# 1NC

## Off-Case

### 1NC---T

T: PRIVATE SECTOR

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

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

"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.

#### TVA: any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

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

#### The aff only applies to conduct in a specific segment of the private sector

#### Vote neg:

#### 1---limits and ground---the number of potential subsets is infinite---any industry, production, single company, individuals could be included, which undermines clash; only big affs have link uniqueness

#### 2---precision---has the intent to define, exclude, AND is in legislative context

### 1NC---CP

#### The United States federal government should substantially expand international food aid, and at least double investments in agricultural and food research over the next 10 years.

#### That solves food shortages.

Keefe ’15 (Meagan; assistant director of global agriculture and food at The Chicago Council on Global Affairs, former Mickey Leland International Hunger Fellow at the International Food Policy Research Institute, MS in natural resource management from the University of Minnesota, Associate Director of the Program of African Studies at Northwestern University; May 2015; “Leveraging Innovation to Feed the Future”; <https://www.thechicagocouncil.org/sites/default/files/GlobalAg_ResearchBrief_v4.pdf>; The Chicago Council on Global Affairs; accessed 7/6/18; TV)

The United States should double investments in agricultural and food research over the next 10 years. The United States needs to double investments in agricultural and food research over the next 10 years to help meet these challenges. Research funds should be focused on priorities that will be most important to meeting future demand: equipping agriculture both domestically and in low-income countries to be resilient to climate change and weather variability; aligning agricultural production and nutrition goals; and ensuring agricultural production builds rather than harms the natural resource base. Public agencies— such as USDA, the new Foundation for Food and Agricultural Research, and National Science Foundation— the US Congress, and research universities will be game-changing players in increasing the investment in agricultural research and reshaping national priorities. Given the lag time between the research funding and the eventual uptake of technologies, R&D investment decisions need to be taken with a long-term perspective and a funding horizon of at least a decade. Forge a new science of agriculture Agriculture’s mandate should be expanded beyond simply increasing production. Agriculture must increase production in a way that uses fewer resources and optimizes nutrition outcomes while providing solid incomes to food producers. Experts from all scientific disciplines are needed to increase nutritious food production sustainably. Proven approaches and innovations should be transferred to farmers everywhere, but especially to women and underproducing farmers in Sub-Saharan Africa and South Asia. A new multidisciplinary science of agriculture is needed and should be based on increasing outputs—production, nutrition, and incomes—while using less land and water resources.14 This requires improving human health through accessible nutritious food, improving food safety, and reducing food waste along the supply chain. The US Congress should consider convening a national, bipartisan commission that draws from the policy, university, business, and civil society sectors to develop a research agenda for how to overcome future food challenges sustainably, nutritiously, and economically. Build research capacity Because the challenges facing the food system will be both global and local, international research institutions need increased support. At the same time, there is a need for transforming university and research institutions in developing countries so that they conduct the research that is critical to their location, context, and people. The US government has ramped up this type of training over the past five years, but it is nowhere near the level of support the US provided in the 1970s and ’80s at the height of the Green Revolution.15 These efforts should be expanded to develop local institutions in developing countries. This can be done through public-private partnerships, educational exchanges, and connecting universities around the world. The US university system is well positioned to contribute to this, but increased funding is needed to facilitate partnerships and educational exchanges between universities in the United States and institutions in the developing world. Bolster research on climate change Climate change is already beginning to threaten the global food supply. Recent scientific reports predict that the hotter temperatures and natural disasters already undermining food production will be increasingly common. The effects from climate change are expected to slow the growth of food production by 2 percent each decade for the rest of this century.16 The US government must increase funding for research to build resilience and address the threats to the food system posed by climate change. In order to prepare for climate change, more research is needed on increasing tolerance to higher temperatures, building resilience to extreme weather events, and combating pests and diseases. While it’s becoming increasingly clear that the consequences of climate change will be severe, there are significant gaps in the current understanding of the effects along the value chain, from farmers’ fields to consumers. Better models are needed to help understand the effects of climate change. Food producers cannot prepare effectively and researchers and businesses cannot innovate without better data. Data on weather, water resources, crop performance, land use, and consumer preferences are necessary to adequately prepare. Better models and data are crucial for increasing productivity, enhancing nutrition, and increasing resilience to the effects of climate change.17 Expand nutrition-sensitive agricultural research Malnutrition—from undernourishment to obesity—is already affecting every country on earth and placing nearly one-half of the world’s population at serious health risk.18 Although nutrition interventions such as therapeutic foods to manage severe acute malnutrition and supplements to address micronutrient deficiencies are necessary, good health is driven largely by access to overall nutritious diets.19 The US government should make nutrition a key priority in agricultural research to increase access to healthy foods, drive economic growth in poor countries, and improve the livelihoods of small-scale farmers. The current fruit and vegetable supply is far from sufficient for everyone to meet recommended nutrient intakes, especially in low-income countries. Research across the entire food value chain is critical in order to increase production; reduce costs; and improve the storage, processing, and transport of horticultural crops.20 In addition, food safety is an often neglected but essential component at the nexus between nutrition and agriculture that requires additional research. Aflatoxin contamination is one of the most pressing food safety challenges in developing countries, affecting one-quarter of harvests worldwide. Reduce food waste An estimated one-third of all food produced globally is wasted. In developed countries, consumers throw too much food away. In developing countries, food often rots before it can be processed or brought to market because of poor infrastructure that allows pests and other contaminants to run rampant. Innovations in reducing food waste are desperately needed. Because fruits and vegetables as well as fish spoil more quickly and are more difficult to transport than grains, they are wasted in greater quantities—along with the valuable nutrients they contain.21 In addition, the higher temperatures and humidity brought by climate change will cause even more food to be wasted without innovations in cold storage and transport. Finding innovative ways to reduce food waste and bringing them to scale would help meet the increasing demand for food without necessarily growing more food. Innovation from the private sector could help significantly in addressing this challenge. US leadership is crucial for meeting the challenges to the global food system. As the rate of agricultural productivity growth continues to slow both in the US and globally, it is clear that a change in the global research enterprise is essential to meet the future challenge of feeding two billion more people by 2050. The United States is a global leader in agricultural research, holding almost 15 percent of the world’s public agricultural knowledge stock. US leadership is crucial for revitalizing the research institutions and investments needed to increase productivity, produce more nutritious food, use fewer resources, and adapt to climate change. Investing in agricultural research and taking a more comprehensive approach to utilizing existing knowledge would help safeguard the productivity gains made in the United States over the past century while meeting the future challenges facing the global food system.

### 1NC---T

#### New affs are bad---skews clash and fairness---reject the team---our interp is teams must disclose at pairings. Absent disclosure it lets Joe prep them out.

### 1NC---K

EXTINCTION GATEWAY:

#### Reject the aff’s extinction reps ⁠— they are settler voyeurism, reproduce colonialism, and erase ongoing violence; vote neg for plural world-building

Theriault & Mitchell 20, \*Assistant Professor at the Department of History, Dietrich College \*\*Balsillie School of International Affairs (Noah Theriault, Audra Mitchell, 2020, “Extinction,” Anthropocene Unseen: A Lexicon, edited by Cymene Howe and Anand Pandian, Punctum Books, 2020, pp. 177-183, JSTOR, doi:10.2307/j.ctv11hptbw.30)

In a recent essay entitled “The Uninhabitable Earth,” David Wallace-Wells (2017) makes a morbid prediction: “The mass extinction we are now living through has only just begun; so much more dying is coming.” The essay, which quickly went viral, regales readers with graphic imagery of starvation and perpetual war in a coming climate apocalypse. But it leaves us to wonder precisely who is doing this dying, now and in the future? For whom and by whom—humans and other beings included—is earth being made “uninhabitable”? Part of a growing journalistic and pop-culture genre that some have called “apocalypse porn,” Wallace-Wells’s essay vividly reflects the necropolitics that haunt narratives about life, death, and extinction in the Anthropocene. As scholar-activists committed to promoting environmental and ecological justice, we acknowledge the gravity of extinction, but we are concerned about what narratives of mass extinction obscure. By eliding the violent structures that disproportionately burden certain assemblages of beings with acute acts of dislocation and cumulative forms of “slow violence” (Nixon 2011), these narratives naturalize a colonial order in which some earthlings are actively targeted for extermination, some are categorized as valuable “biodiversity,” and many others are summarily consigned to an unmarked planetary grave. As cultural theorist Claire Colebrook (2014) has shown, the desire of Western people to contemplate the total and irreversible destruction of the planet has become a central theme of popular culture. Exposure to these images produces complex forms of affect: the thrill of fear, the sublime sense of living in important (perhaps even end) times, and the fantasy of being among a small group that survives the destruction of its species—all experienced from the safe position of the voyeur. This fantasy is evident in the jarringly optimistic, almost salvational conclusion to Wallace-Wells’s essay: “Now we’ve found a way to engineer our own doomsday,” he declares, “and surely we will find a way to engineer our way out of it.” Here, mass extinction is inevitable, but not necessarily for us. Who we are is left unspecified, although it almost certainly refers to the “modern,” Western humans interpellated by the article. Similarly unquestioned are the specific social, political, and economic formations—primarily, Western colonial and capitalist ones—that drive global patterns of extinction. Like many of the most influential Anthropocene narratives, this framing naturalizes immense inequalities in responsibility for harm and in the distribution of suffering, among and across diverse life forms (Malm and Hornberg 2014; Ogden et al. 2015; Todd 2015). A clear example of this can be found in prevailing marketdriven practices involving the conservation of life forms deemed useful to humanity (see Adams 2010). Recent efforts to assess the financial value of biodiversity aim to incentivize states and other actors to conserve more efficiently. In these schemes, the relations that have enabled life forms to coexist over millennia are recast as stocks of capital to be leveraged or as commodities to be bought and sold, ostensibly for their own protection (Büscher 2014; Castree and Henderson 2014). Sometimes these relations are literally figured as financial instruments—biodiverse ecosystems as “banks” or “insurance policies” (UNMA 2003; de Groot et al. 2012; Roe et al. 2013)—while biodiversity derivatives generate capital by betting against the extinction of life forms (Sullivan 2013). These approaches monetize biodiversity, along with the labor and relationships that sustain it, in order to “offset” ecological degradation in the global North (Pawlicek and Sullivan 2011). Not only does this strategy conscript more forms and dimensions of life into systems of global capital (Kelly 2011; Moore 2016), but it also prescribes “fixes” intended to sustain capitalist systems (Harvey 2003). These fixes make the global calculus of elimination profitable for global elites, while relegating marginalized groups of humans and other-than-human beings to sacrifice zones and/or conservation enclosures. As a subgenre of apocalypse porn, mass-extinction narratives also tend to obscure the racialized and colonial nature of the phenomena they seek to define. This is reflected in the profound anxiety of white Western authors regarding the apparently imminent end of the world. By locating this apocalypse in a potential future—and fetishizing images of its ravaging by extinction—purveyors of these narratives evince extreme privilege. In contrast, for Potawatomi scholar Kyle Powys Whyte (2017, 207), Indigenous peoples faced—and survived—centuries of colonial occupations that have forced them to “inhabit what our ancestors would have likely characterized as a dystopian future” in which plants and animals integral to their ways of life have been obliterated. Meanwhile, by framing all of humanity as the undifferentiated victim of ecological collapse, mass-extinction narratives magnify colonial discourses that treat extinction or extermination as inevitable for Indigenous peoples, peoples of color, and nonhumans such as wolves, dingos, whales, or bison (Mohawk 2010; Bird Rose 2011; Hubbard 2014). These stories of extinction preclude the powerful acts of survivance and resurgence through which more-than-human communities coexist and resurge in the face of world-ending violence. These examples illustrate the dangers of apocalypse porn, of the shocking, thrilling, and sometimes pleasurable exposure to the threat of mass extinction. Rather than a deviant subgenre, these narratives have become mainstream; in fact, for many Western people, they serve as the first and most basic understanding of what extinction is and whom it affects most. Just as pornography can normalize particular kinds of violence, we contend that apocalyptic narratives of mass extinction embed and mask their own perverse and self-sustaining violences. To confront the violence of extinction, it is necessary to nurture alternative concepts and practices that better tend to who and what is being destroyed—alternatives that recognize the capacity of life forms and worlds to resist the violences that threaten them and that respect refusals of subjugation and erasure. We are not asking readers to disregard dire warnings about mass extinction, but rather to look closer at what their overexposing rhetoric may conceal and legitimize.

### 1NC---CP

#### Text: The United States federal government should:

#### 1---increase foreign aid

#### 2---push sustainable development goals

#### 3---increase security cooperation between the US and Mexico

#### 4---increase investment in Mexico and strengthen collaboration on issues relating to education, innovation, and entrepreneurship.

#### 5---promote market competition in South Africa

#### 6---invest in climate innovation

#### Solve Mexico scenario

Wilson ’17 [Christopher; writer for the Wilson Quarterly; *LEVERAGING THE U.S.-MEXICO RELATIONSHIP TO STRENGTHEN OUR ECONOMIES*; <https://wilsonquarterly.com/quarterly/after-the-storm-in-u-s-mexico-relations/leveraging-the-u-s-mexico-relationship-to-strengthen-our-economies/>; accessed 12/13/18//MSCOTT]

Innovation, Education, and Entrepreneurship: From Building to Inventing

Because of the massive volume of merchandise trade between the United States and Mexico — over a half-trillion dollars per year — the bilateral economic relationship has tended to focus on ensuring the free and secure movement of goods between the two countries. Without doubt, such an agenda has yielded significant results. Further progress along these lines is still possible and desirable, but as the Mexican economy has developed and economic integration has deepened, new areas of economic cooperation are growing in importance. Mexico has evolved from an economy using low-cost labor as its principal comparative advantage to a middle-income country with a large middle class and an economy oriented toward higher value and higher skill manufacturing, exemplified by its large auto and aerospace industries. The next step in the development of the Mexican economy is the growth of a knowledge-based economy, an economy that not only builds products but also dreams them up and designs them. Such a transformation is underway and offers major benefits not only for Mexico but also for the United States. In the creative industries, for example, Mexican and American television and film makers have developed numerous partnerships and joint projects to create content in English and Spanish for regional and global audiences. Software developers from the Mexican tech industry in Guadalajara and Monterrey are working with counterparts across the United States to codevelop apps and other business tools. Investment flows, once almost entirely southbound, are quickly becoming more balanced, with well over 100,000 jobs in the United States now directly supported by Mexican direct investment.

To continue this trend, the two countries should strengthen collaboration on issues relating to education, innovation, and entrepreneurship. The Mexico-U.S. Entrepreneurship and Innovation Council (MUSEIC), for example, was created in 2013 to “promote and strengthen the cross-border design and innovation system to complement our cross-border production system.” MUSEIC has several subcommittees focusing on topics ranging from promoting women entrepreneurs to sharing best practices on commercialization and financing entrepreneurs with high impact ideas. Another example of the expanding economic agenda is the U.S.-Mexico Bilateral Forum on Higher Education, Innovation and Research, known by its Spanish acronym FOBESII, which seeks to “expand opportunities for educational exchanges, scientific research partnerships, and cross-border innovation to help both countries develop a 21st century workforce for both our mutual economic prosperity and sustainable social development.” Both FOBESII and MUSEIC have achieved some important results, but at the same time they are in many ways still nascent initiatives that can and should grow over time as successful pilots are replicated and scaled. Partnerships with subnational governments, civil society, and the business community are vital to their future success and should be actively expanded.

Conclusion

The U.S.-Mexico economic relationship, as constructed over the past several decades, offers concrete benefits to millions of Americans and Mexicans. It is composed of a large and deep trade relationship in which the two countries coproduce products across regional manufacturing networks that enhance the competitiveness of each. This current state of interdependence and mutual gain also naturally means that a deterioration of the relationship could put the economic security and prosperity of citizens of both countries at risk. Instead, the two countries should work together to boost productivity and strengthen the competitiveness of the regional economy. They should aim to not only build things together but to also invent them, to design them, and to open markets around the world in which to sell them. The economic challenges of each country are real. They require significant improvements to the domestic economic policies of each. But to the extent that they are international, they are best faced together.

#### Solves the climate impact

Atkinson, 6/1/2015, Ph.D. in city and regional planning from the University of North Carolina, president of the Information Technology and Innovation Foundation (David, “An Innovation-Based Clean Energy Agenda For America”, <http://www2.itif.org/2015-energy-innovation-agenda.pdf?_ga=1.247224845.809357633.1469213846>) Recut by scott

FEDERAL INVESTMENT IN CLEAN ENERGY-RELATED RESEARCH AND DEVELOPMENT Public investments in research and development form the base of support for the innovation ecosystem by funding foundational basic science through proof-of-concept designs. Boost Clean Energy Science at the National Science Foundation The development of truly breakthrough technologies in areas like energy storage and solar conversion require advancements in science. 12 Government can’t predict or even direct the nature of that science, but it can identify the key areas of science most likely to lead to these breakthroughs and increase funding accordingly. A key place to start is the National Science Foundation. With an annual budget of approximately $7 billion, NSF funds projects that range the gamut on energy-related basic science, including those that advance knowledge about the growth of nanocrystals and the development of ultralightweight carbon fiber materials. 13 NSF provides integral support for basic energy science, including divisions in chemical, bioengineering, transport systems, chemistry, and materials research. NSF funds thousands of projects with implications for improving and developing new energy technologies. But it can and should do more. Congress should triple NSF funding for energy-related research to $1 billion annually. This increased funding should not go to studying climate change, but to advancing the science underpinning clean energy technology breakthroughs, especially generation and storage. At the same time Congress should charge the National Academy of Sciences (NAS) to undertake a study of the kinds of scientific advancements needed to drive transformational clean energy breakthroughs. 14 The findings of this study should guide the internal allocations of NSF funding for clean energy science. While early stage basic research is needed to build the knowledge base for clean energy breakthroughs, we also need more high-risk directed or applied R&D. The best agency supporting this is the Advanced Research Projects Agency-Energy, the Department of Energy’s breakthrough energy technology program, which invests in risky, next-generation clean energy technologies that could fundamentally change the energy market. 15 Modeled aft­er the Department of Defense’s Defense Advanced Research Projects Agency (DARPA) program, which has long invested in risky, potentially breakthrough technologies, ARPA-E invests in transformative technologies that allow scientists to re-envision entire energy systems. Unfortunately, ARPA-E is significantly underfunded. Its FY2013 budget is set at $280 million, not even 30 percent of the $1 billion initially proposed by the National Academies of Science and the President’s Council of Advisors on Science and Technology.16 Furthermore, ARPA-E’s budget has been plagued by uncertainty. It was initially funded at $400 million through the stimulus package in 2009, only to be cut through budget appropriations to $200 million in 2010. Its funding dipped further to $181 million in 2011, but was increased as part of the FY2012 budget Omnibus appropriations to $275 million, and investment in the agency has stayed relatively consistent since then. 17 ARPA-E is the strongest high-risk, high-reward research program in the federal government for clean energy technology, and its budget should reflect this reality; over a period of three to four years Congress should ramp up ARPA-E’s budget to $1 billion annually. DOE’s Energy Innovation Hubs are interdisciplinary, goal-oriented, integrated centers that bring together researchers from academia, industry, and the National Laboratories to work toward meeting ambitious and targeted technology goals with industry applications in mind. DOE funds four Hubs at $25 million per year: the Critical Materials Institute, the Joint Center for Energy Storage Research, the Joint Center for Artificial Photosynthesis (“Fuels from Sunlight”), and the Consortium for Advanced Simulation of Light Water Reactors (“Nuclear Energy Modeling and Simulation”). The Hubs connect scientists and industry to enable fast technology transitions from the lab into the market, and this goal-oriented mission keeps the Hubs focused on the future. DOE’s Office of Energy Efficiency and Renewable Energy (EERE) invests in research to develop next generation transportation, energy generation, and efficiency technologies. EERE serves as the “connective tissue” of the Department of Energy. Its Hubs leverage research conducted through EERE to reach technology milestones; the Energy Frontier Research Centers inform EERE research priorities; and cross-cutting programs within EERE connect interdisciplinary research throughout traditionally separate industry sectors. EERE also funds DOE’s Advanced Manufacturing O‑ice, which partners with industry, small business, universities, and other stakeholders to advance emerging manufacturing technologies that reduce climate and energy impacts while strengthening the manufacturing sector to increase national competitiveness. Appropriations to EERE are frequently significantly lower than proposed in presidential budget requests— FY2015 Omnibus appropriations were 15 percent below the FY2015 presidential request for EERE, and in previous years the di­erence has been even more significant. As EERE is the connective force among many of DOE’s innovation institutions, funding should be increased from approximately $1.9 billion to at least $3 billion per year to successfully accelerate and integrate energy RD&D programs at DOE. Expand and Increase the R&E Tax Credit The Research and Experimentation (R&E) Tax Credit is a key way the federal government supports private-sector R&D activities. The IRS allows the credit for qualified expenditures in the United States, which primarily include the wages paid to employees engaging in qualified research activities, 65 percent of the fees paid to external contractors for the performance of qualified research, and supplies used in conducting qualified research (but not equipment used in research). Scholarly research has shown that the credit is an e­ffective tool for spurring additional R&D (with one dollar of credit stimulating at least $1.20 of R&D), and that it also responds to a significant market failure: companies’ inability to capture the full societal benefit of their research.18As the Congressional Joint Committee on Taxation wrote, “Although an individual business may find it profitable to undertake some research, it may not find it profitable to invest in research as much as it otherwise might because it is diff­icult to capture the full benefits from the research and prevent such benefits from being used by competitors.”19 To spur private sector R&D investment, including in clean energy, while at the same time reducing the e­ffective corporate tax rate to make the U.S. economy more globally competitive, Congress should increase the Alternative Simplified Credit rate from 14 percent to 30 percent. REFORMING TECH-TO-MARKET AND DEPLOYMENT POLICIES Build Better Connections Between the National Labs and the Market The Department of Energy’s Off­ice of Science serves as a major hub for energy science research, exploring research in high-energy physics, nuclear energy, and chemistry to develop new materials and biochemistries for major advances in battery technologies and fuel cells. A critical source of energy innovation, Off­ice of Science investments support the construction and operation of its user facilities and maintain the U.S. National Labs system. The National Labs system, created in the 1940s, addressed some of the most significant scientific and innovation challenges of the time, and today the Labs continue to be a source of technology development and discovery. However, the Labs’ connection to the market is weak, and institutional adaptations would make the Labs more e­ffective and eff­icient. To enhance the “innovation enterprise” of the National Labs, Congress should pass the American INNOVATES Act of 2015, introduced by Senators Coons and Rubio. The bill would integrate the management of DOE’s science and energy programs to create a vertically integrated research enterprise, direct DOE to implement best practices to improve operations and management across the National Lab complex, allow the Labs to partner more e­ffectively with the private sector to create new technologies and enhance technology commercialization, allow DOE more flexibility to support applied research and development activities conducted by universities and nonprofits, and give startups more access to cutting-edge facilities at the Labs. The legislation would also provide the Labs with the opportunity to increase collaboration between government and university scientists with researchers from the private sector, including allowing the Labs to charge a market rate for all proprietary research, rather than only allowing full-cost recovery. Additional fees raised this way could be directed toward incentives for Lab management contractors, additional Lab overhead expenses, and/or the taxpayer as necessary per the Lab management and operation contracts. 21 The legislation also extends DOE’s pilot program— Agreements for Commercializing Technology (ACT)—which would give the Labs greater ability to partner with industry more quickly and eff­iciently. Transform Tax Credits for Deployment to Innovation Incentives Congress has created energy tax credits to spur clean energy deployment. But these could do more to drive innovation rather than more deployment of existing technologies. For example, the Wind Production Tax Credit (PTC) has off­ered the same value per kilowatt hour since 1992, making it a guaranteed subsidy for any wind technology, regardless of its future cost reduction and performance improvement potential. 22 Environmental groups argue the PTC is a key public investment for a nascent industry competing against entrenched fossil fuels that contribute to global warming. Yet, the PTC no longer supports breakthrough wind innovation as it did in the 1990s when most wind turbines were truly new technology. Today’s developers are more likely to choose commercial scale wind turbines that still aren’t cost competitive, especially when energy storage costs are taken into account, rather than invest in riskier, next-generation technologies. Congress should make the wind PTC and the solar Investment Tax Credit (ITC) drivers of innovation and at the same time eliminate conventional fossil fuel tax subsidies, such as oil and gas depletion allowances, drilling cost expensing, and production tax credits. 23 To do that Congress should implement a permanent, technology-neutral tax credit that only supports emerging energy technologies looking to scale into the marketplace. A good tax structure to start with is the Energy Innovation and Manufacturing Tax Credit (EIMTC) proposed by Will Coleman of OnRamp Capital. The EIMTC would only support next-generation clean energy from demonstration until it reaches commercial production scale, at which point the line of credit would sunset and the technology would have to compete in the marketplace. Clean technologies already at commercial scale, such as natural gas and many wind and solar technologies already prevalent in the market, would not be eligible. The result is a flexible, long-term tax credit that fosters and accelerates clean energy innovation and provides long-term policy certainty. RAISING REVENUE TO FUND CLEAN ENERGY INNOVATION INVESTMENTS Budgetary and political disputes in Congress, particularly in recent years, have resulted in consistent appropriations threats to key energy innovation programs. Investing more in clean energy R&D can help make America more energy independent, can lead to the growth a robust and globally competitive clean energy industry, and of course, can help reduce carbon emissions while actually saving money. But getting this technology will require increased federal support, in part to pay for the increased R&D tax credit and for increased federal support for clean energy research and development. There are two sources of funding Congress should consider to pay for these expanded investments. Create an Energy Innovation Trust Fund Supported by Drilling Fees The federal government collects drilling revenues on public lands through bonus bids in auctions, rents during times of exploration, and royalty rates when the tract of land is producing oil or gas. Congress distributes the majority of the revenue from oil and gas drilling on public lands to the U.S. Treasury’s General Fund. To prioritize energy innovation as a solution to climate change mitigation and economic growth, Congress should raise royalty rates on onshore leases as well as increase fees on unproductive acres for both onshore and off­shore leases to raise at least $1 billion per year to fund an Energy Innovation Trust Fund.

### 1NC---DA

#### DOJ-Antitrust Division criminal enforcement of price-fixing generics is a sufficiently funded priority now.

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Antitrust cartel and related collusive scheme enforcement is poised to increase. Several factors support this: (1) the Antitrust Division (the Division) has a 10% budget increase for Fiscal Year (FY) 2021; (2) proposed legislation that would increase its budget by $300 million; (3) Democratic administrations have traditionally been more aggressive in enforcing antitrust laws; (4) according to the US Department of Justice (DOJ), last year the Division opened the most grand jury investigations in almost 20 years and by the end of 2020 had the most open grand jury investigations in a decade; (5) increased coordination with international law enforcement agencies, including the Division recently signing a number of cross-border agreements, maintaining active memberships in multilateral organizations dedicated to cross-border antitrust enforcement cooperation and a DOJ official recently noting they have been working at strengthening their relationships with international law enforcement agencies during the pandemic and they expect this to benefit international coordination on investigations and (6) as pandemic limitations on in-person investigative tactics subside (including search warrants and knock and talk interviews, among others), expect a return to overt tactics related to open grand jury investigations. Historically, cartel enforcement has increased following economic downturns and substantial federal stimulus packages. For example, after the 2008 financial crisis and the 2009 Recovery Act, the DOJ filed 60% more criminal cases than in prior years. We expect this trend to continue in the wake of the unprecedented government stimulus packages passed in 2020 and 2021 and additional potential government spending on infrastructure. In addition to the increased resources, the Division has stepped up its criminal enforcement program with the creation and recent expansion of the Procurement Collusion Strike Force (PCSF), the expansion of criminal investigations and prosecutions into labor markets, higher expectations for corporate cooperators and new potential benefits for corporate entities with compliance programs addressing antitrust violations. Below we discuss the sectors most likely to be implicated by increased criminal antitrust enforcement, the PCSF and what steps can be taken to prepare and minimize risk in this environment. Based on the trends described above and our recent experience at the DOJ, we expect antitrust criminal enforcement to focus in at least the following industries: Healthcare – The DOJ remains active in this sector with its ongoing generics investigations and prosecutions and other cases relating to market allocation and labor markets. In fact, all of the charged labor market cases thus far have been in the healthcare industry. The DOJ has stated that investigations and prosecutions for violations in the healthcare sector remain its top focus and stimulus spending will likely serve to increase the DOJ’s attention to healthcare markets. Although healthcare compliance policies have often focused on other fraud and abuse issues, such as the Anti-Kickback Statute and Stark Law, compliance with antitrust laws – including for human resources – is now more critical than ever. In addition, the recently signed Competitive Health Insurance Reform Act significantly narrows the exemption for health and dental insurers from the federal antitrust laws.

