust tests satisfied. 48 9 For example, in December 1990, the Justice Department challenged the acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. under the BHCA even though the Fed had approved the transaction. The suit was settled by the agreement of the parties to a divestiture plan proposed by the Justice Department.490 InJuly 1991, theJustice Department challenged an acquisition by Fleet/Norstar of assets from the FDIC after the transaction was approved by the Fed under the Bank Merger Act.49 1 As these two cases show, the Justice Department has sufficient regulatory authority to police the antitrust aspects of bank acquisitions effectively without the BHCA statutory protections.

2. Federal Trade Commission Act

Secondary to the core antitrust laws, and of more potential than experiential significance in regulating bank holding company behavior in the absence of the BHCA, is the Federal Trade Commission Act (FTC Act). 49 2 In its broad scope the FTC Act is inapplicable to banks. 493 The FTC, however, may require banks to produce documentary evidence required during agency investigations. 494 The FTC Act's basic function is the prevention of precisely the type of activity that banks and their nonbank affiliates were accused of in the initial drafting of and amendments to the BHCA49 5-the perpetration of "unfair methods of competition. "496

### AT: Deficit

#### It’s binding---indexicals---any other reading is unconstitutional

Michael Stokes Paulsen 9, Distinguished University Chair and Professor of Law, the University of St. Thomas. J.D. Yale Law School (1985), M.A.R. Yale Divinity School (1985), B.A. Northwestern University (1981)., 2009, "Symposium: Original Ideas On Originalism: Does The Constitution Prescribe Rules For Its Own Interpretation?," 103 Nw. U.L. Rev. 857, Lexis

Introduction

It is frequently assumed - indeed, it is often stated as an agreed premise in debates over constitutional interpretation - that the Constitution itself specifies no rules or principles governing how it is to be interpreted and applied. But is this really so? In this Article, I will argue that this commonly held assumption is seriously mistaken. A careful reading of the text of the Constitution - I will assume, provisionally, for the sake of developing the argument, that this is the appropriate method for seeking an answer to this constitutional question - shows that the Constitution does prescribe an interpretive methodology. That methodology is to read and apply the document's written words and phrases, taken in context, as they would have been understood by reasonably informed readers of such a document at the time they were written. The search is for the objective, original meaning of the language, as informed by concrete evidence as to how it actually was understood at the time; but it is not a search for the subjective views of individuals or their specific expectations about how a provision would apply.

Where such an understanding supplies a sufficiently clear rule of law, that rule must be applied to all matters falling within its scope; actions of government contrary to such a rule violate the Constitution. 1 Where such an understanding supplies a general principle, actions of government that fall within the scope of judgment or discretion admitted by the breadth with which that principle is expressed do not violate the Constitution, and are thus allowable; 2 actions outside the range of judgment permitted by the principle violate the Constitution. 3 And finally, where the text of the Constitution supplies no rule or principle concerning the issue in question, the Constitution is not a source of governing law concerning that matter; the decision defaults to some other source of governing law. 4

 [\*859]  This methodology is, I submit, set forth in the Constitution. It is not set forth in elaborate detail. The Constitution, on this point as with many others, uses spare, concise language. The document is refreshingly free of the language of interpretive theory, hermeneutic principles, or the academic gobbledygook that so pervades, and perverts, much law-review discussion of how the Constitution is to be interpreted. (Indeed, I tend to think that the absence of such language, in addition to other virtues, suggests that the injection of such academic terms into the discussion is almost literally an unconstitutional approach to interpreting this written Constitution.)

Instead, the Constitution sets forth its own interpretive principles simply, cleanly, and rather without pretense. It says, in express terms, that it is the written text of the Constitution that has been adopted by the People and that is authoritative and binding: "We the People ... do ordain and establish this Constitution" for the United States. 5 "This Constitution ... shall be the supreme Law of the Land." 6 It seems further to say, by virtue of the clarity of the specification of "This Constitution," that the written text comprising "This Constitution" is exclusive; nothing not included in the written Constitution is part of "This Constitution." And it specifies that judges are to be "bound" by this exclusive, written text; that they, and all other government officials, must swear a formal oath to support it; and that they must apply it as binding, supreme law. 7

In short, the Constitution's text prescribes fidelity to a specific, exclusive, defined, determinate written text.

It does not say, quite, that judges and other officials may not change the meanings of the words and phrases of the Constitution. But that is fairly clearly implicit in the text's specification of a particular written text as authoritative, exclusive, and supreme over any other source of law or policy. Were it otherwise - if officials could alter, either at once or over time, the original content of the Constitution's rules, standards, and principles by interpreting its written words and phrases in ways that depart from their original public meanings in historical-political and textual context - such anachronistic readings would decisively undermine the Constitution as a written, authoritative, binding, and exclusive document. Supremacy would  [\*860]  lie not in the written text of "This Constitution," but in the subjective, changing interpretations of government officials - a principle contradicted by the text, structure, and logic of the document. Even more peculiarly, supremacy might lie in changing linguistic conventions over time. In short, to grant the premise that meanings change, or that interpreters legitimately may change them, is to contradict the postulate of the supremacy and authority of the written text. That contradiction disproves the theory's validity. 8

Finally, if the Constitution had meant to have incorporated such extraordinary interpretive principles, contradicting the fair implications of Article VI's "This Constitution" and "Oath" Clauses (and departing drastically from the baseline default interpretive principles of written legal texts at the time), 9 it almost certainly would have said so. But it does not. Dogs tend to bark when disturbed and elephants generally leave traces of having been present. 10 No one at the time of the Constitution's framing and ratification ever spoke for the proposition that the meaning of the words of the Constitution legitimately would be subject to change over time. (The words might admit of a range of different policy choices for governing officials, but that is different from saying that the text's meaning actually changes. 11) The only men to bark a meanings-change doctrine were expressing fears of what might be done, improperly, because of insufficient checks against the abuse of interpretive power by judges (and others). 12 The Federalists took pains to  [\*861]  deny that the checks were insufficient. 13 They never defended the propriety of latitudinarian construction to depart from the original public meaning of the document. There is no evidence of that elephant ever having been in the room - other than in the imagination and fears of the document's opponents.

Most importantly, the Constitution's own words give off absolutely no whiff of this elephant. That is the sense in which the oft-assumed absence of interpretive instructions in the document is pertinent: there is nothing - nothing - in the document in the way of interpretive directions that could remotely be taken to contradict the most natural sense of Article VI's (and related provisions') evident specification of the words of the written text, as enacted at a point in historical time, as the authoritative and exclusive source of constitutional meaning. Moreover, there are additional, confirming clues in the text that would contradict any such imagined contradiction of Article VI's interpretive instruction: the textual specification of an amendment process for changing the content of the authoritative text; and the text's specification of interpretive rules, procedures, interpreters, or gatekeepers for specific provisions or situations where there otherwise might be thought a reason to depart from the baseline rule that the document specifies the original meaning of the text as the beginning and end of constitutional interpretation. 14

In short, the text of the Constitution does prescribe an interpretive methodology: original-meaning textualism.

In what follows, I develop this straightforward thesis. It is an "intra-textual" argument and, in that (nonpejorative) sense, circular. 15 My methodology  [\*862]  is original-public-meaning textualism. Applying that methodology to the Constitution, I conclude that the original public meaning of the Constitution's provisions nearly overwhelmingly suggests the conclusion that the Constitution is to be interpreted and applied in accordance with the original public meaning of its words, phrases, and internal structural logic. One could (I suppose) posit an interpretive theory that begins with some "outside" stance, employ that stance to "interpret" the Constitution in a fashion governed by such external-to-the-document interpretive principles, and thereby break the hermeneutic circle from outside of it. Such approaches, however, in addition to their other flaws, 16 surely are no less bootstraps than the proposition that the original meaning of the text compels original-meaning textualism. 17 My objective here is simply to destroy the common canard that there exists no set of internal interpretive instructions in the Constitution.

Part I of this Article develops the main textual argument from Article VI's provisions, from related, confirming provisions paralleling Article VI's "This Constitution" language, and from the necessary implications of the written, bounded constitutionalism these provisions entail and describe. Part II then discusses the loud absence of any contravening interpretive instructions anywhere in the text - the lack of elephant evidence - and the supportive textual evidence that the document specifies particular interpretive rules where it intends any departure from the baseline norm. Further, the document specifies a single means for changing the Constitution's text, the strong textual negative implication being that amendment-through-interpretation is excluded. Interpretations must conform to original linguistic meaning, or they violate Article V's constitution-making provisions.

Part III addresses conventional objections to original-meaning textualism. Most of these objections are not actually directed at the textual argument for originalism, but are "external" critiques of its consequences or perceived limitations. Embracing arguments often made first by others, I conclude that some of these supposed consequences are simply wrong and tend to show only what poor original-meaning textualists its external critics frequently are. More fundamentally, the consequentialist arguments are really beside the point. Interpretation precedes evaluation, and is separate from it. 18

 [\*863]  As to the supposed limitations of original-meaning textualism - its failure to provide clear, determinate answers to all constitutional questions - I fully embrace them. There is no honest approach to constitutional interpretation that provides clear, determinate answers to all constitutional questions. This scarcely impeaches originalist textualism as the proper method of constitutional interpretation. It merely shows that the Constitution does less work - and thus leaves more questions to be resolved by democratic political choice - than its critics suppose, or prefer. That is not an objection to original-meaning textualism. It is simply the inevitable, and appropriate, byproduct of originalist textualism. As such, it is a fundamental feature of the Constitution's textual design.

Part IV concludes with some brief thoughts about why I am "for" original-meaning textualism as the appropriate method of constitutional interpretation, complying (minimally) with the assigned title for the panel at which this paper was originally presented, "Originalism: For and Against." I favor this method not on account of any highfaluting philosophical, linguistic, or political theory. I will not - other than in this sentence - mention Heidegger, Kant, Derrida, Locke, Hobbes, Rawles, Stanley Fish, Bruce Ackerman, or George Carlin. Rather, I favor original-meaning textualism because it is the method prescribed by the Constitution itself. It is the only legitimate method of constitutional interpretation, if the project really is constitutional interpretation. This is a purely internal perspective. If what one is doing is interpreting the Constitution, one must take it literally on its own terms - just as one would the Articles of Confederation, for example - as a specific textual, linguistic artifact. As I have said, interpretation precedes, and is distinct from, application.

There is no a priori reason to assume that the Constitution of the United States, understood and applied in accordance with the original public meaning of its words, phrases, and structure, is a good and worthy constitution; such a premise forms no part of my justification for originalism. The Constitution was bad, in important respects, from the start. (Consider the original Constitution's several protections and encouragements of slavery, defective representation and franchise rules, somewhat undemocratic - and originally slavery-reinforcing - presidential selection process, and the difficulty of alteration of the Constitution. 19) It remains deficient in important  [\*864]  respects today. (All of the above defects remain except slavery. 20) These would furnish decent, or at least colorable, arguments against agreeing to exercise government authority pursuant to such a constitution, or even against agreeing to be bound by it as a citizen. That was, in various forms, the argument of Garrisonian anti-slavery advocates. 21 But it is not an argument that the language means something different from what it means. 22

I. Article VI as a Rules-of-Construction Provision

A.

 "This Constitution": Article VI as a Specification of Textualism

 There are several applicable provisions of the Constitution that contain instructions about constitutional interpretation and application. I will eventually touch on most all of them: the document's Enacting Clause ("Preamble"), Establishment Clause (Article VII), Amendment Article (Article V), Due Process Clauses (in the Fifth and Fourteenth Amendments), and several "retail" rules-of-construction provisions (the Ninth, Tenth, and Eleventh Amendments; the first sentence of the Fourteenth Amendment; and obscure provisions of Article IV and of the Seventeenth Amendment). 23

 [\*865]  But the most important instructions are set forth in Article VI of the Constitution, the next-to-last Article of the Constitution. This is about where one would expect to find a rules-of-construction provision in a legal document, charter, or contract - at the tail end of the document, after its substantive provisions.

