# 1NC---ROUND 4---vs Michigan PS

## OFF

### 1NC

#### **T: PER SE**

#### Interpretations:

#### 1---“business practices” are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. (Kerry Lynn, “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline, Accessed: 8-27-2021)

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

**Only per se illegality forbids a practice---rules of reason prohibit anticompetitive effects for individual acts, not the practices themselves.**

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

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

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

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

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

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

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

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

**2---“prohibition” means forbid.**

**Eaton** et al. **17**, Joseph Van Eaton, Gail Karish, Gerard Lavery Lederer, lawyers for Best Best & Krieger, Llp. Michael Watza, (3-8-2017, KITCH DRUTCHAS WAGNER VALITUTTI & SHERBROOK, “BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C”, COMMENTS OF SMART COMMUNITIES SITING COALITION, https://tellusventure.com/downloads/policy/fcc\_row/smart\_communities\_siting\_coaltion\_comments\_mobilitie\_8mar2017.pdf)

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

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

Loevinger 61, Assistant Attorney General in charge of the Antitrust Division. (Lee, “The Rule of Reason in Antitrust Law”, *Section of Antitrust Law* , Vol. 19, PROCEEDINGS AT THE ANNUAL MEETING, ST. LOUIS, MISSOURI, AUGUST 7 THROUGH 11, 1961, pp. 245-251, JSTOR, Accessed: 9-13-2021)

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

#### Vote neg:

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

#### 2---LIMITS---they lead to a wave of novel legal standard plans.

### 1NC

#### T: SUBSETS:

#### “Private sector” means all commercial enterprises.

Avis 16, International Development Department Research Fellow @ University of Birmingham. (Dr William Robert Avis, “Private sector engagement in fragile and conflict-affected settings”, *GSDRC Applied Knowledge Services Helpdesk Research Report* , 13.01.2016 <http://unprmeb4p.org/wp-content/uploads/2018/10/Private-sector-engagement-in-fragile-and-conflict-affected-settings.pdf>, Accessed: 7-19-2021)---DFAT = Department of Foreign Affairs and Trade, the department of the Australian federal government responsible for foreign policy and relations, international aid, consular services and trade and investment.

Whilst PSD is considered to have an important role to play in the field of economic development, there is much debate over what constitutes ‘best practice’ in PSD and what the term private sector encompasses. The private sector1 [BEGIN FOOTNOTE 1] DFAT use the term ‘private sector’ to refer to all commercial enterprises (businesses) and includes individual farmers and street traders, small and medium enterprises, large locally-owned firms and multinational corporations.[END FOOTNOTE 1] can include local formal, informal and illegal actors, diaspora communities and regional and multinational players (Peschka, 2010). This review adopts DFATs definition of private sector engagement which is characterised as a tool to achieve better development outcomes in private sector development and human development.

#### A topical aff could change a universally applied standard, like the CWS [Consumer Welfare Standard]

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

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

#### Violation: The aff targets a narrow subset of the private sector.

#### Vote neg:

#### ONE---limits---economic sectors are infinite---any industry, single companies, individuals, OR any permutation of these. That undermines depth and makes meaningful prep impossible.

#### TWO---ground---only broad reforms guarantee link uniqueness and prevent bidirectional affs that clarify an ambiguous statute in a way that weakens enforcement.

### 1NC

#### CON CON CP:

#### The United States should call a strictly limited Constitutional Convention that substantially increases prohibitions on anticompetitive business practices by the private sector by expanding the extraterritorial scope of antitrust laws utilizing a comity balancing test.

#### Solves and avoids politics.

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

The Limited Convention

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

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

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

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

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

### 1NC

#### AT LEAST PIC:

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by expanding the extraterritorial scope of its core antitrust laws utilizing a comity balancing test.

#### Solves, because all their ev says that’s sufficient, but avoids activating fears of an increase in unrelated enforcement---links less to every DA

### 1NC

#### EU RELATIONS DA:

#### US-EU trade relations are strong.

Reuters 21, published in Al Jazeera. (6-15-2021, "EU and US call truce in Trump-era trade war", *Al Jazeera*, <https://www.aljazeera.com/economy/2021/6/15/eu-and-us-call-truce-in-trump-era-trade-war>)

United States President Joe Biden ended one front in a Trump-era trade war when he met European Union leaders on Tuesday by agreeing to a truce in a transatlantic dispute over aircraft subsidies that has dragged on for 17 years. Quoting Irish poet WB Yeats at the start of his first EU-US summit as president, Biden also said the world was shifting and that Western democracies needed to come together. “The world has changed, changed utterly,” Biden, an Irish-American, said, citing from the poem Easter 1916, in remarks that pointed towards the themes of his eight-day trip through Europe: China’s rise, the COVID-19 pandemic and climate change. Sitting at an oval table in the EU’s headquarters with US cabinet officials, he told EU institution leaders that the bloc and the US working together was “the best answer to deal with these changes” that he said brought “great anxiety”. He earlier told reporters he had very different opinions from his predecessor. Former President Donald Trump also visited the EU institutions, in May 2017, but later imposed tariffs on the EU and promoted Brexit – the United Kingdom’s departure from the bloc. “I think we have great opportunities to work closely with the EU as well as NATO and we feel quite good about it,” Biden said after walking through the futuristic glass Europa Building, also known as The Egg, to the summit meeting room with EU institution leaders. “It’s overwhelmingly in the interest of the USA to have a great relationship with NATO and the EU. I have very different views than my predecessor,” he said. The two sides agreed to remove tariffs on $11.5bn of goods from EU wine to US tobacco and spirits for five years. The tariffs were imposed on a tit-for-tat basis over mutual frustration with state subsidies for US planemaker Boeing and European rival Airbus. “This meeting has started with a breakthrough on aircraft,” European Commission chief Ursula von der Leyen said. “This really opens a new chapter in our relationship because we move from litigation to cooperation on aircraft – after 17 years of dispute … Today we have delivered.” Biden’s summit is with von der Leyen and the European Council President Charles Michel, who represents EU governments. Biden also repeated his mantra – “America is back” – and spoke of the need to provide good jobs for European and American workers, particularly after the economic impact of COVID-19. He spoke of his father saying that a job “was more than just a paycheque” because it brought dignity. He is seeking European support to defend Western liberal democracies in the face of a more assertive Russia and China’s military and economic rise. “We’re facing a once in a century global health crisis,” Biden said at NATO on Monday evening, while adding “Russia and China are both seeking to drive a wedge in our transatlantic solidarity.” According to an EU-US draft summit statement seen by Reuters news agency and still being negotiated up until the end of the gathering, Washington and Brussels will commit to ending another dispute over punitive tariffs related to steel and aluminium. Broader agenda US Trade Representative Katherine Tai discussed the aircraft dispute in her first face-to-face meeting with EU counterpart Valdis Dombrovskis before the US-EU summit. The pair are due to speak on Tuesday afternoon. Freezing the trade conflicts gives both sides more time to focus on broader agendas such as concerns over China’s state-driven economic model, diplomats said. Biden and US Secretary of State Anthony Blinken earlier met Belgian King Philippe, Prime Minister Alexander De Croo and Foreign Minister Sophie Wilmes in Brussels’ royal palace. On Wednesday, he meets Russian President Vladimir Putin in Geneva. The summit draft statement to be released at the end of the meeting said they had “a chance and a responsibility to help people make a living and keep them safe, fight climate change, and stand up for democracy and human rights”. There are no firm new transatlantic pledges on climate in the draft summit statement, however, and both sides will steer clear of setting a date to stop burning coal. The EU and the US are the world’s top trading powers, along with China, but Trump sought to sideline the EU. After scotching a free-trade agreement with the EU, the Trump administration focused on shrinking a growing US deficit in goods trade. Biden, however, sees the EU as an ally in promoting free trade, as well as in fighting climate change and ending the COVID-19 pandemic.

#### Enforcers would apply the plan extraterritorially. That blows up US-EU trade relations.

Kava 19, J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business. (Samuel F., “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity”, 15 J. Bus. & Tech. L. 135, pg. 157-159 Available at: <https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5>)

A. Adverse Political and Economic Effects

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158 should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

Essentially, for trade to prosper, it is more important to provide producers and consumers with predictability and certainty (regarding the rule of law) rather than enacting laws that focus on free trade economics. Accordingly, it is in the best interest of governments to focus on unifying its laws before negotiating for the elimination of tariffs or quotas. This is not to say that eliminating trade barriers is not vital to the health of the economy—in fact, tariffs, quotas, and other trade barriers are proven to adversely affect all parties involved in the chain of distribution—however, it is more important to unify laws before focusing on the elimination of any trade barriers.159

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA “to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act.”160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that “conduct must have a ‘direct, substantial, and reasonably foreseeable effect’” for the Sherman Anti-Trust Act to apply extraterritorially.161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading.