#### New per se violations are policed by the criminal components of the Antitrust Division

Fishman 19 (Todd, “The Rule of Reason as a Bar to Criminal Antitrust Enforcement,” *JD Supra*, <https://www.jdsupra.com/legalnews/the-rule-of-reason-as-a-bar-to-criminal-87406/>)

Under stated policy, the Antitrust Division does not criminally prosecute cases under the more permissive rule of reason standard, but reserves its discretion only to charge conduct considered to be per se illegal—that is, restraints of trade classified as unlawful without assessing potential precompetitive benefits and overall market impact. So a judicial finding that charged conduct comprises an offense that should be evaluated under the rule of reason effectively amounts to a dismissal. The trial court’s ruling in Kemp precluding antitrust prosecutors from proceeding on a per se theory, and the Tenth Circuit’s criticism of that ruling, provide unique insight into the modern use of the Sherman Act as a criminal statute. The Sherman Act, and in particular a per se violation of the Sherman Act, often functions as a blunt prosecutorial instrument. The Sherman Act tends to limit the per se rule of illegality to those restraints among horizontal competitors, with which courts have had considerable experience and where the restraints are deemed facially anticompetitive and lack any plausible business justification. But such condemnation is not static. The principles animating antitrust law have evolved with the century-old Sherman Act, dynamically moving from the formalistic approach towards horizontal price-fixing agreements applied in United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 224 n.59 (1940), to the recognition that not all price-fixing arrangements unreasonably eliminate competition in Broadcast Music v. Columbia Broadcasting System, 441 U.S. 1, 23 (1979), to more complex notions that emphasize economic realities of business relationships as set forth in Business Electronics v. Sharp Electronics, 485 U.S. 717, 726 (1988). As with antitrust doctrines themselves, the judgment that guides prosecutorial discretion should take into consideration the complexities and nuances of markets. This article reviews a series of criminal antitrust cases in which indicted defendants have challenged the application of the per se rule of illegality, with only a small degree of success. Still, to the extent the Sherman Act continues to be a weapon of choice for U.S. prosecutors, practitioners should consider whether the rule of reason can function as a useful tool in pre-charging discussions and, if need be, seeking dismissal of an indictment. Policy and Provenance The DOJ’s policy on prosecuting antitrust crimes focuses, as a matter of institutional discretion, on per se unlawful conduct. The current version of the U.S. Attorneys’ Antitrust Manual provides that “current Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing, bid rigging, and customer and territorial allocations.” U.S. Dep’t of Justice, Antitrust Division, Manual at III-12 (5th ed. 2018). The Antitrust Manual, however, states that “[t]here are a number of situations where, although the conduct may appear to be a per se violation of law, criminal investigation or prosecution may not be appropriate.” According to the Manual, those “situations may include cases in which (1) the case law is unsettled or uncertain; (2) there are truly novel issues of law or fact presented; (3) confusion reasonably may have been caused by past prosecutorial decisions; or (4) there is clear evidence that the subjects of the investigation were not aware of, or did not appreciate, the consequences of their action.”

#### That trades off. The criminal Antitrust Division has limited resources and will triage when faced with resource constraints

Powers 19, Acting Assistant Attorney General @ DOJ Antitrust Division (Richard, “Deputy Assistant Attorney General Richard A. Powers Delivers Remarks at the American Bar Association Public Contract Law Section's 2019 Procurement Symposium,” <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-richard-powers-delivers-remarks-american-bar>)

Instead, I will focus my comments on the criminal program. As the DAAG responsible for criminal enforcement, I supervise approximately 100 prosecutors who are located in Washington, DC, New York, Chicago, and San Francisco. Divided into five sections that are responsible for different regions of the country, these dedicated prosecutors conduct grand jury investigations into possible violations of antitrust laws and related criminal conduct, and prosecute resulting criminal cases in federal district courts across the nation. Much like our fellow prosecutors in other parts of the Department of Justice, we work with several law enforcement partners to investigate suspected criminal violations, including the Federal Bureau of Investigation and agents from the Offices of Inspector General from agencies like the Department of Defense, Postal Service, Department of Transportation, and Internal Revenue Service, among others. So that is who we are, and now I’ll turn briefly to what it is we do on the criminal side of antitrust law enforcement. In the words of a former Assistant Attorney General who headed the Division, Anne Bingaman, “[c]riminal enforcement against the most serious antitrust offenses is our core mission.” The heart of our criminal program is the 1890 Sherman Act, which provides that “[e]very . . . conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” In practice, we prosecute criminally only certain types of conspiracies to restrain trade. Specifically, we prosecute conspiracies between horizontal competitors to fix prices, rig bids, or allocate markets. These are the types of agreements the Supreme Court has recognized as categorically or “per se” illegal. And these are the types of agreements “that unambiguously disrupt the integrity of the competitive process, harm consumers, and reduce faith in the free-market system.” Over the years, we have found that the range of industries, products, and services affected by criminal antitrust conspiracies is as expansive as peoples’ temptation to cheat for profit. From conspiring to fix the prices of the canned tuna you buy in the grocery store, to rigging the bids for financial products, we have seen a lot in the history of the program. And our experience has taught us that this type of criminal behavior is not limited to commercial businesses that impact private consumers directly. Rather, we have seen—and continue to see—a large volume of cases affecting public procurement. Along with other forms of fraud and public corruption, criminal antitrust conspiracies pose a grave threat to the integrity of government procurement processes. From an enforcer’s standpoint, we care about criminal antitrust conduct in this area because of the harm it poses to government agencies, and by extension the taxpayers. (I’ll address that further in a moment.) But why should you care, as professionals involved in public procurement? I’ll tell you: because your employer or client could be subject to severe penalties for illegal conduct. Violations of criminal antitrust laws result in significant fines for companies and prison time for individuals. The maximum term of imprisonment is 10 years for individuals, and companies can face fines of up to $100 million or twice the gain or loss resulting from the conspiracy offense. To give you a recent example, just last month StarKist Co. was sentenced to pay a criminal fine of $100 million, the statutory maximum, for its role in a conspiracy to fix prices for canned tuna sold in the United States. And for individuals, the threat of jail time is real. To give another recent example, in June two executives were sentenced to 18 months and 15 months respectively for their role in an international freight forwarding price-fixing conspiracy. Moreover, in addition to criminal penalties, there are often other collateral effects, as well. Civil lawsuits often follow criminal investigations and can result in treble damages. And, importantly for those in the public procurement field, a criminal conviction nearly always leads to debarment. Having described the significant risks companies and individuals face when they collude to fix prices, rig bids, or allocate markets, I want to pause for a moment and highlight a unique enforcement tool used by the Antitrust Division that provides a significant incentive to self-report participation in these schemes. Under the Division’s Leniency Program, the first to self-report can receive a complete pass in return for cooperating with the Division’s investigation and meeting the Program’s other requirements. That means no criminal conviction, no criminal fine, and non-prosecution protection for all officers, directors, and employees. Moreover, companies that win the race to the door and receive leniency can achieve de-trebling and removal of joint and several liability under the Antitrust Criminal Penalty Enhancement and Reform Act for providing timely and satisfactory cooperation in any follow-on litigation. While the benefits of leniency speak for themselves, it’s worth considering the other side of the equation. For those who don’t win the race for leniency, the Division will pursue the prosecution of all remaining members of the conspiracy, especially the culpable executives. So, the choice is stark: a complete pass, or else face severe monetary penalties, potential criminal conviction, and the associated risks such as debarment, lengthy prison sentences for culpable executives, and substantial exposure in private litigation. The last point I want to make about our leniency program is our firm commitment to both the transparency of its application and the predictability of outcomes. To that end, our Division’s public website contains a number of documents relating to leniency, including the Corporate Leniency Policy, the Individual Leniency Policy, a set of frequently asked questions, and other helpful documents. Now that I’ve given you some background on who we are and what we do, I want to focus the rest of my remarks on the public procurement space and antitrust risks. Like any enforcer, the Antitrust Division’s criminal program must decide where to allocate limited resources. What should we prioritize, and why? I am an Infantry Officer by training, and one of the things I learned in the Army is that first you have to identify what the problem is before you can devise a plan to solve it. Having served as the DAAG for criminal enforcement for 18 months now, I have concluded that criminal antitrust conduct in the public procurement area is a distinct problem that demands attention. And I’m here to give you the message that we are giving a hard look at the public procurement space, and we will be devoting significant investigative resources to it going forward. Why? Our experience investigating antitrust conspiracies in various industries, along with plain common sense, tell us that the public procurement space is particularly vulnerable to collusion. Moreover, when antitrust violations do happen, they result in significant financial harm to American taxpayers, due to the dollar values involved. Let’s talk about vulnerabilities first. Bid rigging is the typical form of collusion we see in public contracting—that is, an agreement among competitors that limits competition in the bidding process. In a typical scenario, bidders agree among themselves who should win the contract and then arrange their bids in a way—such as through complementary bidding or bid rotation—to ensure the designated company wins the bid. Since such conspiracies often last for years, government purchasers—and ultimately, the taxpayers—pay more for goods or services than they otherwise would have in a truly competitive market. The bidding processes involved in public procurement make this area uniquely vulnerable to collusion for several reasons. For one, the sheer monetary value of government projects presents an enticing opportunity for greed to prevail over ethical conduct. Next, regulatory requirements governing procurement procedures can make the process predictable and thus subject to manipulation through collusion. Many agencies have repetitive or regularly scheduled purchases, for instance. Another factor that makes it easier for sellers to collude is that there are often relatively few qualified sellers for a given project, given that government agencies often require specialized goods and services. In addition, rush or emergency projects arise in government procurement, such as disaster-relief projects, and the exigency creates opportunities to cheat. Finally, the large volume of goods and services contracted by the government creates monitoring difficulties, even with the existence of 72 statutory Inspectors General across the U.S. federal government. Given the growth in government spending over time, it is difficult for audit and investigation resources within agencies to keep pace. So why do these vulnerabilities pose a problem? Setting aside the inherent importance of deterring, detecting, and prosecuting illegal conduct wherever it’s found, those of you in the audience today know that the sheer amount of money flowing from the government to contractors to purchase a broad array of goods and services makes any criminal conduct that cheats the taxpayer especially impactful. Let’s look at a current snapshot. Roughly one out of every ten dollars of federal government spending is allocated to government contracting. Following a brief downward trend between 2010 and 2015, federal contract spending rebounded and climbed from $440 billion in 2015, to $470 billion in 2016, to $510 billion in fiscal year 2017. The growth continues: in fiscal year 2018, the federal government spent more than $550 billion—or about 40% of all discretionary spending—on contracts for goods and services. This represents more than a $100 billion increase from 2015, largely due to defense spending. In 2018, the Department of Defense alone spent nearly $113 billion on procurement. Of course, federal money spent on goods and services is not confined to federal agencies. The 2018 federal budget included more than $696 billion in grants to state and local governments. While healthcare accounts for much of that total, more than $79 billion of this money went to fund major public physical capital investment. Since we are in California today, I’ll highlight that the state of California received approximately $84.6 billion in grants from the federal government in 2018, with about $21.9 billion for non-healthcare spending. With all of this money flowing to government contracts, therefore, even a small percentage lost to bid rigging or price fixing or other types of related criminal conduct inflicts great harm on the government and the taxpayers. So here is another eye-popping number: the Organisation for Economic Co-operation and Development (OECD) estimates that eliminating bid rigging could help reduce procurement costs by 20% or more. Twenty percent. While precise estimates are hard to come by, if OECD’s estimate is even half-way accurate, reducing illegal and anticompetitive collusion in procurement could save U.S. taxpayers tens of billions of dollars per year. In short, even the most conservative estimates of illegal conduct in the public procurement space lead one to the conclude that the aggregate harm to the public fisc is enormous. But let’s drill down past abstractions and generalities. We know collusion in public procurement is a problem. We know because “[w]hat’s past is prologue”: we have seen this conduct before, and we are seeing it now in our investigations. The Antitrust Division has a long history of prosecuting criminal antitrust conspiracies that target government contracts, ranging from construction and disaster recovery projects to food and hardware. Let me point you to just a few examples from over the last few decades: From the late 1970s into the 1980s, the Division prosecuted hundreds of corporations and individuals for bid rigging in road construction projects in multiple states around the country. In the early 1990s, we uncovered a decade-long conspiracy to rig bids on frozen seafood contracts awarded by a Department of Defense purchasing center and prosecuted the multiple individuals and companies responsible. After Typhoon Paka struck the island of Guam in December 1997 and caused hundreds of millions of dollars in damage, a government official conspired with contractors to award reconstruction projects through rigged bids and took bribes to line his pockets. As a result of our investigation, five individuals pled guilty to rigging bids for these emergency repair contracts, and that government official was convicted at trial and sentenced to 8 years in prison—one of the longest prison sentences ever imposed in an antitrust case. Moving to the early 2000s, we rooted out bid rigging in humanitarian aid water treatment construction projects in Egypt, which were funded by the U.S. Agency for International Development. The successful prosecution resulted in guilty pleas by four companies, fines of over $140 million, and a three-year prison sentence for a defendant who was convicted at trial. We uncovered yet more criminal conduct taking advantage of government aid programs in the mid-2000s, when the Division and our investigative partners prosecuted multiple individuals in multiple states for schemes to rig bids in connection with the E-Rate Program, which provides discounts to help schools and libraries in disadvantaged areas obtain internet access and telecommunication services. In one prominent case, a consultant was convicted at trial of 22 counts of bid rigging and fraud, sentenced to 7.5 years in prison, and debarred for 10 years. Which brings me to the present day. Recently, we prosecuted one of the more significant procurement-related cases in the Division’s history—one that has helped inform our renewed focus on this area. In November 2018 and March 2019, five South Korean oil companies agreed to plead guilty for their involvement in a decade-long bid-rigging conspiracy that targeted contracts to supply fuel to U.S. military bases in South Korea. In total, the companies have agreed to pay $156 million in criminal fines and over $205 million in separate civil settlements. (These companion civil settlements are important for a reason to which I’ll return in a moment.) The Division also indicted seven individuals in this case for conspiring to rig bids and to defraud the government, and one executive was also charged with obstruction of justice. This investigation is the latest example of our commitment to holding corporations and individual executives accountable when they defraud the U.S. government, victimize taxpayers, and interfere with the integrity of our investigations. So, again, how do we know there’s a collusion problem in public procurement? Because we see the criminal conduct in this space. And common sense tells us there’s a lot more of it going on than we’ve detected. Right now, the Antitrust Division has over 100 open grand jury investigations—more than at any point since 2010. Of those, more than one third relate to public procurement or otherwise involve the government being victimized by criminal conduct. And we intend to take measures to increase our detection rate going forward. Having identified the problem as we see it, let me now turn to what the Antitrust Division is doing about it. The mission of our criminal program overall is to aggressively deter, detect, and prosecute individuals and organizations that collude and undermine competition. In the context of government procurement, specifically, our objective must be first to deter and prevent antitrust and related crimes on the front end of the procurement process. When crimes do happen, we must also effectively investigate and prosecute such conduct on the back end of the procurement process, both to punish the wrongdoers and deter others from following the same path. Deterrence must be a primary aim of any prosecuting agency for a reason that is obvious but bears repeating: prosecution can never fully un-do the harm of a crime, whether it be a murder or a financial crime. Enforcement through prosecution is, inherently, of limited remedial value because the money is already out the door. No matter how large the fine or restitution in a successful prosecution, it is impossible to reverse the harm that has been done by anticompetitive conduct and recover every cent on the dollar. There are many ways government enforcers can seek to deter bad conduct. I want to talk about three: First, one important way enforcers can deter crime is by giving clear notice of what conduct they will prioritize investigating and prosecuting. Through our public statements and actions, government enforcers should be as transparent as possible about our investigative priorities and the ways in which individuals and companies can steer clear of illegal conduct.

#### Competitively priced generics are vital to low health care costs

Attorney’s General 19, Attorney’s General of 44 states suing various members of the pharmaceutical industry for generic price-fixing (IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, <https://portal.ct.gov/-/media/AG/Downloads/GDMS-Complaint-51019-FINAL-REDACTED-PUBLIC-VERSIONpdf>)

Like their branded counterparts, generic drugs are used in the diagnosis, cure, mitigation, treatment or prevention of disease and, thus, are integral components in modern healthcare, improving health and quality of life for nearly all people in the United States. In 2015, sales of generic drugs in the United States were estimated at $74.5 billion dollars. Today, the generic pharmaceutical industry accounts for nearly 90% of all prescriptions written in the United States. 73. A branded drug manufacturer that develops an innovative drug can be rewarded with a patent granting a period of exclusive rights to market and sell the drug. During this period of patent protection, the manufacturer typically markets and sells its drug under a brand name, and the lack of competition can permit the manufacturer to set its prices extremely high. 74. Once the brand-name drug’s exclusivity period ends, additional firms that receive FDA approval are permitted to manufacture and sell “generic” versions of the brand-name drug. As generic drugs enter the market, competition typically leads to dramatic reductions in price. Generic versions of brand name drugs are priced lower than the brand-name versions. Under most state laws, generic substitution occurs automatically, unless the prescriber indicates on the prescription that the branded drug must be "dispensed as written." 75. As additional manufacturers enter a particular drug market, competition pushes the price down much more dramatically. Often, the price of a generic drug will end up as low as 20% of the branded price or even lower. For this reason, generic drugs have long been referred to as one of the few "bargains" in the United States healthcare system. Experts have stated that 22 the substantial cost savings gained from the growing number of generic drugs have played a major role in keeping health care costs from increasing more dramatically. 76. Where there is genuine competition, the savings offered by generics drugs over their brand-name equivalents provide tremendous benefits to consumers and health care payors. Patients typically see lower out of pocket expenses, while lower costs for payors and insurers can lead to lower premiums for those who pay for health insurance, and lower costs to government health care programs like Medicare and Medicaid mean greater value for taxpayers.

#### Rising health care costs cause budgetary collapse

Horowitz 18, Evan, “The GOP Plan To Overhaul Entitlements Misses The Real Problem,” https://fivethirtyeight.com/features/to-cut-the-debt-the-gop-should-focus-on-health-care-costs/)

There is no wide-reaching entitlement funding crisis, no deep-rooted connection between runaway debts and the broad suite of pension and social welfare programs that usually get called entitlements. The problem is linked to entitlements, but it’s much narrower: If the U.S. budget collapses after hemorrhaging too much red ink, the main culprit will be rising health care costs. Aside from health care, entitlement spending actually looks relatively manageable. Social Security will get a little more expensive over the next 30 years; welfare and anti-poverty programs will get a little cheaper. But costs for programs like Medicare and Medicaid are expected to climb from the merely unaffordable to truly catastrophic. Part of that has to do with our aging population, but age isn’t the biggest issue. In a hypothetical world where the population of seniors citizens didn’t increase, entitlement-related health spending would still soar to unprecedented heights — thanks to the relentlessly accelerating cost of medical treatments for people of all ages.1 What’s needed, then, is something far more focused than entitlement reform: an aggressive effort to slow the growth of per-person health care costs. Or — if that’s not possible — some way to ensure that the economy grows at least as fast as the cost of health care does. Diagnosing the debt: It’s not about demographics America’s long-term budget problem is very real. Already, the federal government has a pile of publicly held debts amounting to around $15 trillion, or about 75 percent of the country’s entire gross domestic product. That’s the highest level since the 1940s, yet the debt burden is expected to double by 2047 and reach 150 percent of the GDP, according to the Congressional Budget Office.2 It makes sense to list entitlement spending among the culprits for the growing national debt, given that these programs have grown from costing less than 10 percent of the GDP in 2000 to a projected 18 percent in 2047. Part of this is simple demographics: As America ages, more of us become eligible for Social Security and Medicare, thus driving up expenses.3 But there’s a crack in this demographic explanation: It only makes sense for the next 10 to 15 years. That’s the period of rapid transition when graying baby boomers will boost the population of seniors from around 50 million to more than 70 million. A change like that should indeed produce a surge in entitlement spending as those millions submit their enrollment forms. By 2030, however, this wave will start to ebb, leaving the elderly share of the population at a roughly stable 20 to 21 percent all the way through 2060, based on the size of the population following the boomers and slower-moving forces like lengthening lifespans. But think what this should mean for entitlement spending. As the population of seniors levels out in those later years, costs should naturally stabilize — at least, if demographics were really the driving factor. This is exactly what you see for Social Security. The CBO expects total Social Security spending to leap up over the next decade but then settle at just over 6 percent of the GDP, at which point it will cease to be a major contributor to rising entitlement spending or growing debts. Social Security is thus a minor player in our long-term budget drama; if you cut the program to the bone, shrinking future payouts so that they won’t add a penny to the deficit, the federal debt would still reach 111 percent of the GDP in 2047.4 Likewise, cuts to welfare and poverty-related entitlements like food stamps and unemployment insurance are unlikely to improve the debt forecast. In fact, spending on these entitlements has been dropping since the high-need years around the Great Recession and is expected to shrink further in the decades ahead — partly because payouts aren’t adjusted to keep up with economic growth, and partly because the birth rate has been falling and several programs are geared to families with children.5 But the scale of the problem is totally different when you turn to health care. Spending on entitlement-related health programs — including Medicare, Medicaid and subsidies required by the Affordable Care Act — will never shrink or stabilize, according to projections. The CBO predicts these costs will grow over 65 percent between now and 2047 — and then go right on growing after that, heedless of the fact that the percentage of the population that’s over 65 should no longer be increasing. Why is health care eating the budget? Per-person costs Demographics aren’t responsible for the projected explosion in health care costs. More important than the growing number of elderly Americans is the growing cost per patient — the rising expense of treating each individual The CBO found that the lion’s share — 60 percent — of the projected increase in health spending comes from costs that would continue to increase even if our population weren’t getting older. The reasons for this are many, including the rising cost of prescription drugs and the fact that hospital mergers have reduced competition. But since 2000, per capita health costs in the U.S. have, on average, grown faster than the GDP. And while these costs rose more slowly after the Great Recession and the implementation of the Affordable Care Act, analysis from the Centers for Medicare and Medicaid Services suggests this slower growth rate won’t last. Which is bad news for these programs, because if the problem were demographic, it’d be easier to solve. By mixing the kind of program cuts Republicans generally support with targeted tax increases favored by some Democrats, you could meet the short-term challenge posed by retiring baby boomers and raise enough money to cover the larger — but stabilizing — population of eligible seniors. But with ever-rising costs, there is no stable future to prepare for. To keep these programs funded, you’d need a wholly different approach — indeed a whole new perspective on mounting federal debt and the role of entitlements. The future is a race between rising health care costs and economic growth, a race that the economy is losing. Each time health costs outpace the GDP, it creates what the CBO calls “excess cost growth,” which feeds the federal debt. If the government could close this gap, the long-term budget outlook would be a lot rosier. There are two ways to solve this issue: Either contain health care costs — say through price regulation or more competitive markets — or boost economic growth enough to pay for this expensive health care. Success on either front would make health care spending look more manageable over future decades and lighten the debt load. Entitlement reform needs health care reform to work Few of the proposals that commonly fall under the heading of entitlement reform target the health care cost problem, which limits their ability to reduce the long-term debt. Even when they do address health care, often the result is to shift — rather than solve — the problem. Say lawmakers decide to dramatically cut Medicare. That would indeed ease the government’s debt problem. But the underlying dynamic — the race between health costs and the GDP — wouldn’t really change. Seniors would still need health care, and per-person costs would likely still grow (maybe even faster, since Medicare is a relatively efficient program). On top of all this, there’s also a deep-seated political barrier: It’s no good if one party picks its favored solution only to watch the other party dismantle it when they next take over. You need political consensus to make changes stick, and America is notably short on consensus right now. In the end, though, it won’t do to just throw up our hands. Absent some workable solution, spending on health care will sink the federal budget, generating levels of debt that would hold back the economy and potentially spark a global crisis of confidence in the United States’ ability to borrow.

#### Healthcare driven budgetary overstretch causes global instability

Brown 13, PhD, Professor of Practice and Vice Chair, Public Administration and International Affairs at Syracuse, worked as an economist at the International Monetary Fund and as Chief Economist for Eastern Europe, Africa, and the Middle East at BNP Paribas, (Stuart S., “Global Power: Key Issues,” in *The Future of US Global Power: Delusions of Decline*, Palgrave, p. 57-58)

In the first instance, structural26 budget deficits are more likely to be symptoms of incipient overstretch then prima facie evidence of national decline. Overstretch suggests a need to realign commitments and resources, hence spending and revenues. In principle, persistently large deficits demand adjustments that need not materially impact the underlying drivers of longer-term prosperity. In contrast, if fiscal imbalances prove sufficiently chronic, they can eventually trigger growth-inhibiting alterations in microeconomic incentives. In such cases, incipient overstretch can mutate into a more primary threat to the system's underlying dynamism. In its classical formulation, “imperial overstretch” refers to unrestrained and exorbitant foreign military campaigns. The latter can be said to redound to the detriment of great powers by crowding out more productive capital investments. Yet in contrast to widespread impression, the US fiscal challenge does not primarily reflect out-of-control defense spending and the burden of foreign entanglements. If this were the case, then the feasibility of financing an ever-expanding global power projection would be brought into question. This neither minimizes the sizable resources the US commits to military-related spending nor denies that cutbacks in such spending can help facilitate overall fiscal adjustment. Rather, the point is that an endemic failure to rein in explosive economy-wide health care costs with the latter's implications for public sector health insurance programs – the real fiscal challenge – will do more to endanger macroeconomic stability and eventually erode the material foundation of US power (see chapter 8). By viewing (health-care driven) fiscal deficits as a necessary manifestation of overstretch is misguided for a more basic reason. The root of the US fiscal problem involves unsustainable commitments – particularly in the area of health expenditure – made by government to its citizens. It is decidedly not a question of any dearth of national resources to adequately meet the health needs of the population at large. As the richest country in the world, the US possesses more than enough resources to achieve this goal. The relevant political and social question is whether the population’s basic health requirements are best met via ever-expanding entitlements requiring increasingly higher levels of taxation.

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#### The United States federal government should include extraterritorial jurisdiction over private sector cross-border cartels through enhanced regulations that do not expand the scope of its core antitrust laws.

#### That solves and competes

Shelanski 18, Professor of Law at Georgetown (Howard Shelanski, 2018, “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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#### COURT CLOG DA:

#### The plan clogs federal dockets. Antitrust cases are uniquely complex and time-consuming.

Holleran 20, JD from GMU School of Law. (Keith, 2020, “Establishing an Independent Antitrust Court,” https://awards.concurrences.com/IMG/pdf/4.\_establishing\_an\_independent\_antitrust\_court.pdf?56466/614536766da09a9216d1e0809972eb9aa909eb4d

The Antitrust Court would be more efficient than generalist courts simply because the Antitrust Court is made up of experts in antitrust law. “Judges who regularly handle a single class of cases are expected to dispose of their work in less time than their counterparts on generalist courts who see that class of cases less frequently.”5 Antitrust Court judges are made up of experts in the field, and so they would require much less preliminary research to get brought up to speed on a given case. Generalist judges may not see many antitrust cases each year, and so they would have to research antitrust law and gain an understanding of what needs to be resolved and proven in every case. As antitrust cases often involve highly complex economic models and arguments, more and more is required of generalist judges to make an accurate decision. An ancillary gain in efficiency is realized from generalist courts no longer having to work through complicated antitrust cases, as they are now brought before a specialized court.6 Antitrust cases can take years to resolve, and these cases can clog up a generalist court’s docket. “It is now generally accepted that the regular federal courts, and especially the courts of appeals, are critically overloaded.”7 Removing all of these cases to a specialized court frees up generalist judges to resolve other cases quicker.8

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

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Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] genocidal maniacs and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

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#### The 50 states and relevant subnational entities should prohibit anticompetitive business practices by increasing the scope of its core antitrust laws to include extraterritorial jurisdiction over private sector cross-border cartels.

#### State antitrust is enforceable and solvent

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Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session. These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York. Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

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#### The aff is strengthens free markets and saves capitalism by upholding competition

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Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies. Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1 In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4 While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

#### Capitalism causes extinction---climate change, nuclear war, democratic collapse, extreme inequality, disease, prison-industrial complex, and perpetual exploitation of the Global South; it’s try-or-die for a transition

Foster 19, Sociology Professor at the University of Oregon (John Bellamy Foster, 2-1-2019, “Capitalism Has Failed—What Next?,” The Monthly Review, Vol. 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war. To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3 Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7 The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13 Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15 In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18 At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21 More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet. Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23 The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers. Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27 War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29 Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30 More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35 The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38 If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40 Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### Racial capitalism outweighs---the current system necessitates super-exploitation of the Global South, colonial dispossession, militaristic imperialism, and racial hierarchies to sustain itself; the system must be rejected on ethical grounds

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Drawing on the intellectual production of twentieth-century Black anticapitalists, I theorize modern U.S. racial capitalism as a racially hierarchical political economy constituting war and militarism, imperialist accumulation, expropriation by domination, and labor superexploitation.14 The racial here specifically refers to Blackness, defined as African descendants’ relationship to the capitalist mode of production—their structural location—and the condition, status, and material realities emanating therefrom.15 It is out of this structural location that the irresolvable contradiction of value minus worth arises. Stated differently, Blackness is a capacious category of surplus value extraction essential to an array of political-economic functions, including accumulation, disaccumulation, debt, planned obsolescence, and absorption of the burdens of economic crises.16 At the same time, Blackness is the quintessential condition of disposability, expendability, and devalorization.

Footnote 14: Another feature of modern U.S. racial capitalism is property by dispossession. In Theft Is Property! Dispossession and Critical Theory, Robert Nichols draws on the experience of Indigenous peoples in the United States, Canada, and New Zealand to theorize how the “system of landed property” was fundamentally predicated on violent dispossession. While the Anglo-derived legal-political regimes differed in these localities, the “intertwined and co-constitutive” material effects converged in the legalized theft of indigenous territory amounting in “approximately 6 percent of the total land on the surface of Earth.” Such dispossession, Nichols notes, is recursive: “In a standard formulation one would assume that ‘property’ is logically, chronologically, and normatively prior to ‘theft.’ However, in this (colonial) context, theft is the mechanism and means by which property is generated: hence its recursivity. Recursive dispossession is effectively a form of property-generating theft.” As such, theft and dispossession, through property regimes, are an ongoing feature of the Indigenous reality of modern U.S. racial capitalism. Robert Nichols, Theft Is Property! Dispossession and Critical Theory (Durham: Duke University Press, 2020), 50–51.

Footnote 15: Borrowing from Karl Marx’s dictum that the labor process is the hidden abode of the capitalist production of value, and Nancy Fraser’s conceptualization of reproduction as the even more hidden abode, or background condition, for the possibility of capitalist production, I understand Blackness as the obfuscated abode. The immense value of Blackness is obscured and rendered unintelligible by its positioning as worthlessness, as something that does not amount to anything—but that does not equal nothing. As a structural location at the intersection of indispensability and disposability, Blackness exceeds the category of race, is not reducible to class, and does not fit the specifications of caste.