The last Article of the original document, Article VII, states a rule of recognition specifying when and how the new Constitution would become operative and to what political communities its authority would extend: "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same." 24 It makes sense that this statement, which I call the "Establishment Clause" (notwithstanding - or, perhaps perversely, because of - the confusion it might cause with the religion clauses of the First Amendment) comes last, as a matter of style and form, following a rules-of-construction Article. Article VI is precisely such a how-to-understand-and-apply-this-document set of interpretive instructions.

The language of Article VI, in its entirety, is as follows:

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

 [3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. 25

 I have emphasized the "this Constitution" language, repeated in each of Article VI's three clauses, for obvious reasons: First, the specification of this Constitution, and what exactly "this Constitution" is, is crucial to the entire interpretive enterprise. Taken seriously, as I will argue it should be, it establishes the metes and bounds of constitutional argument. The specification of what constitutes "this Constitution" literally defines the interpretive territory.

Second, and importantly, Article VI's references to "this Constitution" connect the document's concluding Articles (VI and VII) to its opening words: "We the People of the United States ... do ordain and establish this Constitution for the United States of America." This provision, commonly known as the Preamble, might equally well be dubbed the "Enacting  [\*866]  Clause." The different label is not entirely without consequence: indeed, it is relevant to the connection between this provision and Article VI. "Preamble" might have too much the sense of fluff and surplusage - as if the Constitution's opening words were empty rhetoric without any operative effect. To be sure, "Preamble" does, usefully, convey the sense that this clause does not itself confer specific powers or rights - those are set forth in the Articles and the subsequently adopted amendments that follow in the text - but instead states general purposes that those later, specific provisions are intended to serve. But the word "Preamble" fails to capture the force of what the provision declares: that "We the People" do hereby "ordain and establish" - in a word, enact - "this Constitution." Enactment is the function of this provision within this legal document. Thus, the "Enacting Clause."

And what precisely does the Enacting Clause enact? It enacts "this Constitution for the United States of America" - the same "this Constitution" that Article VI specifies as "supreme Law," the written document that follows the Enacting Clause and that concludes (in the original) with Article VI and Article VII. The opening and closing words of the Constitution refer to "this Constitution" as what has been enacted, is supreme law, and is established among the states that adopt it. 26

 [\*867]  The third coordinating function of the "this Constitution" language is to tie together the three clauses of Article VI. Plainly, Article VI, Clause 2, commonly referred to as the Supremacy Clause (my preferred name is "Supreme Law Clause" 27), is the core rules-of-interpretation provision. But it is importantly reinforced by the Oath Clause of Article VI, Clause 3, as we shall see presently.

What about the first clause of Article VI? The question is worth a short detour. At first blush, Article VI, Clause 1 - specifying that debts of the Confederacy remain valid under "this Constitution" - seems of a different character from the rest of the Article. It does not specify the authority and binding nature of the Constitution, as Clauses 2 and 3 do. But on careful reflection, Clause 1 can be seen as simply a specific rule of construction, included to refute the inference - which might otherwise have been a correct inference - that adoption of a new government worked a repudiation of the debts and contracts of the ancien regime. The Clause could as easily have read: "The adoption of this Constitution shall not be construed to repudiate Debts contracted and Engagements entered into before the Adoption of this Constitution, but shall be as valid against the United States under this Constitution, as under the Confederation." 28 The United States is still the United States, the provision states in effect, and those entering into the new government, identified in Article VII, will honor the debts and obligations of the prior government. This is an important specification of how the act of adoption of the Constitution should be interpreted in terms of legal obligations incurred by the old government. There is a related provision in Article VI, Clause 2: The language concerning treaties as part of the supreme  [\*868]  law of the land contains a seemingly awkward verbal circumlocution - "All Treaties made, or which shall be made, under the Authority of the United States ... ." But the slight awkwardness is easily explained as included to make clear a "savings"-effect rule-of-construction similar to Clause 1's: Treaties made under the Confederation are carried forward as part of the binding legal obligations of the United States under the Constitution, just as debts and contractual obligations are. 29

But, as noted, the guts of the Constitution's interpretive instructions lie within Article VI, Clause 2: the Supreme Law Clause. Here it is again, in full:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The "bound thereby" command to state judges is buttressed, and extended comprehensively, in the Oath Clause, which immediately follows:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ... . 30

 [\*869]  All senators and representatives, all members of state legislatures, and all executive and judicial officers, national and state, are bound to support this Constitution as "supreme Law of the Land."

What does the Constitution mean when it says, so repeatedly, "this Constitution"? To what does Article VI, Clause 2 of the Constitution refer when it says "this Constitution" and specifies it as "supreme Law"? To what does Article VI, Clause 3 refer when it says that all federal and state officials "shall be bound" by oath or affirmation to support "this Constitution"? To what does the Enacting Clause ("Preamble") similarly refer when it proclaims that the people do hereby ordain and establish "this Constitution"? To what does Article VII refer when it proclaims "the Establishment" of "this Constitution" upon ratification by nine states?

I submit that this question, or series of questions, has a single, almost painfully obvious answer: "this Constitution" means, each time it is invoked, the written document. It refers to the entire text of the written Constitution, of which the Enacting Clause, Article VI's Supreme Law Clause and Oath Clause, and Article VII's Establishment Clause are constitutive, constituting parts. The document specifies the document as authoritative. By very strong linguistic implication, if not quite by explicit language, the document's specification of the document as supreme and binding would appear to exclude anything outside the document as authoritative. 31 Nothing not set forth in the writing that constitutes "this Constitution" is part of the Constitution. The writing is exclusive. Structurally, Article VI functions in much the same way as a "merger" or "entire agreement" provision in a written contract. This document is "the Constitution." Nothing else is enacted. Nothing else is supreme law. To nothing else are all government officials bound by their oaths. And anything to the contrary is hereby superseded, as among the states that ratify this Constitution. 32

 [\*870]  Thus, it appears that the best, most faithful internal exegesis of the text itself - of Article VI's provisions, logic, and function, and of allied provisions like the Enacting Clause and the Establishment Clause that begin and end the original document - reveals textualism, in some proper form, as the textually prescribed method for interpreting and applying the Constitution. 33

At least, that is the method that must be employed by those whom the Constitution charges with interpreting and applying it in connection with the exercise of actual governmental authority under the Constitution - those persons who, having agreed to exercise power under "this Constitution," have sworn an oath to "support" it, be "bound" thereby, and (in the case of the President) to "preserve, protect and defend" it. Under the Oath Clauses, it is not open to such persons to exercise authority under the Constitution other than in accordance with its own terms. Other people may choose (one supposes) to interpret the Constitution as if it were poetry, literature, aspiration, intergenerational political chain novel, or a monkey's keystrokes. Humpty Dumpty (or some other deconstructionist) might have the words mean whatever he wants them to mean. 34 But the Constitution binds those who exercise authority under it to regard it as controlling law, not as literature, inkblot, or anything else. And it specifies that its meaning is internal to the document, not imported from personal judgment or any other external authority. 35

It is true, as noted above, that this argument is in a sense circular: it is original-meaning textualism that yields original-meaning textualism. 36 But this is not a very powerful objection at all, for the same will be true of any interpretive approach. For example, original understanding intentionalism (original intent), a close relative of original-meaning textualism and in some ways perhaps an earlier model of the same vehicle, 37 is "circular" in that it  [\*871]  starts from the premise that what matters in legal textual interpretation is the intention of a text's author(s); the intention of the lawgiver is the law. 38 This starting point yields the conclusion that discerning the lawgiver's intention is the object in reading the text. 39 It is, in a small way, an interpretive stance external to the text, and circular in its own way.

So too with the many variations of nonoriginalism - interpretive theories that eschew reliance on text, structure, intention, or history. These are circular as well. They adopt an interpretive stance radically external to the text itself and then reason from the premises of that stance to the conclusion that this is the interpretive stance that the text (as viewed through such an external lens) in fact presupposes - or at least the one that makes for the "best" interpretation of the text under that interpretive approach.

With any and all such interpretive theories there is a greater or lesser degree of bootstrapping. Textualism-yields-textualism is subject to the same objection, but it is not a unique objection and at least textualism has two discernible differences. First, intentionalists and nonoriginalists often will, before adopting their respective external stances, plead necessity: because the text itself does not prescribe any interpretive rules, one needs to look outside the document. The implication is that if the text did state interpretive rules, they would be binding; that sort of (internal) bootstrapping would be okay. Indeed, it would obviate the need to look outside the text. My argument here is precisely that a careful, patient exegesis of the text does yield interpretive rules that cohere nicely with the method of original-meaning textual exegesis employed to derive them. Thus, the "necessity" justification for looking elsewhere dissipates. The "very self-referentialism of the document," 40 and the possibility of deriving reasonable principles of original-meaning textual interpretation from it, defeats the premise from which most extrinsic interpretive theories often start.

Second, the bootstrapping involved in other interpretive approaches is far more problematic. Specifically, it severs interpretive premises and principles from the text being interpreted. This is a problem for an enterprise that is seeking to interpret the Constitution in order to apply it as exclusive, authoritative, binding law. The more an interpretive approach is disconnected from the text, the more it is disconnected from the text's authority. If the text's prescribed approach is textualism, following that approach connects interpretive method to the text's supposed authority. That's a better circle than other, outside alternatives. As Vasan Kesavan and I have written, "to invoke the Constitution as authoritative requires that the text be taken on its own terms. To reject the basis on which the Constitution purports to be authoritative and its own specification of what constitutes "this  [\*872]  Constitution' is to reject any basis for invoking the Constitution as authoritative." 41

#### They have no evidence--- The decision will be carried out fully---everyone complies

Dr. Lawrence A. Baum 18, Professor of Political Science at Ohio State University, PhD in Political Science from the University of Wisconsin-Madison, The Supreme Court, Thirteenth Edition, p. 206-208

Summing Up: The Effectiveness of Implementation

We know far too little to make confident judgments about how well judges and administrators carry out Supreme Court decisions, even if that question is simplified to the question of compliance and noncompliance. Still, a few generalizations are possible.

When judges and administrators address issues on which the Supreme Court has ruled, most of the time they readily apply the Court’s ruling. They often do so even when that requires them to depart from positions on legal policy they had adopted before the Court’s decision. These actions typically get little attention because they accord with most people’s assumption that judges and administrators will follow the Court’s lead and carry out its decisions fully.

Contrary to this assumption, however, implementation of the Court’s policies is often quite imperfect. For Supreme Court decisions, like congressional statutes, the record of implementation is mixed. Some Court rulings are carried out more effectively than others, and specific decisions often are implemented better in some places or situations than in others.

Implementation of the Court’s decisions is most successful in lower courts, especially appellate courts. When the Court announces a new rule of law, judges generally do their best to follow its lead. And when a series of decisions indicates that the Court has changed its position in a field of policy, lower courts tend to follow the new trend. For this reason, Court decisions that require only action by lower courts tend to be carried out more effectively than decisions that involve other policymakers.36

But even appellate judges sometimes diverge from the Court’s rulings. Seldom do they explicitly refuse to follow the Court’s decisions. More common is what might be called implicit noncompliance, in which a court purports to follow the Supreme Court’s lead but actually evades the implications of the Court’s ruling.