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a “direct, substantial, and reasonably foreseeable effect” 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies—i.e. the U.S. Department of Justice and the Federal Trade Commission—have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) published the International Guidelines—a publication “explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States.”163 The International Guidelines have taken the broadest approach in determining if conduct is “direct”—finding if there is a “reasonably proximate causal nexus between the conduct and the effect” conduct is “direct”—and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation’s law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations’ laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

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

#### Reducing trade tensions is key to check Chinese tech norms.

Mulligan 20, managing director for national security and international policy at the Center for American Progress. She previously worked in the national security division at the U.S. Department of Justice, where she provided legal and policy advice on a broad range of national policies. Jordan Link is the China policy analyst at the Center for American Progress. Laura Edwards is the China program coordinator at the Center for American Progress. (Katrina, 11-18-2020, “THE ROAD TO A SUCCESSFUL CHINA POLICY RUNS THROUGH EUROPE,” *War on the Rocks*, <https://warontherocks.com/2020/11/the-road-to-a-successful-china-policy-runs-through-europe/>)

European nations also have a crucial role to play on tech issues. The European Union has already demonstrated leadership on technology governance, and the United States is beginning to follow. Together, the United States and the European Union can collaborate on common technology governance standards, offering a democratic alternative to China’s digital authoritarianism. To do so, the administration should develop a new digital technology strategy within its first 100 days. This strategy should be coordinated with allies and partners like the European Union to promote liberal governance values, push back against increasing disinformation, and combat digital authoritarianism. The next administration should also convene an international technology forum for like-minded democracies to develop common approaches to challenges posed by emerging technologies. Beijing will no doubt be hostile to a united democratic approach to technology governance. For example, the Chinese ambassador to Germany recently threatened that “the Chinese government will not stand idly by” if Germany bans Huawei 5G telecoms equipment. But that makes it even more important that the United States and the European Union coordinate on tech together. Human Rights and Democratic Values Another area in which the United States and Europe can exert pressure on China is human rights — in particular, holding China accountable for abuses in Hong Kong and Xinjiang. Europe is already toughening its stance on China’s human rights violations. European leaders pressed Xi on these issues during the E.U.-Chinese virtual summit in September, expressing grave concerns over the treatment of minorities and human rights advocates in a conversation that was reportedly “quite intense.” European Council President Charles Michel stated, “We reiterated our concerns over China’s treatment of minorities in Xinjiang and Tibet, and the treatment of human rights defenders and journalists.” The European Union also requested that China allow independent observers to visit the Xinjiang region to investigate internment camps. During the meeting, European leaders raised concerns with Xi about Hong Kong’s new national security law, which effectively severed China’s agreement to abide by the “One Country Two Systems” governance structure. The United States should join Europe in demanding better. The U.S. Congress has already worked to highlight China’s abuses. The United States should push the European Union further to turn recent soft rhetoric into broader collaborative action. The next administration can take immediate steps to demonstrate support for democratic norms and aid victims of China’s egregious human rights violations. Possible actions include granting temporary protected status and special immigration status to the people of Hong Kong and announcing new U.S. sanctions against individuals and entities connected to the repression of the Uighurs in Xinjiang. The administration should also invite Uighur activists to the White House to bring greater attention to the atrocities that Beijing is carrying out in Xinjiang. Trade On trade, the United States should shift away from the transactional trade policy of the last four years to focus on addressing China’s most egregious economic and trade behavior jointly with Europe. As German Foreign Minister Heiko Maas has said, “Europe and U.S. alike have expectations towards China: fair conditions for trade and investment, observance of international treaties and obligations.” To implement this shift, the next administration on day one should announce an end to President Trump’s misguided trade war with the European Union. While all disputes will not be settled within 100 days, a productive dialogue to lower trade barriers is a key step in repairing transatlantic relations. Reducing trade tensions will create space for Washington and Brussels to coordinate on other issues related to China. Further, the next administration should take collective action at the World Trade Organization by filing a nullification and impairment case against Beijing. These actions will set the stage to develop a more multilateral trade approach with buy-in from Europe on China. Looking Ahead Policymakers in European capitals are watching the United States to gauge opportunities to join forces. The Biden administration must get that outreach right in order to course-correct a failed China strategy. It will be critical for the next administration to collaborate with the European Union on common interests such as climate change, technology policy, human rights and democracy, and trade issues in order to form a more coherent coalition to face challenges presented by Beijing. Without coordinated action on these critical fronts, Beijing will continue to challenge global norms while seeking to alter the rules that govern the international system. Together, the United States and the European Union can overcome this challenge. Now more than ever, there is a clear path towards a reinvigorated transatlantic partnership: The road to a successful policy towards China runs through Europe.

#### Extinction.

Jain 19, senior fellow with the Scowcroft Center for Strategy and Security, where he oversees the Atlantic Council’s Democratic Order Initiative and D10 Strategy Forum; and Matthew Kroenig, deputy director for strategy in the Scowcroft Center for Strategy and Security and associate professor of government and foreign service at Georgetown University (Ash, “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” *Atlantic Council*, <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>)

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way.

Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability.

Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

### 1NC

#### TRADE-OFF DA:

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### The plan overwhelms antitrust enforcement officers---International actors will block investigations at every turn

DOJ 6 (U.S. EXPERIENCE WITH INTERNATIONAL ANTITRUST ENFORCEMENT COOPERATION CHALLENGES TO ANTITRUST ENFORCEMENT IN TRANSNATIONAL MATTERS, <https://www.justice.gov/sites/default/files/atr/legacy/2006/06/01/1c.PDF>)

Enforcement of national laws in international matters is a process that can be both more complex and less predictable than domestic enforcement. Historically, concerns by nations over issues of sovereignty have led to some combination of legal, practical, and political impediments to such enforcement aims. Some nations introduced a variety of legal obstacles to stymie other nations in their efforts to prosecute international antitrust matters, and of course, affected parties often take their own evasive measures. The most common barriers to both U.S. antitrust authorities and private plaintiffs can impede efforts at accessing information and witnesses across borders. Sovereignty Concerns Sovereignty and consequent jurisdictional issues are among those that historically have elicited the most objections from other governments to U.S. antitrust enforcement efforts and, accordingly, led to the implementation of protective measures that bar efforts by U.S. litigants to obtain information for use in their domestic actions. Extraterritorial antitrust enforcement by U.S. antitrust enforcers has involved investigations into anticompetitive conduct of non-U.S. firms and individuals in violation of U.S.antitrust laws. Such conduct has included instances in which non-U.S. firms and individuals acting outside the United States have caused harm to competition within the United States and, on occasion, to U.S. firms doing business abroad. When engaging in this extraterritorial enforcement, U.S. antitrust authorities need to overcome sovereignty concerns that arise when they seek to obtain information and testimony from non-U.S. citizens located overseas; successfully meet jurisdictional requirements, including establishing personal jurisdiction and subject matter jurisdiction; and render valid service of process. Moreover, the successful prosecution of U.S. antitrust law under these circumstances requires U.S. antitrust authorities to overcome potential objections that extraterritorial enforcement violates principles of “traditional comity.” The term comity refers to the general principle that a country should take other countries’ important interests into account in its law enforcement in return for their doing the same. Traditional comity has been defined as “the recognition which one nation allows within its territory tothe legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.” The Advisory Committee, in 1 its deliberations, has considered these different dimensions. The application of comity with respect to application of the antitrust laws to conduct outside the United States remains an unsettled area of law after the most recent Supreme Court ruling in the area, Hartford Fire Insurance Co. v. California, and lower 2 federal U.S. courts have recently come to different interpretations of the holdings in this case. For much of the postwar period, extraterritorial application of U.S. antitrust laws had been a significant source of tension between the United States and its trading partners. In response to U.S. assertions of extraterritorial jurisdiction, some nations introduced laws that could impede U.S. investigatory efforts to compel production or gain access to information or witnesses located abroad. Today, while they are rarely exercised in contrast with even two decades ago, these statutes remain in effect. They encompass blocking statutes, to prevent the U.S. from collecting evidence and testimony on foreign soil, and clawback statues, to authorize the filing of local suits to recover multiple damages already paid in connection with a foreign judgement. Other mechanisms traditionally employed by foreign governments to resist or object to U.S. assertions of jurisdiction over foreign defendants are used occasionally today. These have taken the form of official protests to legal actions in the United States, including diplomatic notes of protest and the filing of amicus curiae briefs in connection with ongoing U.S. litigation; reservations against providing investigative or judicial assistance under bilateral or multilateraltreaties; and unwillingness to recognize and enforce acts of U.S. courts or extradition requests upon conclusion of antitrust litigation. Blocking statutes, no matter how sporadically invoked, stand as reminders to the hostility that may confront efforts by a U.S. antitrust authority to exercise and to enforce its compulsory power in the affected jurisdiction. Other obstacles include limitations on recognition and enforcement of foreign court orders, particularly those for multiple damages. Evidence Gathering One persistent impediment to U.S. evidence gathering efforts in international antitrustmatters is the government’s limited ability to exercise its compulsory powers in order to obtain information located abroad. As a result, in international matters the government is unable to engage in standard information gathering practices, forexample, searching the premises of a firm under investigation and seizing documents in the process. Compounding this situation is the fact that because evidence is located outside U.S. borders, there is a heightened possibility that essential information may be destroyed before U.S. antitrust authorities may have a chance to access it. Indeed, U.S. antitrust officials often emphasize that they are hindered in their efforts to aggressively pursue antitrust law violators because key documents and witnesses located abroad are often out of the reach of U.S. antitrust authorities.5

#### Resources are finite and are drawn from under-the-radar M and A priorities

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### Health consolidation collapses public health

Numerof 20, PhD @ Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, <https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0>)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Strong public health infrastructure prevents bioterror attacks

Kosal 14, Adjunct Scholar to the Modern War Institute at the US Military Academy/West Point, Ph.D. in Chemistry from the University of Illinois at Urbana Champaign, Associate Professor at The Sam Nunn School of International Affairs at Georgia Tech (Margaret E. Kosal, “A New Role For Public Health in Bioterrorism Defense,” Frontiers in Public Health, Volume 2, Article 278)