My operationalization of capitalism follows Oliver Cromwell Cox’s explication in Capitalism and American Leadership.17 Modern U.S. racial capitalism arose in the context of the First World War, when, as Cox explains, the United States took advantage of the conflict to capture the markets of South America, Asia, and Africa for its “over-expanded capacity.”18 Cox further expounds upon this auspicious moment of ascendant modern U.S. racial capitalism thus: By 1914, the United States had brought its superb natural resources within reach of intensive exploitation. Under the stimulus of its foreign-trade outlets, the financial assistance of the older capitalist nations, and a flexible system of protective tariffs, the nation developed a magnificent work of transportation and communication so that its mines, factories, and farms became integrated into an effectively producing organism having easy access to its seaports.… [Likewise,] further internal expansion depended upon far greater emphasis on an ever widening foreign commerce.… Major entrepreneurs of the United States proceeded to step up their campaign for expansion abroad. The war accentuated this movement. It accelerated the growth of [modern] American [racial] capitalism and impressed upon its leaders as nothing had before the need for external markets.19 Relatedly, Peter James Hudson argues that the First World War fundamentally changed the terms of order of international finance, allowing New York to compete with London, Paris, and Berlin for the first time in the realm of global banking. This was not least because the Great War “drastically reordered global credit flows,” with the United States transforming from a debtor into a creditor nation.20 In addition to Latin American and Caribbean nations and businesses turning to the United States for financing and credit, domestic saving and investment patterns were altered to the benefit of imperial financial institutions like the City Bank.21 Although the United States is, to use Cox’s terminology, more a “lusty child of an already highly developed capitalism” than an exceptional capitalist power, the nation perfected its techniques of accumulation through its vast natural wealth, large domestic market, imbalance of Northern and Southern economies, and, importantly, through its lack of concern for the political and economic welfare of the overwhelming masses of its population, least of all the descendants of the enslaved.22 Modern U.S. racial capitalism is thus sustained by military expenditure, the maintenance of an extremely low standard of living in “dependent” countries, and the domestic superexploitation of Black toilers and laborers. Cox notes that Black labor has been the “chief human factor” in wealth production; as such, “the dominant economic class has always been at the motivating center of the spreads of racial antagonism. This is to be expected since the economic content of the antagonism, especially at its proliferating source in the South, has been precisely that of labor-capital relations.”23 In a general sense, racial capitalism in the United States constitutes “a peculiar variant of capitalist production” in which Blackness expresses a structural location at the bottom of the labor hierarchy characterized by depressed wages, working conditions, job opportunities, and widespread exclusion from labor unions.24 Furthermore, modern U.S. racial capitalism is rooted in the imbrication of anti-Blackness and antiradicalism. Anti-Blackness describes the reduction of Blackness to a category of abjection and subjection through narrations of absolute biological or cultural difference; ruling-class monopolization of political power; negative and derogatory mass media propaganda; the ascent of discriminatory legislation that maintains and reinscribes inequality, not least various modes of segregation; and social relations in which distrust and antipathy toward those racialized as Black is normalized and in which “interracial mass behavior involving violence assumes a continuously potential danger.”25 Anti-Blackness thus conceals the inherent contradiction of Blackness—value minus worth—obscuring and distorting its structural location by, as Ralph and Singhal remark, contorting it into only a “debilitated condition.”26 Antiradicalism can be understood as the physical and discursive repression and condemnation of anticapitalist and/or left-leaning ideas, politics, practices, and modes of organizing that are construed as subversive, seditious, and otherwise threatening to capitalist society. These include, but are not limited to, internationalism, anti-imperialism, anticolonialism, peace activism, and antisexism. Anti-Blackness and antiradicalism function as the legitimating architecture of modern U.S. racial capitalism, which includes rationalizing discourses, cultural narratives, technologies of repression, legal structures, and social practices that inform and are informed by racial capitalism’s political economy.27 Throughout the twentieth century, anti-Blackness propelled the “Black Scare,” defined as the specter of racial, social, and economic domination of superior whites by inferior Black populations. Antiradicalism, in turn, was enunciated through the “Red Scare,” understood as the threat of communist takeover, infiltration, and disruption of the American way of life.28 For example, in the 1919 Justice Department Report, Radicalism and Sedition Among the Negroes, As Reflected in Their Publications, it was asserted that the radical antigovernment stance of a certain class of Negroes was manifested in their “ill-governed reaction toward race rioting,” “threat of retaliatory measures in connection with lynching,” open demand for social equality, identification with the Industrial Workers of the World (IWW), and “outspoken advocacy of the Bolshevik or Soviet doctrine.”29 Here, anti-Blackness, articulated through the fear of the “assertion of race consciousness,” was attached to the IWW and Bolshevism—in other words, to anticapitalism—to make it appear even more subversive and dangerous. Likewise, antiradicalism, expressed through the denigration of the IWW and Soviet Doctrine, was made to seem all the more threatening and antithetical to the social order in its linkage with Black insistence on equality and self-defense against racial terrorism. In this way, “defiance and insolently race-centered condemnation of the white race” and “the Negro seeing red” came to be understood as seditious in the context of modern U.S. racial capitalism. The link between my theory of modern U.S. racial capitalism and Robinson’s catholic theory of racial capitalism, beyond his “suggest[ion] that it was there,” is vivified through the prison abolitionist and scholar Ruth Wilson Gilmore, who writes: “Capitalism…[is] never not racial.… Racial capitalism: a mode of production developed in agriculture, improved by enclosure in the Old World, and captive land and labor in the Americas, perfected in slavery’s time-motion, field factory choreography, its imperative forged on the anvils of imperial war-making monarchs.”30 Racial capitalism, she continues, “requires all kinds of scheming, including hard work by elites and their compradors in the overlapping and interlocking space-economies of the planet’s surface. They build and dismantle and reconfigure states, moving capacity into and out of the public realm. And they think very hard about money on the move.”31 Perhaps more than Gilmore, though, my approach aligns with that of Neville Alexander as described by Hudson.32 Like Alexander, who focused on South Africa, I offer a particularistic understanding of racial capitalism, mine being rooted in the political economy of Blackness and the legitimating architectures of anti-Blackness and antiradicalism in the United States. Gilmore qua Robinson offers a more universalist and transhistorical conception. Like Alexander, my theory of modern U.S. racial capitalism is primarily rooted in (Black) Marxist-Leninists and fellow travelers. This is an important epistemological distinction: whereas Robinson finds Marxism-Leninism to be, at best, inattentive to race, my theory of modern U.S. racial capitalism is rooted in the work of Black freedom fighters who, as Marxist-Leninists, were able to offer potent and enduring analyses and critiques of the conjunctural entanglements of racialism, white supremacy, and anti-Blackness, on the one hand, and capitalist exploitation and class antagonism on the other hand.33 Although Robinson draws on scholars like Fernand Braudel, Henri Pirenne, David Brion Davis, and Eli Heckscher to understand European history, socialist theory, and the European working class, the work of Black Marxists like James Ford, Walter Rodney, Amílcar Cabral, and Paul Robeson offer me those same intellectual, historical, and theoretical resources. Finally, I agree with Alexander that the resolution to racial capitalism is antiracist socialism, not a cultural-metaphysical Black radical tradition. In what remains of this essay, I will draw on the work of Black Marxist-Leninists and anticapitalists to explicate the defining features of modern U.S. racial capitalism—war and militarism, imperialist accumulation, expropriation by domination, labor superexploitation, and property by dispossession. In this, I demonstrate that their critiques and analyses offer a blueprint for theorizing modern U.S. racial capitalism. War and militarism facilitate the endless drive for profit. Military conflicts between imperial powers result in the reapportioning of boundaries, possessions, and spheres of influence that often exacerbate racial and spatial economic subjection. War and militarism also perpetuate the endless construction of “threats,” primarily in racialized and socialist states, against which to defend progress, prosperity, freedom, and security. The manufacturing of conflict legitimates the mobilization of extraordinary violence to expropriate untold resources that produce relations of underdevelopment, dependency, extraversion, and disarticulation in the Global South. Moreover, the ruling elite and labor aristocracy in imperialist countries, not least the United States, wage perpetual war to defend their way of life and standard of living against the racialized majority who, because they would benefit most from the redistribution of the world’s wealth and resources, represent a perpetual threat.

#### Reject the aff and critically interrogate neoliberal discourse---resisting capitalist pedagogy in educational spaces is a prerequisite towards anti-capitalist political projects; COVID-19 provides a unique transition opportunity

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As educators, it is crucial for us to examine how we talk, teach, and write about inequality as an object of critique in an age of precarity, uncertainty and the current pandemic crisis. This is especially true at a time when a growing number of authoritarian regimes around the globe substitute replace thoughtful dialogue and critical engagement with the suppression of dissent and a culture of forgetting r. How do we situate our analysis of education as part of a broader discourse and mode of analysis that interrogates the promises, ideals, and claims of a substantive democracy? How do we fight against iniquitous relations of power and wealth that empty power of its emancipatory possibilities, and as Hannah Arendt has argued, “makes most people superfluous as human beings”? How might we understand how neoliberal ideology, with its appropriation of market-based values, regressive notions of freedom and agency, uses language to infiltrate daily life? How does a pandemic pedagogy in the service of neoliberalism produce identities defined by market values, and normalize a notion of responsibility and individuality that convinces people that whatever problem they face they have no one to blame but themselves? Repeated endlessly on right-wing media platforms, the underlying conditions that disproportionately produce chronic illness among poor people of color disappear among a public distracted, if not persuaded, by a pandemic pedagogy that celebrates unchecked self-interest, disdains social responsibility, and turns away from the reality of a society with deep-seated institutional rot and unravelling of social connections and the social contract. Pandemic pedagogy thrives on inequality and becomes a militarized and heartless normalizing tool to convince the broader public that the lives of the elderly, sick, and vulnerable should be valued according to how much they contribute to the economy. And if they are willing to die in order not to be a drain on the economy, all well and good. Nothing escapes the cruel logic of neoliberalism with its arrogance and hubris on full display as it bathes in the glow of right-wing populism, ultra-nationalism, and neofascism. Its accoutrements of dictatorship are everywhere and can be seen in the swagger of militia that storm state capitals, in police who punch and pepper spray protesters and push elderly men to the ground, and in military forces on the streets without badges reinforcing a climate of fear, repression, and unaccountability. There is more at work here than a lack of humanity on the part of the Trump administration. As the Irish journalist Fintan O’Toole observes, there is also the deepening grip of a culture of cruelty and dehumanization. He writes: “As a society the American people are being habituated into accepting cruelty on a wide scale. Americans are being taught by Trump and his administration not to see other people as human beings whose lives are as important as their own. Once that line has been crossed – and it is not just Trump and the people around him, but many of Trump’s supporters as well – then we know where that all leads, what the ultimate destination is. There is no mystery about it. We know what happens when a government and its leaders dehumanize large numbers of people.”

Depoliticization and the Authoritarian Turn

Neoliberalism is not only an economic system, it is also an ideological apparatus that relentlessly attempts to structure consciousness, values, desires, and modes of identification in ways that align individuals with its governing structures. Central to this pedagogical project is the attempt to prevent individuals from translating private issues and troubles into broader systemic considerations. By doing this, it becomes difficult for individuals to grasp the historical, social, economic, and political forces at work in shaping a social order as a human activity deeply immersed in specific relations of power. Neoliberalism’s attempt to erase or rewrite historical and social forces makes it difficult for individuals to imagine alternative notions of society, with themselves as collective actors, or view their problems as more than the limitations of faulty character, moral failure, or a problem of personal responsibility. Reducing individuals to isolated, discrete, hermetically-sealed human beings whose lives are shaped only by notions of self-reliance and self-sufficiency is a pedagogical strategy that utterly depoliticizes people, leading them to believe that however a society is shaped, it is part of a natural order. President Trump echoed this “no alternative” narrative when asked about celebrities and rich people having special access to being tested for the coronavirus while few others had access. He replied, “Perhaps that’s been the story of life.” This individualization of the social with its mounting privatization, gated communities, and social atomization undermines collective action, any viable notion of solidarity, and weakens the notion of global connectivity. The philosopher Byung-Chul Han has rightly argued that contemporary neoliberal society is shaped by a dysfunctional notion of solitude and hermitically-sealed notions of agency, all of which undermine the values and social connections vital to a democracy. He writes: “Those subject to the neoliberal economy do not constitute a we that is capable of collective action. The mounting egoization and atomization of society is making the space for collective action shrink… The general collapse of the collective and the communal has engulfed it. Solidarity is vanishing. Privatization now reaches into the depths of the soul itself. The erosion of the communal is making all collective efforts more and more unlikely.” This panoptical nature of hyper-individualism is more aligned with shared fears than shared responsibilities. Under such circumstances, trust and the notion that all life is related become difficult to grasp as the myopic language of private self-interest inures individuals to wider social problems such as extreme inequality. There is no understanding in this discourse of the damage fanatical entrepreneurialism does to our embodied collectivity. Nor is there any value attributed to the important responsibilities, social values, and notion of the common good that exceeds who we are as individuals, or how we have been shaped by diverse social forces in particular ways. It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable. Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects. The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.” Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism and a halt to the spiraling militarism that has resulted in endless wars. This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited. Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics.

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself. Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.” Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history. Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community. The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy. Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism. Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

## Indigenous Regimes

### 1NC---AT: SDG

#### SDG’s fail—multiple alt causes prevent success.

Saldinger 19, Senior Reporter at Devex, where she covers the intersection of business and international development, as well as U.S. foreign aid policy. From partnerships to trade and social entrepreneurship to impact investing, Adva explores the role the private sector and private capital play in development. A journalist with more than 10 years of experience, she has worked at several newspapers in the U.S. and lived in both Ghana and South Africa (Adva, April 5th, “UN report: Financial systems must change or SDGs will fail,” *Devex*, https://www.devex.com/news/un-report-financial-systems-must-change-or-sdgs-will-fail-94605)

WASHINGTON — If national and international financial systems don’t change, the Sustainable Development Goals will not be achieved, according to a new report out from the United Nations on Thursday.

“The world cannot achieve the SDGs without a fundamental shift in the international financial system to address urgent global threats,” U.N. Deputy Secretary-General Amina Mohammed said in a press conference Thursday.

The 2019 “Financing for Sustainable Development Report,” a project of more than 60 agencies in the U.N. system along with partner organizations, sounds the alarm and outlines some recommendations for a path forward.

Despite some progress on poverty reduction, the picture the report paints is bleak. World economic growth is holding at about 3 percent and unlikely to rise, seven times more dollars’ worth of goods are subject to trade restrictions compared to a year ago, and about 30 least-developed or vulnerable countries are in, or at high risk of, debt distress.

“Achieving sustainable development requires multilateral action to address global challenges; revisiting the global institutional architecture; and strengthened regional and national action, including adjusting policies to the changing global landscape,” according to the report.

Here are five key takeaways from the report about what needs to be done:

1. The multilateral system is under strain in a rapidly changing global environment. While this poses a challenge, it also “opens the door” to ensure that multilateral institutions are “fit for purpose,” Mohammed said. They need to adapt and reform. “Rather than retreating, we must strengthen collective action in support of sustainable development,” she said.

2. There needs to be a remaking of global financial architecture — from sovereign debt, to international tax norms, to the international trade system. With so many countries facing debt challenges, new instruments and nontraditional creditors have created gaps in the current systems. As reforms to debt reduction are discussed, they should consider whether debt restructuring or reduction programs can be tied to future social sector spending that less debt can unlock, Mohammed said. An increase of digitalization has also raised questions about how changes to the global tax system could be changed to address inequities.

3. Countries need to take action on the national level to create national financing frameworks that support their national development plans. These frameworks were introduced at the Addis Ababa financing summit, but it’s time to start creating and using them, Mohammed said.

4. Success on the global goals will require a shift to a more long-term way of thinking by all involved, including the private sector, where incentives and regulations encourage short-term oriented behavior. Investors and businesses will have to make sustainability a central part of investment decisions, and public and private incentives need to be aligned to ensure sustainable development, according to the report.

5. Innovation and new technologies offer great potential for development finance, but it also prevents risks and needs to be properly managed. There needs to be a new focus on the regulatory frameworks needed to address risks from technology, Mohammed said.

### 1NC---!D---Mexico Collapse

#### No Mexican state collapse -- experts

Daudelin, 12 - Professor @ Carleton, development and conflict (Jean, “The State And Security in Mexico” http://books.google.com/books?id=o-Tu81Bq6s4C&pg=PA127&lpg=PA127&dq=mexico+state+collapse&source=bl&ots=Yhx\_8YtFb4&sig=pa7WFUmTZL9ABazqwXvl8euUKw&hl=en&sa=X&ei=46UHVNGWOIfxgwSRlYDACg&ved=0CB8Q6AEwATgU#v=onepage&q=mexico%20state%20collapse&f=false)

A careful look at the evidence and the fact that the U.S. seems to be disengaging from what has ultimately been a limited involvement in the region's drug and organized-crime scene suggests that, from whichever angle one looks at the problem, the latter does not represent a very significant threat to U.S. security. In that context, a sizable increase in Canada's involvement can hardly be justified by the dangers the problem represents to its main ally. The prospects of narco-traffickers provoking a state collapse in Mexico are essentially nonexistent, notwithstanding alarmist declarations by some U.S. public officials.14 No reputable expert on the country has supported that view.54 Such prospects for Guatemala, Honduras, or even El Salvador are much less far-fetched, however, which is why an effort is currently being made by the World Bank, the European Union, the U.S., and Canada to bolster the region's governments\* individual and collective capacity to confront the organized-crime challenge." It is difficult to argue, however, that the emergence of a narco-state or some kind of state collapse in Central America and the Caribbean would represent a significant threat for Canada itself. These regions—Central America and Haiti in particular—have long been plagued by corruption, violence, and instability and have previously-seen long episodes of civil war without any ripple effect on Canada. Were such developments to occur, they would create, relative to North America, the situation that currently exists in the urban peripheries of large Latin American countries, such as Colombia or Brazil, whose stability and economic prospects are not significantly impacted by the anarchy and violence that prevail in small "uncontrolled territories."

### 1NC---AT: Cartels

#### No cartel impact

Daudelin, 12 - Professor @ Carleton, development and conflict (Jean, “The State And Security in Mexico” http://books.google.com/books?id=o-Tu81Bq6s4C&pg=PA127&lpg=PA127&dq=mexico+state+collapse&source=bl&ots=Yhx\_8YtFb4&sig=pa7WFUmTZL9ABazqwXvl8euUKw&hl=en&sa=X&ei=46UHVNGWOIfxgwSRlYDACg&ved=0CB8Q6AEwATgU#v=onepage&q=mexico%20state%20collapse&f=false)

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## Cartels

#### Plan Destroys indigenous antitrust regimes – That destroys development

**Cheng ‘12** [Thomas; 2012; assistant professor at the Faculty of Law of the University of Hong Kong; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law." <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil>]

Serious **poverty** and **income inequality** are prevalent in many developing economies. These phenomena present two main challenges to developing countries as far as **competition law** enforcement is concerned. One is the need to encourage entrepreneurship to promote **inclusive growth**; the other is the need to protect impoverished consumers from exploitative practices. A number of commentators, including Fox, have argued that developing countries must pursue **inclusive growth** that will alleviate **poverty** and reduce income **inequality**.162 Inclusive growth requires opportunities for upward economic mobility, an important avenue for which is entrepreneurship.'63 For those who are at the bottom of the economic ladder in a developing country, often the **only way** to **break out of poverty** is to start their own businesses, which are going to be, at least initially, **SMEs**. Therefore, encouragement of entrepreneurship and **assistance** to **SMEs** must be a **central pillar** in every inclusive growth strategy. If competition law is to complement an inclusive growth strategy, it must afford SMEs **stronger protection** than is customary in established jurisdictions and be particularly vigilant against **abuse** of dominance. This is especially so because dominant firms in developing countries are often former **state monopolies** that still benefit from official patronage or informal connections to the state. Their privileged positions make it even harder for new private firm **rivals** to **compete** with them.

The poorest in many developing countries live below the poverty line and often scrape by with no more than a dollar or two a day.'64 They are often malnourished, sick, and illiterate, which severely curtails their productivity and ability to improve their economic well-being. Therefore, an inclusive growth strategy must include policies to combat **malnourishment**, poor health, and **illiteracy**. While the bulk of the responsibility will fall on government programs that directly confront these problems, competition law has a **role to play**. Competition law enforcement may focus on goods that have the **most direct impact** on the nutritional, health, and educational needs of the poorest in developing countries. **Anticompetitive conduct** in these sectors should be dealt with harshly.

### 1NC---Solvency---Courts

#### 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---Food Wars

#### Food insecurity doesn’t cause war.

Vestby et al 18, \*Jonas, Doctoral Researcher at the Peace Research Institute Oslo, \*\*Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and \*\*\*Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography. (5/18/18, “Does hunger cause conflict?”, *Climate & Conflict Blog*, <https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/>)

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

# 2NC

## CP---Adv 1

### 1NC---CP

#### COMBINING

#### Text: The United States federal government should:

#### 1---increase foreign aid

#### 2---push sustainable development goals

#### 3---increase security cooperation between the US and Mexico

#### 4---increase investment in Mexico and strengthen collaboration on issues relating to education, innovation, and entrepreneurship.

#### 5---promote market competition in South Africa

#### 6---invest in climate innovation

#### The United States federal government should substantially expand international food aid, and at least double investments in agricultural and food research over the next 10 years.

#### NEW

#### The United States federal government should pass a policy that prohibits the military for initiating military intervention in Mexico.

#### Military, economic, and diplomatic inducements provide sufficient leverage to ensure say yes.

Reardon 10, A.B. in History @ Columbia and M.S. in Biology at UIC (Robert, Nuclear Bargaining: Using Carrots and Sticks in Nuclear Counter-Proliferation, *Massachusetts Institute of Technology*, https://dspace.mit.edu/handle/1721.1/62473)

A. Types of Positive Inducements Issue linkage takes the form of positive inducements when the sender promises to provide some new benefit in one issue area if the target agrees to change its behavior in some specified way in another issue area. Positive benefits can also be provided over time, in which case the sender promises to continue to provide some benefit so long as the target maintains the desired behavior. The sender can offer benefits from any issue area in which it can act, drawing on any of its sources of power and influence. As a result, we can identify three classes of positive inducements: Military or security-related positive inducements: With allies, these include increased security guarantees or defense commitments, or an upgrading of the alliance; additional military assistance or aid, arms transfers, or the transfer of advanced military technology; increased troop or equipment deployments in support of the target's national defense, or as a contribution to a military endeavor to which the target is a party; or any threats or military action against a third party that is beneficial to the target's own security. With adversaries, these include arms reductions, troop withdrawals or military demobilization, security assurances, or the denial of assistance or support for the target's adversaries. Economic positive inducements: These include transfers of aid or assistance, improved opportunities for trade and investment, loans or loan guarantees, or technology transfers. Diplomatic positive inducements: These include the establishment of stronger diplomatic ties or the normalization of relations; the exchange of high-level envoys; agreement to high-profile talks, summit meetings, or state visits; joint statements of cooperation or friendship; cultural or other symbolic exchanges; or support for membership in international treaties or forums that enhance prestige or confer legitimacy. The three categories are not mutually exclusive. Inducements in one issue area can also affect those in others, bringing yet more issues into the linkage. Economic inducements can improve security, diplomatic inducements can allay security concerns, and military inducements can provide new economic opportunities. For example, improved diplomatic relations between the US and Libya improved the Tripoli's economic fortunes because it led other states and international investors to believe that the Libyan market was more stable and that investments in the country would be more secure. For all three cases presented in this dissertation, the provision of economic incentives led to improvements in the security of each state as well. The target's preferences in the issue area of the positive inducement may also be naturally linked to (or non-separable from) its preferences on the nuclear issue. Security assurances, for example, that successfully mitigate the target's strategic concerns can lead the state's decision makers to conclude that a nuclear program is no longer worth its cost. Likewise, because much of the technology required to make a nuclear bomb can also be used in the production of civilian nuclear energy, economic inducements can often lead the target to reconsider the benefits of a nuclear program as well.

#### Coop solves

Metz 14 [Steven, Director of Research at the Strategic Studies Institute, Ph.D. from the Johns Hopkins University, “Strategic Horizons: All Options Bad If Mexico’s Drug Violence Expands to U.S.,” Feb 19, 2014, http://www.worldpoliticsreview.com/articles/13576/strategic-horizons-all-options-bad-if-mexico-s-drug-violence-expands-to-u-s]

Over the past few decades, violence in Mexico has reached horrific levels, claiming the lives of 70,000 as criminal organizations fight each other for control of the drug trade and wage war on the Mexican police, military, government officials and anyone else unlucky enough to get caught in the crossfire. The chaos has spread southward, engulfing Guatemala, Honduras and Belize. Americans must face the possibility that the conflict may also expand northward, with intergang warfare, assassinations of government officials and outright terrorism in the United States. If so, this will force Americans to undertake a fundamental reassessment of the threat, possibly redefining it as a security issue demanding the use of U.S. military power. One way that large-scale drug violence might move to the United States is if the cartels miscalculate and think they can intimidate the U.S. government or strike at American targets safely from a Mexican sanctuary. The most likely candidate would be the group known as the Zetas. They were created when elite government anti-drug commandos switched sides in the drug war, first serving as mercenaries for the Gulf Cartel and then becoming a powerful cartel in their own right. The Zetas used to recruit mostly ex-military and ex-law enforcement members in large part to maintain discipline and control. But the pool of soldiers and policemen willing to join the narcotraffickers was inadequate to fuel the group’s ambition. Now the Zetas are tapping a very different, much larger, but less disciplined pool of recruits in U.S. prisons and street gangs. This is an ominous turn of events. Since intimidation through extreme violence is a trademark of the Zetas, its spread to the United States raises the possibility of large-scale violence on American soil. As George Grayson of the College of William and Mary put it, “The Zetas are determined to gain the reputation of being the most sadistic, cruel and beastly organization that ever existed.” And without concern for extradition, which helped break the back of the Colombian drug cartels, the Zetas show little fear of the United States government, already having ordered direct violence against American law enforcement. Like the Zetas, most of the other Mexican cartels are expanding their operations inside the United States. Only a handful of U.S. states are free of them today. So far the cartels don’t appear directly responsible for large numbers of killings in the United States, but as expansion and reliance on undisciplined recruits looking to make a name for themselves through ferocity continue, the chances of miscalculation or violent freelancing by a cartel affiliate mount. This could potentially move beyond intergang warfare to the killing of U.S. officials or outright terrorism like the car bombs that drug cartels used in Mexico and Colombia. In an assessment for the U.S. Army War College Strategic Studies Institute, Robert Bunker and John Sullivan considered narcotrafficker car bombs inside the United States to be unlikely but not impossible. A second way that Mexico’s violence could spread north is via the partnership between the narcotraffickers and ideologically motivated terrorist groups. The Zetas already have a substantial connection to Hezbollah, based on collaborative narcotrafficking and arms smuggling. Hezbollah has relied on terrorism since its founding and has few qualms about conducting attacks far from its home turf in southern Lebanon. Since Hezbollah is a close ally or proxy of Iran, it might some day attempt to strike the United States in retribution for American action against Tehran. If so, it would likely attempt to exploit its connection with the Zetas, pulling the narcotraffickers into a transnational proxy war. The foundation for this scenario is already in place: Security analysts like Douglas Farah have warned of a “tier-one security threat for the United States” from an “improbable alliance” between narcotraffickers and anti-American states like Iran and the “Bolivarian” regime in Venezuela. The longer this relationship continues and the more it expands, the greater the chances of dangerous miscalculation. No matter how violence from the Mexican cartels came to the United States, the key issue would be Washington’s response. If the Zetas, another Mexican cartel or someone acting in their stead launched a campaign of assassinations or bombings in the United States or helped Hezbollah or some other transnational terrorist organization with a mass casualty attack, and the Mexican government proved unwilling or unable to respond in a way that Washington considered adequate, the United States would have to consider military action. While the United States has deep cultural and economic ties to Mexico and works closely with Mexican law enforcement on the narcotrafficking problem, the security relationship between the two has always been difficult—understandably so given the long history of U.S. military intervention in Mexico. Mexico would be unlikely to allow the U.S. military or other government agencies free rein to strike at narcotrafficking cartels in its territory, even if those organizations were tied to assassinations, bombings or terrorism in the United States. But any U.S. president would face immense political pressure to strike at America’s enemies if the Mexican government could not or would not do so itself. Failing to act firmly and decisively would weaken the president and encourage the Mexican cartels to believe that they could attack U.S. targets with impunity. After all, the primary lesson from Sept. 11 was that playing only defense and allowing groups that attack the United States undisturbed foreign sanctuary does not work. But using the U.S. military against the cartels on Mexican soil could weaken the Mexican government or even cause its collapse, end further security cooperation between Mexico and the United States and damage one of the most important and intimate bilateral economic relationships in the world. Quite simply, every available strategic option would be disastrous. Hopefully, cooperation between Mexican and U.S. security and intelligence services will be able to forestall such a crisis. No one wants to see U.S. drones over Mexico. But so long as the core dynamic of narcotrafficking—massive demand for drugs in the United States combined with their prohibition—persists, the utter ruthlessness, lack of restraint and unlimited ambition of the narcotraffickers raises the possibility of violent miscalculation and the political and economic calamity that would follow.