The higher frequency of implementation problems for Supreme Court decisions in the executive branch reflects several conditions. One condition is that administrators are likely to feel less obligation to follow the Court’s lead than do judges. Another is that carrying out the Court’s decisions is more likely to create practical problems for administrators. Even so, the Court enjoys considerable success in getting compliance from administrative bodies.

Responses by Legislatures and Chief Executives

Congress, the president, and their state counterparts also respond regularly to Supreme Court decisions. Their responses shape the impact of the Court’s decisions, and some responses by Congress and the president affect the Court itself.

Congress

Congressional responses to the Court’s rulings take several forms. Within some limits, Congress can modify or override the Court’s decisions. Congress also affects the implementation of decisions, and it can act against individual justices or the Court as a whole.

Statutory Interpretation

In the world of statutory law, Congress is legally supreme. When the Supreme Court interprets a federal statute, as it does in most of its decisions, Congress can override that interpretation simply by enacting a new statute—so long as the president signs the statute or Congress overrides a veto. Such action is not rare. One study identified 275 decisions that Congress overrode in the forty-five years from 1967 through 2011, an average of more than ten in each two-year Congress.37 These overrides affect a small but meaningful proportion of the Court’s statutory decisions; a study of tax decisions from 1954 to 2004 found that Congress overrode at least 8 percent of them.38

Some overrides represent direct efforts to invalidate recent Supreme Court decisions that have aroused widespread disagreement in Congress. But statutes that are aimed at specific decisions are a distinct minority. More often, Congress updates the law in an area of policy with a new statute, and in the process, it overrides one or more decisions. Occasionally, members of Congress are not even aware that they have overridden the Court with a new statute.

Members of Congress themselves initiate some efforts to override decisions. But more often, they respond to interest groups. Just as groups that are unsuccessful in Congress frequently turn to the courts for relief, groups whose interests have been weakened by the Supreme Court frequently turn to Congress. Sometimes the initiative comes from the Court itself. A dissenting justice may urge Congress to negate the decision in question, as Justice Sotomayor did in a 2017 decision interpreting the Fair Debt Collection Practices Act.39 And occasionally, the Court’s majority opinion invites members of Congress to override the Court’s decision if they think that the Court misinterpreted their intent or that the Court’s decision created an undesirable result.

Significant legislation is usually difficult to enact, and that is true of bills to override Supreme Court decisions. It can help if an override is attached to a broad bill that has majority support. Whether Congress overrides a particular decision depends in part on its partisan composition. In King v. Burwell (2015) the Supreme Court considered an argument that the Affordable Care Act did not authorize tax credits to subsidize insurance premiums in states in which the federal government rather than the state had set up health care “exchanges.” In oral argument, Solicitor General Donald Verrilli argued that a decision ruling out such tax credits would have disastrous consequences. Justice Antonin Scalia pointed out that in such instances, Congress often enacts a new statute to take care of the problem. He asked, “Why is that not going to happen here?” Verrilli responded, “Well, this Congress. . . . ” That comment brought laughter from people in the audience who knew that the Republican majorities in the House and Senate were very unlikely to enact a statute that would rescue “Obamacare.”40

More generally, overrides on issues that have an ideological element are difficult to enact when control of government is divided between the two parties, as it was from 2011 through 2016. And the partisan polarization that often makes it more difficult to enact controversial legislation of any type in the current era helps to account for a reduction in the number of overrides since the 1990s.

Statutes that override the Court’s decisions, like other statutes, are subject to the Court’s interpretation in later cases. Sometimes the Court reads an override in a way that limits the impact of that override on the law. This has been the case with some of the congressional overrides of decisions that gave narrow interpretations to statutes prohibiting employment discrimination.41 When that happens, Congress could enact another statute to clarify the law. But often there is not sufficient interest or political support for such action.

## Advantage 2

### Impact Trick---2NC/1NR

#### Only warming causes extinction — outweighs on future lives.

McDonald 19, Geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition. (Samuel Miller, 1-4-2019, “Deathly Salvation”, *The Trouble*, https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

### Warming Turns War — 2NC/1NR

#### Warming turns every nuclear conflict.

Jürgen 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., April 2016, “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.

### Trade Causes Warming — 2NC/1NR

#### Trade skyrockets emissions — deals systematically ignore the environment.

Kucik 18 — Assistant professor in the School of Government and Public Policy at the University of Arizona (Jeffrey; December 22nd; “Trade deals have glaring omission: Environmental standards”; *The Hill*; <https://thehill.com/opinion/energy-environment/422458-trade-deals-have-glaring-omission-environmental-standards>; Date Accessed 03-04-2021)

Unfortunately, cooperation on the environment still lags in other areas. The international agreements that govern free trade still fail to adequately address climate change.

Trade plays an important role in global greenhouse gas (GHG) emissions. To start, there are the emissions associated with production. Emissions from industry account for around 20 percent of GHG output in both the United States and the European Union.

And, as production has moved out of the OECD to elsewhere in the world, GHG output has increased in emerging markets. The European Commission reports that, between 2000 and 2015, emissions grew by 45 percent in Brazil and 130 percent in India.

In those countries, changes in land use to promote agriculture exports and industrialization are major contributors to climbing emissions.

The spread of production around the world also increases emissions from transportation. Parts and components cross borders multiple times before a finished product appears on our shelves. Each step in that process contributes a little more to overall emissions.

What are recent trade agreements doing to confront these trends? The answer appears to be: not enough.

Trade deals suffer from two main shortcomings. First, they fail to recognize that climate change is a problem. The Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU probably scores best on this front.

It acknowledges 1972's Stockholm Declaration and "Agenda 21" — a broad commitment to sustainable development that came out of the Earth Summit.

But CETA shares a trait with other recent deals, including the revised Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and the U.S.-Mexico-Canada Agreement (USMCA). Despite lengthy passages about the environment, these deals never say the words “climate change,” and they are largely silent on the issue of GHG emissions.

Silence on this issue isn’t just a point of principle. Failing to recognize climate change has a policy implication, namely, the world’s trade deals do not lock members into more responsible practices.

Rather than binding commitments, there are only general aspirations, such as CPTPP’s call for “low emissions technologies.” That’s not a very significant step beyond the promises made decades ago in Rio.

#### Every benefit of trade is empirically denied — don’t equate theory with practice.

EIU 19 — The Economist Intelligence Unit (EIU) is the research arm of The Economist Group, publisher of The Economist. Contributors include: Conor Griffin – Project director; Diana Hindle Fisher – Project manager; Ailia Haider – Researcher; Kamala Dawar – Contributing researcher; Adam Green – Contributing author; Gareth Owen – Graphic designer; Professor Petros Mavroidis, Columbia University Assistant Professor; Antonia Eliason, University of Mississippi; André Sapir, Bruegel and Université libre de Bruxelles; Professor Robert Howse, New York University; Mark Sanctuary, IVL Swedish Environmental Research Institute; Professor James Bacchus, University of Central Florida. (Climate change and trade agreements Friends or foes? *The Economist*; <https://iccwbo.org/content/uploads/sites/3/2019/03/icc-report-trade-and-climate-change.pdf>; Accessed 03-04-2021)

\*NDCs = Nationally Determined Contributions

1. TRADE AGREEMENTS AND CLIMATE CHANGE: FROM NAFTA TO KAFTA

Analysis of the impact of trade agreements on environmental goals dates back to the early 1990s. At the time, trade liberalisation was surging alongside a broad uptick in globalisation, as the Soviet Union disintegrated and a technological revolution cut the cost of transport and communication across borders. After the US, Canada and Mexico signed the North American Free Trade Agreement (NAFTA) in 1992, Grossman and Krueger identified three “mechanisms of action” through which trade agreements could indirectly affect environmental outcomes:21

l Scale effects: Liberalisation typically increases trade flows by sea, air and land, as well as boosting broader economic activity. In a business-as-usual scenario, this will increase resource depletion, pollution and emissions (shipping alone accounts for 2–3% of global GHGs).22 Most evaluations of trade agreements support the Grossman–Krueger hypothesis.23

l Composition effects: Trade agreements encourage nations to specialise according to their comparative advantage, which may be more or less emission-intensive. For instance, manufacturing in Malaysia is twice as carbon-intensive, and in Vietnam six times as carbon-intensive, as in the US.24 If trade agreements shift production to more polluting geographies, global emissions will increase.25

l Technique effects: Emissions and pollution may fall if trade liberalisation encourages multinational corporations to transfer cleaner technologies to developing countries. But technique effects can also be climate-negative—for example, if natural gas exports or fossil fuel extraction increase owing to the diffusion of hydraulic fracturing technology or innovative oil exploration machinery.26

Searching for synergies …

The Grossman–Krueger model was concerned with the indirect effects of trade agreements on environmental outcomes. However, trade provisions can also directly help or hinder environment and climate goals. Photovoltaic (PV) cells “made in China” are produced with equipment and component parts from Germany, Switzerland and the US, among other countries.27 By removing tariffs and harmonising standards, trade agreements can help renewables companies access more competitive suppliers and tap the skills, capital and finance they need to expand. For consumers, trade agreements can lower the costs of green products, from solar panels to electric vehicles, thereby boosting demand.

Trade agreements may also eliminate distortionary subsidies on fossil fuels or, where poorly designed, agriculture, both of which could encourage greener economic growth models. Open borders can also help the type of regional integration—such as the pooling of electricity markets in parts of Sub-Saharan Africa—that can result in more efficient use of resources. Trade deals also provide a platform to formalise efforts to eliminate destructive trade-related malpractices, such as illegal logging and fishing.

… but finding conflicts

Notwithstanding the potential for trade–climate synergies, the weight of evidence is heavy in the other direction. Universal tariff reduction increases trade in carbon-intensive and environmentally destructive products, such as fossil fuels, as easily as it does in solar panels and electric vehicles. Trade agreements can also shrink the “policy space” available to countries to tackle climate change, a subject that is especially relevant in the post-Paris world. Future climate policies such as import bans on environmentally damaging products and border taxes on carbon-intensive products could be challenged if they are deemed to discriminate on unjustifiable grounds or to be a disguised restriction on international trade28. In NDCs published to date, various countries have announced policies that could lead—and in some cases have led—to trade disputes for violating principles such as nondiscrimination or open borders (see table, below).

At odds

NDC provisions that may conflict with free trade agreements

Table

Description automatically generated

Trade–climate policy conflicts are not hypothetical. Canadian trade officials opposed an EU effort to label tar sands as a “highly polluting” energy source in its Fuel Quality Directive rules (the classification was eventually dropped). The US lambasted an EU definition of renewables that restricted US exports of soybeans as a biofuel feedstock as a “barrier to trade”.29 Governments have invoked the WTO settlement mechanism to challenge renewable energy policies in China, India, Canada, EU member states and the US, on the grounds that subsidies and domestic prioritisation violate free trade principles.

Investment liberalisation agreements, which can be incorporated into trade deals or signed as standalone agreements, have also been invoked to contest climate and environment policies. For example, the governments of Germany, Canada and the US have faced legal action from companies for environment-related regulatory changes and decisions on water pollution, hydraulic fracturing, and an oil pipeline, respectively.

Taken together, these conflicts raise fundamental questions about whether the liberalisation norms in trade agreements will be compatible with the NDCs and the climate policies that NDCs necessitate. At face value, many of the fundamental building blocks of free trade and environmental policy appear to run contrary to each other. For instance, the free trade principle of non-discrimination requires imported products to be treated in the same way as “like” domestic products.30 This creates challenges for climate policies that distinguish between products according to factors like embodied emissions.31 A further conflict relates to intellectual property. Developing economies need access to climate innovations, from renewable energy technology to drought-resistant crops, but measures such as compulsory licensing and facilitated access could fall foul of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

A further challenge for those who support free trade and robust action to tackle climate change is detecting whether the conflicting measures are legitimate climate-conserving interventions or protectionist measures under the pretence of environment policy. Generous subsidies to an unproductive national renewables company could be a genuine attempt to boost renewable energy consumption, or a greener form of the command-and-control industrial policy misadventures adopted in times past, or both.