In thinking about public health infrastructure as an active or passive part of new deterrence strategies, it is useful to think about the role of missile defense. As the presence of a ballistic missile defense system is supposed to be an existential deterrent itself, so could be a strong public health system. Missile defense is both a passive deterrent and, if used, an active deterrent, as it stops something from occurring. A strong public health infrastructure is likely to be the key in reducing the vulnerability to bioterrorism attack, as well as having a potential role in deterring a foreign terrorist group from even considering such an attack. If a biological weapon launched by a terrorist group will have little or no effect on the target country because of a known robust public health sector, then a foreign terrorist may be discouraged from launching a biological weapons attack in the first place. If foreign terrorists are also aware of the weak public health infrastructure with their own borders, and the increased risks to them and their publics in the event of an accident in developing biological weapons and/or spread of an infectious disease that they might launch, this may also deter them from pursuing this work. In addition, even the accidental release of a dangerous pathogen or the spread of an infectious disease via attack will most likely cause disproportional negative effects to nations with limited public health infrastructures and affect tacit and explicit supporters in those states. The role of a robust public healthcare system for its deterrence capacity can be explored through empirically driven case study methods against predominant theories of deterrence in political science (14, 15) and in comparison to other works considering the possibility of deterring bioterrorism (16–20). For example, the re-emergence of polio offers a potentially useful example to think about the effects of a potential bioterrorist attack on the developed and the developing world. Polio is both a contagious infectious disease and transmissible from human-to-human (like smallpox and plague). The poliovirus is highly transmissible with a basic reproductive rate or secondary transmission rate (R0) exceeding most suspected biological agents, e.g., standard estimates of R0 for polio range from 5 to 7 (21, 22), whereas R0 for suspected bioterrorist agents like smallpox (1.8–3.2) (23–25); pneumonic plague (0.8–3.0) (26, 27); and even Ebola (1.34–2.0) (28, 29) are lower. It is not a likely biological terrorism agent, however, due to the low-mortality associated with infection. It is, however, a useful model for thinking about the spread of infectious disease and the importance of a robust public health infrastructure as a deterrence strategy. At the beginning of 2003, the complete eradication of polio appeared to be within the grasp of the World Health Association and its many partners. In 1998, the World Health Organization estimated there were over 365,000 new cases of polio; by early 2003, the rate of infection had declined to <1,000 new cases worldwide due to a vigilant vaccination effort (30). That trend was interrupted, however, when Nigerian citizens refused to be vaccinated after hearing unfounded allegations of contaminated vaccines that would lead to sterility or cause HIV/AIDs. Before 2003, polio had largely been confined to only a handful of countries; Nigeria, India, Pakistan, and Afghanistan accounted for 93% of the world’s cases (31). What started with the refusal of local clerics to allow vaccination led to the reestablishment or importation of the poliovirus to 14 countries that were previously disease-free. Transport of the contagious virus was not limited to neighboring African states. The poliovirus moved through Sudan to Ethiopia crossing the Red Sea to Lebanon and Yemen. The latter was been particularly severely affected, witnessing more than 500 new cases in the first half of 2005. The poliovirus spread as far as Indonesia, where it afflicted more than 150 people in a single year in 2 provinces, predominantly children (32). Prior to this outbreak, Indonesia had been polio free for nine years. Genetic fingerprinting confirmed that the strain imported to Indonesia came from northern Nigeria through Sudan, most closely resembling an isolate recovered in Saudi Arabia in December 2004. A pilgrim returning from Mecca or a returning foreign worker is suspected to have brought the virus to the island of Java, across an ocean and thousands of miles from its source. The polio virus continues to persist in a limited number of states in the developing world, specifically in Nigeria, Afghanistan, and Pakistan, where a ban on vaccination by Islamist leaders in Waziristan remains in place. Since 2013, polio (linked genetically to the strain in Pakistan) has spread from Syria to Iraq (33). Countries that have witnessed the re-emergence of poliovirus outbreaks have some crucial links: social and political challenges that have impeded the development and implementation of appropriate public health infrastructures and measures. Not unexpectedly, there is an inverse relationship between government health expenditure in health and number of polio cases. Looking at the spread of polio can provide us with a lens to think about the impacts of bioterrorism in states with developed public health infrastructures and those who do not. A bioterrorist attack, especially one with a contagious agent like smallpox or pneumonic plague, will likely impact the developing parts of the world substantially more than the US. One only has to look as far as polio’s re-emergence (or more recently the outbreak of Ebola virus disease in West Africa) to see the very real repercussions of a contagious virus and how the most dire causes and effects of infection and spread stem from poor public health infrastructures (34). Creating a new deterrence strategy for bioterrorism is needed. Credibly, communicating the differential capacities to respond and the comparative likely outcomes will require diplomacy, coordination with civil affairs, specialized knowledge of individual states, and regions of the developing world. These are fundamentally interdisciplinary efforts that should leverage small teams from diplomatic, development, public health, and defense communities. One single parochial voice will be inadequate. Further improving the US domestic public health infrastructure would be beneficial and cost effective regardless of whether an outbreak is intentional or natural. The devastating Ebola outbreaks serve as a call for urgent investment in public health infrastructures worldwide, to provide both responsive and proactive actions to deter bioterrorism and to deal with natural disease outbreaks. Public health remains a powerful and often underutilized asset for bioweapons defense through vulnerability reduction; leveraging public health may also enable new approaches to deterring bioterrorism threats. International security scholars would benefit from better understanding of and leveraging the knowledge of the public health community.

#### Bioterror causes extinction

Larsen 20, Senior Advisor, Copenhagen Institute for Futures Studies. *et al*. (Nicklas, 6-25-2020, "Future pandemics: A growing existential risk", *Medium*, <https://medium.com/copenhagen-institute-for-futures-studies/future-pandemics-a-growing-existential-risk-9c08f3d5358e>)

We have entered the era of global risks that stem from both man-made and natural sources, or a combination of both: climate change, a malevolent super AI, nuclear bombs, bioterrorism, cyber-attacks and, of course, pandemics. To further add to this complexity, there are distinctions to make in this global risk landscape. A global catastrophic risk is a hypothetical future event that could harm human well-being on a global scale, even endangering or destroying modern civilisation, whereas an event that possibly could lead to human extinction is an existential risk, as the Swedish author and philosopher Nick Bostrom defines it: ‘One where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential’. While some of these existential risks stem from nature and are thus out of our control — asteroid impacts or super volcanoes for example — other threats facing us are man-made. Throughout history, human ingenuity has produced technologies with double-edged capabilities. Perhaps the most dramatic example came with the capability to harness the atom, with nuclear power and nuclear weapons being the by-products. This marked the dawn of a new epoch in which humankind achieved the ability to destroy itself, with a few very close calls happening especially during the Cold War. Since then, nuclear weapons have now been joined by other emerging technological risks such as nanotechnology and AI. THE EXPANDED RISK LANDSCAPE OF PANDEMICS Although it has been a novel experience for most people living through it, the COVID-19 pandemic was not an unanticipated event. In fact, a respiratory virus-enabled pandemic like COVID-19 was deemed likely or even expected by virologists. The interconnectedness of modern-day civilisation has made it much easier for a pandemic to spread globally in days or weeks rather than months, and the frequency of outbreaks is accelerated by ecosystem collapse, demographic developments and global warming. In any given month, The World Health Organization now traces roughly 7.000 signals of potential outbreaks, conducts 300 follow-ups, and leads 30 investigations. In the month of June 2018, for the first time ever, the WHO tracked outbreaks of six of the eight of the ’priority communicable diseases’, like Zika and MERS happening at the same time. WHO’s list of potential outbreaks also includes ‘Disease X’, representing the fact that a future epidemic or pandemic could also be caused by a pathogen unknown to us at the current time. Below, we take a closer look at some of the global trends that will accelerate the emergence and spread of disease in the future. The rise of megacities The transition from rural to urban life is a defining characteristic of our age. By 2050, two-thirds of the world’s 9,8 billion people will live in urban areas, up from around half of the world population living in cities today. This movement of people from the countryside to cities is driven by the promise of increased economic opportunity, access to healthcare, connections, education, and increased mobility. During the next decade, the number of megacities (defined as 10 million inhabitants or more) will increase to 39 by adding Chicago, Bogota, Luanda, Chennai, Baghdad, and Dar es Salaam to the list. With more than 80% being in low- or middle-income countries, megacities with large parts of the populations living in slums heightens the risk of disease spreading effortlessly. Novel outbreaks will have fertile ground for spreading exponentially, as seen in metropoles and travel hubs of today like New York City. The megacities of the future will be densely populated hubs for transnational commerce, mobility, and hyper-connected which all amplify pandemic risk. With the growing risk of pandemics occurring in the future, the need to bolster the pandemic resilience of cities will only get more pressing. Researchers at the Senseable City Lab at MIT offer a glimpse into some of the features of the pandemic-proof city of the future. As part of their project named ‘Underworlds’, they placed sensors in sewers to detect concentrations of illegal drugs and harmful bacteria in specific areas. The researchers propose to develop a new kind of human health census by sampling the ‘urban gut’ and thus providing early signals of things like contagious disease with geographical precision. A city built with lessons from pandemics might be filled with systems such as these to help map the spread of disease. While technology can get us some of the way, it can’t solve some of the more structural issues that lie at the heart of why and how outbreaks of disease become epidemics or pandemics. Outbreaks of disease tend to hit underprivileged or marginalised population groups the hardest, and to effectively curb the spread of disease in the future, we not only need to expand our urban and technological resilience, but arguably (and chiefly) our social and community resilience as well. Global warming and increased human-wildlife interfacing Pandemics and global warming remind us that nature is powerful, and that despite all our modern gadgets, we are still subject to its temperaments. Our current situation is a terrifying harbinger of the pandemics that can be brought about in the future if global warming continues to further destabilise the natural world. Already today, global warming is exposing new threats. The warming planet is melting permafrost that has been frozen for decades or longer, releasing ancient viruses and bacteria that have lain dormant. Out of the meltwater, smallpox or the Spanish flu could be given a second chance, or something completely different we do not want to discover could be ‘released’ into the world. Rising global temperatures are also expanding the geographical reach of diseases like zika, dengue fever, and malaria, as these infectious diseases and their vectors, like mosquitos, thrive better in a warmer and a more humid climate. Additionally, global warming is also changing the water cycle, leading to heavier rainfalls and higher risks of floods, and consequently spreading water-borne diseases like cholera. This is especially problematic in the world’s poorest regions which are unable to invest heavily in climate mitigation infrastructure. COVID-19 breached natural boundaries at the interface between human activity and wild ecosystems. A major factor driving such spillover events is the loss of natural ‘buffers’ between humans and wild ecosystems, exemplified through deforestation, bushmeat hunting, and the traditional Asian open wet markets. Additionally, the world’s growing demand for domesticated meat is greatly increasing the number of pigs and chickens on the planet, increasing the chances of a pig or avian influenza to make the jump from animals to humans. Democratisation and proliferation of biotechnology In the past two centuries, we went from discovering the world of microbes invisible to the human eye to growing them in petri dishes, sequencing their genomes and now, altering their DNA. Just in the past 10 years, we have seen major breakthroughs in our biotechnological capabilities, such as the use of gene drives, the genetic cut-and-paste tool CRISPR-Cas9, and the world’s first genetically modified babies. A gene drive is a genetic mechanism by which a desired genetic sequence can be spread through a population faster than traditional inheritance. This strategy can be so effective that traits can spread even if they result in a disadvantageous trait, such as sterility. Thus, gene drives present potential new solutions for a variety of issues facing humanity, including eradicating, or altering disease carriers such as mosquitoes and controlling invasive species of plants, insects, or toads. What is worrisome, however, is that these biotechnological breakthroughs are not only in the hands of state actors and institutions. The rapid democratisation of biotech has made these powerful tools increasingly available to groups from the undergraduate biologist to the DIY biohacking communities. When the first human genome was sequenced in 2001, it took almost 15 years and the cost was around $2,6 billion. Today, a genome can be sequenced in an hour for a price of less than $1.000. While our growing biotechnological knowledge has benefits, it is a double-edged sword and can be misused — intentionally or unintentionally — in ways that can cause great harm. As the number of people with access to the technology grows, so does the risk for the technologies to be misapplied with deadly and global impact. Error or terror: bad bugs or bad guys? A biotechnological catastrophe may be caused by an engineered organism being accidentally released from controlled research environments, by the planned release of such an organism which then turns out to have unforeseen and catastrophic interactions with ecosystems, or by intentional usage of biological agents in biological warfare or bioterrorism attacks. The existential risks posed by most scientific and medical research is negligible. However, there is ongoing research into live agents of smallpox, SARS, H5N1, and avian flu, which, if escaped mistakenly, could wreak havoc. It is likely possible to engineer pathogens that are even more dangerous than the natural strains by increasing their incubation time, transmissibility, lethality, or resistance to vaccination and treatment. Research by well-intentioned actors into potential pathogens of pandemic, both natural — and down the road synthetic — is a path society can pursue to try to stay one step ahead of bad actors by exploring the space of possibilities and prepare adequately. Engineering pathogens to study them of course comes with its own set of dangers, but the benefits to resiliency might outweigh the risks and thus presents a fine line to be walked by the scientific community and its regulators. The technological means to genetically modify pathogenic characteristics are likely to become more widely available in the future. The main candidate for biological existential risk in the coming decades thus stems from our own technology and particularly the risk of misuse by groups or even individuals. Capabilities that were once only in the hands of governments and universities are increasingly moving into the living rooms and garages of individuals. Nick Bostrom from The Oxford Future of Humanity Institute estimates from a survey among researchers a 5% probability of a pandemic of catastrophic proportions (1 billion deaths) from natural sources by 2100 and estimate a 10% probability from an engineered pandemic.