#### Aff takes years and signal of leadership key

Chapter Title: Cartel enforcement in the southern African neighbourhood Chapter Author(s): Thula Kaira 17 Book Title: Competition Law and Economic Regulation in Southern Africa Book Subtitle: Addressing Market Power in Southern Africa Book Editor(s): Jonathan Klaaren, Simon Roberts and Imraan Valodia Published by: Wits University Press Stable URL: https://www.jstor.org/stable/10.18772/22017070909.9 Enduring long and costly investigation and litigation processes

Cartel investigations may take years from the initiation of the investigation to settlement. A competition authority must brace itself for protracted legal battles, interlocutory or points in limine (preliminary points of law) before the substantive merits of the case are heard. The soda ash cartel investigation in South Africa was opened in 1999 and took nine years to reach settlement in 2008. The CCSA’s investigations revealed a contravention of the Competition Act and the complaint was referred to the Tribunal on 14 April 2000. The American Natural Soda Ash Corporation (Ansac) opposed the referral on the grounds that the agreement was not a contravention of the Act, but, rather, was integral to the operation of a legitimate and transparent corporate joint venture, which existed for the promotion of export sales, generated significant logistics efficiencies and impacted pro-competitively on the South African market. Between February 2000 and July 2008, the case was held up by extended litigation involving points in limine and appeals. In May 2005, the Supreme Court of Appeal decided that the matter be heard before the Tribunal. The Tribunal hearings into the merits of the case began in mid-2008, and Ansac closed its case within a month. In September 2008, Ansac and its fellow respondent and South African agent, CHC Global, approached the CCSA to discuss a settlement. This case took nine years to reach settlement. With the threat of staff turnover and loss of institutional memory, a competition authority will need to ensure that there is a system of continuity in such cases, in the context of both human resources (proper and easily traceable records) and financial resources, in order to effectively sustain them.

Leadership

There is a need for anti-cartel leadership that is seen to be not only knowledgeable but also well inclined to undertake sustained action against cartels. Such leadership should prioritise resources accordingly and ensure that maximum impact is gained from the prioritisation. Leadership will also be expected to engage in impactful debates that create awareness of a competition authority’s unflinching stance against cartels. This kind of leadership should show examples of visible enforcement achievements and not merely play public relations. Such leadership should equally ignite the right national debate and interest in the work of a competition authority. Leadership must project a visionary dedication to the rule of law, transparency and fairness in investigations and prosecutions. For instance, Spicer (2009, in CCSA and CTSA, 2009, p. 34) remarked about David Lewis, former chairperson of the Tribunal: ‘What has particularly struck me about Lewis is the combination of toughness, independent-mindedness, but ultimately the fairness of his approach. Business can expect no favours, but it can generally be confident that the law will be fairly applied.’

Conclusion

Cartel leniency confessions and settlements in South Africa have not resulted in similar confessions in SACU/SADC countries where there are functional competition authorities. It is unlikely that such confessions will ever be received in the absence of the competition authorities actually demonstrating that they have the capacity and resolve to detect and punish cartel offences. As useful as it is, a CLP is merely a document and in and of itself will not invite confessions from cartel participants. Life has to be breathed into CLPs by competition authorities going out into the marketplace and getting admissible evidence that can attract punitive penalties. To do this, competition authorities must invest not only in systems, but also in developing the staff involved in advocacy, cartel investigations, analysis, prosecution and adjudication to understand investigation procedures, rules of evidence, collection and handling. It is also worth noting that a number of competition authorities in the SADC have been undertaking market studies/inquiries into specific sectors to understand the nature of such sectors and their competition dynamics. This has been done by individual competition authorities at the national level as well as in the regional collaborative context under the SADC and the African Competition Forum in sectors that include transport, sugar, cement and poultry. Such investment is timely and will assist the authorities to better understand particular sectors and how the cross-regional corporate strategies and linkages can be monitored to ensure that cartels are detected timeously. It will also facilitate the necessary cooperation among competition authorities.

### Foreig Aid

#### Foreign aid stabilizes states and solves threats

Vin Gupta and Vanessa Kerry, 5-5-2016 – Vin Gupta, an assistant professor at the Institute for Health Metrics and Evaluation at the University of Washington and a fellow at the Center for Global Development, also serves as a physician and officer in the U.S. Air Force Medical Corps, where he focuses on the Pentagon’s global health engagement activities. @VinGuptaMD Vanessa Kerry is CEO of Seed Global Health, director in global initiatives at Massachusetts General Hospital's Center for Global Health, and director of global public policy at Harvard Medical School. @VBKerry ("Foreign Aid Makes America Safer," Foreign Policy, <https://foreignpolicy.com/2018/04/11/foreign-aid-makes-america-safer/>) jbb

Nowhere is that more obvious than in the Trump administration’s drastic action in cutting the once-ambitious efforts of U.S. global diplomacy, international aid, and public health infrastructures. This includes both sweeping budget reductions and replacing leaders with political spin operations. In March, U.S. President Donald Trump proposed a 33 percent cut in the budget for the United States Agency for International Development on the grounds that the president was aiming for “efficiency and effectiveness” in U.S. aid efforts and to prioritize the overarching security and economic needs of American citizens. This rhetoric reveals a profound misunderstanding of how closely foreign aid is intertwined with the security, health, and economic interests of the United States. Many critics have argued that justifications for foreign aid are based on anecdotal data and a misguided belief in the power of aid dollars to transform the governance of aid-dependent countries. But history demonstrates that programs from the Marshall Plan to the Peace Corps have had a deep and lasting impact. Even the Department of Defense has recognized the importance of soft power through its focus on programs aimed to “win the hearts and minds” of U.S. adversaries. Yet, while no one will dispute that the Marshall Plan was a key cog in postwar Europe’s reconstruction, the perceived absence of hard data on aid’s effectiveness has allowed skeptics to question how the United States furthers its soft power in the modern age. However, the data exists. The change in state fragility between 2005–2014 across the WHO Africa region as measured by the Fragile States Index. The index generates information on a nation’s degree of fragility in a given year. Fragility is defined as weak state capacity or legitimacy, whereby a population is vulnerable to shocks ranging from economic disruptions to civil war. The index ranges from 0 to 130; lower values connote greater stability. Source: Fund for Peace. (Global Public Health) Along with colleagues, we recently published the results of a broad empirical study that asked the following question: Have countries in sub-Saharan Africa become more stable as a direct result of U.S. federal aid dollars? We specifically looked at development assistance for health and analyzed the years from 2005 to 2014, a period that saw the rise of the President’s Emergency Plan for AIDS Relief and a concomitant increase in other financial commitments to global health programs. Countries that received the highest levels of per capita health aid enjoyed near-immediate results in terms of improved state stability metricsCountries that received the highest levels of per capita health aid enjoyed near-immediate results in terms of improved state stability metrics, including higher quality of governance, lower degrees of corruption, enhanced social cohesion, and a more vibrant civil society. Moreover, the results were all the more impressive because the focus countries of health aid were all destabilized by some of the highest levels of global disease burden from HIV and other communicable pathogens. Our findings suggest that when lower- and lower-middle-income nations facing overwhelming health challenges receive significant support for their health systems, there are immediate benefits for state stability. In other words, giving health aid to countries with the highest rates of HIV, tuberculosis, or malaria, as is the mission of the President’s Emergency Plan for AIDS Relief, not only saves lives but also appears to facilitate the rise of more peaceful societies. This link between health aid and peace underpins the concept of “strategic health diplomacy,” which has gained greater currency in the past decade since the roll out of the presidential AIDS program. Former Sens. Bill Frist (R-Tenn.) and Tom Daschle (D-S.D.) have long championed the doctrine as a bipartisan, effective, and efficient approach to enhancing global security. In a 2015 white paper, they showed how indices of economic growth and human development improved at higher rates among countries that were recipients of the relief program than in nations that did not receive such aid. Countries of focus for U.S. foreign aid flows. Source: Organization for Economic Co-operation and Development. (Global Public Health) Collectively, these studies underscore the argument that health aid can serve both strategic and humanitarian purposes. Sadly, the debate on the value of foreign aid remains another tug of war between populists and globalists. Unfortunately, foreign spending has become an easy political target in many countries at a time when economic inequality is increasing. Even though the United States ranks 20th among the 28 richest economies in terms of relative aid spending, earmarking just 0.17 percent of gross national income for foreign development assistance as of 2015, populist politicians don’t hesitate to target it as misdirected spending. The reality is that there is not a domestic versus international trade-off. Investment in health and development abroad has clear security benefits for Americans at home. Investment in health and development abroad has clear security benefits for Americans at home. In another empirical analysis we also recently completed, we observed over the period from 2008 to 2014 that nations that posed a greater threat to U.S. national security interests received less health aid dollars annually than those posing a lesser threat. Unsurprisingly, these high-threat nations are often instead the focus of non-health development aid efforts, including military assistance and programs designed to support stronger civil society institutions. While these are important aspects of a holistic aid portfolio, our studies suggest that policymakers should at the very least consider expanding the scope of health aid to countries that pose a higher security threat; such assistance may, in fact, facilitate other peace and stability efforts already underway. As the Trump administration cuts foreign aid, hollows out the State Department, and reverses a long history of global engagement, policymakers must not forget the importance of reaching outward. There is now hard evidence that foreign assistance, especially in health, is precisely the type of investment that any administration should increase if it is seeking cost-effectiveness. To do otherwise would be myopic and is not in the United States’ long-term national security interests.

#### Foreign aid solves poverty – economic development, fights disease, political stability

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The truth is foreign aid improves global health standards across the board, and that makes the world a better place to live in. It is sometimes difficult to justify government expenditures on foreign aid while any of its own citizens are in poverty. The truth is the amount spent on foreign aid is nominal, the benefit, however, astronomical. Foreign Aid programs cost the U.S. Government as much as 365 billion per year, but it is money well spent. According to Five things you need to know about foreign aid by [Concern USA.org](https://www.concernusa.org/story/5-things-you-need-to-know-about-foreign-aid/?gclid=CjwKCAiA8P_TBRA9EiwAJrpHM8n8GupzKdK__WVFXZUg0fULjDXk3OdI0ozISLBt4r9tuHfOXTwg2BoCFNsQAvD_BwE) , two-thirds of foreign aid is managed by the State Department or related agencies like USAID. Foreign aid is given in more than just dollars, it also provides political, development, and humanitarian assistance. Assistance can take many forms including food distributions in famine zones to assisting in rebuilding following a natural disaster. Foreign aid saves over 17 million lives With the direction of President Trump, State Department, Treasury officials and other key executive personnel, including Agriculture, are working simultaneously creating foreign aid programs designed to relieve global poverty, including its economic inefficiencies. Whether delivering food, supplying humanitarian aid, expanding improvement in global living standard trends, the impact is clear. Foreign aid saves lives. Organizations like the [Global Fund](https://www.theglobalfund.org/) to fight AIDS, TB and Malaria save over 17 million individuals annually. Global giving creates stronger diplomatic ties Foreign aid is instrumental at formulating stronger economic relations, as government counterparts create strategies and policies to increase interactive human development and improve human rights. Nikki Haley addresses the U.N. Image: Screenshot Capture from [Youtube.com](http://youtube.com/) Ambassador Nikki Haley, U.S. Permanent Representative to the United Nations, met with United Nations Secretary-General, Antonio Gutierrez to help protect Christians and Yedizis currently in Iraq, displaying a clear positive shift toward a more multilateral [policy development agenda](https://usun.state.gov/remarks/8247) Foreign Aid distributions provides long-term development, creating simultaneous economic improvement. The World Economic Forum says every year global governments spend 17.6 billion to ensure human rights protections. An [increase in 400 million](https://www.cfr.org/backgrounder/how-does-us-spend-its-foreign-aid) over previous year expenditures. US, our globes largest giver, distributes foreign aid in four main categories: How Does the U.S. Spend Its Foreign Aid? [CFR backgrounder April 2017](https://usun.state.gov/remarks/8247) Foreign aid is paving a path to more stable communities around the world. Increasing opportunities for trade, travel, and exploration, the benefit of foreign aid programs it is not immediate for the donor country. Recipient countries, however, inevitably become allies as they fuel the demand for economic development. That global strategic positioning is priceless. Government support for foreign aid programs is critical for infrastructure development in emerging economies. Bringing food, medical aid, access to clean drinking water are all essential support programs. Other programs provide job training, agriculture assistance, education, and more. However, each works to ensure basic human needs are available to those that live in the most underdeveloped countries. Five of the basic reasons to support foreign aid programs are as follows: 1. Improving global economic forecasts Globalization, post-economic recession, requires considerably larger foreign aid appropriations to further implementation targets for human rights improvements, for the most vulnerable global populations with a growing and greater diversity of needs, forward. Setting goals for projects like space habitation and complete global technological integration are important. 2. Increasing wider access to basic necessities delivers a greater degree of security Historically, adverse weather conditions negatively impact regional communities across the globe, sometimes on catastrophic levels. Foreign aid acts as a monetary stabilizer, providing basic necessities, and institutes a greater degree of overall security in the face of natural disasters. 3. Changing technological landscape Technological advances make construction, utility delivery, even implementation of social service programs like health assessments and nutrition development an ever-changing landscape that creates a new base to begin lifting the barriers to achieving better, stable living conditions across the globe. 4. Increasing global safety threats Terror networks like Al Qaeda and ISIS are actually an ongoing plot to destabilize governments and democracy along with economic development and international prosperity. 5. Stability Altogether, fluctuations in aid levels have a significant impact on emerging economies. Aid must be ongoing until goals of self-sufficiency are met.

#### That’s a prerequisite to preventing future conflict

American Institutes for Research March 2007 – (Role of Education and the Demobilization of Child Soldiers, Aspects of an Appropriate Education Program for Child Soldiers <https://www.unicef.org/wcaro/Role_of_education_and_demobilised_children.pdf>) jbb

2. Families and Communities Must Be Central for Reintegration of Child Soldiers. Recognizing families as key to the reintegration process, successful programs work closely with parents so that they are better able to support both themselves and the child who is coming home. Frequently, families are unaware of the rights of children, and as such some see no wrong in sending older children or adolescents to work in potentially harmful situations. For this reason and others, awareness-raising for family members about the rights of children is an integral part of successful programming. Invariably, the family of the child soldier is very poor and has difficulty in meeting daily needs. During and immediately after conflict, economies suffer greatly and jobs and livelihoods are hard to find. Inflation is high, and families may find the income of their child soldiers is a significant contribution to their tenuous existence. Many programs attempt to address this issue by helping the returnee children learn a vocation. In some programs, such as one run by Save the Children, the focus was on increasing family income by increasing livelihood capacities among families.1 1 See Save the Children’s Going Home: Demobilizing and Reintegrating Child Soldiers in the Democratic Republic of Congo by Beth Verhey, 2003. Issue Paper: Aspects of an Appropriate Education Program for Child Soldiers 2 Awareness-raising programs also work to prepare parents to receive the returning child. Families in these situations often face the dilemma of wanting their child back but fearing repercussion from the community, militia or government armies. In some cases the families themselves harbor fear or hatred for the child because he or she may have been instrumental in bringing violence and trauma to the family. Programs that recognize this dilemma work closely with families to mentally and emotionally prepare them to accept and help their children. Preparation strategies include dialogue, counseling and awareness generation. Successful strategies to help children and families cope may be a combination of: identifying/mapping families of child soldiers; contacting and counseling these families; coordinating for the child’s return; and creating livelihood options for both the family and the child soldier. It is not uncommon for a community to manifest considerable hostility and mistrust toward returning child soldiers. This phenomenon occurs most frequently with returning girls, who have often served as sex slaves or wives during their time with armed groups. If the community as a whole is unready to accept the returned child soldiers and if appropriate power structures of community leaders are not in place to sanction this acceptance, reintegration is practically impossible. Returning children who fail to reintegrate often return to their commanders or reenlist elsewhere. Community participation also plays a critical role in implementing and sustaining local activities, particularly as governments may be consumed by processes of reconstruction or may be, in many cases, ineffective or absent. Some programs demonstrate how existing community institutions and traditional community leaders can be enlisted to give social legitimacy to the return of the child soldiers to civilian life. Local rituals and traditions may prove especially effective in gaining acceptance and forgiveness for the child soldier. Successful examples of using community networks to facilitate reintegration include: ▪ The Christian’s Children Fund implemented program in Angola, which worked with the community to legitimize the return of the former child soldiers. The program worked through church-based motivators and welcomed returning children in a traditional ceremony involving cleansing rituals.2 ▪ The Save the Children-run program in DRC layered demobilization activities with their strong Community Child Protection Networks (CCPN), which focused on preventing and protecting children from all kinds of abuse, advocating for children’s protection and development, and disseminating and promoting the rights of children and legal protection instruments. Because they were already actively engaged in child rights issues, the CCPN played critical roles in demobilization and reintegration activities.3 2 See Christian Children’s Fund, Final Report: Project of Reintegration of Child Soldiers in Angola, September 1998. 3 See Save the Children, Going Home: Demobilizing and Reintegrating Child Soldiers in the Democratic Republic of Congo by Beth Verhey, 2003. Issue Paper: Aspects of an Appropriate Education Program for Child Soldiers 3 ▪ The USAID-sponsored Community Focused Reintegration (CFR) programs in Burundi, DRC, Liberia, and Sierra Leone made community central to the reintegration and education processes. In Burundi, for example, the program consisted of three components: 1) leadership training for esteemed community members, including training on understanding perceptions, communicating effectively, and resolving conflicts; 2) combined vocational skills and literacy training for ex-combatants and other community members; and 3) small grants for small community infrastructure projects. Together these activities helped to reweave the social networks of the community while reintegrating the returning child soldiers.4 3. Post-Conflict Education Efforts Must Be Targeted to Reach Child Soldiers. Most children who participate in conflicts as soldiers either have never been to school or dropped out in early grades. By the time they are ready for reintegration, these children have spent a number of years outside any sort of formal learning space. She or he is likely to be deeply scarred and highly traumatized and is likely to have been a witness or even a perpetuator of violence of the worst kind. The rigor of soldier life has likely left him or her undernourished and suffering from disease, injury and/or disability. Unfortunately, sexually transmitted diseases are far too common among these children, especially among female ex-combatants. In addition, child soldiers become accustomed to the military way of life. Many ex-combatants miss the money, power and action associated with their lives as soldiers. Years spent associated with armed groups have deprived these children of an education, leaving them far behind their peers in education. Most often government educational systems in these contexts have been destroyed by conflict, leaving few options for child soldiers. Experience shows that in order to reach child soldiers with educational interventions, they must be specifically targeted. The programs reviewed for this analysis consistently demonstrated that inter-related activities are key to enabling the child soldier to become a learner who is integrated into civilian life. These activities include the provision of temporary shelter and a kit for immediate personal needs, health screening and medical care, psycho-social care, foster care, education, and economic support. Alternative education programs are most often preferred for returning child soldiers. The programs reviewed also demonstrated that planned properly, child soldiers can also benefit from the other post-conflict initiatives implemented for the general population of children. However, key to making this happen is planning for the special needs of former child soldiers at the outset. Some of the approaches and activities in education that have worked for child soldiers include: ▪ Transit Camps and Bridge Courses: Transit camps are considered essential as an intermediary step for child soldiers. These camps offer a number of services, such as psycho-social care, medical attention, literacy development and skill courses. The former child soldiers stay in these transit camps for 6 to 8 weeks or more until they are reintegrated with their families. Educational bridge programs work well in these settings, as they enable returning children to achieve some basic literacy and primary level competencies in a relatively short time. Bridge programs effectively create a base from which the child can move to other learning options. In most cases, children proceed to vocational education. 4 See USAID, Community-Focused Reintegration, 2005. Issue Paper: Aspects of an Appropriate Education Program for Child Soldiers 4 ▪ Vocational Education: Most former child soldiers undergoing the process of reintegration are eleven years of age or older and belong to extremely poor families. Invariably, these children feel compelled to supplement the family income (or are without families and must earn a living for themselves). For this reason many demobilization programs include vocational education programs to build skills in a specific trade. Vocational training exists to help children gain skills in agriculture, animal husbandry, baking, carpentry, crafting, masonry, mechanics, tailoring and a variety of other trades. The vocational skills training component of the USAID-sponsored project in Burundi also included classes on small-business management. Over 4,000 participants have graduated from that program.5 ▪ However, some programs have found it challenging to choose appropriate vocations in which to train children. In El Salvador, for example, the experience with vocational training was not very encouraging; only about 25% of children became involved in the trade for which they were trained.6 To make the most of these programs, a complex labor market analysis should determine which vocations will be offered. ▪ Special Content: Modules or lessons on specific themes thought to be useful to child soldiers are often integrated into education programs. Some examples include peace education, education on landmine and HIV awareness, and civic education. In its civic education program, UNCHR included lessons intended to sensitize children to the underlying causes of child recruitment and to the issues of human and child rights.7 ▪ Creating Awareness of Children’s Rights: Many children are unaware of their rights and simply do not know that it is unlawful for them to become or remain child soldiers. Save the Children has disseminated rights-based information by launching extensive awareness building campaigns. In these instances, this strategy can be successful in moving children to demobilize themselves and reach out to the community-based networks and transit centers.8 ▪ RapidEd: Developed by PLAN and UNESCO, RapidEd is an accelerated remedial program for war affected children. It includes basic courses in literacy and numeracy, as well as in therapeutic and healing forms of self expression. The intent is to establish schools as quickly as possible to give a sense of normalcy and to create opportunities for children to voice their deep-seated emotions and traumas. In order to ensure the latter goal, facilitators are trained in undertaking dialogue with the children in the most sensitive manner. The approach also encourages singing, playing, discussing, participating in role playing or dramas and drawing. A school kit comprised of pens, 8 See Save the Children, Going Home: Demobilizing and Reintegrating Child Soldiers in the Democratic Republic of Congo by Beth Verhey, 2003. Issue Paper: Aspects of an Appropriate Education Program for Child Soldiers 5 chart paper, select locally appropriate sports equipment and musical instruments is given to the community.9 ▪ Creating Healing Classrooms: The International Rescue Committee (IRC) has advanced the concept of schools as places for psycho-social support and recovery after times of conflict or upheaval. Through the initiative, IRC trains teachers to adopt practices that `restore and nurture developmental opportunities’. Teachers are trained to create a nurturing environment where the child’s need for protection, security, psycho social-care, development and learning are addressed. The training enables teachers to create classrooms that promote a sense of belonging in all children, build routines and relationships with peers, promote personal attachments, provide intellectual stimulation and develop a sense of control among children. The training also works to ensure the quality of education and addresses teachers’ needs to reflect and address their own personal traumas and problems. The healing classrooms module has been successfully piloted in Aceh, Iraq, Liberia, and Northern Ethiopia.10 ▪ Peace Education: Participation in war and indoctrination into the ideologies of hatred and violence leaves children’s moral sensibilities deformed. Children may hand over their guns, but they cannot so easily abandon the violent ways of thinking in which they have been trained. Part of demobilization is enabling the child move away from violence and into a more inclusive and constructive way of life. The inclusion of peace education in curricula facilitates this process. For example, the Peace Education Module for Youth and Young Adults in Solomon Islands, developed by UNICEF, promotes deep and reflective thinking on issues of peace, diversity, conflict. It includes practical activities and lessons on practicing inter-personal and inter-group peace and on good governance and peace. The module contains set lessons to be implemented in secondary schools over a period of time through a range of activities like role play, discussion, small group work, opinion polls and negotiation exercises. ▪ Accelerated Learning Programs: In South Sudan, an Accelerated Learning Program (ALP) designed under the Sudan Basic Education Program (SBEP) provides alternative and faster basic education for older children and youth ages 12 – 18. The program allows these children to catch up with their peers already enrolled in the formal primary education program. The ALP adopts the eight-year primary school curriculum but restructures its contents, such that those enrolled will take a period of four years to cover the material. The ALP program provides the opportunity for members of its target group to acquire knowledge, skills, attitudes, values and life skills which will enable them to express themselves and become self-disciplined and self-reliant. It also provides them with an education designed to promote their desire to continue learning through formal or other alternative forms of education. ▪ The Teacher Emergency Package (TEP) Program: The Teacher Education Emergency Package was a co-venture of UNICEF-UNESCO and UNHCR. The TEP contains a basic 9 Hannu Pesonen, `Sierra Leone: Where Children Draw end to their Waterloo from ..Helping Children out grow War, by Vachel W. Miller and Friedrich Affolter, USAID, 2002 10 Creating Healing Classrooms: Guide for Teachers and Teacher Educators. International Resuce Committee. 2006. Issue Paper: Aspects of an Appropriate Education Program for Child Soldiers 6 lesson plans in literacy and numeracy, basic learning material like chalk, pencil and exercise books. It enables teachers to start education process when the system has been badly affected and made dysfunctional. The TEP has been used at a large scale in Rwanda, Somalia and other contexts of conflict.11 ▪ Psycho-Social Care: Almost every demobilization program incorporates psycho-social care through a range of different activities (see Healing Classrooms listed above). Some such activities focus on helping children construct life narratives for when they were with their families and for when they were child soldiers. The effects of these narratives differ from individual to individual, but they are largely effective in enabling children to express and address their deeper emotions and concerns. Other activities undertaken as psycho-social care include individual counseling, therapeutic workshops, peer relation and communication sessions and productive work for children. ▪ The experience in Colombia brought out the significance of social relationships for the child.12 During their time with the militia or the military, children develop friendships with fellow soldiers. In many cases, young soldiers perceive their commanders as mentors and idolize them. Former child soldiers must abandon the patterns of military relationships and adapt to the patterns of civilian life instead. The experience in Columbia emphasizes the need to ‘recreate the social fabric’ by enabling the child to rebuild new relationships that validate him or her. ▪ The Colombian experience also emphasizes the need to build on the child soldiers’ internal capacities and resources and to keep a perspective on the negative previous negative conditioning of the child. Engaging the returnee children in sports has proven an effective rebuilding strategy. Save the Children in Liberia integrated sports with life skill education, and they found that sports gave the child soldiers an opportunity for physical expression, for developing social groups and above all for gaining social recognition and re-establishing self identity.13 CONCLUSION Demobilization of Child Soldiers is not possible if insecurity and conflict persist in the region. The success of the demobilization efforts depend a great deal on certain conditions.

### FOOD

### Overview – 2NC

#### Solves---gives incentives to model South Africa’s Competition Act and targets Nigeria/Ghana---their ev establishes the threshold at 10% decrease in food prices AND $700 million, which the counterplan does. Ignore deficits---this is their antitrust key card

1AC Nwuneli ’18 [Ndidi; August 7; Co-Founder of AACE Food Processing & Distribution, Managing Partner of Sahel Consulting Agriculture & Nutrition, Founder of LEAP Africa, and a 2018 Aspen Institute New Voices fellow; Project Syndicate, “The High Cost of Food Monopolies in Africa,” <https://www.project-syndicate.org/commentary/africa-monopoly-food-prices-by-ndidi-okonkwo-nwuneli-2018-08>; KS]

Many consumers in Africa spend a disproportionate percentage of their household income on food. One of the biggest reasons is the failure of regional governments to ensure competition in the food sector, which has led to higher prices and made local agriculture less competitive.

LAGOS – In May, global food prices increased 1.2%, reaching their highest level since October 2017. This upward trajectory is having a disproportionate impact in Africa, where the share of household income spent on food is also rising. To ensure food security, governments must work quickly to reverse these trends, and one place to start is by policing the producers who are feeding the frenzy.

According to data compiled by the World Economic Forum, four of the world’s top five countries in terms of food expenditure are in Africa. Nigeria leads the list, with a staggering 56.4% of household income in 2015 spent on food, followed by Kenya (46.7%), Cameroon (45.6%), and Algeria (42.5%). By comparison, consumers in the United States spend the least globally (6.4%), far less than people in emerging economies like Brazil (16%) and India (30%).

One reason for the distortion is the price of food relative to income. As Africa urbanizes, people are buying more imported semi- or fully processed foods, which cost more than locally produced foods. And in most countries, wages have not kept pace with inflation.

But the primary cause is poor public policy: African governments have failed to curb the power of agribusinesses and large food producers, a lack of oversight that has made local agriculture less competitive. In turn, prices for most commodities have risen.

The absence of antitrust laws, combined with weak consumer protection, means that in many countries, only two or three major companies control markets for items like salt, sugar, flour, milk, oil, and tea . The impact is most pronounced in African cities, where prices for white rice, frozen chicken, bread, butter, eggs, and even carbonated soft drinks are at least 24% higher than in other cities around the world. These prices hit consumers both directly and indirectly (owing to pass-through of higher input costs by food conglomerates and service providers).

The Food and Agriculture Organization of the United Nations (FAO) has long argued that food security and fair pricing depends on markets that are free from monopolistic tendencies. The OECD concurs, and has frequently called on authorities to address “anti-competitive mergers, abuse of dominance, cartels and price fixing, vertical restraints, and exclusive practices” in the food sector. And yet, in many African countries, this advice has rarely been heeded.

To be sure, this is not a new problem. Between 1997 and 2004, for example, the FAO counted 122 allegations of “anti-competitive practices” in 23 countries in Sub-Saharan Africa. Violations included a “vertical monopoly” in the Malawi sugar sector, price fixing in Kenya’s fertilizer industry, and a “buyer cartel” in the Zimbabwean cotton industry. And, despite the considerable attention such cases have received, the underlying problems persist.

According to the World Bank, more than 70% of African countries rank in the bottom half globally for efforts to protect “market-based competition.” While 27 African countries and five regional blocs do have antitrust laws on the books, enforcement is rare. The remaining countries have no regulations at all and have made little progress in drafting them.

There is one notable exception: South Africa. Since 1998, the country’s Competition Act has prohibited any company controlling at least 45% of the market from excluding other firms or seeking to exercise control over pricing. Violators face penalties of up to 10% of their earnings, and during the last two decades, some of the biggest companies in the country – including Tiger Brands, Pioneer Foods, and Sime Darby – have been penalized. As Tembinkosi Bonakele, head of South Africa’s Competition Commission, noted last year, the government is “determined to root out exploitation of consumers by cartels,” especially in the food industry.