Are climate-friendly trade deals achievable?

To date, climate agreements have made little reference to trade. Clauses on international shipping and aviation, for instance, were removed from the draft text during the COP21 Paris negotiations. Similarly, countries’ NDCs make only limited direct reference to their trade policy. One study found that only 6% of NDCs mention reductions in trade barriers, while just 11% refer to the regulation of trade on climate grounds.32

Major trade deals also make limited reference to climate change. Since the scientific processes of climate change cannot be modified, some observers argue that trade agreements must be made more compatible with climate policies rather than vice versa. A Boston University-based group claims the prevailing model of trade and investment treaties “is largely incompatible with the world’s broader climate goals”, and calls for a redesign to “reward climate-friendly modes of economic activity, curb activity that worsens climate change, and provide the proper policy space so that nation-states can adequately address the climate challenge.”33

Much of global trade is locked into trade agreements that have already been negotiated or are currently being negotiated—either at the WTO level or on a bilateral or regional basis. As such, it is imperative to understand the degree to which these trade agreements support the kinds of climate friendly policies that are implicitly or explicitly required by the NDCs. In the next chapter, we examine whether the WTO supports or hurts climate goals. In chapter 3, we examine the degree to which four contemporary FTAs support climate goals.

### War — 2NC/1NR

#### Increased screening incentives outweigh opportunity costs.

Spaniel & Malone 19 — William Spaniel: Department of Political Science, University of Pittsburgh. Iris Malone: Department of Political Science, Stanford University (March 5th; *The Uncertainty Tradeoff: Re-Examining Opportunity Costs and War*; <https://wjspaniel.files.wordpress.com/2019/03/uncertainty-tradeoff-final.pdf>; Date Accessed 03-04-2021)

Conventional wisdom about economic interdependence and international conflict predicts increasing opportunity costs make war less likely, but some wars occur after costs grow. Why? We develop a model that shows a nonmonotonic relationship exists between the costs and probability of war when there is uncertainty over resolve. Under these conditions, increasing the costs of an uninformed party’s opponent has a second-order effect of exacerbating informational asymmetries about that opponent’s willingness to maintain peace. We derive conditions under which war can occur more frequently and empirically showcase the model’s implications through a case study of Sino-Indian relations from 1949 to 2007.This finding challenges how scholars traditionally believe economic interdependence mediate incentives to fight: instruments like trade have competing effects on the probability of war.

Introduction

What is the relationship between opportunity costs and war? Most political scientists invoke the “opportunity cost mechanism” to explain why commerce, trade ties, and other economic transactions decrease the probability of conflict.1As potential gains from interdependence increase, opportunity costs also rise. The range of mutually preferable settlements expands and the probability of war correspondingly drops (Fearon 1995; Oneal and Russett 2001; Polachek and Xiang 2010). In sum, changing opportunity costs underscore one of the most popular theories of war.

However, not all scholars believe opportunity costs are a panacea for war.2 The historical record contains empirical inconsistencies in this relationship. At times, conflicts have arisen despite increased economic interdependence between parties, fueling concerns over when and whether opportunity costs reduce conflict. We therefore ask a simple question: holding all else equal, does increasing opportunity costs for war decrease the probability of conflict?3

In this paper, we develop a model that reconciles this puzzle by showing both proponents and skeptics of the opportunity cost mechanism are right. Instruments like trade have competing effects on the probability of war. How is this true? Despite raising the price of war, opportunity costs also have an indirect, second order effect of exacerbating uncertainty about a state’s resolve, which is among the most popular mechanisms that explain war.4Which effect is stronger? We show that the latter effect can dominate in equilibrium—that is, the probability of war increases despite raising opportunity costs.

The intuition falls back on screening models where a proposer is uncertain about its opponent’s willingness to fight. Broadly, the uninformed state can pursue two strategies under these conditions. First, it can offer a generous amount that resolved types would accept. This has the benefit of avoiding the costs of war. Alternatively, it can propose a stingy settlement and screen the opponent’s willingness to fight, causing unresolved types to accept while inducing resolved types to reject. The latter benefits the proposer by giving it a large share of the settlement when the opponent accepts, but also forces it to pay the costs of war if its screening offer backfires.

When the difference between the costs of war for types is small, the proposing state has less incentive to screen. Why? Screening still forces the proposer to risk war, but the prospective gains from such a settlement are minimal. However, as the costs of conflict grow, a state is more likely to issue more aggressive demands because of a divergence in relative valuations among types. As the difference in relative costs between types increases, stingy offer strategies become more attractive. For the proposer, the increased screening incentives can outweigh the increased opportunity cost of conflict. This causes the proposer to risk war and trade breakdown by making more aggressive demands. Thus, increasing opportunity costs can have a countervailing effect of raising the risk of war even though these costs are common knowledge.

Our model verifies this counterintuitive relationship. It also generates comparative statics on when the uncertainty effect dominates over the opportunity cost effect. We focus on the role of opportunity costs in economic interdependence theory given its popularity. To preview, the effect arises as trade flows increase because a state cannot observe how its opponent weighs the benefits of trade relative to the costs of fighting. The probability of war increases when the state facing this uncertainty internalizes a larger portion of the military costs than the benefits of trade relative to their opponent’s internalization. The conditional effect introduced here suggests caution in making broad claims about the relationship between trade and war, though the scope conditions the model generates provide a straightforward substantive interpretation that scholars can exploit.

#### Vulnerability causes uncertainty and aggression.

Bonfatti and O’Rourke 14 (Roberto, School of Economics University of Nottingham, and Kevin, All Souls College University of Oxford, “GROWTH, IMPORT DEPENDENCE AND WAR,” July 2014, NATIONAL BUREAU OF ECONOMIC RESEARCH, <https://www.nber.org/system/files/working_papers/w20326/revisions/w20326.rev0.pdf>. DOA: 1-5-2020) //Snowball

The argument is a controversial one, however (for a brief survey, see Barbieri 1996, pp. 30-34). While some realist scholars deny the relevance of trade to the issue of international conflict, on the grounds that war and peace are solely determined by security concerns, relative power, and so forth, others have argued that trade makes war more likely. A frequent theme is that trade can make countries dependent on others, and therefore vulnerable, in the context of an anarchic world in which countries have fundamentally different interests. In the words of John Mearsheimer, “states will struggle to escape the vulnerability that interdependence creates, in order to bolster their national security. States that depend on others for critical economic supplies will fear cutoff or blackmail in time of crisis or war; they may try to extend political control to the source of supply, giving rise to conflict with the source or with its other customers” (Mearsheimer 1990, p. 45). There is a critical difference between international and domestic trade, argues Kenneth Waltz: regions within a country “are free to specialize because they have no reason to fear the increased interdependence that goes with specialization”, whereas in an anarchic world, states may fear specialization on the grounds that their potential competitors may gain more than they do, or because trade makes them “dependent on others through cooperative endeavors and exchanges of goods and services” (Waltz 1979, pp. 104, 106; see also Gilpin 1981, p. 220).

#### It makes wars likelier and longer.

Paganelli and Schumacher 19 (Maria Pia, Professor of Economics at Trinity University, and Reinhard, Professor of Physics at Carnegie Mellon University, “Do not take peace for granted: Adam Smith’s warning on the relation between commerce and war,” Cambridge Journal of Economics 2019, <https://academic.oup.com/cje/article-abstract/43/3/785/5127359>, DOA: 1-5-2020) //Snowball

Does commerce bring about peace? Contrary to what is commonly believed, one of the most famous promoters of the civilising role of commerce seems to answer the question with a negative warning. Commerce, and the wealth commerce creates, may not decrease international conflicts; they may actually increase them. This is not because commerce is an extension of war or because commerce does not offer a ‘bond of friendship’. It is rather because of a set of perverse incentives: commerce and the wealth it brings about increase the power of commercial interest groups and decrease the relative and the perceived costs of wars.

Analysing the positions of Smith introduces an economic analysis and offers a fresh contribution to open a debate on the effects of commerce on warfare and the probability of current wars. For Smith, the development of commercial societies brings about justice and order at home, and more humanity both in peace and in war, but it also increases the likelihood and the likely duration of wars. Economic development, which varies from country to country, increases the inequality in international wealth— a possible motive for increasing the frequency of international wars, as richer countries become enticing targets of poorer countries.25 In addition, for Smith, the likelihood of wars increases with the increase in commerce because the ‘mean rapacity’ of merchants and manufacturers ‘intimidates’ the legislature and wrongly convinces the population that establishing monopolies and higher profits for themselves is actually good for the country. The majority of the population supports more wars because it can ‘dream of empire’ at a relatively low price. Soldiers can be taken out of productive work without affecting the subsistence of the rest of the population, differently from non-commercial societies, in which wars cannot last long because the country is too poor to support troops for long periods of time without starvation. For Smith, the relative price of war decreases with the increase in commerce, and as with all price decreases, the decrease in the price of war increases the quantity demanded of wars. In addition, for Smith, even if the absolute cost of war increases, the ability to pay increases too, thanks to the availability of debt financing of commercial societies. Debt financing decreases the perceived cost of war, generating increasing support for more frequent and longer wars.

#### Asymmetry and economic volatility stemming from trade cause war — empirics.

Kat, IR PhD, 15 — Mazhid Kat, PhD in International Relations at King's College London, (“A Conceptual Analysis of Realism in International Political Economy,” *E-IR*, April 16th, Accessible Online at http://www.e-ir.info/2015/04/16/a-conceptual-analysis-of-realism-in-international-political-economy, Accessed On 02-08-2016)

The main critics of realism are liberals. They argue that growing integration of the world economy and interdependence among states will create a more peaceful and stable global order because aggressive actions will lead to huge economic losses. However, this concept misses several points. Firstly, even greatly economically interdependent states may start wars with one another, as was seen with the British Empire and Germany in the beginning of the 20th century.[xxix] Moreover, interdependence is usually not perfectly symmetrical. In many cases, weak states become more dependent on major powers.[xxx] Leading powers, in turn, use their economic power to promote global regimes more favourable to themselves. Also, interdependence can le[a]d to economic crises becoming more wide spread, which in turn leads to negative consequences in different parts of the world.[xxxi] For instance, the Great Depression in the United States during the 1930s was one of the reasons for huge economic problems in Germany, which were used by Hitler in his rise to power. Finally, some states have ideologies which prevail over economic interests. For example, North Korea conducts a Juche policy of self-sufficiency and Russia continues to experience significant economic losses because of its imperialistic turn.

#### Third parties take out their offense but magnify ours.

Bonfatti and O’Rourke 14 (Roberto, School of Economics University of Nottingham, and Kevin, All Souls College University of Oxford, “GROWTH, IMPORT DEPENDENCE AND WAR,” July 2014, NATIONAL BUREAU OF ECONOMIC RESEARCH, <https://www.nber.org/system/files/working_papers/w20326/revisions/w20326.rev0.pdf>. DOA: 1-5-2020) //Snowball

The relationship between trade and war has been subject to extensive statistical testing in recent decades (for recent contributions, see Martin, Mayer and Thoenig 2008, and Harrison and Wolf 2012). Using dyadic trade data for the period 1950-2000, Martin et al. find that higher bilateral trade between two countries lowers the probability that they will go to war; but that the more either of these countries trades with third parties, the greater is the probability that they will go to war (since their trade will be less disrupted overall in the event of a bilateral war).