### 1NC

#### NO ANTITRUST CP:

#### The United States federal government should not extra-territorially apply US antitrust, for the purpose of comity.

#### It solves their "over-enforcement now" arguments, and promotes harmonization

## CASE

### 1NC---Adv 1

#### Cartels are deterred – most recent evidence prices in aff arguments and concludes that cartels are on the decline.

**Verbeke & Buts 08-17** – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

 A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are **doubtful**, however, even when accepting B&C’s broad definition of this governance mode, that **international cartels** will **gain ground** more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

A key element, and perhaps a surprising one, explaining our **doubt** about the **bright future of cartels** is **four clear trends** in cartel regulation that are now **creating significant political risk for international cartel members** (admittedly not covering B&C’s benevolent cartels). First, **competition policy** is now a **priority** for policy makers around the world, as reflected in the **progress made** in **detecting**, **investigating**, and **prosecuting cartels** (OECD, 2020; OECD, 2021b). Recently published data indicate that **68% of global cartels** (with members from at least two different continents) have been **prosecuted by multiple jurisdictions**, with **average cartel fines** being **very high** at €19.3 million (OECD, 2020).

Second, the **consequences** of **being caught** as a cartel member have **gradually become more severe and far-reaching**, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a **wide array of sanctions** is **now being deployed**, including **personal fines**, **trade prohibitions**, and **prison sentences** (these have **increased sevenfold** over a **recent five-year period**, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, **cartel investigations** have also **become more sophisticated**. **Leniency policies** – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This **powerful tool** serves both **detection** and **deterrence purposes** in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It **incentivizes cartel members to become whistle blowers**. Companies will be **less likely to join a cartel** if they know that its members may be **enticed to disclose cartel operations**, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

A larger number of agencies than before now also have the mandate to conduct ‘**dawn raids**’, in order to **collect evidence of cartel behavior** and they can even enter private premises of employees during their search for incriminating material. In addition, **sophisticated econometric analyses** have become **standard practice** to **provide evidence of coordinated conduct** in industry and to calculate cartel overcharges (Parcu, Monti, & Botta, 2021).

Fourth, competition authorities have invested more in **outreach**, **communicating competition rules** through dedicated events, online campaigns, and competition networks. **Compliance programs** have also been on the rise with an **increasing number** of mainly **large companies investing in compliance training** to abide by competition rules (De Stefano, 2018).

The **increased efforts** to **fight anticompetitive agreements** in industry are now **deterring** and **destabilizing cartels**. Following a **substantial increase** in the **number of cartels** that have been ‘**caught**’, the **average life span** of these cartels is now **going down rapidly** (OECD, 2020). The fight against illegal, anticompetitive behavior will **intensify further in the near future**, rather than governments shifting their focus to contemplate potential benefits. At the same time, the beneficial effects have been widely acknowledged of international collaboration forms that are legally allowed by various competition policy regimes (and are therefore not considered cartels), see for instance Martínez-Noya and Narula (2018) on international R&D cooperation.

#### No impact to US economic strength - Economic recessions hurt China and Russia just as much as the US.

#### AND, no leadership impact.

Fettweis ’17 (Christopher J.; is Associate Professor of Political Science at Tulane University; May 8th; *Unipolarity, Hegemony, and the New Peace*; <https://www.tandfonline.com/doi/abs/10.1080/09636412.2017.1306394?journalCode=fsst20>; accessed 5/3/19; MSCOTT)

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a high-level US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

#### Grid resilient.

Niiler 19, citing a study by the Electric Power Research Institute. (Eric, 4-30-2019, "The Grid Might Survive an Electromagnetic Pulse Just Fine", *Wired*, https://www.wired.com/story/the-grid-might-survive-an-electromagnetic-pulse-just-fine/)

The study, by the Electric Power Research Institute, a utility-funded research organization, finds that existing technology can protect various components of the electric grid to buffer it from the effects of solar flares, lightning strikes, and an EMP from a nuclear blast all at the same time: a three-for-one surge protector. “We have a strong technical basis for what the impacts [of an EMP] might be,” says Randy Horton, EPRI project manager and author of the report being released today. “That is one thing that didn’t exist before.”

Horton says that EPRI technicians worked with experts at the Department of Energy labs at Los Alamos and Sandia to simulate some effects of an EMP on substations and distribution systems. They also did real-world testing of electrical equipment at an EPRI laboratory in Charlotte, North Carolina. The study, which took three years to complete, looks at the effects of three kinds of energy spawned by a nuclear detonation.

The first high-energy wave occurs in just a few nanoseconds and is called an E1. The second wave, called an E2, lasts up to a second and can fry electric systems the way a lightning strike does, unless they are properly grounded. Effects of an E2 wave on the grid are expected to be minimal. The third kind of wave can last for tens of seconds and is similar to what utility operators might expect from a low-frequency, long-duration solar flare or geomagnetic storm. The report says that the combination of an E1 and E3 would cause the most damage over the widest area.

Horton says simulations and testing by EPRI contradicts earlier findings that an EMP would wipe out the US grid. “You could have a regional voltage collapse, but you wouldn’t damage a large number of bulk power transformers immediately,” Horton says. “That was the difference in our finding. There were some studies that said you could damage hundreds of transformers. We just didn’t find it.”

#### Trade doesn’t solve war.

White 13, Emeritus Professor of Strategic Studies at the Strategic and Defence Studies Centre of the Australian National University. (Hugh, “China: Power and Ambition,” *The China Choice: Why We Should Share Power*, pg. 51-53, Oxford University Press)

Certainly, the more countries trade and invest with one another, the greater the economic cost of conflict and the stronger the incentive to keep the peace. America and China today are more interdependent economically than any two comparably powerful states have ever been before, and this will certainly restrain ambition and rivalry on both sides. The question is whether the restraints will prove stronger than the pressures going the other way. If interdependence does trump strategic and political ambition, we should be seeing it happening between the United States and China now – but we have not seen much evidence of that yet. So far the two countries seem to be acting very much as strong states in the past have acted as relative power shifts from one to the other. Pessimists like John Mearsheimer and Niall Ferguson remind us that before war broke out in 1914, the great powers of Europe had grown more economically interdependent than they had ever been before, and than they would be again for almost a century.12

The lesson to draw is that interdependence increases the incentive for leaders to subordinate political ambitions and ignore nationalist sentiments, but it does not remove the need for them to take these bold and [politically] politicaly risky steps. The hard choices still have to be made. It is easy for leaders to see that economic interests require them to compromise their countries’ aspirations for international status and power, but it is harder for them to acknowledge that to their people, and harder still to put their economic interests ahead of strategic and political ones when a choice has to be made. In fact, most often people see it as shameful to put economic concerns first when issues of power and status are engaged. What president would tell the American people that their country will compromise its position on an issue like Taiwan in order to protect America’s economic interests? What Chinese leader could make the same argument to the Chinese people? When a choice has to be made, especially when it has to be made in the glare of an international crisis, it is very hard to put economics first.

In some ways the obvious importance of economic interdependence increases rather than limits the risk that rivalry will escalate, because of the way it can affect one country’s view of the other’s priorities. There seems to be a pattern here: each side believes that the imperatives of interdependence will press more heavily on the other. That inclines both governments to assume that the other will compromise to protect the economic relationship, so they do not have to do so. In Washington they expect China to back down from its challenge to America once Beijing understands the economic risks of rivalry. In Beijing they think America will blink. That makes both of them less inclined to compromise their own position – which makes escalation more likely.

Ultimately, faith in the power of interdependence boils down to faith in the power of money to trump other emotions and motivations. That is a risky proposition. We cannot assume that Chinese leaders will always choose rationally to maximise China’s objective benefits. They are no less liable than the leaders of any other country to allow what may be, or may seem to us to be, irrational desires for status and influence to trump the rational calculations of national interest.