Other countries should follow South Africa’s lead. Companies and special-interest groups will always seek to benefit from the absence of regulation. The need for reform is greatest in countries like Nigeria and Ghana, where food expenditures are high and food-industry pressure is most pronounced. Fortunately, there is growing recognition of the need to address these challenges. Babatunde Irukera, Director General of the Consumer Protection Council in Nigeria, recently asserted that, “In a large vibrant and loyal market such as Nigeria, the absence of broad competition regulation is tragic. Unregulated markets in competition context constitute the otherwise ‘legitimate’ vehicle for both financial and social extortion.”

Reducing the prices of staple food by even a modest 10% (far below the average premium cartels around the world charge) by tackling anticompetitive behavior in these sectors, or by reforming regulations that shield them from competition, could lift 270,000 people in Kenya, 200,000 in South Africa, and 20,000 in Zambia out of poverty. Such a policy would save households in these countries over $700 million (2015 US dollars) a year, with poor households gaining disproportionately more than rich ones.

Ultimately, it is the responsibility of political leaders to protect consumers from collusion and price-fixing. There is no question that Africa’s businesses need space to innovate and grow, but their success should never come at the cost of someone else’s next meal.

## Adv 1

#### Drug war ienvtiable---AMLO’s promises fail

Pierson 18 — Carli Pierson, 8-1-2018, "Can AMLO end Mexico's devastating drug wars?," No Publication, https://www.aljazeera.com/indepth/opinion/amlo-mexico-devastating-drug-wars-180724104456491.html

On July 1, by electing Andres Manuel Lopez Obrador (AMLO) as their new president, the Mexican people did not only speak, they shouted: "No more copycat politicians, no more failed promises, no more violence and no more Institutional Revolutionary Party (PRI)". PRI candidates had dominated Mexican presidential elections since its founding in 1929, with the exception of the twelve year period from 2000 to 2012 in which the National Action Party (PAN) candidates Vicente Fox and Felipe Calderon held office. The shift from right of centre (PAN) and center-right (PRI) to the far-left presidency of AMLO was a massive change, albeit a risky one. But Mexico desperately needed change. 2017 was the deadliest year in Mexico in two decades, with over 23,000 homicides. The country has been convulsing from a wave of violence linked to drug trafficking that has left almost 200,000 dead since December 2006, when former President Felipe Calderon's government launched a controversial military anti-drug operation. Clearly, the government is not winning the so-called "war on drugs". Moreover, corruption is on the rise and the income gap is widening. Local politicians unapologetically flaunt their wealth in the faces of their struggling constituents. Historically, apathy combined with the need for the money politicians pay for votes was enough to keep corrupt individuals in office. But not this year - this year the people had enough. The victory of AMLO, a far-left populist and a somewhat volatile and potentially autocratic political figure, has left many corrupt local politicians concerned for their political future. And concerned they should be - two of AMLO's loftiest campaign promises have been to broker an amnesty deal with organised criminal organisations, in order to put an end to the violence, and to investigate and prosecute corrupt politicians, many of whom are in business with the cartels. The public is split on the plan for peace and reconciliation. Moreover, the details of the plan and how the president-elect intends to pardon the narco-cartels without pardoning the politicians that are in cahoots with them is not yet clear. The promise of amnesty So, what would an amnesty in Mexico look like and could it work? One country that can possibly provide an example is Colombia - in November of 2016, Colombian President Juan Manuel Santos headed up the country's famous Peace Agreement which granted amnesty to members of the Revolutionary Armed Forces of Colombia (FARC) in exchange for their weapons, much to the horror of the Colombian right. While the civilian death toll has fallen since the amnesty, it hasn't yet done much to ameliorate the situation of the nearly eight million Colombians who have been internally displaced due to the five-decade long conflict. Moreover, cocaine production is at a record high in the country and violence is rising once again with dissident rebels and drug gangs seeking to take over in areas formerly under the control of FARC fighters. But the albeit modest success of the amnesty in Colombia should not be seen as a clear sign that a similar deal with narco-cartels in Mexico could also succeed, as there are important differences between the Mexican drug cartels and the Colombian FARC. For instance, the FARC had a Marxist-Leninist ideology behind it, and it joined with drug cartels in order to finance its resistance operations. But, at least originally, making money wasn't the fighters' main objective. With the Mexican narco-cartels, however, money is clearly the main objective and there is no redeeming ideology. Also in Mexico, there is no specific leader to negotiate with, as there was with the FARC. And perhaps most importantly, the amnesty negotiations between the Colombian State and the FARC were mutually agreed upon: many FARC members wanted to put down their weapons and lead relatively normal civilian lives, something that members of major organised criminal networks in Mexico have not shown an inclination for as of yet. There is another major problem facing AMLO's proposed amnesty that Santos did not have to deal with in his own country: the logistics of it. Over 125 million people live in Mexico, and hundreds of thousands are believed to be participants in the drug trade to varying degrees. AMLO's proposal has been relatively ambiguous in terms of how or who would be given amnesty, under what terms and when. This ambiguity signals that the president elect does not fully comprehend just how convoluted the situation is in Mexico. An amnesty in a country as large, populous and corrupt as Mexico would involve potentially tens of thousands of people, sometimes entire families and even entire towns implicated in some way or another in the drug trade - a move that is logistically hard to conceptualise. A reality check Another obstacle in the way of AMLO's efforts is the fact that the drug war cannot be won in or by Mexico, alone. Any significant decrease in the drug violence in Mexico is directly dependent on a parallel decrease in the demand for narcotics in the US, and to a lesser extent, in Europe. So, if AMLO wants to end his country's devastating drug wars, he will either have to convince the US and European governments to find some way to get their populations to stop using illicit drugs, or he's going to have to convince those countries to decriminalise such narcotics and eventually legalise access to them - thereby substantially weakening the black-market demand for narcotics. This is a long shot for even the most persuasive of presidents. Of course, diminishing or even eliminating the black market demand for narcotics in the US and Europe would not guarantee the end of organised criminal activity and the violence that accompanies it in Mexico. The narco-cartels are, like most organised criminal groups around the world, able to adapt and expand into other markets. Take for example the mafia in Sicily, which found a way to make an illicit profit off of the most benign of markets - tomato production. With the wrong kind of motivation, the opportunities for finding creative ways to make illegal profits are endless. In short, AMLO's campaign promises of amnesty fall short of the reality of the country he is about to take the helm of. While the president-elect's promises were good enough to convince people to vote for him, he will now need to put pen to paper and come up with a real plan to end narco-crime and violence in the country. Hopefully, he will be smart enough to surround himself with people who know more than he does about the violence in Mexico, and wise enough to listen to what they have to say. Otherwise, Mexicans can look forward to another six years of unprecedented violence and economic uncertainty.

#### Transitional justice prevents reform

Krauze 18 — León Krauze 9-23-2018, "Mexico’s Next President Has a Radical Plan to End the Drug War. It Won’t Be Enough.," Slate Magazine, https://slate.com/news-and-politics/2018/08/andres-manuel-lopez-obrador-has-a-radical-plan-to-end-mexicos-drug-war-it-wont-be-enough.html

Two successive presidential administrations before López Obrador have tried but failed to contain the cartels. After coming to power in 2006, then-President Felipe Calderón began confronting organized crime in his home state of Michoacán, on Mexico’s western coast, where the cartels had supplanted the government, collecting taxes, offering “protection,” and taking over other services. The confrontation eventually expanded, mostly to northern Mexico and the country’s Pacific coast. Calderón’s strategy was simple: capture or kill as many drug lords as possible and criminal structures would either crumble entirely or, once pulverized, become less of a threat. He succeeded in the former but failed in the latter: Many of the country’s most famous drug dealers were either caught or taken out in dramatic gunfights, but violence did not abate. Enrique Peña Nieto, who became president in 2012, has fared worse. Even though he initially promised a “paradigm shift,” he dutifully followed his predecessor’s blueprint. Peña Nieto did manage to strike at the very top of a few of the country’s main drug cartels, even capturing legendary drug lord Joaquín “El Chapo” Guzmán. But even that victory proved bittersweet, and not only because El Chapo escaped before being recaptured and sent to the U.S. for trial. New criminal organizations, more sophisticated and vicious than previous ones, have sprouted across the country. The homicide rate has also increased. When his term ends in December, more people will have been killed during Peña Nieto’s presidency than Calderón’s. What incentives can the next Mexican administration offer the cartels? And who exactly can the government sit across from? Public frustration with Mexico’s unrelenting violence—along with deep-seated anger with the country’s chronic corruption problem—played a crucial role in the recent election of López Obrador, who ran as a left-wing opponent of the political establishment. On security matters, Mexico’s president-elect, who will be inaugurated on Dec. 1, ran on a controversial proposal to grant amnesty for certain, nonviolent drug crimes in an attempt to put Mexico on the path toward transitional justice, a system often used to help countries emerge from interior conflict and widespread human rights violations. On the surface, the idea makes sense: Mexican jails are filled with young people imprisoned for minor drug offenses. Many others have been recruited by the cartels under duress. Mexican farmers harvest illicit crops as the only way to escape abject poverty. Still, the next president’s plan has met resistance. The first problem has to do with the concept of transitional justice itself. Critics, like Alejandro Hope, Mexico’s foremost security expert, point to the fact that Mexico’s struggle has little to do with, say, the long struggle between the government and FARC guerillas and Colombia, where transitional justice is currently being applied. “Transitional justice” in Colombia, Hope recently wrote, “has been limited to certain crimes, committed by specific offenders in a well-defined period of time [and has been directed to] groups that had some sort of political objective, even if they later veered toward overt criminality.” The Colombian process, he adds, began once a certain “stability” has already been achieved. Hope adds that “none of this is true” in Mexico, where violence is not only still raging but reaching new, terrifying heights, and where cartels have no other objective but financial gain through ruthless means and surely do not harbor any overt political ambition. Finally, Hope raises a series of crucial questions: What incentives can the next Mexican administration offer the cartels, these hyperviolent, ascendant organizations, whose sole purpose is control of an expanding and lucrative business, to convince them to come to the table? And whom exactly can the government sit across from, when there might be at least 20 major criminal organizations in the country? The country’s next president doesn’t seem to have clear answers. Another one of López Obrador’s troubles is the evident unwillingness of many victims’ families to transition toward amnesty or forgiveness without first seeking, well, justice. In the past few weeks (even though he’s still more than three months away from power) López Obrador has hastily organized a series of highly publicized meetings with victims’ families, alongside local officials and members of his own team. The president-elect himself opened the discussion in the first gathering, held in Ciudad Juárez, which has experienced some of the country’s most heinous violence. In his remarks, López Obrador called those present to consider clemency. “We won’t forgive nor forget! There can’t be forgiveness without justice!” someone in the audience interjected. Others echoed the concern. “Most people rejected amnesty, or at least what they understood by it,” writes journalist Marcela Turati, who was present in Juárez.

#### Crime organizations are resilient

Duijn, Kashrin & Sloot 14 — Paul Duijn (Department of Research and Analysis, Dutch Police); Victor Kashrin (TMO University St. Petersburg, Russian Federation, Saint Petersburg, Russian Federation); Peter Sloot (ITMO University St. Petersburg, Russian Federation, Saint Petersburg, Russian Federation — The University of Amsterdam, Faculty of Science), The Netherlands Nanyang Technological University, Singapore, “The Relative Ineffectiveness of Criminal Network Disruption,” 2014, Scientific Reports. https://www.nature.com/articles/srep04238 –EGA

Organized crime forms a great threat to societies across the globe. International criminal drugs organizations try to infiltrate legal businesses and governments, infecting economic branches with corruption and violence. Moreover upcoming threats like cybercrime, child porn, maritime piracy, match fixing and identity theft cause substantial harm and ask for proactive interventions to control the criminal organizations behind them1,2. Government and law enforcement agencies worldwide seek ways to disrupt these criminal organizations effectively, preferably at an early stage. Over the past decade a growing number of studies emerged that provide empirical evidence of the use of social network analyses to get a better understanding of organized crime. These studies show that criminal organizations need to be considered as social networks that form collectives rather than organizations with unique features, such as flexible and non-hierarchical internal relations2,3,4,5,6,7,8. This approach has serious implications for the way we think about law enforcement control of organized crime. It has long been assumed that targeting the ‘kingpin’ leader at the top of the pyramid structured mafia organization, would result in the collapse of the entire criminal organization4,9,10. However, new insights from social network analyses emphasize that the fluidity and flexibility of the social structure of criminal networks makes them highly resilient against these traditional law enforcement strategies7,10. For instance, it was found that even though a drug trafficking network was structurally targeted over a substantial period of time, the trafficking activities continued and its network structure adapted11. Research concerning the resilience of criminal networks involved in the production of ecstasy in the Netherlands lead to the same conclusions10. How can this be explained? The complexity of criminal networks An answer to this question can be found within the specific features of the associated ‘dark’ network structures and, more importantly, the conditions under which these exist9,12. Criminal network structures are known to be very complex systems. As Morselli describes it “Criminal networks are not simply social networks operating in criminal contexts. The covert settings that surround them call for specific interactions and relational features within and beyond the network”7. Criminal networks therefore differ from legal networks in that they face a constant trade-off between security and efficiency which directly affects its network structure13. On the one hand illegal activities need to stay concealed from the government or criminal competition. This means that direct communication between co-conspirators concerning illegal activities needs to be restricted to a minimum. On the other hand risks have to be taken in times of action, often demanding highly efficient communication and trust among the participants12,14. Criminal networks therefore continuously balance between efficiency and security according to the given circumstances of the illegal activities. This trade-off has a direct effect on its network structure as revealed by a study from Baker and Faulkner15. They found that within a covert network, involved in a price-fixing scheme, the most important actors deliberately operated from the peripheries of the network, thus protecting these essential players from immediate detection after government intervention. In addition, Morselli et al. found that the balance between efficiency and security within covert networks was influenced by its network objective. They compared the structure of a criminal network with terrorist networks and showed that criminal networks need more efficiency in their direct lines of communication as compared to terrorist networks. Consequently this made them less secure and more vulnerable to disruption14. This can be explained by the fact that economically driven criminal networks need shorter time frames between action (time-to-task) as opposed to ideologically driven terrorist networks. Terrorist networks might achieve their goals by just one successful terrorist attack. Criminal networks are often action oriented, resulting in higher levels of risk of becoming detected. In response, criminal networks try to remain flexible and agile. This flexibility gives them the ability to adapt quickly to external shocks9,16. Although these studies help us to understand that remaining flexible is the key to criminal network resilience against disruption, little is known about how these flexible network structures actually recover from an attack and continue their illegal activities. In other words: What actually makes these flexible criminal network structures so difficult to disrupt? In search for an answer, we first need to understand that like every social network, criminal networks are not static, but dynamic in nature3,7. Criminal networks can change for several reasons: as a result of new business opportunities, as a consequence of competition that requires a defensive orientation or as a direct result of law enforcement controls that may lead to the downfall, stagnation or adaptation of the network7. The changing effects of network disruption can therefore only be understood within its dynamics, these networks are truly complex adaptive systems17. Many researchers of criminal networks agree that “studying … the dynamics in criminal networks is probably the most challenging obstacle facing anyone approaching this area.”3,7 Although we recognize the complexity and difficulty that is associated with studying change within social networks, we attempt to capture these dynamics within a computational framework.

#### No Mexican state collapse -- experts

Daudelin, 12 - Professor @ Carleton, development and conflict (Jean, “The State And Security in Mexico” http://books.google.com/books?id=o-Tu81Bq6s4C&pg=PA127&lpg=PA127&dq=mexico+state+collapse&source=bl&ots=Yhx\_8YtFb4&sig=pa7WFUmTZL9ABazqwXvl8euUKw&hl=en&sa=X&ei=46UHVNGWOIfxgwSRlYDACg&ved=0CB8Q6AEwATgU#v=onepage&q=mexico%20state%20collapse&f=false)

A careful look at the evidence and the fact that the U.S. seems to be disengaging from what has ultimately been a limited involvement in the region's drug and organized-crime scene suggests that, from whichever angle one looks at the problem, the latter does not represent a very significant threat to U.S. security. In that context, a sizable increase in Canada's involvement can hardly be justified by the dangers the problem represents to its main ally. The prospects of narco-traffickers provoking a state collapse in Mexico are essentially nonexistent, notwithstanding alarmist declarations by some U.S. public officials.14 No reputable expert on the country has supported that view.54 Such prospects for Guatemala, Honduras, or even El Salvador are much less far-fetched, however, which is why an effort is currently being made by the World Bank, the European Union, the U.S., and Canada to bolster the region's governments\* individual and collective capacity to confront the organized-crime challenge." It is difficult to argue, however, that the emergence of a narco-state or some kind of state collapse in Central America and the Caribbean would represent a significant threat for Canada itself. These regions—Central America and Haiti in particular—have long been plagued by corruption, violence, and instability and have previously-seen long episodes of civil war without any ripple effect on Canada. Were such developments to occur, they would create, relative to North America, the situation that currently exists in the urban peripheries of large Latin American countries, such as Colombia or Brazil, whose stability and economic prospects are not significantly impacted by the anarchy and violence that prevail in small "uncontrolled territories."

#### Conflict between cartels inevitable

Kilmer et al. 10 [Beau, Codirector, RAND Drug Policy Research Center; Senior Policy Researcher, RAND; Professor, Pardee RAND Graduate School, et al, 2010, “Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?,” <http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP325.pdf>]

We consider here the consequences of a decline in the demand for Mexican drug exports from the perspective of economic and organizational principles. There is nothing about the analysis that is specific to marijuana or to its legalization. This analysis simply assesses the effects of a loss of revenue from one of the existing streams of the DTOs resulting from some event over which they have no control, be it a change in law or in U.S. customer tastes. Our principal focus is on violence.8¶ The DTOs can be defined as consisting of the following: (1) a set of hierarchical relationships that allow higher-level members to command their subordinates to commit violent and risky actions, (2) a reputation for providing above-market earning opportunities to low-skilled workers willing to take particular kinds of risks, (3) a network of relationships with corrupt law enforcement officials, (4) a network of suppliers and customers for various drugs, and (5) ready access to capital for illegal ventures.¶ Presumably, the DTO demand for labor will decline, at least at the aggregate level. Given the lack of specialization, one would think almost all the individual DTOs will suffer some decline. One question is whether those “reductions in force” can be achieved through “natural attrition” or whether they will require “layoffs,” to use familiar industrial jargon.¶ Large-scale dismissals might carry a peculiar risk, both for the organization and for society in general. Those who are fired may try to create their own organizations, so DTO managers may have to think strategically about whom to dismiss. Also, those leaving have probably become accustomed to earning levels they cannot attain in legal trade. Since the whole industry would be affected by the downturn, other DTOs will not be hiring. Thus, the fired agents might attempt to compete with their former employers.¶ Hence, in the short run, there could be additional violence resulting from at least three sources:¶ • conflict between the current leaders and the dismissed labor¶ • within DTOs. Even after the firing of excess labor, the earnings of the leadership most likely will decline. One way the individual manager might compensate for this is to eliminate his or her superior, generating systemic internal violence from senior managers who become more suspicious in the face of the overall decline in earnings.¶ • between DTOs. The leadership of an individual DTO may try to maintain their earnings by eliminating close competitors.

#### \*Arms sales and US interventionism are an alt cause to cartel violence

Monzo et al 2017 (Lilia D. Monzó, associate professor of education in the College of Educational Studies at Chapman University. Peter McLaren, distinguished professor of education in the, College of Educational Studies, at Chapman University; fellow of the Royal Society of Arts and Commerce (England); and professor emeritus of urban education at the University of California, Los Angeles. Arturo Rodriguez ,associate professor in the Department of Bilingual Education at Boise State University. “Deploying Guns to Expendable Communities,” Cultural Studies, Critical Methodlogies, Volume 17, Issue 2, 201, p. 91-100. CW: mentions of sexual violence) ©B

The Border Patrol, the War on Drugs, and Hemispheric Hegemony

The backing of particular regimes by the Central Intelligence Agency (CIA), military training, surveillance operations, and other CIA activities throughout the world guarantee U.S. new markets and work prophylactically against social- ist alternatives (Robinson, 2008). The military industrial complex aids in this imperialist project by developing the mightiest military in the world with the most destructive arsenal. The need to condition soldiers psychologically to indiscriminately kill other human beings requires a host of ideologies and practical strategies to mark the Other as defi- cient, immoral, and expendable; to desensitize the military and its adoring public to pain, torture, and death; and to create increasingly efficient guns that can destroy in sec- onds a mass of people. Racism, an appeal to patriarchy, and other related antagonisms are used strategically to negate the humanity of the Other and enable soldiers to see them as expendable in the context of war. When the word terrorism reverberates through the mass media, White Americans cringe at the perceived threat to their way of life. Shout the word “terrorism,” and the domi- nant group acquiesce to the Patriot Act, Foreign Intelligence Surveillance Act (FISA), violations of the Amendments to the Constitution, and the Bill of Rights, not to mention the suspension of Posse Comitatus during the Boston bombings or any time local police forces claim exigent circumstances to apprehend a known suspect or fugitive. Under the cloak of building “democracy” across the world, the United States squashes dissent, defeats its inter- national opposition, and maintains its position as the world’s superpower. This agenda is waged primarily in the so-called developing world where poverty and unfreedoms are too evident to be ignored and uprisings are increasingly common. The racist attack on Mexican immigrants and Chicanx communities within the United States extends beyond our borders through the exploitation of Mexican workers in the maquiladora industry. Within this framing of the Mexican people, our society is duped into seeing the U.S. govern- ment and U.S. transnational corporations as benevolently providing jobs to those poor souls from the developing world who cannot sustain themselves within a global economy. The border patrol and the narco-terrorist industry pro- vide an increasingly militarized gateway that secures a mass population of desperate workers in Mexico whose only recourse is the maquila industry and also serves as an excuse and opportunity for the surveillance of Latin America against any insurgent forces that may threaten capital interests. Through torture and surveillance training, the CIA and other U.S. government agencies support the coercion of the Mexican people and militarily and sometimes financially back regimes likely to legislate favorably for U.S. capital interests. Our guns supply both sides of the war on drugs and serve to terrorize Mexican communities in Mexico, push them out, and then terrorize them again in the United States. This “service” of extracting the greatest surplus value from the Mexican worker and controlling the political arena of the entire hemisphere to secure open markets for exploitation of people and natural resources by U.S. corporations stems not from an incessant and inhuman greed but instead is a result of the monstrous logic of capitalism. Under such logic, capitalism must continue to plunge into every possi- ble venue of profitability and power to survive.

#### \*Cartels won’t provoke US response—they’ll de-escalate the border

**Stewart 11**, former U.S. State Department special agent, “The Buffer Between Mexican Cartels and the U.S. Government”, 8-17, <http://www.stratfor.com/weekly/20110817-buffer-between-mexican-cartels-and-us-government#axzz3D37Ei7zA>

As we have discussed in our coverage of the drug war in Mexico, Mexican cartels, including the VCF, clearly possess the capability to construct and employ large vehicle-borne improvised explosive devices (VBIEDs) — truck bombs — and yet they have chosen not to. These groups are not averse to bloodshed, or even outright barbarity, when they believe it is useful. Their decision to abstain from certain activities, such as employing truck bombs or targeting a U.S. Consulate, indicates that there must be compelling strategic reasons for doing so. After all, groups in Lebanon, Pakistan and Iraq have demonstrated that truck bombs are a very effective means of killing perceived enemies and of sending strong messages. Perhaps the most compelling reason for the Mexican cartels to abstain from such activities is that they do not consider them to be in their best interest. One important part of their calculation is that such activities would remove the main buffer that is currently insulating them from the full force of the U.S. government: the Mexican government. The Buffer Despite their public manifestations of machismo, the cartel leaders clearly fear and respect the strength of the world's only superpower. This is evidenced by the distinct change in cartel activities along the U.S.-Mexico border, where a certain operational downshift routinely occurs. In Mexico, the cartels have the freedom to operate far more brazenly than they can in the United States, in terms of both drug trafficking and acts of violence. Shipments of narcotics traveling through Mexico tend to be far larger than shipments moving into and through the United States. When these large shipments reach the border they are taken to stash houses on the Mexican side, where they are typically divided into smaller quantities for transport into and through the United States. As for violence, while the cartels do kill people on the U.S. side of the border, their use of violence there tends to be far more discreet; it has certainly not yet incorporated the dramatic flair that is frequently seen on the Mexican side, where bodies are often dismembered or hung from pedestrian bridges over major thoroughfares. The cartels are also careful not to assassinate high-profile public figures such as police chiefs, mayors and reporters in the United States, as they frequently do in Mexico

### 2NC ⁠— AT: SDGs

#### SDG’s aren’t going to be met in ANY of the key areas – the plan is a drop in the bucket

Servaes and Yusha’u, 2021

(Jan - UNESCO-Chair in Communication for Sustainable Social Change @ University of Massachusetts, Amherst & Muhammad Jameel - international development expert and former journalist with the BBC, “Are UN’s Sustainable Development Goals in the Doldrums Due to the Corona Virus?” July 2021, https://www.ipsnews.net/2021/07/uns-sustainable-development-goals-doldrums-due-corona-virus/)

A short answer to this question is yes, but it is obvious and predictable failure was visible for some time. This debate started before 2015, the year in which the Sustainable Development Goals (or SDGs) were adopted as successors to the Millennium Development Goals (MDGs) agreed in 2000. The 8 MDGs were expanded to 17 massive goals and 169 targets. Using projections from international organizations such as the World Bank, the OECD and the WHO, the British Overseas Development Institute (ODI) already quantified in 2015 how much the world would need to accelerate current trends to achieve the SDGs by 2030. The targets were given a ‘grade’, based on the expected progress. An ‘A’ rating meant that current progress is sufficient to meet the target, ‘B’, ‘C’, ‘D’ and ‘E’ numbers need to go up a notch. An “F” number indicates that the world is going in the wrong direction. None of the 17 SDGs was rated A. Only three SDGs, — SDG1 (no poverty), SDG8 (economic growth and decent jobs) and SDG15 (biodiversity) — were rated B. SDG 3 (health for all), 4 (quality education), 16 (peace, justice and strong institutions), 17 (partnerships for the goals), 2 (no hunger), 6 (water and sanitation), 7 (energy), 5 (gender) and 9 (industrialization) all received an average C grade. SDGs 10 (inequality), 11 (cities), 12 (waste), 13 (climate change) and 14 (oceans) were all unsatisfactory. In other words, only 3 of the 17 SDGs were on track to achieve a reasonably acceptable outcome by 2030. This score was developed in 2015, long before COVID-19 hit. With the devastating effect of COVID-19 on nearly every sector of the global economy, it is clear that achieving the SDGs by 2030 is virtually impossible. Moreover, addressing development goals by nation states is more difficult than was recognized by the authors of the 2030 Agenda for Development. For example, a study by Lin and Monga (2017) concluded that between 1950 and 2008, only 28 countries managed to reduce their gap with the United States by 10 percent or more. That is a period of 58 years, while the 2030 agenda must be realized within 15 years. Of the 28 countries listed by Lin and Monga, only 12 were non-European or non-oil economies. According to Lin and Monga, the challenge of renewing developing countries’ economies is inseparable from some of the intellectual and policy errors imposed by the Washington consensus in the 1970s to 1990s, the years described as the lost decade for developing countries. Banerjee and Duflo (2019), who shared the 2019 Nobel Prize in Economics for their work on poverty alleviation, in fact emphasized how economists designing development policies are out of touch with the realities of ordinary people. In a more recent analysis, published in the authoritative World Development, Moyer and Hedden (2020) also question how feasible the SDGs are under the current circumstances. They highlight difficulties for some SDG indicators (access to safe sanitation, high school completion, and underweight children) that will not be resolved without a significant shift in domestic and international aid policies and prioritization. In addition, Moyer and Hedden cite 28 particularly vulnerable countries that are not expected to meet any of the nine human development targets. These most vulnerable countries should be able to count on international aid and therefore financial support. In our view, the realization of the 2030 agenda can only be achieved on the basis of three factors. The first is financing. The critical question that is posed in various forums about the SDGs invariably ends with the question: who is going to fund it? Where will the money come from? How can low- and middle-income countries generate sufficient resources to finance the 2030 development agenda. Although each country has its own priorities, paying the bills for the SDGs remains a delicate matter. The Asia-Europe Foundation calculated (2020: 6) that “the total investment costs to achieve the SDGs by 2030 are between USD 5 and USD 7 trillion per year at the global level and between a total of USD 3.3 and USD 4.5 trillion per year in developing countries. This implies an average investment need of USD 2.5 trillion per year in developing countries. To better understand the real financial needs of the SDGs, these countries should prepare their own estimates, at least for their priority objectives”. A significant effort must be made through the private sector and philanthropists. While governments and ordinary people have been hit hard by the health and economic impact of COVID-19, in a way it has been good news for billionaires, many of whom have seen their wealth grow astronomically. A report from the Washington-based Institute of Policy Studies (IPS) shows that US billionaires have seen their wealth grow by $1 trillion between March and November 2020. Amazon’s owner Jeff Bezos’ net worth increased 61 percent between March and November 2020, from $113 billion to $182.4 billion. The report added that just three years ago, there was not a single multi-billionaire, that is, a person with a net worth of more than $100 billion. Since November 2020, at the height of the COVID-19 pandemic, there are now at least 5 multi-billionaires; namely Jeff Bezos of Amazon, Bernard Arnault, president of Louis Vuitton; Bill Gates, founder of Microsoft; Mark Zuckerberg of Facebook; and Elon Musk of Tesla (Huffington Post 2020). These billionaires, along with the more than 2,000 billionaires from around the world, are wealthy enough to help make substantial progress in some of the SDGs. The second important factor that can help achieve the SDGs is political will. Many countries have drawn up ambitious national development plans that look great on paper. How many of those plans end up being realized? When one sees that the fortunes of a country have been successfully changed through the effective implementation of national plans, one cannot separate such achievements from the strong political will of the leaders. The example of China speaks for itself. The crucial question to be asked is whether that political will is there. UN Secretary-General, Antonio Guterres, responded to a mid-term review of the Sustainable Development Goals (UN 2020): “It is inevitable that one crucial ingredient is still missing. Political will. Without political will, neither the public opinion, nor the stakeholders take sufficient action”. This is where the challenge to achieve the SDGs lies, i.e. a real political will. The third factor is the need for robust communication for development and social change, so that political will can be conveyed to all stakeholders. Leaders who inspire change do so with the communication tools available in their time. While the digital age disrupts social systems and drives transformation at a scale and pace unparalleled in history, the SDGs remain quite silent on the subject. Indeed, today digital technologies determine what we read and consume, how we vote and how we interact with each other and the world around us. Many risks and uncertainties are emerging, including threats to individual rights, social justice and democracy, all amplified by ‘the digital divide’ – the differential speed of internet penetration and access to digital technologies around the world. None of the SDGs can be achieved unless people are able to communicate their dreams, concerns and needs – locally, nationally, regionally, globally. We therefore propose to supplement the list with SDG 18: Communication for all. Communications for social change in the era of COVID-19 must also consider the challenge of misinformation when initiating communication strategies. Therefore, the communication strategies of the World Bank, UNICEF or WHO are not comprehensive enough. First, they failed to take into account the challenges of infodemics and fake news in addressing the COVID-19 pandemic. The second shortcoming is that the strategies contain little scientific communication to make the public aware of how health professionals make decisions and advise the public about its safety. Disinformation is a critical factor that exacerbates the challenges that communication for development and social change must address. For all these reasons, the UN and the rest of the international community need to be realistic and review the 2030 Agenda for Development by shifting the timeline from 2030 to 2050.