Statistical analyses such as these are extremely informative. However, by definition they tell us something about average correlations. Individual deviations from average experience are particularly important when what we are talking about is warfare - especially if the war in question is a world war. World War I, for example, erupted at a time when the world economy was integrated to an unprecedented extent (O’Rourke and Williamson 1999, Rowe 2005, McDonald and Sweeney 2007). In this paper we develop a model which shows one way in which late 19th century globalization might have made the world a more dangerous, rather than a safer, place.

#### No cost imposition — countries can still trade during conflict by rerouting to allies and neutral states.

Joanne Gowa & Raymond Hicks 17. \*\*William P. Boswell Professor of World Politics of Peace and War, Princeton. \*\*Statistical Programmer, Niehaus Center for Globalization and Governance; PhD in political science, Emory. “Commerce and Conflict: New Data about the Great War.” *British Journal of Political Science* 47(3): 653-74. Emory Libraries.

The findings we report show that the Great War led to a rerouting, rather than a wholesale breakdown, of trade. This did not come as a surprise to states: the historical record shows that states anticipated wartime shifts in their trade channels. Most belligerents nonetheless incurred efficiency losses as a consequence of the shifts, but the losses pale in light of the aggregate costs the war imposed on them. These findings suggest that neglecting wartime trade channels can overstate the deterrent power of ex ante trade. It is reasonable to question the extent to which wartime trade can, in general, substitute for its ex ante counterpart. This depends, as we noted above, on the composition of trade. The dominance of homogenous products in trade at the time of World War I made substitution a feasible option. For the same reason, other wars that occurred during the first half of the twentieth century seem likely to have precipitated the same trade dynamics as did the Great War. Preliminary empirical analyses are consistent with this argument. 95 After World War II, however, intra-industry trade – that is, trade in differentiated products between countries with similar factor endowments – came to account for a much larger share of commerce. Krugman notes, for example, that intra-industry rose from about 22 per cent of trade between the industrialized countries in 1962 to about 50 per cent in 2006. 96 This trade tends to involve ‘highly specialized imported varieties for which domestic imports are hard to find’, 97 raising the estimated gains from trade that accrue to countries shifting from autarky to free trade. Trade in these products can magnify wartime trade costs to the extent that trade across enemy lines engages imports that cannot easily be obtained from other trading partners. Production networks also spread more widely across countries over time. This implies that conflicts in the more recent past might indeed have wreaked havoc on trade, raising the deterrent power of ex ante trade. But the composition of conflicts also shifted over time. After 1945, no war would ever again split the major trading states. As we noted above, the advent of the Cold War transformed them into each other’s sturdiest allies. Because the advanced industrialized countries account for a large share of **intra-industry trade**, post-World War II conflicts did not endanger the exchange of differentiated products. The same is true of foreign direct investment: for most of the twentieth century, it was largely the major developed country trading partners that were both its home and host countries. 98 The changing composition of warring dyads after World War II may help explain the findings in the empirical literature on this period that conflict and ex ante trade are inversely related. The effects of conflicts on wartime commerce in this period have yet to be examined, however. Conclusion That the First World War unleashed tremendous destruction is indisputable. It marked the inception of what has been described as the long European civil war. It resulted in sixteen million deaths and twenty million wounded and destroyed large amounts of physical capital. 99 In its wake, the great powers never established anything remotely similar to the Concert of Europe that succeeded the Napoleonic Wars. Their best efforts produced a League of Nations that was unable to resolve the conflicts of interest that stymied co-operation among them. They could agree neither on the enforcement of the Versailles Treaty nor on a collective response to the Great Depression, which set the stage for the outbreak of the Second World War. The Great War also reputedly destroyed the large trade flows that existed during the first golden age of globalization. For this reason, it has become central to debates about the liberal peace. Its outbreak seemed to destroy any hope that leaders had internalized the idea that war had become a ‘great illusion’, more likely to impose costs than benefits because of the concomitant destruction of the trade that had become integral to the growth of national power. 100 Because its belligerents had been each other’s major trading partners ex ante, the Great War seemed to destroy hopes that economic linkages would secure peace. Yet, the evidence we present here suggests that one of the largest wars in history did not induce a breakdown of trade. Instead, large shifts occurred in interstate commerce, privileging trade between allies, penalizing commerce between adversaries and increasing trade with neutrals. The composition of early twentieth-century trade helped to mitigate the welfare losses these shifts imposed, as it enabled states to switch trading partners and transit routes more easily than might seem possible later in the twentieth century. Because ex ante commerce between belligerents is not necessarily a good indicator of their ex post trade, estimates of the deterrent power of trade need to take both into account.

#### Economic interdependence as a theory oversimplifies why states go to war and ignores counter-examples

Joel Einstein 17, Masters of Strategic Studies at the Strategic & Defence Studies Centre (SDSC) at Australian National University, reviewed by Charles Miller, Ph.D. in Political Science from Duke University, Professor at Australian National University, 1/17/17, “Economic Interdependence and Conflict – The Case of the US and China,” https://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/

Economic Interdependence and Conflict¶ The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4]¶ As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect?¶ Does Conflict Cut off Trade?¶ Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11]¶ In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations.¶ Variables that Impact the Pacifying Effect of Economic Interdependence¶ The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification.

### 1NC---!D---Prolif

#### No prolif---EVEN IF, no impact.

Mueller 20, senior fellow at the Cato Institute, member of the political science department and senior research scientist with the Mershon Center for International Security Studies at Ohio State University. (John, 06/24/20, “Nuclear Alarmism: Proliferation and Terrorism”, *Cato Institute*, <https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism>)

Nuclear Proliferation

In an influential book, Graham Allison argues that “no new nuclear weapons states” should be a prime foreign policy principle, and analyst Joseph Cirincione very much agrees, insisting that nonproliferation should be “our number one national‐​security priority.”5

There are good reasons to avoid alarmism in this area, however. First, the pace of nuclear proliferation has been far slower than has been commonly predicted primarily because the weapons convey little advantage to their possessor. Second, the consequences of such proliferation that has taken place have been substantially benign: those who have acquired the weapons have “used” them simply to stoke their egos or to deter real or imagined threats.6

And thirdly, the costs of anti‐​proliferation policy have been very substantial: the number of people who have died as a consequence of dedicated efforts to contain nuclear proliferation runs well into six figures.

Pace

Alarmists have been wrong for decades about the pace of nuclear proliferation. Dozens of technologically capable countries have considered obtaining nuclear arsenals, but very few have done so. Indeed, as Jacques Hymans has pointed out, even supposedly optimistic forecasts about nuclear dispersion have proved to be too pessimistic.7 Thus, in 1958, the National Planning Association predicted “a rapid rise in the number of atomic powers … by the mid‐​1960s.”8 A few years later, C. P. Snow sagely predicted, “Within, at the most, six years, China and several other states [will] have a stock of nuclear bombs,” and John Kennedy observed that there might be “ten, fifteen, twenty” countries with a nuclear capacity by 1964.9

As part of that forecasting, it has generally been assumed that nuclear weapons would be important status — or virility — symbols; therefore, all advanced countries would want to have them in order to show how “powerful” they were. Thus, France’s de Gaulle opined in the 1960s, “No country without an atom bomb could properly consider itself independent,” and Robert Gilpin concluded that “the possession of nuclear weapons largely determines a nation’s rank in the hierarchy of international prestige.”10 In Gilpinian tradition, some analysts who describe themselves as “realists” have insisted for years that Germany and Japan must soon come to their senses and quest after nuclear weapons.11 Such punditry has gone astray in part because the pundits insist on extrapolating from the wrong cases. A more pertinent prototype would have been Canada, a country that could easily have had nuclear weapons by the 1960s but declined to make the effort.12 In fact, over the decades, a huge number of countries capable of developing nuclear weapons have neglected even to consider the opportunity — for example, Canada, Italy, and Norway — even as Argentina, Brazil, Libya, South Korea, and Taiwan have backed away from or reversed nuclear weapons programs, and Belarus, Kazakhstan, South Africa, and Ukraine have actually surrendered or dismantled an existing nuclear arsenal.13 Some of that reduction is no doubt due to the hostility of the nuclear nations, but even without that, the Canadian case seems to have proved to have rather general relevance.

To begin with, as Stephen Meyer has shown, there is no “technological imperative” for countries to obtain nuclear weapons once they have achieved the technical capacity to do so.14 Moreover, like military prowess in general, the weapons have not proved to be crucial status symbols. As Robert Jervis has observed, “India, China, and Israel may have decreased the chance of direct attack by developing nuclear weapons, but it is hard to argue that they have increased their general prestige or influence.”15 How much more status would Japan have if it possessed nuclear weapons? Would anybody pay a great deal more attention to Britain or France if their arsenals held 5,000 nuclear weapons, or would anybody pay much less if they had none? Did China need nuclear weapons to impress the world with its economic growth? Or with its Olympics? As Jennifer Mackby and Walter Slocombe observe, “Germany, like its erstwhile Axis ally, Japan, has become powerful because of its economic might rather than its military might, and its renunciation of nuclear weapons may even have reinforced its prestige.”16

Decades of alarmist predictions about proliferation chains, cascades, dominoes, waves, avalanches, epidemics, and points of no return have proved to be faulty. The proliferation of nuclear weapons has been far slower than routinely expected because, insofar as most leaders of most countries (even rogue ones) have considered acquiring the weapons, they have come to appreciate several defects: the weapons are dangerous, distasteful, costly, and likely to rile the neighbors. Moreover, as Jacques Hymans has demonstrated, the weapons have also been exceedingly difficult to obtain for administratively dysfunctional countries like Iran.17

Consequences

Although we have now suffered through two‐​thirds of a century during which there has been great hysteria about the disasters inherent in nuclear proliferation, the consequences of the proliferation that has occurred have been substantially benign. The few countries to which the weapons have proliferated have quietly kept them in storage and haven’t even found much benefit in rattling them from time to time. And even the deterrence value of the weapons has been questionable — the major Cold War participants, for example, scarcely needed visions of mushroom clouds to conclude that any replication of World War II, with or without nuclear weapons, was a decidedly bad idea.18

Moreover, there has never been a militarily compelling — or even minimally sensible — reason to use the weapons, particularly because of an inability to identify suitable targets or ones that could not be attacked about as effectively by conventional munitions. And it is difficult to see how nuclear weapons benefited their possessors in specific military ventures. Israel’s presumed nuclear weapons did not restrain the Arabs from attacking in 1973, nor did Britain’s prevent Argentina’s seizure of the Falklands in 1982. Similarly, the tens of thousands of nuclear weapons in the arsenals of the enveloping allied forces did not cause Saddam Hussein to order his occupying forces out of Kuwait in 1990. Nor did possession of the bomb benefit America in Korea, Vietnam, Iraq, or Afghanistan; France in Algeria; or the Soviet Union in Afghanistan.

## Advantage 1

### 2NC---!D---Disease

#### Resiliency, intervening actors, burnout

Adalja 16, infectious-disease physician at the University of Pittsburgh (Amesh, 6-17-2016, "Why Hasn't Disease Wiped out the Human Race?," *The Atlantic*, https://www.theatlantic.com/health/archive/2016/06/infectious-diseases-extinction/487514/)

In Michael Crichton’s The Andromeda Strain, the canonical book in the disease-outbreak genre, an alien microbe threatens the human race with extinction, and humanity’s best minds are marshaled to combat the enemy organism. Fortunately, outside of fiction, there’s no reason to expect alien pathogens to wage war on the human race any time soon, and my analysis suggests that any real-life domestic microbe reaching an extinction level of threat probably is just as unlikely.

When humans began to focus their minds on the problems posed by infectious disease, human life ceased being nasty, brutish, and short.