Economics is important, but money isn’t everything. Countries, like people, want to be rich, but they also want to be safe and to feel good about themselves. For countries, as for individuals, aspirations for security and identity often compete with material interests, and often win. America’s and China’s divergent visions touch on very deep issues of national identity in both countries, which can easily seem to outweigh economic imperatives when the crunch comes. And there is always something a little strange about the assumption, implicit in the interdependence argument, that our economic desires will suppress the urge to strategic and political competition when our desire to avoid the horrors of war will not.

### 1NC---Adv 2

#### Balancing tests are bad—they leave critical sovereignty issues to judicial discretion

--assumes aff updated comity analysis

Stephen D. Piraino, Hofstra Law, A Prescription for Excess: Using Prescriptive Comity to Limit the Extraterritorial Reach of the Sherman Act, 2012, Hofstra Law Review, Vol. 40, Iss. 4

An objective analysis avoids the problems inherent in balancing tests. 354 Balancing tests are ill-suited to determine the extraterritorial application of the Sherman Act.355 These types of tests do not operate well in practice and become problematic for judges.356 Courts cannot properly judge and balance the political factors inherent in balancing tests. 357 Further, these balancing tests-which do not represent rules of international law-have not adequately addressed the comity concerns raised by foreign nations. 358 Given the open-ended nature of balancing tests, there can either be multiple answers or no answer.3 59 Judges who cannot properly balance national interests will inevitably assert jurisdiction, which does nothing to further international relations. 360 However, an objective analysis grounded in prescriptive comity would solve many of the international relations issues because a nation's sovereignty is adequately protected.

One proposed solution to the extraterritorial application of the Sherman Act is modifying the Restatement (Third) of Foreign Relations Law.36 1 In its current form, the Restatement provides a list of factors for courts to balance when deciding if they ought to apply laws extraterritorially. 362 This new Restatement would use the locus of principle effects and principle contacts as an important factor.363 Courts would also look at the "combined overall welfare of the communities affected. 364 Instead of including the list of factors to be weighed from the current form in the new Restatement, the revised Restatement would include factors in a comment that could possibly be used when deciding whether to apply a law extraterritorially. 365 This approach recognizes that the current Restatement factors are not applicable in all circumstances and are outdated.3 66 Even though this new approach would include a comity-type analysis by acknowledging the effects of enforcement in a foreign country, it still leads to a balancing test of interests.367 Further, this new approach continues to reinforce the effects as the most important factor for application of a law extraterritorially and not the place of the conduct.368 This would not be consistent with prescriptive comity because it ignores the sovereignty of the nation where the conduct occurred.

#### Invading the sovereignty of foreign countries spurs efforts to destabilize the international application of U.S. antitrust law – that turns case.

McNeill 98 – B.S. (Business Administration), M.S. (Business Administration), San Diego State University, J.D., California Western School of Law

James S. McNeill, “Extraterritorial Antitrust Jurisdiction: Continuing the Confusion in Policy, Law, and Jurisdiction,” California Western International Law Journal, Vol. 28, No. 2, 1998, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1316&context=cwilj

The history of court opinions, enforcement policies, and antitrust statutes clarifies the reason behind international mistrust of United States antitrust enforcement: inconsistency.237 One significant result of this confusion is the suspicion of United States antitrust actions by the international community.238 Foreign states take various measures specifically to defeat the effect of United States enforcement, allowing those foreign governments to give their resident trading entities predictability in their United States commercial interactions.239 Allowing avoidance of treble damage awards240 via "claw-back" provisions241 and discovery or judgment blocking242 are just a few examples of how governments have hindered United States antitrust enforcement. At the root of these efforts is resentment of what is perceived as an invasion of sovereignty, namely the United States extending its law to adjudicate foreign commerce disputes affecting foreign interests.243

#### Litany of reasons SGDs fail – poor climate protections, lack of G20 leadership and commitment, budget commitment failure

Bertelsmann-Stiftung 19

“Long in words but short on action: UN sustainability goals are threatened to fail,” *Bertelsmann-Stiftung*, 6/19/19. https://www.bertelsmann-stiftung.de/en/topics/latest-news/2019/june/long-in-words-but-short-on-action-un-sustainability-goals-are-threatened-to-fail

What began as a historic summit could end up as mere lip service. In 2015, 193 states agreed to implement the 17 UN Sustainable Development Goals by 2030. The fight against poverty and hunger is just as important as the commitment to more climate protection or better educational opportunities. This year, the heads of state and government want to meet for the first time for an interim review in New York. The results should be sobering: The latest edition of the SDG Report\* shows that no country is currently on track to meet all targets by 2030.

The industrialized countries play an ambivalent role in their implementation. On the one hand, they come closest to fulfilling the goals. On the other hand, they hinder global implementation by incurring environmental and economic costs for third countries due to high living standards and consumer preferences. These are the findings of the current Sustainable Development Report, based upon which we and the Sustainable Development Solutions Network (SDSN) have been analyzing the implementation of the UN goals since 2015.

[Image omitted]

Need for catching up in the protection of climate and environment and in sustainable consumption

Sweden, Denmark and Finland have achieved the highest rankings in the country comparison with around 83 points. In other words, these countries have already met three quarters of the requirements of the UN goals. Overall, the authors see the greatest need for catching up in the indicators relating to climate protection and sustainable consumption.

On the whole, all OECD countries scored the worst here. Another weak point is agriculture, which accounts for a quarter of the world's greenhouse gas emissions. On top of this is soil pollution: More than two-thirds (78 percent) of all countries surveyed are in the red for nitrate pollution caused by fertilizers and pesticides, and have thus scored poorly. The authors have criticized the disparity between malnutrition and an overproduction of food: One third of food worldwide ends up in garbage cans or is disposed of unused, even though more than 800 million people are malnourished, according to the authors.

Poor role models: The richest states do not do enough

On a structural level, the authors have above all criticized G20 states for being poor role models. Apart from the "No Poverty" and "Quality Education" goals, the G20 countries are responsible for around half of the implementation gaps in achieving the goals, according to the authors. Brazil, China, India, Indonesia and the US account for around two percent of this negative weight alone.

"The G20 countries have a decisive role in making the UN goals a success. This includes financial support, for example through development aid. However, out of the G20 club, only a few countries have given the 0.7 percent of gross domestic product (GDP) as required by the UN for development aid," according to Christian Kroll, co-author of the study.

[Image omitted]

Consumption preferences in G20 states cause costs abroad

Further major grounds for criticism of the G20 is its role as a cost driver: "The living standards and consumer preferences in industrialized countries often incur costs in third countries," said Christian Kroll. Other examples of external costs include intense demand for palm oil in industrialized countries, fueling deforestation in the tropics, or support for tax havens and secret accounts that can also contribute to the misappropriation of public funds or development funds; money that is urgently needed in developing countries.

At the top of the list of cost drivers are small, internationally networked industrialized countries such as Luxembourg, Singapore and Switzerland. In addition, there is a lack of budget commitments for the implementation of the UN goals. Sustainability targets are actually mentioned in the national budget plans of only 18 of the 43 G20 and emerging economies surveyed. Only Bangladesh and India have expressly provided funds to implement the goals.

#### No African instability OR US draw-in.

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", A Dangerous World? Threat Perception and U.S. National Security, https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy)

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

#### 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.

#### Adaptation makes ag resilient

* plants are being modified to be successful in droughts
* ocean and island crops are resilient to rising sea levels and salinity
* livestock resistant to diseases
* livestock prepared for droughts

FAOUN 19 [FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE @ UN, “THE STATE OF THE WORLD’s BIODIVERSITY FOR FOOD AND AGRICULTURE”, https://www.courthousenews.com/wp-content/uploads/2019/02/fao-report.pdf]

Maintaining, using and developing adapted genetic resources A number of countries note the significance of well-adapted species, varieties or breeds in terms of enhancing resilience to climate change. Several specific examples of how such components of BFA have been utilized in adaptation efforts are provided. For example, Papua New Guinea mentions the distribution to farmers of crop accessions identified in ex situ collections as being tolerant to salinity (taro and cassava varieties), drought (cassava, banana and aibika13 varieties) and flooding (taro and banana varieties). It notes that this activity proved very useful in sustaining food security during the drought that struck the country in 2015 and 2016,14 when 40 percent of the population was seriously affected. Panama reports that its criollo livestock breeds have a combination of characteristics that are not found in any introduced breeds, including high fertility rates, longevity, resistance to parasites and diseases and good grazing abilities, including the ability to make use of poor-quality pastures. It notes, in particular, the potential of two locally adapted cattle breeds, the Guaymi and the Guabal^, in climate change adaptation. It also mentions, among its climate change adaptation measures, the development of maize varieties and hybrids that are tolerant of drought and diplodia rot (a fungal disease) and that grow well in soils with low nitrogen levels. With regard to choices at species level, Sudan reports that some of its livestock keepers have replaced cattle and sheep with dromedaries and goats, as the latter species are better suited to a climate change-affected environment that is more prone to droughts.

Some countries note the significance of participatory breeding programmes in the context of climate change. For example, Oman mentions that local wheat and barley landraces have been improved through such programmes to obtain varieties that have shorter growing seasons and can be managed more flexibly, especially during years with prolonged periods of extreme heat and limited water availability. Ensuring farmers have access to the adapted germplasm they need is another issue highlighted. Nepal, for example, mentions the role of community-based seed banks in providing farmers with immediate access to locally adapted germplasm that can be used in efforts to cope with climate change.

# 2NC

## T\_PER SE

### 2NC---AT WM

**“Prohibition” requires ending something, which excludes regulating within rules.**

**Feldman 86**, Member of Procopio's Native American Law practice. (Glenn M., On Appeal from the United States Court of Appeals for the Ninth Circuit, California v. Cabazon Band of Mission Indians, 1986 U.S. S. Ct. Briefs LEXIS 1221, Supreme Court of the United States, 1986, LexisNexis)

In arguing that California's bingo laws are prohibitory rat ther than regulatory, the appeallants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the prohibition and regulation of the sale of liquor are entirely different things: "To prohibit the liquor traffic implies the putting a stop to its sale as a beverage, to end it fully, completely, and indefinitely." In contrast, regulation "implies that the sale of intoxicating liquor shall go on within the bounds of certain prescribed rules, restrictions, and limitations." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are analytically distinct. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

#### If the plan allows a court to inquire into the effects of certain conduct, then they’re forbidding the effect, NOT the conduct. Only a declaration of illegality without weighing consequences is topical.