## Case

#### Cartels will tacitly circumvent the AFF.

Buckley 21—(Professor of International Business at Leeds University Business School). Peter J. Buckley & Mark Casson. August 17, 2021. “Multinational Enterprises and International Cartels: The Strategic Implications of De-globalization”. Management and Organization Review. https://www.cambridge.org/core/journals/management-and-organization-review/article/multinational-enterprises-and-international-cartels-the-strategic-implications-of-deglobalization/9032AFB82E97EF453C7551894FD89E2B.

\*\* IC = International Cartel, MNE = Multi-National Enterprise

TACIT COLLUSION AND PRICE LEADERSHIP

Tacit collusion can replicate the outcome of a cartel without direct communication between firms. The firms need to be able to observe each other’s actions, and to possess sufficient background information on the industry to interpret each other’s actions very easily (Cubbin, 1973).

The main mode of collusion involves a form of ‘tit-for-tat’ behavior. Each firm demonstrates to the others that its behavior follows a simple rule: typically to match the lowest price set by any member firm. The threat of this action is normally sufficient to deter price cutting in the first place. Someone needs to initiate the pricing process, however. This will normally be the largest firm, or the firm with the ‘deepest pockets’. They act as leader and set their price at a level they believe approximates to the monopoly price, i.e., the price that maximizes industry profit. As a large firm with deep pockets, they are in a strong position to punish anyone who does not follow the rules.

This price leadership mechanism suggests that a cartel may not need an absolute monopoly of an industry in order to exercise market power. The rational response of a non-member firm may not be to undercut the cartel, but to shelter under its ‘price umbrella’. It cannot afford to undercut the cartel because the cartel has deeper pockets and can force it into bankruptcy with a punitive pricecut of its own. In some industries there is a ‘fringe’ of such firms, e.g., small firms catering for minority niches or local customers.

#### Lobbying guarantees opposition.

Wallen 2K – (Spencer Weber Wallen, Professor of Law @ Brooklyn Law School and Of Counsel @ Kaye, Scholer, Fierman, Hays & Handler, LLP; published Winter 2000, Northwestern Journal of International Law & Business, Vol. 20, Issue 2, “Can U.S. Antitrust Laws Open International Markets?” doa: 9-4-2021) url: https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1506&context=njilb

Targeting international cartels thought to impede American exports and investment also may have the unfortunate effect of mutating the private cartel into a creature of the state beyond the effective reach of U.S. antitrust. This could be achieved through either outright compulsion or direction by the foreign government to achieve the same goals, or by private lobbying for other forms of protection from foreign competition. For example, one of the first reactions to the announcement of the Justice Department's intention to reapply antitrust to attempts to block United States export opportunities was the Japanese announcement that it was considering the adoption of a blocking statute along the lines of the British Protection of Trading Interests Act.97

#### They’ll block evidence discovery.

Hachigian 95—(Law clerk for Judge Harry Pregerson of the Ninth Circuit Federal Court of Appeals, BS from Yale University, JD from Stanford Law School.). Nina Hachigian. 1995. “Essential Mutual Assistance in International Antitrust Enforcement”. The International Lawyer, Volume 29, Number 1. <https://core.ac.uk/download/pdf/216912031.pdf>. Accessed 9/3/21.

An antitrust administrator who decides to obtain the information directly has three paths to choose from: apply the domestic country's rules of discovery; use a letter rogatory; or follow procedures outlined in the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. 99 None of the alternatives presents an easy and rewarding path.

The first method, applying domestic rules of discovery for taking evidence abroad, is often lauded in countries such as the United States as "broader, swifter, and less expensive" than other types of discovery.'0° For countries in which competition authorities are permitted to use their compulsory powers abroad, 01 this approach can appear to be the simplest. However, the use of this method, especially by the United States, has been very disruptive: "[N]o aspect of the extension of the American legal system beyond the territorial frontier of the United States has given rise to so much friction as the request for documents in investigation and litigation in the United States."0 2 In civil law countries, such as France, discovery is mostly ajudicial function, and such jurisdictions will often not allow extraterritorial discovery. Rather, they will view requests, particularly pretrial requests for documents, as abusive "fishing expeditions" that could reveal commercial secrets.'0 3 Thus, an antitrust lawyer may want to reconsider applying domestic laws to collect information abroad even if such laws allow it. The risk of disturbing relations with the foreign country is very real because such efforts could amount to a perceived infringement of sovereignty.°+ A country's reaction may depend on whether the information is being solicited voluntarily or by use of compulsory powers, but some countries, like Switzerland, allow neither approach without supervision.'0 5 Also, because of so-called blocking statutes, this direct method may be ineffective-the sensitive financial information needed is likely to be protected by laws that prohibit nationals from revealing it.06 Many countries have enacted such laws, including Australia, Canada, France, Switzerland, and the United Kingdom."°7

Another disadvantage of using domestic law is that it may not prove compulsory because a domestic court will not always be able to assert jurisdiction over the foreign conduct or persons in question. 0 In that case, an antitrust office is left to gather information directly from voluntary foreign sources, which is likely to be ineffective yet still offensive to the foreign government.

In practice, one of the few ways some antitrust offices do get evidence directly from companies located abroad is to find related domestic companies, either subsidiaries or parents, and to apply domestic discovery procedures to gather information through them. '09 In Canada, the European Union, Japan, Sweden, and the United States, for example, competition authorities may use their compulsory powers under domestic law to solicit information from companies located within their respective territories about related companies outside." 0

#### No ev that US cartels are key or the plan is sufficient

#### Can’t overcome structural trends, such as South Africa’s history of apartheid, bad economic policies, AND other sectors thump

1AC Nair ’19 [Gaylor Montmasson-Clair and Reena; Senior economist at Trade and Industrial Policy Strategies (TIPS), a South Africa based economic policy think-tank, where he leads work on sustainable growth. He has done extensive research on the transition to a sustainable development pathway from a developing country perspective; Founding director of and principal consultant at Optimal Competition and Compliance Solutions based in Lusaka, Zambia. He served as CEO of the Competition Authority in Botswana from 2011 to 2016 and as Executive Director of of the Competition and Consumer Protection Commission of Zambia during the period 2008–2011; Competition Law and Economic Regulation Addressing Market Power in Southern Africa, “Cartel Enforcement in the Southern Africa Neighborhood,” pg. 191-192; KS]

Economic regulation, competitive outcomes and inclusive growth

The presence and persistence of a range of market failures is the most prominent justification for economic regulation. Market failures arise when resources are not allocated or priced efficiently, and when a more optimal outcome would result from reallocating resources and altering prices. Market failures, along with other constraints, impede the poor and marginalised from accessing markets and benefiting from growth, thereby perpetuating inequality and non-inclusive growth (Ali and Son, 2007; Ianchovichina and Lundstrom, 2009; see also chapter 5, this volume).

One type of market failure, and a persuasive justification for regulation, is the presence of natural monopolies. Typical industries that have natural monopoly characteristics and that are commonly subject to regulation include electricity transmission, liquid fuel pipelines, telecommunication infrastructure and water supply systems. In South Africa, economic regulation has focused on regulating the natural monopoly parts of these value chains, which were formerly stateowned and subsequently privatised (Roberts and Mondliwa, 2014).

Another type of market failure arises from non-competitive markets. This can occur when a single firm or groups of firms possess persistent market power which results in less than optimal output being produced with higher resultant prices. The lack of effective competition could result in dominant firms abusing their market power or engaging in collusive behaviour, obtaining rents at the expense of consumers and potential competitors. This has negative implications for productivity and job creation. Uncompetitive markets also result in lower levels of innovation, reduced choice for consumers and poorer quality of goods or services. Not only are direct consumers harmed, but the viability of downstream industries is affected if the product in question is an intermediate input. Furthermore, firms with market power that control essential facilities that cannot easily be replicated or that control key inputs could abuse their dominance by limiting access to their facilities, thereby creating barriers to entry. Regulation can be a way to curb excesses in market power by regulating access to infrastructure as well as other market outcomes, including prices (Viscusi et al., 2000, in Roberts and Mondliwa, 2014).

South Africa’s history and economic policies under apartheid created markets that are highly concentrated, with a few firms in strategic industries possessing considerable market power. Economic opportunity only catered to the interests of minority groups. The state owned and controlled several strategic sectors, such as energy, telecommunications, mining, agriculture and several intermediate industrial product markets. Even following the liberalisation and privatisation trends of the 1990s, most of these industries continue to be highly concentrated while some remain state-owned (Makhaya and Roberts, 2013). Participation by new entrants has typically been constrained through structural or strategic barriers to entry (or both).

#### Alt causes: large food producers, which the plan doesn’t tackle AND no consumer protection

1AC Nwuneli ’18 [Ndidi; August 7; Co-Founder of AACE Food Processing & Distribution, Managing Partner of Sahel Consulting Agriculture & Nutrition, Founder of LEAP Africa, and a 2018 Aspen Institute New Voices fellow; Project Syndicate, “The High Cost of Food Monopolies in Africa,” <https://www.project-syndicate.org/commentary/africa-monopoly-food-prices-by-ndidi-okonkwo-nwuneli-2018-08>; KS]

Many consumers in Africa spend a disproportionate percentage of their household income on food. One of the biggest reasons is the failure of regional governments to ensure competition in the food sector, which has led to higher prices and made local agriculture less competitive.

LAGOS – In May, global food prices increased 1.2%, reaching their highest level since October 2017. This upward trajectory is having a disproportionate impact in Africa, where the share of household income spent on food is also rising. To ensure food security, governments must work quickly to reverse these trends, and one place to start is by policing the producers who are feeding the frenzy.

According to data compiled by the World Economic Forum, four of the world’s top five countries in terms of food expenditure are in Africa. Nigeria leads the list, with a staggering 56.4% of household income in 2015 spent on food, followed by Kenya (46.7%), Cameroon (45.6%), and Algeria (42.5%). By comparison, consumers in the United States spend the least globally (6.4%), far less than people in emerging economies like Brazil (16%) and India (30%).

One reason for the distortion is the price of food relative to income. As Africa urbanizes, people are buying more imported semi- or fully processed foods, which cost more than locally produced foods. And in most countries, wages have not kept pace with inflation.

But the primary cause is poor public policy: African governments have failed to curb the power of agribusinesses and large food producers, a lack of oversight that has made local agriculture less competitive. In turn, prices for most commodities have risen.

The absence of antitrust laws, combined with weak consumer protection, means that in many countries, only two or three major companies control markets for items like salt, sugar, flour, milk, oil, and tea . The impact is most pronounced in African cities, where prices for white rice, frozen chicken, bread, butter, eggs, and even carbonated soft drinks are at least 24% higher than in other cities around the world. These prices hit consumers both directly and indirectly (owing to pass-through of higher input costs by food conglomerates and service providers).

The Food and Agriculture Organization of the United Nations (FAO) has long argued that food security and fair pricing depends on markets that are free from monopolistic tendencies. The OECD concurs, and has frequently called on authorities to address “anti-competitive mergers, abuse of dominance, cartels and price fixing, vertical restraints, and exclusive practices” in the food sector. And yet, in many African countries, this advice has rarely been heeded.

To be sure, this is not a new problem. Between 1997 and 2004, for example, the FAO counted 122 allegations of “anti-competitive practices” in 23 countries in Sub-Saharan Africa. Violations included a “vertical monopoly” in the Malawi sugar sector, price fixing in Kenya’s fertilizer industry, and a “buyer cartel” in the Zimbabwean cotton industry. And, despite the considerable attention such cases have received, the underlying problems persist.

According to the World Bank, more than 70% of African countries rank in the bottom half globally for efforts to protect “market-based competition.” While 27 African countries and five regional blocs do have antitrust laws on the books, enforcement is rare. The remaining countries have no regulations at all and have made little progress in drafting them.

There is one notable exception: South Africa. Since 1998, the country’s Competition Act has prohibited any company controlling at least 45% of the market from excluding other firms or seeking to exercise control over pricing. Violators face penalties of up to 10% of their earnings, and during the last two decades, some of the biggest companies in the country – including Tiger Brands, Pioneer Foods, and Sime Darby – have been penalized. As Tembinkosi Bonakele, head of South Africa’s Competition Commission, noted last year, the government is “determined to root out exploitation of consumers by cartels,” especially in the food industry.

Other countries should follow South Africa’s lead. Companies and special-interest groups will always seek to benefit from the absence of regulation. The need for reform is greatest in countries like Nigeria and Ghana, where food expenditures are high and food-industry pressure is most pronounced. Fortunately, there is growing recognition of the need to address these challenges. Babatunde Irukera, Director General of the Consumer Protection Council in Nigeria, recently asserted that, “In a large vibrant and loyal market such as Nigeria, the absence of broad competition regulation is tragic. Unregulated markets in competition context constitute the otherwise ‘legitimate’ vehicle for both financial and social extortion.”

Reducing the prices of staple food by even a modest 10% (far below the average premium cartels around the world charge) by tackling anticompetitive behavior in these sectors, or by reforming regulations that shield them from competition, could lift 270,000 people in Kenya, 200,000 in South Africa, and 20,000 in Zambia out of poverty. Such a policy would save households in these countries over $700 million (2015 US dollars) a year, with poor households gaining disproportionately more than rich ones.

Ultimately, it is the responsibility of political leaders to protect consumers from collusion and price-fixing. There is no question that Africa’s businesses need space to innovate and grow, but their success should never come at the cost of someone else’s next meal.

#### Trade policy too

Jenny ’20 [Frederic; January 22; Professor of Economics, ESSEC Business School, Paris, France; Chair OECD Competition Committee; The Antitrust Bulletin, “An Essay: Can Competition Law and Policy Be Made Relevant for Inclusive Growth of Developing Countries?” <https://journals.sagepub.com/doi/full/10.1177/0003603X19898621>; KS]

On closer scrutiny, the competition experience of South Africa, which is by far the most advanced of the African countries reviewed and has a strong judiciary, so far at least, is not entirely encouraging.3 There have been a few civil lawsuits based on the claims of competition violations and those have been introduced not by “outsiders” or poor victims of anticompetitive abuses but by already fairly established competitors or institutional customers. One plaintiff was South African Airline Nationwide, which brought a claim against national carrier South African Airways (SAA); another was the City of Capetown (which brought a suit against a number of construction companies for civil damages arising from their agreement to rig bids in relation to the construction of the Green Point Stadium in Cape Town).

Section 38(c) of the South African Constitution allows for class actions for an infringement of any fundamental right in the Bill of Rights and this applies to competition law. There have been two class action cases against bakers (The Trustees for the Time Being for the Children’s Resource Centre Trust and Others v. Pioneer Foods (Pty) Ltd and Others, and Mukaddam and Others v. Pioneer Foods (Pty) Ltd and Others) following the prosecution of the bread price-fixing cartel by the Competition Commission in 2010. The Pioneer case was the first of its kind and was brought by five individuals together with several NGOs against Tiger Brands, Pioneer Foods, and Premier Foods for their participation in the bread cartel. It allowed the Supreme Appeals Court of South Africa to clarify a number of issues, particularly those pertaining to the certification of the class. There is some hope that these precisions will lead to an increase in the number of class actions in general. Those cases are still pending, however, nine years after the Competition Tribunal decision.4

Finally, the authors also propose a pro-development agenda with respect to the advocacy function of competition authorities in African countries. This agenda targets both domestic public restraints to competition and transnational anticompetitive practices.

With respect to domestic public restraints to competition, the authors suggest that the advocacy function of competition authorities (and their market investigation powers) should be aimed at regulatory laws that unnecessarily restrict competition; at state-owned monopoly boards, prevalent in African countries, trading in various commodities (including agricultural commodities) with poor results; and at restrictive national trade laws which often protect domestic lobbies to the detriment of consumers and also of newcomers.

With respect to transnational anticompetitive practices that often target developing countries where competition law enforcement is weak and victimize the consumers and the firms of these countries through a combination of exploitative and exclusionary practices, the authors call on the international community to renew efforts to tackle the vexing issue of export cartels by finding inspiration in innovative mechanisms inspired by the spirit of positive comity which has been adopted in other areas such as the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

## Food

### 2NC---!D---Food Wars

#### No causal evidence, only maybe true for the poorest countries, and government responses check

Rosegrant 13, Director of the Environment and Production Technology Division at the International Food Policy Research Institute, et al. (Mark W., 2013, “The Future of the Global Food Economy: Scenarios for Supply, Demand, and Prices”, in *Food Security and Sociopolitical Stability*, pg. 39-40

The food price spikes in the late 2000s caught the world’s attention, particularly when sharp increases in food and fuel prices in 2008 coincided with street demonstrations and riots in many countries. For 2008 and the two preceding years, researchers identified a significant number of countries (totaling 54) with protests during what was called the global food crisis (Benson et al. 2008). Violent protests occurred in 21 countries, and nonviolent protests occurred in 44 countries. Both types of protest took place in 11 countries. In a separate analysis, developing countries with low government effectiveness experienced more food price protests between 2007 and 2008 than countries with high government effectiveness (World Bank 201la). Although the incidence of violent protests was much higher in countries with less capable governance, many factors could be causing or contributing to these protests, such as government response tactics, rather than the initial food price spike.

Data on food riots and food prices have tracked together in recent years. Agricultural commodity prices started strengthening in international markets in 2006. In the latter half of 2007, as prices continued to rise, two or fewer food price riots per month were recorded (based on World Food Programme data, as reported in Brinkman and Hendrix 2011). As prices peaked and remained high during mid-2008, the number of riots increased dramatically, with a cumulative total of 84 by August 2008. Subsequently, both prices and the monthly number of protests declined.

Several researchers have studied the connection between food price shocks and conflict, finding at least some relationship between food prices and conflict. According to Dell et al. (2008), higher food prices lead to income declines and an increase in political instability, but only for poor countries. Researchers also found a positive and significant relationship between weather shocks (affecting food availability, prices, and real income) and the probability of suffering government repression or a civil war (Besley and Persson 2009). Arezki and Bruckner (2011) evaluated a constructed food price index and political variables, including data on riots and anti-government demonstrations and measures of civil unrest. Using data from 61 countries over the period 1970 to 2007, they found a direct connection between food price shocks and an increased likelihood of civil conflict, including riots and demonstrations.

Other researchers have broadened the analysis by considering government responses or underlying policies that affect local prices, and consequently influence outcomes and the linkage between food price shocks and conflict. Carter and Bates (2012) evaluated data from 30 developing countries for the time period 1961 to 2001, concluding that when governments mitigate the impact of food price shocks on urban consumers, the apparent relationship between food price shocks and civil war disappears. Moreover, when the urban consumers can expect a favorable response, the protests only serve as a motivation for a policy response rather than as a prelude to something more serious, such as violent demonstrations or even civil war.

Many in the international development community see war and conflict as a development issue, with a war or conflict severely damaging the local economy, which in turn leads to forced migration and dislocation, and ultimately acute food insecurity. Brinkman and Hendrix (2011) ask if it could be the other way around, with food insecurity causing conflict. Their answer, based on a review of the literature, is “a highly qualified yes,” especially for intrastate conflict. The primary reason is that insecurity itself heightens the risk of democratic breakdown and civil conflict. The linkage connecting food insecurity to conflict is contingent on levels of economic development (a stronger linkage for poorer countries), existing political institutions, and other factors. The researchers say establishing causation directly is elusive, considering a lack of evidence for explaining individual behavior. The debate over cause and effect is ongoing.

Policies can nevertheless be implemented to reduce price variability. Less costly forms of stabilization, at least in terms of government outlays, include reducing import tariffs (and quotas) to lower prices and restricting exports to increase food availability. However, these types of policy responses, while perhaps helping an individual country’s consumers in the short run, can lead to increased international price volatility, with potential for disproportionate adverse impacts on other countries that also may be experiencing food insecurity.

#### Protests are nonviolent, and intervening actors.

Barrett 13, Deputy Dean and Dean of Academic Affairs of the College of Business, Stephen B. and Janice G. Ashley Professor of Applied Economics and Management, and an International Professor of Agriculture, all at the Charles H. Dyson School of Applied Economics and Management, as well as a Professor in the Department of Economics and a Fellow of the David R. Atkinson Center for a Sustainable Future, all at Cornell University. (Christopher B., “Food Security and Sociopolitical Stability,” 26 September 2013, Google Books)

The simplest definition of sociopolitical stability is the absence of coordinated human activities that cause widespread disruption of daily life for local populations. Note that this excludes violent personal crimes, such as murder, and natural disasters. But this definition encompasses a continuum of activities that we can array according to the magnitude of their human consequences, from nonviolent riots or large-scale political protests and work stoppages at one end, through violent versions of such organized actions, to guerilla movements and terrorism by state and non-state actors, to outright civil war, and finally to interstate war at the other. Boulding (1978) defined peace as the absence of war and emphasized that peace does not require the resolution of all conflicts within or among nations, merely that such conflict remain nonviolent. As used here and in the rest of this volume, stability is an even more Utopian state than mere peace. For example, many of the food riots of the past several years proved extremely disruptive to the populations affected—and threatening to governments—but did not turn violent, at least in the sense of causing deaths. We consider such events moments of instability, even though peace prevailed.

This sort of hierarchical ordering is instructive, as it underscores two fundamental points made directly or indirectly by multiple contributors to this volume. First, not all instability is bad. When peaceful, structured, political, legal, and economic conflict occurs where the probability of large-scale conflict is negligible, mobilization against state policy is not automatically negative. Indeed, nonviolent social protest movements can be important forces for productive change. Social movements often push states to adopt policies that ultimately enhance both food security and sociopolitical stability by offering some redress for longstanding structural grievances that might otherwise lead to violence, even war.

This leads directly to the second fundamental point: the greatest dangers come not from lower-level instability associated with protests, riots, and work stoppages, but rather from violence at scale, especially in the form of organized civil or interstate war. Preserving peace is far more important, in human, economic, and geostrategic terms, than is maintaining stability. Indeed, a certain level of nonviolent instability can help to secure a stable peace

#### MARKED

if it compels the state to take actions that preempt the intensification and spread of deeper structural grievances—actions it would not choose without pressure. Riots are dangerous to local populations primarily insofar as they enable an opposition to build larger, more durable coalitions for violent political struggle against a regime. State and private actions can defuse more threatening and dangerous guerilla movements, terrorism, and civil or interstate war. Underappreciation of the central place of preventive and responsive action in mediating the relationship between food security and sociopolitical stability is perhaps the greatest deficiency of recent debates, which tend to treat the sociopolitical risks of food insecurity as driven largely by exogenous forcing variables such as climate or global market prices.

# 1NR

## DA---DOJ

### 1NR---AT: Uniqueness

#### There are sufficient resources for the Antitrust Division to counter price-fixing now

Powers 21, Acting Assistant Attorney General (Richard, “Division Update,” <https://www.justice.gov/file/1379221/download>)

In the United States, we have multiple antitrust enforcers, including our colleagues at the FTC and the offices of the attorneys general of each state. We aim to cooperate with our partners whenever possible, and, should we disagree, we will work together to resolve our differences in a way that balances our respective interests and furthers our collective goal of promoting competition and maintaining a fair economy. We are also constantly in touch with our international partners at competition authorities across the globe, as we must be, given the worldwide scope of modern anticompetitive behavior. The coming months will undoubtedly be eventful ones, but I am confident that the Division will rise to any challenges that come our way. The Division’s criminal sections will continue investigating and prosecuting not only the price fixing of consumer and food products, but also per se illegal collusion that harms American workers. And we will continue the fight against collusion affecting government spending and taxpayer dollars— including the vast sums of money allocated to maintain economic stability and fight the pandemic. The Division’s civil sections will continue to protect and promote competition across the economy by investigating mergers and policing anticompetitive civil conduct. For the foreseeable future, Section 2 violations will continue to be a focus for civil investigations. And finally, our Appellate, Competition Policy and Advocacy, and International sections will continue to represent the interests of American consumers in appellate courts, with domestic stakeholders, and around the world. When the Division’s new leadership arrives, it will find that our talented career staff have continued to carry out the Division’s mission during this transition period, despite the ongoing pandemic and our limited resources. We look forward to welcoming our incoming leadership team and working alongside them

### 1NR---AT: Link Turn

## DA---Court Clog

### 1NR---!---IP

#### Specifically, effective IPR key to pharmaceutical innovations that solves disease

Will Rinehart 14, Director of Technology and Innovation Policy at the American Action Forum, 7-29-2014, "Intellectual Property Underpinnings of Pharmaceutical Innovation: A Primer," https://www.americanactionforum.org/research/intellectual-property-underpinnings-of-pharmaceutical-innovation-a-primer/

Being that it is an exclusive right to a piece of knowledge, patents are often considered to be a kind of monopoly. Criticism has been heaped upon patents in exactly the way one would expect given this definition. The creation of intellectual property rights creates an allowable exclusivity. Yet, it should be immediately apparent that patents do not automatically confer a monopoly over an industry. For example, a pharmaceutical company that invents a new and improved cancer medicine is still in competition with alternatives from other companies, which ultimately acts as a constraint on their ability to charge prices above a competitive level.

Commercial success is tied to more than just an innovative idea; superior marketing, management, positioning, and other factors are likely to be more important than the patent itself. Moreover, individuals and companies will seek multiple solutions to the same problem, whether that might be in new commercial arrangements or products. By limiting a particular avenue for competitors, patents have the potential effect of promoting further innovation by encouraging others to develop new products.

PATENTS IN PHARMACEUTICALS

The medical field presents a strong case for patents, and because of its unique features, allows for a better understanding of the current tensions in other areas of patent policy.

The medical field has a lone inventor myth, which is exemplified in the belief of the cure for cancer. The truth is that there is unlikely to be any sole cure, but rather through research and applied innovation, effective methods and treatments for dealing with these diseases will be found. Of course, this means that the entire endeavor will be expensive. As with any piece of property, the bounds of intellectual property must be set, which is where we first encounter the variance that can exist between industries under patent protection. Compared to software patents where there is far less clarity in breadth of patents, medical patents tend to be more discreet in their delineation. It is relatively clear what constitutes a new drug and what does not.

Pharmaceutical companies also differ from other industries in their cost structure, including the time and resources needed to bring an innovation to market. Both the research phase and the regulatory approval process are costly and time intensive.

Biopharmaceutical discovery has benefited from a remarkable shift in research and technology. Even in the last 10 years, the methods to innovation have been revolutionized, spurred on by better understandings of genetic relationships. Take for example, Gleevec, a treatment for chronic myeloid leukemia. Before the drug was introduced, less than a third of those diagnosed with chronic myeloid leukemia were alive five years later, but after it became available that figure jumped to 90 percent. The method of research responsible for its development was extremely innovative and as such the total development was costly. Gleevec and the drugs that followed it are part of a new breed of drugs that are far more complex than their predecessors.

Even with biopharmaceutical innovations, estimates place the average cost of bringing a successful new drug to market at around $1.2 billion. After compounds are screened for use to treat a condition, only about 1 out of the 6 that make it to clinical trials will eventually obtain FDA approval. The table below shows that total industry research and development (R&D) has increased in recent years.

The marginal cost of another pill is often miniscule compared to the initial investment cost. Prices for generic drugs are substantially lower than the original brand because these new firms don’t have to amortize the initial R&D costs over a drugs patent life. Additionally, pharmaceutical firms face high risks in their ventures as well as high costs of entry compared to other industries.

Clinical trials provide an example of the costs to develop a market ready drug. As the Tufts Group has shown, the average length of a clinical trial increased by 70 percent from 1999 to 2005. In that same time period, the average number of routine procedures per trial increased by 65 percent. To add to that, the average clinical trial staff work burden increased by 67 percent. To top it all off, enrollment criteria and trial protocols resulted in 21 percent fewer volunteers being admitted into trials and 30 percent more enrollees dropping out before completion of the tests.