Any apocalyptic pathogen would need to possess a very special combination of two attributes. First, it would have to be so unfamiliar that no existing therapy or vaccine could be applied to it. Second, it would need to have a high and surreptitious transmissibility before symptoms occur. The first is essential because any microbe from a known class of pathogens would, by definition, have family members that could serve as models for containment and countermeasures. The second would allow the hypothetical disease to spread without being detected by even the most astute clinicians.

The three infectious diseases most likely to be considered extinction-level threats in the world today—influenza, HIV, and Ebola—don’t meet these two requirements. Influenza, for instance, despite its well-established ability to kill on a large scale, its contagiousness, and its unrivaled ability to shift and drift away from our vaccines, is still what I would call a “known unknown.” While there are many mysteries about how new flu strains emerge, from at least the time of Hippocrates, humans have been attuned to its risk. And in the modern era, a full-fledged industry of influenza preparedness exists, with effective vaccine strategies and antiviral therapies.

HIV, which has killed 39 million people over several decades, is similarly limited due to several factors. Most importantly, HIV’s dependency on blood and body fluid for transmission (similar to Ebola) requires intimate human-to-human contact, which limits contagion. Highly potent antiviral therapy allows most people to live normally with the disease, and a substantial group of the population has genetic mutations that render them impervious to infection in the first place. Lastly, simple prevention strategies such as needle exchange for injection drug users and barrier contraceptives—when available—can curtail transmission risk.

Ebola, for many of the same reasons as HIV as well as several others, also falls short of the mark. This is especially due to the fact that it spreads almost exclusively through people with easily recognizable symptoms, plus the taming of its once unfathomable 90 percent mortality rate

by simple supportive care.

Beyond those three, every other known disease falls short of what seems required to wipe out humans—which is, of course, why we’re still here. And it’s not that diseases are ineffective. On the contrary, diseases’ failure to knock us out is a testament to just how resilient humans are. Part of our evolutionary heritage is our immune system, one of the most complex on the planet, even without the benefit of vaccines or the helping hand of antimicrobial drugs. This system, when viewed at a species level, can adapt to almost any enemy imaginable. Coupled to genetic variations amongst humans—which open up the possibility for a range of advantages, from imperviousness to infection to a tendency for mild symptoms—this adaptability ensures that almost any infectious disease onslaught will leave a large proportion of the population alive to rebuild, in contrast to the fictional Hollywood versions.

While the immune system’s role can never be understated, an even more powerful protector is the faculty of consciousness. Humans are not the most prolific, quickly evolving, or strongest organisms on the planet, but as Aristotle identified, humans are the rational animals—and it is this fundamental distinguishing characteristic that allows humans to form abstractions, think in principles, and plan long-range. These capacities, in turn, allow humans to modify, alter, and improve themselves and their environments. Consciousness equips us, at an individual and a species level, to make nature safe for the species through such technological marvels as antibiotics, antivirals, vaccines, and sanitation. When humans began to focus their minds on the problems posed by infectious disease, human life ceased being nasty, brutish, and short. In many ways, human consciousness became infectious diseases’ worthiest adversary.

#### Burnout and variation check

York 14 (Ian, head of the Influenza Molecular Virology and Vaccines team in the Immunology and Pathogenesis Branch of the Influenza Division at the CDC, PhD in Molecular Virology and Immunology from McMaster University, M.Sc. in Veterinary Microbiology and Immunology from the University of Guelph, former Assistant Prof of Microbiology & Molecular Genetics at Michigan State, “Why Don't Diseases Completely Wipe Out Species?” 6/4/2014, http://www.quora.com/Why-dont-diseases-completely-wipe-out-species)

But mostly diseases don't drive species extinct. There are several reasons for that. For one, the most dangerous diseases are those that spread from one individual to another. If the disease is highly lethal, then the population drops, and it becomes less likely that individuals will contact each other during the infectious phase. Highly contagious diseases tend to burn themselves out that way.¶ Probably the main reason is variation. Within the host and the pathogen population there will be a wide range of variants. Some hosts may be naturally resistant. Some pathogens will be less virulent. And either alone or in combination, you end up with infected individuals who survive.¶ We see this in HIV, for example. There is a small fraction of humans who are naturally resistant or altogether immune to HIV, either because of their CCR5 allele or their MHC Class I type. And there are a handful of people who were infected with defective versions of HIV that didn't progress to disease. ¶ We can see indications of this sort of thing happening in the past, because our genomes contain many instances of pathogen resistance genes that have spread through the whole population. Those all started off as rare mutations that conferred a strong selection advantage to the carriers, meaning that the specific infectious diseases were serious threats to the species.

### 2NC---!D---Bioterrorism

#### Terrorists are conservative, and technical complexities overwhelm.

Lentzos 17, Senior research fellow jointly appointed in the Departments of War Studies and of Global Health and Social Medicine at King’s College London. (Filippa, 07/3/17, "Ignore Bill Gates: Where bioweapons focus really belongs", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2017/07/ignore-bill-gates-where-bioweapons-focus-really-belongs/)

I disagree. At a stretch, terrorists taking advantage of advances in biology might be able to create a viable pathogen. That does not mean they could create a sophisticated biological weapon, and certainly not a weapon that could kill 30 million people. Terrorists in any event tend to be conservative. They use readily available weapons that have a proven track record—not unconventional weapons that are more difficult to develop and deploy. Available evidence shows that few terrorists have ever even contemplated using biological agents, and the extremely small number of bioterrorism incidents in the historical record shows that biological agents are difficult to use as weapons. The skills required to undertake even the most basic of bioterrorism attacks are more demanding than often assumed. These technical barriers are likely to persist in the near- and medium-term future.

# 1NR

## Horsetrading DA

### L---AT Plan Isn’t Congress

#### USFG is all three branches

USA.gov 13 "USA.gov is the U.S. government's official web portal" http://www.usa.gov/Agencies/federal.shtml

U.S. Federal Government - The three branches of U.S. government—legislative, judicial, and executive—carry out governmental power and functions.

#### Congress HAS to be involved---funding, enforcement and empirics

Rivero 3-11-2021, tech reporter @ Quartz (Nicolas, “Biden’s antitrust crusaders can’t crusade without Congress,” *QZ*, <https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/>)

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress. Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.) Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy. Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image. How the FTC can tackle antitrust To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices. But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years. A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.” The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down. How Congress can tackle antitrust The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google. Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage. Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### The most likely interpretation is Congress rewriting bad statutory interpretations

Teachout 12-18-2020, professor at Fordham University School of Law and the author of Corruption in America (2014), and Break ‘Em Up: Recovering Our Freedom From Big Ag, Big Tech, and Big Money (Zephyr, “A Blueprint for a Trust-Busting Biden Presidency,” *The New Republic*, https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting)

For all the promise of reinvigorated antitrust actions, the challenges are enormous. The consumer welfare model of merger promotion pioneered in the Reagan years has taken over the courts. In a critical series of rulings, the Supreme Court has made it much harder to bring cases, changing the standards of proof, distorting the meaning of monopoly, and relying on economic theories with no grounding in statutory history. Documenting the baleful impact of this misguided legal reasoning was a key aim of the Cicilline report, and Biden has to use the bully pulpit of his presidency to enact a major raft of legislation to overturn this body of bad statutory interpretations. In the meantime, Biden cannot shrink from bringing cases. There’s no legal or economic rationale for another unilateral government retreat in the face of growing monopoly power. Even less is there any cause to follow the dismal precedent set under Biden’s former boss, Barack Obama, and suspend continued and vigorous antitrust prosecutions out of fear of industry backlash.

#### Definitional support:

#### “Resolved” is legislative

Louisiana House of Representatives No Date (“Legislative Glossary” , <https://www.legis.la.gov/legis/Glossary.aspx#Reading%20of%20a%20bill> , date accessed 9/12/21)

Resolution

A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. (Const. Art. III, §17(B) and House Rules 8.11, 13.1, 6.8, and 7.4 and Senate Rules 10.9, 13.5 and 15.1)

#### Expand requires changing the law

Hatter 90 (HATTER, District Judge. Opinion in In re Eastport Associates, 114 BR 686 - Dist. Court, CD California 1990. Google scholar caselaw. Date accessed 7/12/21)

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

#### That is exclusively statutory modifications

Connecticut Supreme Court 91 (SHEA-judge. Opinion in Sanzone v. Board of Police Commissioners, 219 Conn. 179 - Conn: Supreme Court 1991. Google scholar caselaw, date accessed 9/2/21).

We decline to read the savings clause as broadly as the plaintiffs request; to do so would render the statute a nullity. The legislature could not have intended the general language of the introductory clause to swallow up and nullify the section's other provisions. See Board of Education v. State Board of Labor Relations, supra, 127; see also Board of Education v. Freedom of Information Commission, 217 Conn. 153, 160, 585 A.2d 82 (1991); DeFonce Construction Co. v. State, 198 Conn. 185, 187, 501 A.2d 745 (1985); cf. 2A J. Sutherland, supra, § 47.12. Despite remarks by some legislators to 192\*192 the effect that the word "law" would include the common law, we must limit the word's meaning, within § 52-557n (a), to state and federal statutes. While we strictly construe statutes purporting to limit the common law; State v. Ellis, supra, 444; Ahern v. New Haven, 190 Conn. 77, 82, 459 A.2d 118 (1983); see 3 J. Sutherland, supra, § 61.01; the principle that the legislature does not enact a meaningless statute must be controlling.

### Link

#### Republicans will require censorship prohibitions as a pre-requisite for antitrust reform

Newton 6-24-2021, Verge contributing editor. He is the founder and editor of Platformer, a daily newsletter about Big Tech and democracy (Casey, “WHY THE TECH ANTITRUST REFORM BILLS ARE STRUGGLING TO MOVE FORWARD,” *The Verge*, <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial>)