Kalintiri 20, Lecturer in Competition Law at King’s College London. (Andriani, “Analytical Shortcuts in EU Competition Enforcement: Proxies, Premises, and Presumptions”, *Journal of Competition Law & Economics*, 16(3), pg. 406-417, <https://heinonline.org/HOL/P?h=hein.journals/nylr95&i=1618>)

Firstly, normative assertions and economic propositions are what gives shape to the otherwise vague letter of the antitrust and merger provisions. Arguably, those provisions do not immediately reveal what is prohibited and are in need of elaboration to become operational. In this process, varying perceptions about the goals of the discipline may completely shift the focus of the analysis.45 For example, if competition law is to be enforced with a view to protecting small- and medium-sized enterprises or employment—as opposed or in addition to, say, promoting consumer welfare—then different effects in the market may become relevant.46 On the other hand, economic premises about the procompetitive or anticompetitive nature of the conduct at hand typically inform the choice between the application of a ‘rule’ or a ‘standard’.47 The prohibition, for instance, of cartels as ‘by object’ violations of antitrust law rests on the economic premise that conduct of this kind lacks any efficiency justification and thus a rule of prima facie illegality is not liable to chill procompetitive behaviour.48 Conversely, the treatment of quantity rebates as prima facie lawful is grounded in the idea that this type of discount reflects the cost savings achieved by the undertaking in question.49 In the same vein, the ‘by effect’ analysis of exclusive dealing under Article 101(1) TFEU is explained by the economic insight that behaviour of this kind may entail efficiencies.50 Accordingly, normative and economic premises are instrumental in the construction of competition law. It is worth noting at this point that in the EU the ‘by object’ test has been occasionally portrayed as a presumption of actual or likely anticompetitive effects. Arguably, the language employed by the EU Courts is partly to blame for this.51 In Cartes Bancaires, for instance, the Court of Justice explained that ‘certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects (...), that it may be considered redundant ( ... ) to prove that they have actual effects on the market’, since ‘experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers’.52 This wording though is confusing, insofar as it may create the misimpression that a finding of ‘by object’ violation rests on a presumption—in the technical sense of the word—of the existence of actual or likely anticompetitive effects in the circumstances at hand. Considering that presumptions shift the burden of proof, in this case it should be open to undertakings to challenge such a finding by showing that their cartel agreement, for instance, was never implemented or that the presumed negative effects are unlikely to occur. Nevertheless, the EU Courts’ jurisprudence demonstrates that such arguments may not reverse a finding of ‘by object’ liability.53 Consequently, to speak of a presumption of actual or likely anticompetitive effects is incorrect. Secondly, premises also play a fundamental role in the design of administrative priorities—that is, the identification of cases on which the authority will choose to expend its limited resources to maximize the return on taxpayers’ money. For instance, if the goal is to promote consumer welfare, then it of course makes sense to prioritize investigations into practices which may have a bigger impact on it. Economic premises are critical in this screening exercise, since they can guide administrative agencies in detecting the most but also least ‘problematic’ types of behaviour in view of the pursued objective. For example, the prioritization of cartel enforcement worldwide rests on the economic insight that cartel conduct is among the most harmful for competition and consumers. Conversely, the development of ‘safe harbours’ setting out the circumstances where an authority is unlikely to intervene is grounded in the idea that competition is not liable to be impaired in the absence of a degree of market power. The Commission Guidelines on agreements of minor importance, for instance, explain that arrangements entered into between parties whose market shares do not exceed certain thresholds will be considered not to appreciably restrict competition in the meaning of Article 101(1) TFEU.54 Similar pronouncements may be located in the Commission Guidelines on horizontal cooperation agreements or in the Commission Guidelines on horizontal and nonhorizontal mergers.55 While these ‘safe harbours’ are often presented as ‘presumptions of lawfulness’, strictly speaking they are simply illustrations of the authority’s policy and understanding of the law.56 Last but not least, premises have a third important function in competition enforcement—they form part of the backdrop against which the standard of proof inquiry is conducted. The reason for this is that the process of determining whether the available evidence is sufficient to surpass the requisite level of conviction or probability for a decision to be lawfully adopted is informed—among others—by normality considerations, which allow us to make sense of the evidence and to ‘connect the dots’. Generally, our perception of ‘usual’ and ‘unusual’ is shaped by past experience and common sense.57 In competition enforcement though, economic premises may also determine what is ‘normal’ and what is not.58 For instance, because cartels are deemed to harm competition, claims and evidence of plausible explanations and efficiencies will be evaluated against this default idea. Likewise, the insight that ‘the effects of a conglomerate-type merger are generally considered to be neutral, or even beneficial, for competition’ led the General Court to emphasize in Tetra Laval that ‘the proof of anticompetitive conglomerate effects of such a merger calls for a precise examination, supported by convincing evidence, of the circumstances which allegedly produce those effects’.59 Therefore, premises inform not only the construction of the law and the design of policy but also fact-finding, insofar as they provide ‘rules of thumb’ and baselines for drawing inferences from the evidence.60 B. The Construction and Deconstruction of Normative and Economic Premises Premises are not set in stone though. Because they embody contemporary norms and values as well as current knowledge, they may—and do—evolve over time. Societal and political shifts and advances in economics may lead to the emergence of new premises or the critical revisiting of old ones. The construction and deconstruction of normative and economic premises in competition enforcement occur in an incremental and cumulative manner predominantly outside but also within the legal system. Outside the legal system, scholarly works exposing the thinking underlying competition enforcement and challenging its theoretical and empirical foundations, as well as its consistency, play a pivotal role in this regard. This is hardly surprising—by promoting evidence-based dialogue and allowing for the fermentation of ideas, academic debates may result in the elimination of weak propositions, the emergence of consensus positions, and the creation of new knowledge. This process though is a constant work in progress, which partly explains why many of the disputes concerning competition enforcement resurface now and again. The recently reignited conversation about the goals of the discipline is a good example of this—after the espousal by many of efficiency and consumer welfare as the main aims of competition law, the issue has again been brought into the spotlight by commentators advocating for the pursuit of broader social and political objectives.61 Economic premises are not immune to challenges either. As the currently ongoing discussion around the low levels of vertical merger enforcement illustrates, even well-established propositions—such as the idea that nonhorizontal concentrations generally benefit competition and generate efficiencies—may be questioned and potentially overturned.62 Finally, academic works exposing inconsistencies in the legal treatment of various categories of conduct may also cast doubt on the convincingness of the premises underlying the applicable tests.63 Within the legal system, the construction and deconstruction of premises naturally occur during the development of policy and in the context of specific cases. Indeed, on several occasions the emergence of new knowledge or changes in the prevailing circumstances have prompted competition authorities to reflect on—and update, where necessary—the premises driving their enforcement activities. In the EU, for instance, the heavy criticisms against the Commission’s early formalistic approach to the legal treatment of various practices led the authority to rethink its policy in different areas—from vertical agreements to horizontal arrangements to mergers and unilateral conduct. The replacement of old premises with new ones culminated in the publication of several soft law documents, which were seen as signalling a ‘more economic’ approach to EU competition enforcement.64 More recently, the challenges of the digital economy have impelled several authorities to commission expert reports and to launch task forces or strategies with a view to ascertaining what normative and economic premises should drive antitrust and merger policy in that context.65 By contrast, courts are naturally more cautious against regular or radical changes in the law as a result of contemporary developments due to the need to preserve legal certainty and stability.66 Nevertheless, the normative and economic propositions underpinning competition enforcement may be exposed or challenged in the context of judicial proceedings, too. Leegin is probably among the best examples of a drastic overhaul of the law in judicial acknowledgment of an evolution in current thinking. Noting that ‘economics literature is replete with procompetitive justifications for a manufacturer’s use of resale price maintenance’, the US Supreme Court overturned Dr Miles and dismissed the per se illegality test in favour of a rule of reason analysis.67 In the EU, the Courts have frequently spelt out the premises behind their interpretation of the law. While many have survived the passage of time relatively unscathed, for example, the idea that pricing below average variable costs is generally irrational for an undertaking or the insight that certain restraints are necessary in selective distribution or franchising,68 others have been tested—for instance, the idea that exclusivity rebates offered by a dominant firm are inherently harmful for competition and consumers.69 Over the years, such challenges have provided EU judges with the opportunity to incrementally clarify and elaborate on the main ideas driving the enforcement of the antitrust and merger rules.70 C. Economic Premises and Evidence Rules Most, if not all, premises, in particular economic ones, have at least some empirical grounding, and their ‘truth’ or ‘validity’ may thus be contested, as just noted. To the extent that they underpin the construction of the competition provisions and their application to specific practices and may be challenged in the context of judicial proceedings, it is necessary to briefly consider whether they are subject to the evidence rules. Are economic propositions to be established to the standard of proof before being endorsed by the court? If there is disagreement between the parties about the ‘correct’ premise, say, for instance, regarding the competitive effects of exclusive dealing by dominant firms or the relationship between market structure and innovation, is this to be resolved in accordance with the rules on the burden of proof? And are judges exclusively dependent on parties to produce the relevant information, or can they engage in independent research? These queries go to the heart of a rather old, yet highly important problem— that of the integration of social science in law.71 To the extent that the construction and the application of the legal rules hinge on ‘knowledge’ derived from social science, including economics, is this to be treated as ‘fact’ or as ‘law’ or perhaps as something else? Scholars have approached this question in different, albeit not fundamentally conflicting, ways. On the one hand, it has been suggested that so-called legislative facts—that is, facts that ‘inform (...) a court’s legislative judgment on questions of law and policy’— must be distinguished from adjudicative facts, that is, facts about ‘what the parties did, what the circumstances were, what the background conditions were’, and that the evidence rules apply only to the latter.72 On the other hand, it has been argued that social science may be treated both as ‘law’ and as a ‘fact depending on its use: it is akin to ‘law’ when it provides the basis for law-making or is employed to establish background knowledge and general methodology, while it is akin to ‘fact’, when it is applied to case-specific issues or to produce case-specific research findings.73 With these remarks in mind, when economic premises are employed for the purpose of determining the optimal legal test—that is, whether a conduct should be subject to a rule or a standard (in EU terminology, the ‘by object’ or the ‘by effect’ test)—they arguably escape the application of the evidence rules. In the EU this conclusion is further reinforced by the exclusive competence of the EU Courts to provide authoritative guidance on the meaning of EU law.74 Accordingly, conduct-specific economic premises, that is, generalized propositions pertaining to the economics of different practices—say, tying or price discrimination or refusal to supply—need not be established to the standard of proof to be accepted by EU judges as the motivation behind their choice of legal test. By contrast, where economic premises are employed as ‘background knowledge’ or even ‘rules of thumb’ for the purpose of making sense of the evidence, the answer is not as straightforward. As noted earlier, in this context economic premises may enable judges to draw inferences from the available pieces of information. Inevitably though, the strength of the inference is partly correlated with the strength or relevance of the economic premise. If either is prima facie challenged, then in principle the party with the burden of persuasion should explain why the inference should still be drawn. V. PRESUMPTIONS AS ANALYTICAL SHORTCUTS IN EU COMPETITION ENFORCEMENT A. A Brief Account of the Existing Presumptions Somewhat ironically, considering the popularity of the term in competition scholarship, there are not many presumptions in the technical sense in EU competition law. Indeed, the examination of the EU Courts’ jurisprudence reveals the existence of only five (Table 1).75 These effectively correspond to different elements of the antitrust rules that the Commission must prove to adopt a prohibition decision. The first presumption pertains to the notion of ‘undertaking’ against which Articles 101 and 102 TFEU are addressed.76 As explained in Höfner and Elser, the concept comprises ‘any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed’.77 Further elaborating on this in Hydrotherm, the Court stressed that the term ‘undertaking’ must be understood as designating an economic— rather than a legal—unit.78 In this regard, the existence of distinct legal entities is immaterial; what matters is—as elucidated in Shell—that there is a ‘unitary organisation of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement’.79 In the case of parent companies and subsidiaries in particular, such an economic unit will exist where ‘the subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company’; according to settled jurisprudence, in these circumstances the anticompetitive conduct of the subsidiary may be imputed to the parent company.80 In Akzo the Court of Justice confirmed that ‘where a parent company has a 100% shareholding in a subsidiary (...) there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary’.81 Ever since its first affirmation, the Akzo presumption has been reiterated multiple times and is now solidly rooted in the Courts’ jurisprudence. In any event, to find a violation of Article 101(1) TFEU in particular, the Commission must also demonstrate that the undertaking participated in a collusive arrangement—be it a concerted practice or an agreement.82 Showing the existence of a concerted practice in principle entails proving three elements: concertation, subsequent market conduct, and causal connection between the two. In Hüls and in Commission v Anic Partecipazioni, however, the Court clarified that ‘subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market’.83 Ever since, the Anic presumption—as is often called—has become firmly embedded in the Courts’ case law.84 While it was initially developed in connection with concerted practices—that is, collusive arrangements falling short of an agreement—this presumption soon provided the basis for the emergence of another one, that of participation in a cartel upon evidence that the undertaking has attended a meeting with an anticompetitive object. Indeed, as confirmed for the first time in Aalborg Portland, ‘it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anticompetitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in a cartel’, the presumption being that its will concurs with that of the other attendants.85 At any rate, to adopt a prohibition decision, the Commission must also establish the duration of the antitrust violation and of the undertaking’s involvement in it. This can be a daunting task—especially in complex infringements extending over longer periods of time. In recognition of this challenge, the EU Courts have eased the authority’s burden of proof in two ways. Firstly, they have developed the doctrine of single, continuous or repeated infringement, according to which there is one infringement—rather than several—where a series of acts form part of an unlawful ‘overall plan’.86 The latter may be deduced ‘from the identical nature of the objectives of the practices at issue, of the goods concerned, of the undertakings which participated in the collusion, of the main rules for its implementation, of the natural persons involved on behalf of the undertakings, and lastly, of the geographical scope of those practices’.87 Secondly—and most importantly, for the purposes of this work, the EU Courts have adopted a presumption of continuity, whose foundations originate in Dunlop. According to the latter, ‘if there is no evidence directly establishing the duration of an infringement, the Commission should adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates’.88 Finally, the case law arguably points at the existence of one more presumption—that is, if a conduct lacks any plausible explanation, it is intrinsically capable of harming competition.89 Premises about the economics of the practice at hand and any ‘objective justifications’ raised by the parties will be crucial to ascertaining whether, on the facts, there is no legitimate ground for it.90 In this case, the anticompetitive potential of the practice is automatically inferred and needs not be proved ad hoc, unless the undertaking concerned produces evidence to the contrary, and a ‘by object’ violation will be considered established, provided that the other elements of Article 101 TFEU or Article 102 TFEU have been sufficiently demonstrated. In the context of Article 101 TFEU, the Court of Justice explained in T-Mobile that ‘the distinction between “infringements by object” and “infringements by effect” arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition’.91 As the Court elaborated, ‘in order for a concerted practice to be regarded as having an anticompetitive object, it is sufficient that it has the potential to have a negative impact on competition’; in this case, there is no need for the Commission to consider its effects.92 Nevertheless, Football Association Premier League clarifies that undertakings may ‘put forward any circumstance within the economic and legal context’ of the arrangement in question, which would justify the finding that it is ‘not liable to impair competition’.93 A similar presumption is visible in the context of Article 102 TFEU, as well. Indeed, the judgment of the Court of Justice in Intel implies that practices, which lack a plausible explanation, are presumed to be capable of harming competition, unless the dominant undertaking challenges this conclusion ‘on the basis of supporting evidence’.94