Overall, the regulatory process of drug approval levies a heavy risk for manufacturers and innovators. For every one drug that passes through the regulatory approval process, manufacturers usually assess 5,000-10,000 substances. This is a time consuming and expensive process where innovators hope to see a return on their investment over the long-term. The FDA aims to strike a balance between access to life-saving treatments and assuring the public with standards of safety in all pharmaceuticals.

The final step in pending drug approval usually involves hundreds to thousands of participants in a blind study of the drug. This part of the process now represents about 40 percent of pharmaceutical companies’ R&D expenditures. However, this often-cited statistic actually understates the amount spent. R&D expenditures include all pharmaceutical candidates that a company tests—including hundreds that never reach this trial stage. An analysis conducted by the Manhattan Institute found that for the drugs that are actually approved, these clinical trials typically represent 90 percent or more of the cost of developing an individual drug all the way from laboratory to pharmacy.

CONCLUSION

Medical treatments are among the best cases where intellectual property law has gotten things right. Patents are an important way to ensure that the benefits of research are captured by the creator. Solving the 21st Century’s problems will require complex solutions that will only come about because of intense research and development. Patents ensure that this research takes place. Even though some have criticized aspects of the patent regime, the system itself still serves as a testament to and an enabler of American innovation.

#### Extinction

Piers Millett 17, Consultant for the World Health Organization, PhD in International Relations and Affairs, University of Bradford, Andrew Snyder-Beattie, “Existential Risk and Cost-Effective Biosecurity”, Health Security, Vol 15(4), http://online.liebertpub.com/doi/pdfplus/10.1089/hs.2017.0028

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

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

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

In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as incubation time, environmental survival, and available vectors, could be modified as well.19-2

#### Adaptive antitrust prevents runaway corporatism, that solves case.

Meagher 21—(competition lawyer and Senior Policy Fellow at the University College London Centre for Law, Economics and Society). Michelle Meagher. 03/24/2021. “Adaptive Antitrust.” SSRN Scholarly Paper, ID 3816662, Social Science Research Network. <https://papers.ssrn.com/abstract=3816662>.

"The unprecedented is necessarily unrecognisable. When we encounter something unprecedented, we automatically interpret it through the lenses of familiar categories, thereby rendering invisible precisely that which is unprecedented."

Shoshana Zuboff, The Age of Surveillance Capitalism2

Antitrust for the present moment

In the 1992 movie Toys, starring Robin Williams and Joan Cusack, a megalomaniacal toymaker creates an arcade game for little kids, a violent shoot-em-up where scores soar as enemies fall. What the kids don’t know is that their joysticks control real drones, in the real world, fighting real battles.

As we rightly debate the core, underlying concept of modern antitrust – the nature of the consumer welfare standard – it is important to remind ourselves that this is not a purely theoretical, academic debate. Historic changes to the scope of antitrust, and the tests by which it is enforced, have had profound impacts on the industrial landscape in the past few decades. The implications of any movement in this concept are sure to be swiftly communicated by antitrust and corporate lawyers to companies, in ways that affect business strategy.

Real world impacts are critical to bear in mind because we find ourselves at a particular moment in history. This is an age of environmental breakdown, of deep inequalities and inequities, of populism and autocracy, of globalism, of monopoly and of surveillance.

It is, even if we are numbed from the repetition, an unprecedented moment. Unfortunately, as Shoshana Zuboff reminds us above, we do not have a good track record of dealing with unprecedented moments. As one example, the last Global Financial Crisis confronted the world with a fundamental truth as to the instability of complex financial networks, and we could have reordered ourselves accordingly. But we didn’t. We instead reverted to familiar patterns of regulation (and deregulation).

As with the arcade game in Toys, those who wield the tools to remake the economy to this design or that rarely suffer the negative effects of it personally. We face massive threats – and they are not hypothetical, for they have been felt by many people for decades, as economic opportunity has disappeared from hollowed out towns, democracies have become unstable, violent discrimination has proliferated, nation states have become cowed by corporations, biodiversity has disappeared and the weather has become more extreme. The concept of consumer welfare in antitrust must be situated and rooted in this context. It cannot be otherwise

There will be limits to how far antitrust can help with all these problems, but it can certainly harm or hinder progress towards solutions.

In its essence, antitrust is industrial policy. It determines which organisations can legally build scale, and what they are allowed to do with the resulting power within the rules of fair market conduct. 3 This makes antitrust central to debates around the future of work, economic development, healthcare, food systems, and the future of technology. The context also urges us to be circumspect and intentional when it comes to comes to innovation. Within antitrust, innovation is efficiency on steroids. According to Tad Lipsky, there is a common understanding “shared across the entire spectrum of expert economic opinion” that “the predominant determinant of overall increases in our economic well-being is innovation”. 4 That is quite a statement. When it comes to climate change, green tech innovations could certainly help us live in a zero-carbon world, but we already have the technologies we need to decarbonise. It is the structure of the economy, and politics, that must catch up. When it comes to inequality, the theory is that innovations increase productivity, raising earnings and increasing the size of the economic pie. That will only solve inequality if the gains are distributed (and redistributed) fairly, not just through the tax and benefits systems, but also at the point of production. Otherwise rising capital productivity can be accompanied by unemployment or, as we also see today, underemployment and the degradation of employment terms.

Opioids were an innovation. Fracking is an innovation. Naked Credit Default Swaps were innovations. 5 Not all innovations are good. The direction of innovation matters, and while this may be influenced along paths that are profitable, paths of innovation should not be captured, unprofitable but world-saving innovations should not be side-lined, and democratic institutions should have a say in what is acceptable. At this moment, we cannot afford anything else.

#### Antitrust is sufficient now.

Lande 8—(Venable Professor of Law, University of Baltimore, JD from Harvard). Robert H. Lande & Joshua P. Davis. Spring 2008. “Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases”. 42 U.S.F. L. Rev. 879. <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1723&context=all_fac>. Accessed 11/6/21

This Study analyzes the collected information to help formulate policy conclusions about the desirability and efficacy of private enforcement of the antitrust laws. The results of the Study show that private antitrust enforcement helps the economy in many ways. It very significantly compensates victims of illegal corporate behavior and is almost always the only way these victims can receive redress. Private enforcement often prevents foreign corporations from keeping the many billions of dollars they illegally obtain from individual and corporate purchasers in the United States. This Study also shows that almost half of the underlying violations were first uncovered by private attorneys, not government enforcers, and that litigation in many other cases had a mixed public/private origin. The results of the Study also show that private litigation probably does more to deter antitrust violations than all the fines and incarceration imposed as a result of criminal enforcement by the DO]. This is one of the most surprising results from our Study. We do not know of any past study that has documented that private enforcement has such a significant deterrence effect as compared to DO] criminal enforcement.

### 1NR---UQ---Wall

#### The DOJ terminated outdated judgements to unclog the courts.

Reuters 18, 4/25/2018, “U.S. to seek court approval to terminate 'outdated' antitrust judgment”s, https://www.reuters.com/article/us-usa-justice-antitrust/u-s-to-seek-court-approval-to-terminate-outdated-antitrust-judgments-idUSKBN1HW21H

WASHINGTON (Reuters) - The U.S. Justice Department said Wednesday it plans to seek court approval to terminate “outdated” antitrust judgments that remain on the books throughout the United States. The government said there are nearly 1,300 “legacy” judgments remaining on the books of its Antitrust Division, and nearly all likely remain open in U.S. courts. The Justice Department said the “majority of these judgments no longer protect competition because of changes in industry conditions, changes in economics, changes in law, or for other reasons.” ADVERTISEMENT The government is reviewing all of those judgments to determine “whether each judgment continues to serve competition,” but has already identified “many judgments that it likely will seek to terminate unilaterally after a public comment period.” The Justice Department posted a initial list of 26 judgments it plans to seek approval to terminate - all dating back to 1981 or earlier. ADVERTISEMENT One 1978 judgment the government wants terminated involves Pan American World Airways, Trans World Airlines and Lufthansa German Airlines - now known as Deutsche Lufthansa AG - which settled allegations they conspired to fix the price of airfare to travel between the United States and Germany by U.S. military personnel and their dependents. Pan Am and TWA no longer exist as independent airlines. Since 1979, the Justice Department has adopted the general practice of including sunset provisions that automatically terminate judgments, usually 10 years from entry. “We are taking a first step toward freeing American businesses, taxpayers, and consumers from the burden of judgments that no longer protect competition,” Makan Delrahim, assistant attorney general for the Justice Department’s Antitrust Division said in a statement. “We will pursue the termination of outdated judgments around the country that presently do little more than clog court dockets, create unnecessary uncertainty for businesses or, in some cases, may actually elicit anticompetitive market conditions.”

#### ‘Clog’ exists now and is already ingrained into judicial decision-making---the only relevant consideration for the DA is whether judicial predictions of private antitrust suits increase post-plan.

Poppe 21—(Assistant Professor of Law at the University of California, Irvine School of Law). Emily S. Taylor Poppe. February 2021. “Institutional Design for Access to Justice”. 11 UC Irvine Law Review, 781.

This law-centric orientation is strikingly different from that of most Americans, despite popular claims about their litigiousness. Most individuals never even identify the civil legal problems they experience as "legal." Only a tiny minority will ever seek legal advice in response to a problem, and most are more likely to do nothing than to file a lawsuit. Decades of empirical scholarship have confirmed that despite the prevalence of civil legal problems in everyday life, there is remarkably little recourse to formal law.

[FOOTNOTE BEGINS]

DAVID M. ENGEL, THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE 3 (2016) (noting that "specious claims of a litigation explosion have been made so often that they have rooted themselves in the national psyche").

[FOOTNOTE ENDS]

### 1NR---AT: Thumpers

#### Backlogs are reduced now

Blake Candler 20, Commercial Law Development Program, U.S. Department of Commerce, 5-24-2020, “Court Adaptations during COVID-19 in the World's Two Largest Democracies,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3609521

Alternatives to Standard In-Person Courtroom Proceedings The courts have been forced to get creative to continue to execute their duties. In the United States, some courts, such as the drug court of Daviess County, Kentucky, have experimented with drive-thru operations before shelter-in-place orders were implemented. Other courts have been experimenting for decades with other types of 14 teleconferencing and video depositions in lieu of live witnesses. Beyond select cases (many in the criminal courts), that have been prioritized for in-person hearings, three primary solutions have emerged as alternatives to in-person proceedings: virtual courts, arbitration, and pretrial negotiation. 1. Virtual courts are now the primary venue for the majority of legal proceedings in both the United States and in India. They have the potential to greatly reduce case backlogs. COVID-19 has drastically accelerated a process of making courts less physically dependent on personal appearances and more receptive to online and remote options. Harnessing technology and enhancing access to the 15 judicial process have been two of the seven strategic issues of the U.S. federal judiciary for over a decade. Some believe virtual courts are the way of the 16 future, as “more people in the world now have internet access than access to justice.”17 2. Online dispute resolution (ODR) and alternative dispute resolution (ADR) offer a second solution. Litigants who would otherwise wait for months if not years while their cases are in court backlog queues are taking matters into their own hands and becoming more receptive to the use of arbitrators to resolve or attempt to settle their disputes. “Unlike a court, arbitrators, mediators, and other third parties cannot force the parties to a dispute to appear before them or to comply with the decision rendered. They must rely instead on the litigants’ willingness to submit the dispute to them and respect the resulting decision.” While normally this 18 system depends on goodwill, increased backlog for traditional court hearings may push more litigants towards mediation. ADR “can also reduce court workloads,” which is crucial during a pandemic.19 3. Pretrial negotiations offer a third solution to eliminate or at least narrow the scope of standard trials. Both plaintiffs and defendants have a newfound common interest in avoiding going to trial. Negotiations prior to trial and possibly even before filing suit may become more successful in producing compromises and agreements. During this pandemic, U.S. judges are admonishing lawyers who 20 fail to attempt good faith pretrial negotiations during the meet and confer process. Litigants should ideally be more prone to attempt pretrial negotiation because 21 “a dispute that would have been resolved by reasonable discussion between parties, or at the very least significantly narrowed, taxes the court's resources.”22 Beyond public shaming, if courts had more authority to require more pretrial negotiations, attorneys would be more likely to narrow the scope of disputes or even resolve them entirely. A cultural shift regarding appropriate pretrial behavior could help minimize extraneous issues from reaching trial. Such changes seem worthy of consideration given the budgetary and caseload constraints on the courts during a pandemic. Both the courts and the litigants waiting in line for adjudication would benefit. Admittedly, limiting access to the courts with these or any other new requirements may infringe on constitutional rights. Nonetheless, some limited common sense increases in authority of the courts seem feasible to limit the litigation of unreasonable positions without curtailing the possibility of filing suits.

#### Filing data proves

Joanna C. Schwartz 20, Professor of Law at the UCLA School of Law, “Qualified Immunity and Federalism All the Way Down”, Georgetown Law Journal, 109 Geo. L.J. 305, December 2020, Lexis

Concerns about increased government liability were in the air during the 1970s and 1980s. During that period, the "dominant articulated perception of constitutional tort litigation" was that § 1983 "cases flood the federal courts." The Supreme Court first recognized a cause of action against state and local government officials under § 1983 in 1961, and the number of civil rights filings increased from several hundred to tens of thousands in the years between 1961 and 1979. This expansion in federal civil rights filings and liability corresponded with a collapse of the insurance market for municipal liability coverage. As John Rappaport has described, municipal liability insurance was widely available from the 1960s to the mid-1970s. Then the market contracted, with [\*323] premiums doubling between 1974 and 1976, and many jurisdictions were left uninsured by 1977. After a few years of improvement, there was another decline in the early 1980s. [FOOTNOTE BEGINS] Theodore Eisenberg & Stewart Schwab, The Reality of Constitutional Tort Litigation, 72 CORNELL L. REV. 641, 645 (1987); see also Maine v. Thiboutot, 448 U.S. 1, 24 (1980) (Powell, J., dissenting) ("There is some evidence that § 1983 claims already are being appended to complaints solely for the purpose of obtaining fees in actions where 'civil rights' of any kind are at best an afterthought."); Federalism and the Federal Judiciary: Hearings Before the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary, 98th Cong. 5-13 (1984) (statement of John D. Ashcroft, Att'y Gen. of Missouri) (explaining that § 1983 filings against police officers "skyrocket[ed]" from the mid-1960s to the mid-1970s, growing "in the thousands of percentage increase[s]"); Ruggero J. Aldisert, Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload, 1973 LAW & SOC. ORD. 557, 563, 567 (arguing that the "deluge" of § 1983 cases from 1960 to 1971 and the Court's decisions that "substantially expand[ed] section 1983's subject matter jurisdiction" have "placed additional burdens on federal courts"). Note, however, that Eisenberg and Schwab, after examining the evidence, concluded that "[n]ational filing data refute the myth of a recent civil rights litigation explosion." Eisenberg & Schwab, supra, at 695. [FOOTNOTE ENDS]

#### Federal courts are recovering from COVID now.

Angela Morris 21, ALM Media's Texas litigation reporter, 6/11/21 “'Backlogs Keep Me Up at Night': A look at Cases Clogging Texas Dockets Amid Pandemic,” <https://www.law.com/texaslawyer/2021/06/11/backlogs-keep-me-up-at-night-a-look-at-cases-clogging-texas-dockets-amid-pandemic/?slreturn=20210805152423>

Texas Lawyer analyzed case data from the administrative office and found that between 2019 and March of this year, the active criminal docket in district courts swelled by 34% to land at nearly 255,800 cases. The number of active family cases grew by 13% since 2019, ending at just over 370,600 this March. In contrast, there was only 2% growth in the number of active civil cases in the time period. The number of juvenile cases actually shrank by 5%. “Any backlog is always concerning to me, because I know backlogs represent unresolved cases,” said 379th Criminal District Judge Ron Rangel of San Antonio. “Backlogs do keep me up at night.” Criminal docket The pandemic was the hardest on criminal cases. Although district courts had a 94% clearance rate for criminal cases in 2019, it dropped to 70% in 2020. It’s recovered somewhat so far this year at 80%. Case clearance rates represent a comparison between the number of old cases that courts dispose of, and the new cases added to their dockets. The gold standard is a 100% clearance rate, and means courts are getting rid of the same number of old cases as the new cases coming in. If courts have a rate less than 100%, that will lead to a growing case backlog. If a court’s clearance rate is more than 100%, it means the court is shrinking its docket. The result of criminal clearance rates dropping so much during the pandemic was a case backlog that skyrocketed from about 7,600 cases in 2019 to over 55,200 backlogged cases in 2020. The backlog number represents the difference in case numbers at the end of the year compared to the beginning. The backlog would remain the same if a court had disposed of the same number of cases as were filed that year. But if a court was not keeping up, the backlog would grow. Backlogs sometimes shrink if courts are clearing cases faster than they are coming in. Overall, the number of active pending criminal cases on district courts’ dockets grew by 29% between 2019 and 2020, to land at nearly 247,000 cases. The docket’s growth continued at a slower rate of 4% so far in 2021, and as of March 31, there were nearly 255,800 active criminal cases in the district courts. Rangel, who serves as the local administrative judge in Bexar County, said criminal case backlogs grew more during 2020 than other case types because virtual jury trials were not available for criminal matters. The U.S. Constitution gives criminal-defendants the right to confront their accusers, and the Texas Supreme Court did not allow a court to compel a virtual trial in criminal cases, he explained. When the pandemic started, judges across Texas granted large numbers of personal recognizance bonds to get defendants with low-level, non-violent offenses out of jails, where conditions were ripe for infections, added Rangel. Once a defendant gets released from jail, it lowers the motivation to resolve a case, he said. “The lack of a jury trial removes significant incentives for defendants to work their cases out,” said Rangel. The issue will get better as courts resume in-person jury trials. Rangel noted that Bexar County started sending out jury summonses in May and setting cases in preparation for restarting in-person jury trials in June. “Cases started moving a lot faster. In district court, we reduced the backlog by 200 cases since May 17,” Rangel said during a June 7 interview. “I have always recognized that having the loss of an in-person trial available makes it very tough to move cases, because the parties recognize nobody can force anything on them.” Judge Robert Schaffer of Harris County’s 152nd Civil District Court said that courts have already been able to cut into coronavirus case backlogs for one simple reason—they’re starting to seat juries for trials. But those trials won’t happen in great numbers for quite some time. “We can try a maximum in Harris County we can take a maximum of four juries a day,” said Schaffer, who is local administrative judge in his county. “Until there is access to jury trials in larger numbers, I don’t know what you can do to fix the backlog.” He said that criminal-defense attorneys might have advised their clients not to go to trial during the pandemic. “Lawyers today say, ‘This is a horrible situation that we are in right now. You should not be trying your case now, because of the makeup of the juries, because of the COVID mask restrictions—you can’t see people’s faces,’” said Schaffer. “If I were a lawyer, I wouldn’t want to try a case in this environment, especially if I had a substantial case.” Family dockets The same reticence to use virtual proceedings may have contributed to the backlog in family law cases. Slayton, the Texas court administrator, said that he has talked with judges and attorneys who felt that it wasn’t a good time to resolve cases during the upheaval of the pandemic. “Judges and attorneys felt it was best dealt with in-person, in a courtroom, than over Zoom. I think there was more resistance to doing that remotely,” Slayton said. District courts in 2019 had a 100% clearance rate for family cases, which dropped to 80% in 2020, leading to a backlog that mushroomed to just over 46,500 cases. The active pending family docket grew by 14% between 2019 and 2020—when it was more than 374,000 cases. There was a slight 1% dip in the first quarter of 2021, but the district courts still had more than 370,600 family cases on their dockets. Civil dockets Civil case dockets were not as badly impacted by the pandemic–perhaps because judges and lawyers embraced remote court. District courts’ civil case clearance rates stayed the same–90%–in 2019, 2020 and so far in 2021. The number of cases considered to be a backlog actually shrank by just under 700 cases between 2019 and 2020. As a result, the civil active pending case docket only grew by 5% during the pandemic year, going from nearly 382,900 in 2019 to nearly 401,700 in 2020. This number has already dropped by 2% in the first quarter of 2021. Judge Amy Clark Meachum of Travis County’s 201st District Court wrote in an email that judges rose to the challenges of the pandemic by using virtual platforms. Travis County judges ran their usual non-jury dockets and met their normal daily demands, she said.

### 1NR---L---AT: Link Turn

#### 1---Antitrust judges are risk averse and economically minded---guarantees tradeoffs. Also answers their clog not real argument because judges account for it.

Grant 21—(Associate Director and Managing Director at National Economic Research Associates). Alan Grant & Chetan Sanghvi. 06/14/2021. “The Economic Foundations and Implications of the Per Se Rule.” Columbia Business Law Review, vol. 2021, no. 1. <https://journals.library.columbia.edu/index.php/CBLR/article/view/8476>.

A. Scarcity Is the Foundation of the Per Se Rule

The per se rule seeks to truncate antitrust inquiry into certain conduct.3 Why not delve fully into all matters? It must be that we believe that the judicial resources required to litigate are scarce, so that there is excess demand for these resources.4 To see this, consider the counterfactual in which the resources—including time—necessary to litigate all types of matters are available in such abundance that the parties can litigate every matter in full depth without an opportunity cost. In this scenario, it would be in society’s interest to litigate fully all antitrust matters, including those involving conduct that now falls under the per se rule. There would be no point in truncating a litigation to conserve judicial resources because—by construction—there are abundant resources to litigate fully all other matters, including matters that do not involve antitrust allegations.

Thus, the principled justification for the per se rule derives from a fundamentally economic concern: when judicial resources are scarce, how do we best allocate those resources to serve society’s interests?5 In the language of economists, how do we allocate resources in order to maximize social welfare?

### 1NR---Link---Extraterritoriality

#### 1---Government suits are a drop in the bucket—private suits are what matter.

Lande 8—(Venable Professor of Law, University of Baltimore, JD from Harvard). Robert H. Lande & Joshua P. Davis. Spring 2008. “Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases”. 42 U.S.F. L. Rev. 879. <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1723&context=all_fac>. Accessed 11/6/21

While these criticisms are longstanding and widespread, they have been made without any systematic substantive or empirical basis.35 Those who point to the perceived flaws of private antitrust enforcement typically offer only anecdotes, some of which are questionable, rather than provide reliable and rigorous data to support their arguments.36 Indeed, the same point applies to attacks on private litigation generally-critics tend to make factual assertions without an adequate empirical basis. We emphasize that we are not disputing that the anecdotes the critics use may raise important concerns about abuses in particular cases. Private antitrust enforcement certainly is not perfectP The contention of this Study is, however, that a valid assessment of the net efficacy of private antitrust enforcement, which accounts in most years for more than ninety percent of filed antitrust cases,38

[Begin Footnote 38]

38. See Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online: Antitrust Cases filed in United States District Courts by Type of Case, 1975-2006, http:// www.albany.edu/sourcebook/pdf/t5412006.pdf (last visited Apr. 7, 2008). For the most recent reported year, 96.3% of all antitrust cases filed were private cases. In only nine out of thirty-two years reported did the percentage of private cases fall below ninety percent. The lowest reported percentage was 83.4. Id.

[End Footnote 38]

is possible only by also systematically considering its benefits to victimized consumers and businesses, and to the economy and the public interest more generally.

#### 2---Changing FTAIA terrifies judges---they’ll immediately cite the ‘floodgates’ argument and construct new hurdles.

Koster 4—(Member of the German Bar, the New York Bar and the Brussels Bar). Thomas Koster & H. Harrison Wheeler. 2004. “Appellate Courts Split on the Interpretation of the Foreign Trade Antitrust Improvements Act: Should the Floodgates Be Opened?”. 14 Ind. Int'l & Comp. L. Rev. 717.

Given the relevance and timeliness of Den Norske, it was inevitable that the Kruman defendants would rely on it in their pleadings. The "floodgates" argument figured centrally. The defendants claimed that reading the language of the FTAIA broadly would open U.S. federal courts to all varieties of antitrust claims by foreign plaintiffs. This was especially true, argued the defendants, because the world's markets were becoming increasingly interdependent.

The Kruman majority dismissed this argument, noting that Section 6a (1) of the FTAIA was in place to combat just such a wave of frivolous and unrelated foreign lawsuits. Not only must the claim highlight an effect on the U.S. economy (as required in subsection (2) of 6a), but the effect must be "direct, substantial, and reasonably foreseeable." 29 Clearly, the court believed these elements of the FTAIA sufficient to stem the supposed flood of internationally driven lawsuits.

C. Empagran

The most recent addition to the mix was the 2003 case Empagran, decided by the D.C. Circuit. If the Fifth Circuit's holding was the most restrictive reading of the FTAIA and the Second Circuit's the most lenient, then the D.C. Circuit's ruling fell in the middle but leaning more toward the Second's interpretation. The D.C. Circuit agreed with the Second Circuit that foreign plaintiffs should be allowed to bring their claims in U.S. federal court.

In Empagran, a class of vitamin retailers brought suit against the world's leading vitamin producers, alleging a global price-fixing conspiracy among the several defendants. Just as in Den Norske and Kruman, the plaintiffs in Empagran made no claim that their injuries arose from domestic transactions.

[\*723] All their transactions, in fact, had happened outside the U.S. stream of commerce. Instead, the plaintiffs charged that the defendants' global price-fixing scheme adversely affected the U.S. economy. Prices were kept high all over the world, particularly in the United States, and American consumers suffered as a result.

To the foreign plaintiffs, the two requirements of Section 6a of the FTAIA had been met. First, by virtue of the fact that the alleged cartel controlled billions of dollars in revenue from vitamin sales, the plaintiffs argued that the actions of the vitamin producers had a "direct, substantial, and reasonably foreseeable effect" on the U.S. economy. 30 Second, they argued that this effect gave "rise to a claim." 31 Again, the issue boiled down to the interpretation of the FTAIA language.

Unlike the two previous circuits, the D.C. Circuit found no "plain meaning" in the language of the FTAIA. Instead, they found that they had to reinterpret the provisions all over again. This time, citing the statutory language itself, the FTAIA's legislative history, and public policy considerations, the D.C. Circuit determined that foreign plaintiffs should be allowed to bring their claims. While the majority deemed the Fifth Circuit's interpretation of the FTAIA "overly rigid," they also saw the Second Circuit's holding as going too far, particularly in its determination that only the "substantive provisions" of the Sherman Act need be violated to give rise to a claim.

In striking new legal ground, the court supported its judgment with three legal pillars. First, referencing the statutory language itself, the D.C. Circuit issued the following holding:

We hold that, where the anticompetitive conduct has the requisite effect on United States commerce, FTAIA permits suits by foreign plaintiffs who are injured solely by that conduct's effect on foreign commerce. The anticompetitive conduct must violate the Sherman Act and the conduct's harmful effect must give rise to "a claim" by someone, even if not the foreign plaintiff before the court. Thus, the conduct's domestic effect must do more than give rise to a government action for violation of the Sherman Act, but it need not necessarily give rise to the particular plaintiff's (private) claim. 32

The court remarked of its holding: "This interpretation has the appeal of literalism." 33 Next, the court concluded that, by and large, the legislative [\*724] history of the FTAIA favored an expansive reading of the Act's jurisdictional elements. Specifically, the court said that the legislative history, if it were interpreted to favor the more restrictive view of the FTAIA (as seen in Den Norske), did not exclude the less restrictive reading (Kruman). However, if the roles were reversed, the less restrictive reading would exclude the more restrictive view. The majority found this not only significant but also dispositive.

Lastly, in regard to the public policy issues, the court borrowed from the ruling in Kruman and Judge Higginbotham's dissent in Den Norske. Both had argued that allowing foreign plaintiffs in U.S. federal court would have a strong deterrence effect on potential anticompetitive conspirators on a worldwide scale. Whereas precluding these foreign claims in U.S. federal court could encourage a conspirator to engage in global price-fixing and offset his U.S. liabilities with profits from abroad, allowing foreign claims would obligate the conspirator "to internalize the full costs of his anticompetitive behavior." 34 Moreover, the court reasoned that domestic consumers would also benefit if foreign claims were permitted. Closing U.S. courts would have the effect of diminishing the efficacy of U.S. laws, while at the same time driving the plaintiffs back to their home fora, where the possibilities of prosecution and enforcement were uncertain. The Empagran majority finished assertively: "The U.S. consumer would only gain, and would not lose, by enlisting enforcement by those harmed by the foreign effects of a global conspiracy." 35

As a corollary to the main holding, the majority in Empagran ruled that the foreign plaintiffs in question had standing to bring their case in U.S. federal court. This issue had been left unanswered at the district court level.

Given the facts that Den Norske and Kruman reached opposite rulings and that the court split in Den Norske, the split decision in Empagran should not come as a surprise. Dissenting, Judge Henderson deemed the more "natural reading" of the FTAIA to be the narrower one espoused by the majority in Den Norske. She found it peculiar that a claim by a foreign plaintiff would be judged actionable based on the potentiality of a domestic, hypothetical claim. More reasonable to Judge Henderson was the idea that a claim -- the claim before the court -- be based on the domestic injury that affects U.S. trade or commerce.

To recap, Empagran held that U.S. federal courts have subject matter jurisdiction over Sherman Act claims brought by foreign plaintiffs whose injury resulted solely from transactions that were external to the U.S. economy but, nonetheless, had an effect on U.S. trade or commerce and gave rise to a domestic (private) claim. As long as at least one domestic plaintiff can bring a claim against these domestic or foreign defendants, so too can the foreign [\*725] plaintiff. Empagran followed the overall result of Kruman but diverged in its reasoning. The latter case was deemed to have gone too far in setting the requirements for subject matter jurisdiction, providing for a jurisdictional nexus simply when the main provisions of the Sherman Act are contravened.