Watching Congress debate a package of tech reform bills this week has been sort of like watching a group of people ordered to eat a giant submarine sandwich all at the same time. Everyone has started in a different place, no one agrees on a path forward, and people almost can’t help butting heads. This should be a moment of huge importance in the history of tech and democracy in the United States. The House Judiciary Committee investigated competition in the tech industry for a year. During that time, Congress held 10 hearings. In the end, a 449-page report on the subject was produced. And from that report came a package of bills that, if passed, would reshape the tech industry and probably some other large corporations as well. The bills are rooted in concerns that I have long shared and written about. A small number of companies now controls vast sectors of the economy with little oversight or accountability. How their platforms are used and abused is of huge consequence globally. And in many cases these companies have acted to stifle competition — lowering prices to drive their rivals under; privileging their own products over competitors; preventing competitors from using their services entirely; using near-monopoly profits to maintain their positions; and acquiring potential threats before they can disrupt the incumbent. At the same time, despite Congress taking so long to intervene, market competition has continued anyway. Google may spend billions to ensure it is the default search engine on the iPhone; but its rival DuckDuckGo just raised $100 million amid record growth, and the Brave browser just introduced a search engine of its own. Facebook had social networking mostly to itself in the mid-2010s, and is currently working to own the future of virtual reality. But TikTok and Snapchat now dominate the attention of younger users, and the company is gradually remaking all of its apps in an anxious effort to respond. Of course, the mere existence of rivals doesn’t necessarily mean that the current market is perfectly fair or functional. But it does increase the challenge for writing legislation that addresses our underlying concerns about the platforms. Members of Congress talked at great length on Wednesday about wanting to make markets more competitive, but what is really at stake is the state-like power a handful of apps have to control aspects of our daily lives. It isn’t that no one can conceivably compete with them in the future; it’s that they have too much power now. That’s why I like this bill, which would increase funding for antitrust enforcement by 30 percent. Rather than simply ban most mergers and acquisitions by default, as another bill in the package would do, this one empowers the Federal Trade Commission and the antitrust division of the Department of Justice to scrutinize M&A more carefully. The downside of such an approach is that absent other legislation, courts could strike down the agencies’ enforcement actions; the benefit is that agencies can make more informed, case-by-case decisions. I also like a bill designed to make it easier for consumers to switch between platforms, even if it raises real privacy concerns. (Are the phone numbers in my contacts app really mine to share, even if it makes consumer apps much more competitive?) I also like aspects of Rep. David Cicilline’s bill American Choice and Innovation Online Act, which would restrict platforms from indulging in some of their worst impulses: Amazon using third-party seller data to inform its own product development, for example, or Apple advertising its many subscriptions throughout the operating system. But at the risk of sounding incredibly naive about the political process, this is not really the debate we just had during a marathon bill markup session in the judiciary committee. II. The House bills all have Republican co-sponsors, and appear to enjoy some support in that delegation. But key Republicans have so far refused to engage with any of these bills on a policy level, insisting instead that tech reform begin (and possibly end?) with prohibitions on “censorship.” Galled by the removal of former President Trump from Facebook, Twitter, and other platforms, and perhaps energized by Florida’s recent passage of a (likely unconstitutional) bill that would make such content moderation illegal, some Republicans want to throw out the entire process. Members of Congress in this camp include the House minority leader, Kevin McCarthy, and Rep. Jim Jordan, the ranking Republican on the Judiciary Committee. This piece from Politico this week gives you some flavor of the discussion: Jordan has been publicly pushing against the bills, while McCarthy has said he’s planning to unveil his own tech reform agenda. “We’ve got a beef with all Big Tech in the sense of the censorship they have of conservatives now,” Jordan told Fox Business on Tuesday. Jordan added, however, that the antitrust bills coming to a vote are sponsored by “four impeachment managers” — questioning top Democrats’ ability to write legislation that conservatives can favor. Set aside for a moment the fact that Trump was removed from these platforms because he was using them in an effort to overturn the results of a fair election, the thing to highlight here is that Republican leadership’s concerns have nothing to do with “competition” per se. Instead, their outrage is rooted in the idea that anyone else might have power over their speech. We know what happens when elected officials are allowed to post whatever they want online — they attack minorities, they manufacture influence operations against their own citizens, they chip away at the foundations of democracy. (This has been the story in India for the past year, and if you assume it is a preview of the next Republican administration here in the United States, as I do, it’s quite chilling.) For these Republicans, then, the goal is not actually to make platforms like Facebook and Twitter less powerful — it’s to ensure that they can use those platforms’ power to achieve their own ends, and to make it illegal for anyone to stop them. When Trump shut down his blog 29 days after starting it, it wasn’t in protest of platforms’ power — it was out of the frustration that he no longer had access to it. The Politico story and other reporting on the subject suggests that Democrats will struggle to find 10 Republicans in the Senate to sign on to most of these bills, and perhaps to any but the one providing extra funding for antitrust enforcement. For as long as the parties have spent agreeing that somebody ought to do something about Big Tech, in important ways they are still talking past one another.

#### GOP lawmakers will go for the link of omission versus any antitrust that doesn’t counter censorship

Feiner 20 (Lauren, “Key GOP lawmaker lays out ‘non-starters’ for Big Tech antitrust reform,” *CNBC*, <https://www.cnbc.com/2020/10/06/key-gop-lawmaker-lays-out-non-starters-for-antitrust-reform.html>)

The House panel’s investigation was launched in June 2019 as a bipartisan endeavor. Buck has repeatedly said in interviews it has remained a coordinated effort. But his report shows that even a Republican who has seemed most open to reform is reticent to endorse some of the bolder proposals Democrats are considering. The divergence leaves an opening for the powerful tech companies to oppose legislation that could place greater regulatory burdens on their businesses or even force them to break up. But Buck told CNBC Tuesday that if anything, his response should concern tech companies even more because it shows there is significant agreement on many key recommendations. “I think it’s clear that there will be a bipartisan effort to make reforms in the antitrust area,” Buck said, “And if I was one of the tech companies I would see this week of Democrat and Republican responses as very concerning because there is clearly a bipartisan conclusion that these companies are acting anticompetitively and that [there’s] bipartisan consensus on many of the reforms that are necessary.” In the draft report, Buck wrote that he agrees “in principle” on the findings of the report, but “cannot endorse all of the legislative recommendations offered by the majority.” “We will work with the Chairman in a bipartisan fashion to help enact the legislative solutions where we can agree,” the draft report says. “However, we are concerned that sweeping changes could lead to overregulation and carry unintended consequences for the entire economy. We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.” In the draft report, Buck lays out the following as areas of common ground he’s found with the Democratic report: Additional resources for antitrust enforcers. Creating rules that ensure users can transfer their data between platforms. Shifting the burden of proof in merger cases to make it more possible for antitrust agencies to bring successful merger challenges. Also under the “Common Ground” section, Buck lays out areas where he’d like to see more expert feedback, according to the draft report, before installing potentially onerous regulations. These areas for further exploration include: Leveraging monopoly power from one market to threaten a separate market. Predatory pricing. Revitalizing the “Essential Facilities Doctrine,” whereby a company with monopoly power must allow competitors “reasonable use” of a facility it owns if those competitors rely on it to succeed in the marketplace. How platform monopolies should be allowed to make design changes to their services. Buck also lists several “non-starters” in the discussions: A “Glass-Steagall for the Internet,” or a type of structural separation that would force large data firms to distinguish different lines of business. Buck calls this “a thinly veiled call to break up Big Tech firms,” according to the draft report and writes, “We do not agree with the majority’s approach to pass a Big Tech Glass-Steagall Act,” referring to the 1933 law that separated commercial and investment banking. Eliminating arbitration clauses and removing limits on class action lawsuits. The draft report says the idea is “rife with unintended consequences,” saying arbitration provides important protections for small businesses, though “there is room for Congress to reevaluate some portions of arbitration clause policy.” Creating a “regulatory regime” to create rules governing “equal terms for equal service” to prevent platforms from self-preferencing. The draft report claims this would reduce innovation and harm small businesses. Removing “barriers” to private antitrust enforcement by excluding antitrust arbitration clauses from contracts. The draft report says Congress should focus on removing barriers for antitrust agencies to move forward with enforcement, rather than do so for private enforcement. In addition to the “non-starters,” Buck’s report criticizes the majority report for not tackling the issue of potential censorship and political bias online. Buck told CNBC Tuesday that alleged platform bias was a “symptom of the overall problem” with tech competition. Conservative lawmakers say tech platforms such as Facebook and Google-owned YouTube stifle conservative speech, an allegation the tech companies have repeatedly denied. Buck’s report shows that regardless of the areas of agreement, there will be a long road ahead for lawmakers to reform antitrust laws, even as the companies they have investigated face potentially imminent competition lawsuits.

### !---Disinformation---Democracy

#### Unchecked disinformation collapses democracy

Hwang 20, curator and chair for the Stanford Center on Legal Informatics FutureLaw 2014 conference. He previously organized the New and Emerging Legal Infrastructures Conference (NELIC) at Berkeley Law in 2010, and chaired FutureLaw 2013. He is also the founder of the Awesome Foundation for the Arts and Sciences, a distributed, worldwide philanthropic organization founded to provide lightweight grants to projects that forward the interest of awesomeness in the universe. Previously, he has worked at the Berkman Center for Internet and Society at Harvard University, Creative Commons, Mozilla Foundation, and the Electronic Frontier Foundation. (Tim, “11 - Dealing with Disinformation: Evaluating the Case for Amendment of Section 230 of the Communications Decency Act,” Cambridge Core, <https://www.cambridge.org/core/books/social-media-and-democracy/dealing-with-disinformation-evaluating-the-case-for-amendment-of-section-230-of-the-communications-decency-act/665B952A40A6A5F244E2141A84CA45D8/core-reader>)

“Fake news” has become a commonplace term for characterizing the prevalence of false or inaccurate stories circulating online, considered a symptom of the poor state of information quality throughout media and society generally. These stories were widely distributed during the 2016 US presidential election, with one survey suggesting that close to one in five US adults saw headlines claiming (falsely) that the Pope had endorsed then-candidate Donald Trump and that protestors had been paid #3,500 to disrupt a Trump rally (Silverman and Singer-Vine 2016). These stories were also considered credible, with 64 percent and 79 percent of respondents reporting that they believed the stories to be “very or somewhat accurate,” respectively (Silverman and Singer-Vine 2016).