#### Rule of reason isn’t a prohibition.

Skoczny 01, Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management. (Tadeusz Skoczny, September 2001, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, LexisNexis)

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

#### It's distinct in theory AND practice.

Beschle 87, Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. (Donald L., March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471)

In response to recent attacks on per se rules, courts have clung to the term and to its absolutism by steadily narrowing the definitions of the types of behavior subject to those rules. The result has been not only much confusion, with words being used to designate things far narrower than their commonly understood meanings, but also the application of permissive rule of reason treatment to some behavior which, while not meriting absolute prohibition, clearly deserves careful antitrust analysis.

The proper response to this confusion is to retain the valid insight of per se jurisprudence, that certain types of behavior should be treated as more suspect than others, while abandoning the indefensible absolutism of the term "per se." However, since terms carry with them not only precise meanings, but also more general attitudes, "per se" must be replaced with a term which does not carry the permissive connotations which have become associated with the "rule of reason."

The best available term for this new test is strict antitrust scrutiny. The use of such a term, and the type of analysis it suggests, is well known in constitutional law, where it by no means is associated with leniency. When faced with conduct which would traditionally be labelled per se illegal under the antitrust laws, courts should apply strict antitrust scrutiny. They should ask whether the defendant can carry the heavy burden of demonstrating that its conduct is narrowly tailored to achieve a procompetitive end. By replacing a system which places absolute prohibitions on types of conduct which can be defined so narrowly as to be irrelevant with a system which places, not absolute prohibitions, but heavy negative presumptions, on a larger set of behaviors, strict scrutiny should, on the whole, lead to more vigorous antitrust enforcement.

#### Independently, practices are distinct from the effects branching from individual cases.

Boyle & Hannum 74, \*Kevin, Barrister at Law at Queen’s University of Belfast. \*\*Hurst, member of the California Bar. (“Individual Applications Under the European Convention on Human Rights and the Concept of Administrative Practice: The Donnelly Case,” *The American Journal of International Law*, vol. 68, no. 3, American Society of International Law, pg. 440-453)

In reply, the respondent government argued that the “administrative practices” exception developed by the Commission in relation to interstate cases could not in any circumstances apply to an individual application under Article 25. They submitted that it applied only where an application raised a general issue, distinct from its effects on individuals, and that an individual was incompetent to raise such general issues under Article 25.52 While denying generally that any violation of Article 3 had occurred, the respondent government maintained that, if violations did occur, adequate and effective remedies existed within domestic United Kingdom law which had not been exhausted by the individual applicants.

### 2NC---Ground

#### 2---link uniqueness---per se is key to it.

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

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

**2NC---AT Aff Ground---Case List**

#### 4---case list denies:

#### [DID NOT READ---just for reference]

#### Price gouging.

Woodcock 20, Assistant Professor, University of Kentucky Rosenberg College of Law; Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics. (Ramsi, 9-23-2020, "Toward a Per Se Rule against Price Gouging", *CPI Antitrust Chronicle*, Accessible at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710997>)

INTRODUCTION

The antitrust laws in the United States do not prohibit price gouging. But they could.2

Surge pricing — the use of algorithms to charge high prices in response to unexpected surges in demand — could, for example, constitute conduct illegal per se under Section 2 of the Sherman Act.3

Surge pricing is price gouging, in that it exploits the power created by unexpected shortages. As such, surge pricing harms consumers, who are better off as a group if firms simply sell out during a demand surge. But unlike low-tech price gouging, surge pricing also exhibits the element of anticompetitive conduct required for antitrust liability.4 The algorithms used in surge pricing execute much more quickly than can human beings, allowing gouging to kick in sooner in response to unexpected shortages, and therefore reducing the period of time during which the effects of competition in the pre-shortage period carry over into the shortage period to discipline prices. It follows that surge pricing is anticompetitive in effect.

But antitrust could go even further, to ban all price gouging, whether enabled by technology or not, if antitrust would only more fully embrace the spirit of its consumer welfare standard by doing away with the requirement of proof of anticompetitive conduct that today severely limits antitrust’s ability to protect consumers.5 Absent the anticompetitive conduct requirement, antitrust could hold firms liable based solely on proof of market power combined with any act, such as the charging of higher prices, that harms consumers.

Price gouging would be an excellent candidate for condemnation under such an expanded antitrust regime because price gouging is easy to identify, allowing antitrust to sidestep the problem of distinguishing cost-driven price increases from consumer-harmful price increases that otherwise complicates such a regime.6 A coincident increase in demand and price reliably signals price gouging, and price gouging is never cost justified and so always harms consumers. Enforcers would also readily be able to identify the price that the court should enjoin the gouger to charge: that is just the price charged before the firm encountered the increase in demand.