V. THE GOVERNMENT'S AMICUS CURIAE BRIEF

In response to an invitation from the D.C. Circuit court, the Department of Justice (DOJ) and Federal Trade Commission (FTC) issued an amicus curiae brief in March of 2003, stating the position of the U.S. government on Empagran. Contrasting sharply with both Kruman and Empagran, the position of the government was that only those claims that arise from domestic conduct and accompanying domestic effect should be permitted under the FTAIA. Citing the importance of this area of the law and the need for agreement among the circuits, 36 the brief called for an en banc rehearing of Empagran by the D.C. Circuit to mend the split of authority. The government's argument came in three parts.

First, the brief stated that the "most natural reading" of Section 6a (2) of the FTAIA would understand the phase "gives rise to a claim" as referring not to a claim by any plaintiff but only to a claim "by the particular plaintiff before the court." 37 As the FTAIA does not talk to the purpose of allowing a remedy for foreign conduct and foreign effect, the Sherman Act cannot be stretched to include the sorts of foreign plaintiffs seen in the three controlling cases.

Next, the brief countered the legislative history argument put forth by the D.C. Circuit. Whereas the majority in Empagran concluded that, absent "express legislative history to the contrary, Congress must have intended the more expansive interpretation" 38 of the FTAIA, the government determined this to be dubious logic. The brief proposed that the default position, absent controlling language, should be one that is wholly domestically focused in terms of the effect of anticompetitive conduct. The government brief supported the position put forth in Den Norske: "Nothing is said about protecting foreign purchasers in foreign markets." 39

Lastly, the government disagreed with the majority in Empagran that extending U.S. antitrust laws would have a deterring effect on global anticompetitive conduct. In fact, the government maintained that just the [\*726] reverse was true. Prefacing its argument with the fact that "price-fixing conspiracies are inherently difficult to detect and prosecute [and therefore require the help of co-conspirators,]" 40 the government made the case that extending the jurisdiction of the Sherman Act to foreign plaintiffs injured by foreign conduct "would create a potential disincentive for corporations and individuals to report antitrust violations and seek leniency. . . . " 41 In other words, there is a certain balance at the moment between anticompetitive behavior and resulting lawsuits. The government, through its leniency program, has a way of controlling criminal prosecutions against anticompetitive entities, which in turn influences subsequent civil prosecutions. However, if jurisdiction is broadened, then countless more plaintiffs enter the equation, potentially upsetting the delicate equilibrium. This equilibrium is crucial, it will be recalled, in getting the necessary co-conspirators to come forward in the first place. Thus, co-conspirators will ultimately be deterred from divulging what they know and stopping anticompetitive conduct.

As a corollary to this counter-deterrence argument, the government highlights the "floodgates" argument as well. Noting that the government is "unaware of any decision pre-dating the FTAIA that permitted" suits based on a theoretical domestic plaintiff, the brief surmised that Empagran's new rule "threatens to burden the federal courts" with suits concerned with foreign anticompetitive conduct. 42

In summary, the government's brief centered almost entirely around the notions of domestic and foreign conduct. While the government recognized the right of foreign plaintiffs to bring antitrust claims for injuries stemming from domestic conduct, it refused to concede a similar right to those injured solely by foreign conduct. Moreover, the government found fault with the logic that this latter group of plaintiffs received this right based only on the existence of a single domestic plaintiff. In the end, the government clearly believed that the D.C. Circuit had strayed too far afield in making the jurisdictional nexus between conduct and effect.

VI. IMPLICATIONS

Two major events will flow from Empagran. First, given the split of authority and the three distinct opinions expressed by three federal circuit courts, it seems apparent that this issue is ripe for review by the Supreme Court. Second, a wave of lawsuits by foreign plaintiffs may inundate the federal court system. This was certainly foreseen in a number of sources: the holding in Den Norske, the defendants' arguments in Kruman, and the amicus brief following Empagran. Discounting this argument is not easy, for few [\*727] nations have antitrust laws allowing plaintiffs to recover treble damages and lawyers' fees in civil suits. Thus, it is not unlikely that these existing benefits, in tandem with the newly broadened jurisdictional elements to the Sherman Act, may prompt foreign plaintiffs to bring claims when they otherwise might have refrained.

Certain aspects relevant to Empagran do nothing to undercut the "floodgates" argument. Specifically, the DOJ has already obtained against the Empagran defendants, both corporate and individual, fees in excess of $ 900 million, including the largest criminal fee ever levied by the DOJ ($ 500 million). 43 These huge fines hardly dissuade foreign plaintiffs from trying themselves to reach into the defendants' deep pockets.

#### 3---Floodgates’ reasoning ensures courts feel the need to make cuts.

Shaprio 21—(Assistant Professor of Law at Rutgers Law School). Matthew A. Shapiro. June 2021. “Distributing Civil Justice”. Georgia Law Journal, 109 Geo. L.J. 1473.

In the most direct mechanism, courts foreclose a particular cause of action, effectively withdrawing all judicial resources from that category of litigation so that they can be reserved for other, "more important" cases. This occurs, for instance, when courts embrace the "floodgates" argument, the idea that

certain sorts of law suits should not be allowed because to do so would 'swamp' the courts with litigation. The court supposes that if it were to allow that type of suit it would lack the time to consider promptly enough other law suits aiming to vindicate rights that are, taken together, more important than the rights it therefore proposes to bar.

The access-to-justice concern with the floodgates argument is that courts invoke it disproportionately to avoid having to deal with disfavored claims typically brought by disfavored groups of litigants, such as prisoners or discrimination plaintiffs. When they do so, courts are effectively reallocating their resources away from those disfavored cases toward ones deemed more important.

Courts can also end up distributing judicial resources among different categories of cases somewhat more indirectly, simply by devoting more time and attention to some and thereby leaving less for others. This seems to be one potential concern with the practice that Judith Resnik has dubbed "managerial judging," whereby judges focus on the "managerial" tasks associated with shepherding cases through the pretrial phase (usually resulting in settlement) at the expense of the more traditionally "adjudicatory" tasks associated with actually deciding cases on the merits. Criticisms of managerial judging have tended to focus on [\*1492] the practice's costs for managed cases, particularly the risk that judges will abuse their power to prematurely terminate potentially meritorious lawsuits. But managerial judging might also have more systemic implications for the distribution of judicial resources. In particular, insofar as more complex cases require more case management, judges who adopt a more managerial posture will end up spending more time and attention on complex cases than they otherwise would, necessarily reducing the time and attention they have to spend on more routine cases. The prevalence of managerial judging can thereby end up slighting routine cases. Once again, from an access-to-justice perspective, the worry is that courts are giving certain categories of cases short shrift so that they can focus on the ones that, from many judges' perspectives, really matter.

#### 4---Antitrust judges are risk averse and economically minded—guarantees tradeoffs.

Grant 21—(Associate Director and Managing Director at National Economic Research Associates). Alan Grant & Chetan Sanghvi. 06/14/2021. “The Economic Foundations and Implications of the Per Se Rule.” Columbia Business Law Review, vol. 2021, no. 1. <https://journals.library.columbia.edu/index.php/CBLR/article/view/8476>.

A. Scarcity Is the Foundation of the Per Se Rule

The per se rule seeks to truncate antitrust inquiry into certain conduct.3 Why not delve fully into all matters? It must be that we believe that the judicial resources required to litigate are scarce, so that there is excess demand for these resources.4 To see this, consider the counterfactual in which the resources—including time—necessary to litigate all types of matters are available in such abundance that the parties can litigate every matter in full depth without an opportunity cost. In this scenario, it would be in society’s interest to litigate fully all antitrust matters, including those involving conduct that now falls under the per se rule. There would be no point in truncating a litigation to conserve judicial resources because—by construction—there are abundant resources to litigate fully all other matters, including matters that do not involve antitrust allegations.

Thus, the principled justification for the per se rule derives from a fundamentally economic concern: when judicial resources are scarce, how do we best allocate those resources to serve society’s interests?5 In the language of economists, how do we allocate resources in order to maximize social welfare?

#### 5---The complexity of antitrust cases drains judicial resources.

Lynn Fitch 21, Attorney General of Mississippi, 3/1/21, <https://www.supremecourt.gov/DocketPDF/20/20-1018/170601/20210301174920932_pdf>

The financial costs and burdens of defending antitrust litigation are also extraordinarily high. To mitigate those costs and burdens, which ultimately are borne by state taxpayers and citizens, States and their political subdivisions have a significant interest in dismissal of antitrust claims at the earliest stage possible whenever dismissal is legally appropriate. “Litigation, though necessary to ensure that officials comply with the law, exacts heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government.” Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009). Immediate appellate review of a denial of a claim of state-action immunity is also efficient. Antitrust litigation is costly for litigants and the judicial system. Antitrust cases are complex and can easily consume judicial time and resources. Fully resolving state-action immunity on the front-end of litigation focuses on a narrow, outcome-determinative issue and can prevent the waste of judicial resources expended in a trial that, at the end, proves to be unwarranted. Courts therefore have a vested interest in early-stage dismissal of antitrust claims that cannot lead to redress. An appeal from a final judgment cannot adequately safeguard these important state and judicial interests or adequately protect against financial burdens needlessly imposed by forcing a state entity entitled to state-action immunity to litigate antitrust cases to a final judgment. See Commuter Transp. Sys., 801 F.2d at 1289 (“The purpose of the state action doctrine is to avoid needless waste of public time and money.”). Allowing an immediate appeal to avoid an unnecessary trial when a State or state entity is in fact immune will protect significant public interests; obviate, or at least diminish, unnecessary financial expenditure; foster efficiency; and conserve judicial resources. B. It is widely recognized that antitrust litigation is particularly costly. Indeed, this Court’s decision in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) is predicated in good measure on the fact that antitrust litigation is notoriously expensive. The complex and protracted discovery inherent in the early stages of antitrust litigation accounts for much of that expense. Id. at 558. In fact, that is why Twombly admonished courts not “to forget that proceeding to antitrust discovery can be expensive.” Id. at 558-59 (citing, inter alia, Note, Modeling the Effect of One-Way Fee Shifting on Discovery Abuse in Private Antitrust Litigation, 78 N.Y.U. L. REV. 1887, 1898-99 (2003) (discussing the unusually high cost of discovery in antitrust cases); Manual for Complex Litigation, Fourth, § 30, p. 519 (2004) (describing extensive scope of discovery in antitrust cases); and Memorandum from Hon. Paul V. Niemeyer, Chair, Advisory Committee on Civil Rules, to Hon. Anthony J. Scirica, Chair, Committee on Rules of Practice and Procedure (May 11, 1999), 192 F.R.D. 354, 357 (2000) (reporting that discovery accounts for as much as 90 percent of litigation costs when discovery is actively employed)). Twombly stands for the general proposition that, when allegations in a complaint, however true, fail to state a claim for relief, the claim should be dealt with “at the point of minimum expenditure of time and money by the parties and the court.” Twombly, 550 U.S. at 558 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, at 233-234 (3d ed. 2004)). The point of minimum expenditure in an antitrust case, in particular, comes before the case proceeds to discovery. Twombly, 550 U.S. at 568 (citing Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984) (“[T]he costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint.”)). If a state entity defendant in an antitrust case is entitled to state-action immunity—whether that immunity is deemed immunity from suit or from liability— there is no reasonable likelihood that a plaintiff can raise a claim of entitlement to relief or recovery. There is thus every reason to allow the state-action immunity issue to be appealed before the parties and the court are faced with the costs of discovery and trial—i.e., to deal with the issue “at the point of minimum expenditure of time and money by the parties and the court.” Antitrust litigation is legally and factually complex, inevitably requires massive discovery, cannot be conducted without a battery of expert witnesses, and is of protracted duration. See, e.g., Corr Wireless Commc’ns v. AT&T, Inc., 893 F. Supp. 2d 789, 809-10 (N.D. Miss. 2012); Nepresso USA, Inc. v. Ethical Coffee Co. SA, 263 F. Supp. 3d 498, 508 (D. Del. 2017) (highlighting “the financial burden of the discovery process in general, but particularly in antitrust cases”). Those concerns counsel in favor of application of the collateral-order doctrine to allow interlocutory appeals of the denial of claims of state-action immunity in antitrust cases.

#### 6---Antitrust is unique.

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs. Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact. In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party. Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm. Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best: A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time? [\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### 7---Backlogs prompt judges to quit.

Alicia Bannon 14, Brennan Center’s Democracy Program counsel, “The Impact of Judicial Vacancies on Federal Trial Courts,” https://www.brennancenter.org/sites/default/files/publications/Impact%20of%20Judicial%20Vacancies%20072114.pdf

These heavy workloads can take a toll on judges; in four districts, interviewees explicitly raised the concern of burn-out due to the burdens of compensating for long-term vacancies (E.D. Cal., S.D. Fla., D. Nev., E.D. Tex.).59 Chief Judge Davis in the Eastern District of Texas, for example, described the “long-term tolling effect on the judges” from his district’s two vacancies, citing an impact on “morale.”60 He added, “I sense a weariness and a tiredness on behalf of our district judges, especially ones that have to travel long distances [because of vacancies].”61 Judge Davis speculated that this long-term toll was encouraging judges in his district to retire, noting that the number of senior judges in his district has declined as more judges chose to leave the bench altogether when they reached retirement age.62 Chief Judge Federico Moreno in the Southern District of Florida likewise highlighted the toll that vacancies in his district placed on judges, despite observing that he did not think the vacancies were impacting the administration of justice.63 “It’s like an emergency room in a hospital,” he observed. “The judges are used to it and people come in and out and get good treatment. But the question is, can you sustain it? Eventually you burn out.”64 In two districts, interviewees also highlighted the burdens on senior judges who had retired from active service while continuing to carry full or close-to-full caseloads,65 arguing that it “wears [them] down.”66 The Clerk of Court in the Western District of Wisconsin commended the district’s senior judge as “working as hard or harder than before she retired.”67 Several attorneys raised similar concerns, describing “wear and tear” on their districts’ judges,68 along with “overwork,”69 a “lower level of morale,”70 and a “very heavy burden”71 on judges. These observations suggest that high and sustained levels of judicial vacancies raise concerns not just for their impact on current cases but for the long-term health and vitality of our courts.

# 2NR

#### No impact to failed states

Patrick, 11 – IR PhD at Oxford, Senior Fellow, Director of the Program on International Institutions and Global Governance at the Council on foreign Relations (Stewart M, “Why Failed States Shouldn’t Be Our Biggest National Security Fear”, Washington Post, 4/15/11, <http://www.cfr.org/international-peace-and-security/why-failed-states-shouldnt-our-biggest-national-security-fear/p24689)> // ANK

The message is clear: Failed states are the weak link in the world’s collective security. In truth, while failed states may be worthy of America’s attention on humanitarian and development grounds, most of them are irrelevant to U.S. national security. The risks they pose are mainly to their own inhabitants. Sweeping claims to the contrary are not only inaccurate but distracting and unhelpful, providing little guidance to policymakers seeking to prioritize scarce attention and resources. In 2008, I collaborated with Brookings Institution senior fellow Susan E. Rice, now President Obama’s permanent representative to the United Nations, on an index of state weakness in developing countries.The study ranked all 141 developing nations on 20 indicators of state strength, such as the government’s ability to provide basic services. More recently, I’ve examined whether these rankings reveal anything about each nation’s role in major global threats: transnational terrorism, proliferation of weapons of mass destruction, international crime and infectious disease. The findings are startlingly clear. Only a handful of the world’s failed states pose security concerns to the United States. Far greater dangers emerge from stronger developing countries that may suffer from corruption and lack of government accountability but come nowhere near qualifying as failed states. The link between failed states and transnational terrorism, for instance, is tenuous. Al-Qaeda franchises are concentrated in South Asia, North Africa, the Middle East and Southeast Asia but are markedly absent in most failed states, including in sub-Saharan Africa. Why? From a terrorist’s perspective, the notion of finding haven in a failed state is an oxymoron. Al-Qaeda discovered this in the 1990s when seeking a foothold in anarchic Somalia. In intercepted cables, operatives bemoaned the insuperable difficulties of working under chaos, given their need for security and for access to the global financial and communications infrastructure. Al-Qaeda has generally found it easier to maneuver in corrupt but functional states, such as Kenya, where sovereignty provides some protection from outside interdiction. Pakistan and Yemen became sanctuaries for terrorism not only because they are weak but because their governments lack the will to launch sustained counterterrorism operations against militants whom they value for other purposes. Terrorists also need support from local power brokers and populations. Along the Afghanistan-Pakistan border, al-Qaeda finds succor in the Pashtun code of pashtunwali, which requires hospitality to strangers, and in the severe brand of Sunni Islam practiced locally. Likewise in Yemen, al-Qaeda in the Arabian Peninsula has found sympathetic tribal hosts who have long welcomed mujaheddin back from jihadist struggles. Al-Qaeda has met less success in northern Africa’s Sahel region, where a moderate, Sufi version of Islam dominates. But as the organization evolves from a centrally directed network to a diffuse movement with autonomous cells in dozens of countries, it is as likely to find haven in the banlieues of Paris or high-rises of Minneapolis as in remote Pakistani valleys. What about failed states and weapons of mass destruction? Many U.S. analysts worry that poorly governed countries will pursue nuclear, biological, chemical or radiological weapons; be unable to control existing weapons; or decide to share WMD materials. These fears are misplaced. With two notable exceptions — North Korea and Pakistan — the world’s weakest states pose minimal proliferation risks, since they have limited stocks of fissile or other WMD material and are unlikely to pursue them. Far more threatening are capable countries (say, Iran and Syria) intent on pursuing WMD, corrupt nations (such as Russia) that possess loosely secured nuclear arsenals and poorly policed nations (try Georgia) through which proliferators can smuggle illicit materials or weapons. When it comes to crime, the story is more complex. Failed states do dominate production of some narcotics: Afghanistan cultivates the lion’s share of global opium, and war-tornColombia rules coca production. The tiny African failed state of Guinea-Bissau has become a transshipment point for cocaine bound for Europe. (At one point, the contraband transiting through the country each month was equal to the nation’s gross domestic product.) And Somalia, of course, has seen an explosion ofmaritime piracy. Yet failed states have little or no connection with other categories of transnational crime, from human trafficking to money laundering, intellectual property theft, cyber-crime or counterfeiting of manufactured goods. Criminal networks typically prefer operating in functional countries that provide baseline political order as well as opportunities to corrupt authorities. They also accept higher risks to work in nations straddling major commercial routes. Thusnarco-trafficking has exploded in Mexico, which has far stronger institutions than many developing nations but borders the United States. South Africa presents its own advantages. It is a country where “the first and the developing worlds exist side by side,” author Misha Glenny writes. “The first world provides good roads, 728 airports . . . the largest cargo port in Africa, and an efficient banking system. . . . The developing world accounts for the low tax revenue, overstretched social services, high levels of corruption throughout the administration, and 7,600 kilometers of land and sea borders that have more holes than a second-hand dartboard.” Weak and failing African states, such as Niger, simply cannot compete.

#### Their authors cherry-pick anecdotal examples without causal analysis

Patrick 11(Stewart Patrick, Research Fellow at the Center for Global Development, “Weak Links: Fragile States, Global Threats, and International Security,” Google Books) GG (Recut)

It has become commonplace to claim that the gravest dangers to U.S. and world secu­rity are no longer military threats from rival great powers but rather cross-border threats emanating from the world’s most poorly governed, economically stagnant, and conflict-ridden countries. Public officials and the media—as well as many scholars—depict weak and failing states as generating or enabling a vast array of dangers, from transnational terrorism to weapons proliferation, organized crime, humanitarian catas­trophes, regional conflict, mass migration, pandemic disease, environmental degrada­tion, and energy insecurity. Leading thinkers like Francis Fukuyama argue, “Since the end of the Cold War, weak and failing states have arguably become the single-most important problem for international order.” Official Washington agrees. Secretary of State Hillary Rodham Clinton has spoken of the “chaos that flows from failed states,” which serve as “breeding grounds, not only for the worst abuses of human beings, from mass murders to rapes to indifference toward disease and other terrible calamities, but they 1are [also] invitations to terrorists to find refuge amidst the chaos.” Likewise, Secretary of Defense Robert Gates predicts, “Over the next 20 years, the most persistent and potentially dangerous threats will come less from emerging ambitious states, than from failing ones that cannot meet the basic needs—much less the basic aspirations—of their people.” This new focus on weak and failing states represents a noteworthy shift in U.S. threat perceptions. During the 1990s, a handful of U.S. strategists began to call attention to the possible spillover consequences of weak governance in the developing world. Most U.S. policymakers, however, regarded states with sovereignty deficits almost exclusively through a humanitarian lens: such countries piqued the moral conscience but appeared to have little strategic significance. This calculus shifted following September 11, 2001, when al-Qaeda attacked the United States from Afghanistan, one of the poorest and most wretched countries in the world. The assault quickly produced a consensus in U.S. policy circles that state fragility was both an incubator and vector of multiple transnational threats. President George W. Bush captured this new view in his National Security Strategy of 2002, declaring: “America is now threatened less by conquering states than we are by failing ones.” In the words of Richard Haass, the State Department’s director of policy planning, “The attacks of September 11, 2001, reminded us that weak states can threaten our security as much as strong ones, by providing breeding grounds for extremism and havens for criminals, drug traffickers, and terror­ists. Such lawlessness abroad can bring devastation here at home. One of our most pressing tasks is to prevent today’s troubled countries from becoming tomorrow’s failed states.” This new threat perception quickly became conventional wisdom among government officials, journalists, and independent analysts at home and abroad. Since 9/11, this preoccupation with spillovers from weak or failed states has driven a slew of U.S. policy pronouncements and institutional innovations spanning the realms of intelligence, diplomacy, development, defense, and even trade. In 2003, the Central Intelligence Agency (CIA) identifi ed some fifty lawless zones around the world that might be conducive to illicit activity, and began to devote new intelligence collection assets to long-neglected parts of the world. The following year, Secretary of State Colin Powell established an Office of Reconstruction and Stabilization in the State Department, which worked with the National Intelligence Council to identify states at risk of collapse where the United States could launch conflict prevention and mitiga­tion efforts. In 2006 the National Security Strategy cited “weak and impoverished states and ungoverned areas” as a critical threat to the United States, and Condoleezza Rice, Powell’s successor, announced a new “transformational diplomacy” initiative intended to help build and sustain democratic, well-governed states that respond to the needs of their people and conduct themselves responsibly in the international system. To advance this goal, Rice announced a sweeping plan to ensure that U.S. foreign assistance was more closely aligned with U.S. foreign policy priorities. USAID devised its own Fragile States Strategy, designed to bolster countries that otherwise might breed terror, crime, instability, or disease. The Bush administration even cast its campaign for regional trade liberalization as a means to prevent state failure and its negative externalities. These trends have continued into the Obama administration, informing the Presidential Policy Directive on Development issued in September 2010 and the first-ever Quadrennial Diplomacy and Development Review (QDDR), released three months later. Hillary Clinton, Obama’s Secretary of State, has repeat­edly depicted fragile and dysfunctional states as growing threats to global security, prosperity, and justice—and endorsed increased investments in U.S. “civilian power” resources to address these challenges. Such initiatives have been mirrored across the Potomac. The Defense Department’s guiding strategy documents now emphasize military cooperation to strengthen the sovereign capacities of friendly governments in the developing world against the internal threats posed by insurgents, terrorists, and criminals. “State weakness and failure may be an increasing driver of conflict and situations that require a U.S. military response,” the Undersecretary of Defense for Policy declared in spring 2009. As the National Defense Strategy of June 2008 explains, “Ungoverned, under-governed, mis­governed, and contested areas offer fertile ground for such groups to exploit the gaps in governance capacity of local regimes to undermine local stability and regional secu­rity.” The Defense Department and its Combatant Commands—including a new Africa Command—are responding to this new mission by deploying assets to the world’s rugged remote regions, uncontrolled borders, and un-policed coastlines. Defense Secretary Robert Gates has emphasized that, “Where possible, U.S. strategy is to employ indirect approaches—primarily through building the capacity of partner governments and their security forces—to prevent festering problems from turning into crises that require costly and controversial direct military intervention.” The new conventional wisdom is not restricted to the United States. Other rich world governments have adopted analogous policy statements and have begun to adapt their defense, diplomatic, and development policies and instruments to help prevent state failure and respond to its aftermath—and to quarantine themselves from the presumed “spillover” effects of state weakness. The European Security Strategy iden­tifies the “alarming phenomenon” of state failure as one of the main threats to the European Union. In Great Britain, Prime Minister Tony Blair’s government pioneered a government-wide effort to help prevent failed states from generating pathologies like crime, terrorism, disease, uncontrolled migration, and energy insecurity. Blair’s suc­cessor, David Cameron, has since launched a new UK National Security Strategy that prioritizes attention and resources to “fragile, failing, and failed states” around the world. Canada, Australia, and others have issued similar policy statements. Likewise at the multilateral level, international organizations depict state failure as the Achilles’ heel of collective security. A unifying theme of UN reform proposals over the past decade has been the need for effective, sovereign states to contend with today’s global threats. As UN Secretary General Kofi Annan declared in a December 2004 speech, “Whether the threat is terror or AIDS, a threat to one is a threat to all. . . . Our defenses are only as strong as their weakest link.” In 2006, UN member states endorsed the creation of a Peacebuilding Commission to ensure that states emerging from confl ict do not collapse once again into failure. In parallel with these steps, the major donors of the Organisation for Economic Co-operation and Development (OECD) have pursued a “Fragile States” initiative, in partnership with the World Bank’s Low Income Countries Under Stress (now Fragile and Conflict Affected States) program. The underlying motivation for all of these efforts, as former Congressman Lee Hamilton has noted, is that “our collective security depends on the security of the world’s most vulnerable places.” What is striking, in view of this flurry of official activity, is how little empirical analysis has been undertaken to document and explore the connection between state failure and transnational security threats.

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Policymakers have advanced blanket associations between these two sets of phenomena, often on the basis of anecdotes or single examples (e.g., al-Qaeda operations in Afghanistan before 9/11) rather than through sober analysis of global patterns or in-depth case studies that reveal causal linkages. Such sweeping generalizations provide little analytical insight or guidance for policymakers in setting priorities, since they fail to distinguish among categories of weak and failing states or to ask whether (or why) particular developing countries are associated with specific sets of threats. This book aims to fill these gaps by analyzing the relationship between state weakness and five of the world’s most pressing transnational threats. WEAK STATES AND TRANSNATIONAL THREATS: RHETORIC AND REALITY The growing concern with weak and failing states is really based on two separate prop­ositions: first, that traditional concepts of security such as interstate violence should expand to encompass cross-border threats driven by non-state actors (such as terror­ists), activities (crime), or forces (pandemics or environmental degradation); and sec­ond, that such threats have their origins in large measure in weak governance in the developing world. Since the Reagan administration, successive versions of the U.S. National Security Strategy have incorporated non-military concerns such as terrorism, organized crime, infectious disease, energy security, and environmental degradation. Th e common thread linking these challenges is that they originate primarily in sovereign jurisdic­tions abroad but have the potential to harm U.S. citizens. This definitional expansion has stimulated lively debate. Some national security traditionalists argue that such concerns pose at best an indirect rather than existential threat to U.S. national inter­ests, and that the effort to lump diverse phenomena into a common analytical frame­work dilutes the meaning of “national security.” Proponents of a wider view of national security respond that unconventional threats contribute to violence by destabilizing states and regions and generating spillover effects. More fundamentally, they argue that the traditional “violence paradigm” for national security must adapt to accommo­date other threats to the safety, well-being, and way of life of U.S. citizens. Such threats include not only malevolent, purposive ones such as transnational terrorism—something many traditionalists now accept—but also “threats without a threatener”: malignant forces that emerge from nature, such as global pandemics, or as by-products of human activity, such as climate change. Senator Barack Obama firmly embraced this perspective in his first major foreign policy address as a presidential candidate. “Whether it’s global terrorism or pandemic disease, dramatic climate change or the proliferation of weapons of mass destruction, the threats we face at the dawn of the 21st century can no longer be contained by borders and boundaries.” Today the conventional wisdom in official circles holds that poorly governed states are disproportionately linked to these types of transnational threats. Lacking even minimal levels of resilience, they are perceived as more vulnerable than rich nations to illicit networks of terrorists or criminals, cross-border conflict, and devastating pan­demics. Yet traditionalists are often dubious that weak and failing states—in general—endanger U.S. national security. More relevant, they contend, are a handful of pivotal weak states, such as nuclear-armed Pakistan or North Korea, whose fortunes may affect regional balances of power or prospects for large-scale destruction. It is not always easy to predict, however, where such threats may emerge. In the 1990s, few anticipated that remote, poor, and war-ravaged Afghanistan would be the launching pad for the most devastating attack on the United States in the nation’s history. The unenviable challenge for policymakers is to try to anticipate where weak gov­ernance in the developing world is likely to become strategically salient. “A failing state in a remote part of the world may not, in isolation, affect U.S. national security,” Peter Bergen and Laurie Garrett explain, “but in combination with other transna­tional forces, the process of state failure could contribute to a cascade of problems that causes significant direct harm to the United States or material damage to coun­tries (e.g., European allies) or regions (e.g., oil-producing Middle East) vital to U.S. interests.” At least four things have been missing from the discussion of failed states and trans­national threats. The first is an appreciation that state failure is not simply an either/or condition. Rather, states may fall along a broad continuum in terms of their relative institutional strength, both at the aggregate level and within individual dimensions of state function. Equally important, states’ level of function (or dysfunction) may represent a variable mixture of inadequate capacity and insufficient will. The second is a sophisticated understanding of the conditions under which state weakness may increase a country’s propensity to fall victim to or enable negative “spillovers,” ranging from terrorism to infectious disease. The third is the recognition that all weak states are embedded in a larger global system that can exert both positive and pernicious effects on their resilience and vulnerability. The fourth is an awareness of how transnational threats, such as crime, terrorism, or disease, can further undermine the capacity and will of weak states to meet their obligations to citizens and the international community.