Perhaps the primary trigger for calls for a regulatory response to the challenges posed by disinformation threats online has been confirmation by the intelligence community that Russian state actors engaged in an active effort to shape discourse around the 2016 US presidential election (NCCIC 2016; National Intelligence Council 2017). The 2016 Russian campaign was a multifaceted effort aimed at undermining trust in targeted political figures. This included conspiracy theories such as “Pizzagate,” which spread the notion that Democratic nominee Hillary Clinton and Clinton campaign chairman John Podesta were members of an underground sex trafficking ring (Robb 2017). Beyond efforts to spread disinformation, the effort also included attempts to exacerbate political polarization, in one case stoking racial controversy around law enforcement between activist Black Lives Matter and Blue Lives Matter groups (Alcindor 2017; Seetharaman 2017). The campaign also operated through a range of different channels. State-owned media outlets such as Sputnik and Russia Today were leveraged to create and disseminate disinformation widely. These more obvious channels operated alongside more subtle “grassroots” infiltration of online communities and the purchase of targeted advertising across various social media platforms. Beyond the spread of disinformation, the campaign also engaged in hacking targeted at compromising private information held by political parties and candidates on both sides of the electoral race. Although the 2016 Russian campaign has been a widely discussed example of state-driven online disinformation, the use of these techniques is not new. Researchers have tracked similar online disinformation campaigns launched by Russia to influence political discourse throughout Central and Eastern Europe, as well as the Middle East, in recent years (Chen 2015; Lange-Ionatamishvili, Svetoka, and Geers 2015; NPR 2017; Wintour 2017). Nor are these campaigns specific to Russia. Researchers have found that social media has been leveraged for political disinformation purposes in a range of different contexts in recent years. Incidents include efforts seen in Mexico, Brazil, Canada, and China, to name a few (Finley 2015; Robertson et al. 2016; Woolley and Howard 2017). These campaigns have been launched by state actors as in the Russian case, but have also been launched by a range of independent groups (Robertson et al. 2016). Financial Incentives for Disinformation Recognition that politically motivated actors engaged in efforts to influence the 2016 election has emerged alongside a growing number of commentators highlighting the financial incentives driving the creation and dissemination of disinformation. Online advertising, in particular, has been seen as a motivator to create false but highly sharable content that drives monetizable page views to content online. In the context of the 2016 US presidential election, businesses both within the country and abroad engaged in the creation of sites spreading disinformation through the Web. Media outlets included such sites as “The Denver Guardian,” which spread a range of conspiracy theories, such as one story connecting Clinton to the murder of an FBI agent investigating her use of a private email server, shared millions of times across Facebook (Coler 2016). While the site was designed with the appearance of a local paper in Colorado, it was in actuality operated by a Los Angeles–based entrepreneur who also ran a collection of other sites profiting from the sharing of disinformation (Coler 2016). Outside the United States, journalists have uncovered groups of entrepreneurs in Macedonia and elsewhere profiting by selling advertisements running alongside disinformation catering to right-wing readers online (Tynan 2016; Subramanian 2017). Stories included “news” of Pope Francis endorsing then-candidate Trump and fabricated reports of the candidate slapping a protestor at a campaign rally (Subramanian 2017). These sites sometimes acted as an amplifier rather than an originator of disinformation, copying content from other sites online and promoting them through swarms of fake accounts on social media platforms like Twitter and Facebook (Subramanian 2017). Discussion around financial incentives for disinformation has not been limited to discussing the outlets producing and promoting this content online. Since many of the most prominent online platforms such as Google and Facebook are themselves reliant on advertising, critics and researchers have also underscored that the companies hosting this activity may have perverse incentives to harbor it, given that disinformation content is often widely shared and viewed (Allcott and Gentzkow 2017; Thompson 2017). For their part, these platforms have disputed this notion in numerous public statements and have taken action to restrict distributing advertising against disinformation (Wingfield, Isaac and Benner 2016; Ling 2017). “Trolling Culture” As a Disinformation Source Beyond the activities of politically and financially motivated actors, the participation of grassroots online “troll” culture has also been a force in facilitating political disinformation. Crowd activity – often performed anonymously – to shock and harass private citizens, public figures, and institutions for pure entertainment purposes has been a long-standing feature of social behavior on the Internet (Coleman 2015). These activities in the past have leveraged a wide array of tactics, from the manipulation of online polls to the strategic targeting of journalists and “swatting” – false emergency reports to law enforcement aimed at bringing police officers to a targeted address (North 2017). In recent years, many of these communities have been radicalized by far-right groups to “spread white supremacist thought, Islamophobia, and misogyny through irony and knowledge of internet culture,” as researchers Alice Marwick and Rebecca Lewis have documented (Marwick and Lewis 2017; Schreckinger 2017). In the context of the 2016 US presidential election, many of these communities were involved in coordinated campaigns to spread political disinformation. This included promoting conspiracy theories that philanthropist George Soros was engaged in a nationwide campaign to fund protests against Trump and claims that Democratic National Committee (DNC) staffer Seth Rich was assassinated as part of a cover-up connected to the 2016 leak of emails from the DNC (Dreyfuss 2017). Effectively, these campaigns drew on the efforts of volunteers, a loosely coordinated, informal coalition of overlapping “alt-right” groups. This brought together a wide range of actors, including gamer communities, users of the popular online discussion board Reddit, members of the white supremacist community Stormfront, and “alt-light” news outlets echoing some of the messages of the far-right but excluding some of the more controversial views, to name a few (Marwick and Lewis 2017, p. 26). These techniques drew explicitly on these earlier “trolling” efforts. As Mike Cernovich, one prominent alt-right figure involved in both earlier campaigns against feminists in the video-game industry and in the 2016 election, put it, “troll tactics” were a means with which to “build [his] brand” (Marantz 2016). The involvement of these communities in targeted campaigns of political disinformation highlights the important point that these three sources – state-run, financially driven, and trolling – do not operate independently. Instead, numerous ties link these engines of online disinformation into an ecosystem of overlapping, occasionally cooperating groups. Notably, state-run efforts coordinated by Russia leveraged paid agents who in turn worked to infiltrate and mobilize online communities to spread political disinformation (Kosoff 2017). Similarly, state-run efforts also subsidize and support a variety of financially motivated media channels to spread “fake news” and disinformation through the Web (Belford, Cvetkovska, Sekulovska, and Dojčinović 2017). These groups also operate on their own, acting independently for their own reasons to engage in the distribution of disinformation. The (Ambiguous) Impact of Online Disinformation While all the activities discussed in this section are well documented, it is important to recognize that, at the time of writing, clear empirical evidence of their actual influence over political outcomes is still unclear. While some researchers have concluded that disinformation efforts did have an impact on the 2016 US presidential election, the issue remains a matter of scholarly debate (Howard and Kollanyi 2017; Kollanyi, Bradshaw, and Neudert 2017). Given the limited visibility into the operations of various disinformation activities and the data around overall political participation on social media and other platforms, it is likely that this issue will remain ambiguous for some time. If they are indeed effective, the potential risk to democratic institutions and processes seem clear. The capability of foreign powers to effectively manipulate political discourse within a country raises difficult questions about the representativeness of elected officials and the decisions made by them. To the extent that much disinformation seen during the 2016 US presidential campaign focused on exacerbating political conflict and cementing polarization, such activities might also erode the ability for democracies to effectively act as engines for compromise between segments of society (Epstein and Graham 2007). Yet evidence on this front is ambiguous. It is unclear that the Internet is in fact increasing polarization (Boxell, Gentzkow, and Shapiro 2017). Moreover, it is unclear whether a more partisan media writ large is in turn making the public more polarized (Prior 2013). However, regardless of whether or not they are indeed effective, these politically targeted activities – and public knowledge about them – still may raise threats to the health of democratic processes. Disinformation campaigns might accelerate erosion in public trust of institutions seen as critical to the maintenance of democracy. First, skepticism around the veracity of online information generally might also limit the influence of journalistic channels producing and distributing accurate information (Barthel and Mitchell 2017). This may hinder the ability for democracies to engage in authentic, effective deliberation and arrive at decisions considered “legitimate.”1 Second, regardless of actual effectiveness, a broadly held perception that these disinformation campaigns do indeed have an impact may itself create distrust in the legitimacy of elected officials, particularly those supported by foreign governments and interests. This has been the case in the aftermath of the 2016 campaign, with numerous congressional inquiries and an ongoing special investigation attesting to the continued concerns by policymakers and the public as a whole.

#### Democratic model cascades and prevents a global erosion to authoritarianism that causes nuclear war.

Diamond 19, Professor of Political Science and Sociology at Stanford University, Senior Fellow at the Hoover Institution, Senior Fellow at the Freeman Spogli Institute for International Studies, PhD in Sociology from Stanford University, (Dr. Larry, Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency, p. 199-202)

The most obvious response to the ill winds blowing from the world’s autocracies is to help the winds of freedom blowing in the other direction. The democracies of the West cannot save themselves if they do not stand with democrats around the world. This is truer now than ever, for several reasons. We live in a globalized world, one in which models, trends, and ideas cascade across borders. Any wind of change may gather quickly and blow with gale force. People everywhere form ideas about how to govern—or simply about which forms of government and sources of power may be irresistible—based on what they see happening elsewhere. We are now immersed in a fierce global contest of ideas, information, and norms. In the digital age, that contest is moving at lightning speed, shaping how people think about their political systems and the way the world runs. As doubts about and threats to democracy are mounting in the West, this is not a contest that the democracies can afford to lose. Globalization, with its flows of trade and information, raises the stakes for us in another way. Authoritarian and badly governed regimes increasingly pose a direct threat to popular sovereignty and the rule of law in our own democracies. Covert flows of money and influence are subverting and corrupting our democratic processes and institutions. They will not stop just because Americans and others pretend that we have no stake in the future of freedom in the world. If we want to defend the core principles of self-government, transparency, and accountability in our own democracies, we have no choice but to promote them globally. It is not enough to say that dictatorship is bad and that democracy, however flawed, is still better. Popular enthusiasm for a lesser evil cannot be sustained indefinitely. People need the inspiration of a positive vision. Democracy must demonstrate that it is a just and fair political system that advances humane values and the common good. To make our republics more perfect, established democracies must not only adopt reforms to more fully include and empower their own citizens. They must also support people, groups, and institutions struggling to achieve democratic values elsewhere. The best way to counter Russian rage and Chinese ambition is to show that Moscow and Beijing are on the wrong side of history; that people everywhere yearn to be free; and that they can make freedom work to achieve a more just, sustainable, and prosperous society. In our networked age, both idealism and the harder imperatives of global power and security argue for more democracy, not less. For one thing, if we do not worry about the quality of governance in lower-income countries, we will face more and more troubled and failing states. Famine and genocide are the curse of authoritarian states, not democratic ones. Outright state collapse is the ultimate, bitter fruit of tyranny. When countries like Syria, Libya, and Afghanistan descend into civil war; when poor states in Africa cannot generate jobs and improve their citizens’ lives due to rule by corrupt and callous strongmen; when Central American societies are held hostage by brutal gangs and kleptocratic rulers, people flee—and wash up on the shores of the democracies. Europe and the United States cannot withstand the rising pressures of immigration unless they work to support better, more stable and accountable government in troubled countries. The world has simply grown too small, too flat, and too fast to wall off rotten states and pretend they are on some other planet. Hard security interests are at stake. As even the Trump administration’s 2017 National Security Strategy makes clear, the main threats to U.S. national security all stem from authoritarianism, whether in the form of tyrannies from Russia and China to Iran and North Korea or in the guise of antidemocratic terrorist movements such as ISIS.1 By supporting the development of democracy around the world, we can deny these authoritarian adversaries the geopolitical running room they seek. Just as Russia, China, and Iran are trying to undermine democracies to bend other countries to their will, so too can we contain these autocrats’ ambitions by helping other countries build effective, resilient democracies that can withstand the dictators’ malevolence. Of course, democratically elected governments with open societies will not support the American line on every issue. But no free society wants to mortgage its future to another country. The American national interest would best be secured by a pluralistic world of free countries—one in which autocrats can no longer use corruption and coercion to gobble up resources, alliances, and territory. If you look back over our history to see who has posed a threat to the United States and our allies, it has always been authoritarian regimes and empires. As political scientists have long noted, no two democracies have ever gone to war with each other—ever. It is not the democracies of the world that are supporting international terrorism, proliferating weapons of mass destruction, or threatening the territory of their neighbors.

#### Backsliding leads to global conflicts.

Kendall-Taylor 19, is a Senior Fellow and Director of the Transatlantic Security Program at the Center for a New American Security (CNAS). (Andrea, February 26th, “Autocracy’s Advance and Democracy’s Decline: National Security Implications of the Rise of Authoritarianism Around the World,” <https://www.cnas.org/publications/congressional-testimony/testimony-before-the-house-permanent-select-committee-on-intelligence-1>)

The growing prevalence of personalized autocracies is cause for concern because they tend to produce the worst outcomes of any type of political regime: they tend to produce the most risky and aggressive foreign policies; the most likely to invest in nuclear weapons;7 the most likely to fight wars against democracies;8 and the most likely to initiate interstate conflicts.9 As the adventurism of Iraq’s Saddam Hussein, Uganda’s Idi Amin, and North Korea’s Kim Jong-un suggests, a lack of accountability often translates into an ability to take risks that other dictatorial systems simply cannot afford. Russia underscores the link between rising personalism and aggression. Although Putin’s actions in Crimea and Syria were designed to advance a number of key Russian goals, it is also likely that Putin’s lack of domestic constraints increased the level of risk he was willing to accept in pursuit of those goals. Putin’s tight control over the media ensures that the public receives only the official narrative of foreign events. Limited access to outside information makes it difficult for Russians to access unbiased accounts of the goings-on in the rest of the world and gauge Putin’s success in the foreign policy arena. Putin’s elimination of competing voices within his regime further ensures that he faces minimal accountability for his foreign policy actions. Politics in China show many of these same trends. Xi’s increasingly aggressive posture in the South China Sea has occurred alongside the rising personalization of the political system. Xi has amassed substantial personal power since coming to office in 2012 and continues to roll back the norms of the post-Mao collective leadership system. If Xi further consolidates control and limits accountability—particularly over military and foreign policy bodies—research suggests that he, too, could feel free to further escalate his aggressive rhetoric and actions in the South China Sea. Not only do personalist dictatorships pursue aggressive foreign policies—they are also often difficult and unpredictable partners. Research underscores that, thanks to limited constraints on decisionmaking, personalist leaders generally have the latitude to change their minds on a whim, producing volatile and erratic policies.10 Moreover, personalist leaders—think Putin, Bolivian President Evo Morales, and Venezuelan President Nicolás Maduro—are among those autocrats who are most suspicious of U.S. intentions and who see the creation of an external enemy as an effective means of boosting public support. Anti-U.S. rhetoric, therefore, is most pronounced in personalist settings.