#### Product hopping.

Park 17, JD, Editor-in-Chief, Cardozo Arts & Ent. L.J. Vol. 35. (Justine Amy, "Product Hopping: Antitrust Liability and a Per Se Rule," Cardozo Arts & Entertainment Law Journal 35, No. 3, pg. 766-767, <https://heinonline.org/HOL/P?h=hein.journals/caelj35&i=801>)

B. The Proposal: A Per Se Rule

The key in determining whether a brand-name pharmaceutical company is engaged in anticompetitive behavior lies in analyzing whether there was an element of coercion and restriction of consumer choice, warranting the imposition of a per se illegality rule. Product redesign is anticompetitive if the activity coerces consumers and impedes competition in the market. 180 New York v. Actavis provides the most guidance in the determination of coercion and restriction of consumer choice in pharmaceuticals. 81 The Second Circuit held the combination of introducing a new product while simultaneously withdrawing the older product was anticompetitive because it "went beyond the limits of a patent monopoly."1 82 Unlawful conduct then, is composed of conduct used to acquire a monopoly unlawfully followed by conduct used to maintain that monopoly.' 83 However, courts must be careful not to impede the patenting of actual improvements on existing drugs. 18 4

In applying a per se rule, courts would have to engage in a three-step analysis: (1) was a new "improved" product introduced; (2) was the older product withdrawn from the market prior to generic entry; and (3) was the generic competitor excluded from the market? If all three elements can be proven, then the per se rule would deem the activity unlawful. This per se rule would not require courts to assess the market effects of the behavior or the intentions of the companies who engage in this practice, leaving less room for open-ended questions and a variety of interpretations. Instead, it would lead the courts to apply a clear and coherent rule in a consistent manner.

#### NCAA.

Meese 21, Ball Professor of Law and Co-Director, Center for the Study of Law and Markets, William & Mary Law School. (Alan J., 5-27-2021, “Requiem for a Lightweight: How NCAA Continues to Distort Antitrust Doctrine, *Wake Forest Law Review*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3854852>)

In particular, the essay demonstrates that NCAA’s sports league exemption from the ordinary per se standard contradicts basic antitrust principles. Moreover, the rationale for the exemption turned partly on the Court’s (correct) assertion that some horizontal restraints can overcome market failures and enhance interbrand competition. Recognition of these potential benefits undermined the Court’s otherwise broad articulation of the per se rule that purportedly created the need for such an exemption in the first place.

Failure to condemn the restraints before it as unlawful per se also distorted the Court’s pronouncements regarding how to conduct rule of reason analysis. For instance, the requirements for establishing a prima facie case should depend upon the nature of redeeming virtues a restraint might produce. However, courts, agencies and scholars have read NCAA as holding that proof that a restraint produces prices exceeding the non-restraint baseline necessarily establishes such a case, even when the restraint may overcome a market failure. Moreover, lower courts, agencies and the Court itself have read NCAA as endorsing a “Quick Look” approach in some rule of reason cases, allowing plaintiffs to bypass any requirement to establish anticompetitive harm. Finally, the Court’s approach to rule of reason analysis lent credence to the dubious assumption that benefits produced by challenged restraints necessarily coexist with harms, bolstering the equally dubious less restrictive alternative test. Hopefully, the Court will take this opportunity in Alston to correct these errors and ensure a more coherent Section 1 jurisprudence that better reflects the teachings of modern economic theory.

#### Employment covenants.

Kovacic 21, Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. (William E., 6-14-2021, “The Future Adaptation of the Per Se Rule of Illegality in U.S. Antitrust Law”, *Columbia Business Law Review* (1), pg. 82, <https://journals.library.columbia.edu/index.php/CBLR/article/view/8475>)

D. Rulemaking

The FTC’s authority to promulgate trade regulation rules202 provides another mechanism for adjusting the application of rules of per se illegality. The FTC could draw upon the reassessment proceedings and research programs suggested above,203 along with antitrust agency experience in enforcing section 1 of the Sherman Act, to clarify existing per se principles and adjust the scope of their coverage. For example, the FTC might choose to distill the learning from its proceedings involving employment covenants204 to develop a rule restricting their use, perhaps with proscriptions against the use of such covenants in specific circumstances.

## DA\_EU

### !---Overview

#### Turns the case:

#### 1---foreign application causes clawback statutes---zeroes solvency

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

In addition to these criticisms, the application of the Sherman Act to foreign defendants’ conduct, often legal under the laws of their own sovereigns, prompted controversy among US trading partners.101 Non-US litigants were concerned with the US government’s power to fine and imprison non-US defendants as well as the ability of US plaintiffs to subject non-US companies to expensive discovery and trebledamage exposure.102 As a consequence, US trading partners enacted legislation blocking discovery and permitting defendants to “claw back” the treble-damages portion of any private recovery that might be awarded by a US court.103

#### 3---growth, protectionism, innovation---trade ties turn AND solve it

Wright 18, PhD, MA, Assistant Professor of Economics @ the University of California, Merced. (Greg, 7-18-2018, "The US is a whole lot richer because of trade with Europe, regardless of whether EU is friend or 'foe'", *The Conversation*, <https://theconversation.com/the-us-is-a-whole-lot-richer-because-of-trade-with-europe-regardless-of-whether-eu-is-friend-or-foe-99829>)

President Donald Trump recently questioned the value of the long-standing United States-Europe alliance. When asked to identify his “biggest foe globally,” he declared: “I think the European Union is a foe, what they do to us in trade.” This view is consistent with his recent turn against trade with Europe but ignores the immense benefits that Americans have reaped due to the strong economic and military alliance between the U.S. and Europe – benefits that include nothing less than unprecedented peace and prosperity. As such, Trump’s trade war with Europe and his hostility toward broader Western alliances such as NATO portend a future of diminished standards of living – as a direct result of less trade – and greater global conflict – indirectly due to reduced economic integration. In the words of columnist Robert Kagan, “things will not be ok.” Some of my research focuses on the impact of increased international trade on U.S. standards of living, which I show are causally linked during the late 20th century. Most of the trade in this period occurred among rich nations and was dominated by the U.S.-Europe relationship. Unbiased. Nonpartisan. Factual. By calling Europe a “foe,” Trump makes clear that he simply doesn’t understand why rich countries trade with one another, which, to be fair, is something that also puzzled economists for many years. Trump and one of his ‘foes.’ Reuters/Jack Taylor Why rich countries trade Though in some ways it seems obvious why the U.S. and Europe trade with one another – some might enjoy Parmigiana from Italy, while others prefer Wisconsin cheddar – economists initially had trouble explaining exactly why there was so much trade among rich countries. Surely, they thought, the U.S. can produce good quality cheese at a cost that is similar to producers in Italy, and vice versa, so why would we need to go abroad to satisfy our palettes? In 1979, economist Paul Krugman provided a clear answer that would eventually win him the Nobel Prize in economics. The first part of his answer was simple but important and boils down to the fact that consumers benefit from having a wide range of product varieties available to them, even if they are only small variations on the same item. For instance, in 2016 the top U.S. exports to the EU were aircraft (US$38.5 billion), machinery ($29.4 billion) and pharmaceutical products ($26.4 billion). The top imports from the EU seem almost identical: machinery ($64.9 billion), pharmaceutical products ($55.2 billion) and vehicles ($54.6 billion). Although the product categories clearly overlap, there are important differences in the types of pharmaceuticals and machinery that are sold in each market. Consumers benefit from having all these options available to them. The second part of Krugman’s answer was that, by producing for both markets, companies in Europe and the U.S. could reap greater economies of scale in production and lower their prices as a result. This has been found to indeed be what happens when countries trade. And more recent research has shown that increased foreign competition can also lower domestic prices. These benefits have been quantified. For instance, the gains to the U.S. from new foreign product varieties and lower prices over the period 1992 to 2005 were equal to about one percent of U.S. GDP – or about $100 billion. In short, Krugman’s answer emphasized the extent to which international trade between equals increases the overall size of the economic pie. And no pie has ever grown larger than the combined economies of the U.S. and Europe, which now constitute half of global GDP. Largest trading partner The European Union is the largest U.S. trading partner in terms of its total bilateral trade and has been for the past several decades. Overall, the U.S. imported $592 billion in goods and services from the EU in 2016 and exported $501 billion, which represents about 19 percent of total U.S. trade and also represents about 19 percent of American GDP. A key feature of this trade is that almost a third of it happens within individual companies. In other words, it reflects multinational companies shipping products to themselves in order to serve their local market, or as inputs into local production. This type of trade is critical as it serves as the backbone of a vast network of business investments on both sides of the Atlantic, supporting hundreds of thousands of jobs. It is also a network that propels the global economy: the EU or U.S. serves as the primary trading partner for nearly every country on Earth. Shipping and new institutions The U.S.-Europe trade relationship also laid the groundwork for the modern system of international trade via two distinct innovations: new shipping technologies and new global institutions. On the technological front, the introduction of the standard shipping container in the 1960s set off the so-called second wave of globalization. This under-appreciated technology was conceived by the U.S Army during the 1950s and was perfected over Atlantic shipping routes. In short, by simply standardizing the size and shape of shipping containers, and building port infrastructure and ships to move them, massive economies of scale in shipping were realized. As a result, today container ships the size of small cities are routed via sophisticated logistics to huge deepwater ports around the world. These routes eventually made it profitable for other countries to invest in the large-scale port infrastructure that could handle modern container ships. This laid the groundwork for the eventual growth of massive container terminals throughout Asia, which now serve as the hubs of the modern global supply chain. At the same time that these new technologies were reducing the physical costs of doing business around the world, the U.S. and Europe were also creating institutions to define new international rules for trade and finance. Perhaps the most important one was the post-war General Agreement on Trade and Tariffs, which eventually became the World Trade Organization, creating the first rules-based multilateral trade regime. A large body of research shows that these agreements have increased trade and, more importantly, raised incomes around the world. Overall, these advancements contributed to the subsequent enrichment of hundreds of millions of workers in Asia, Latin America and Africa by helping to integrate them into the global economy. And when the world gets richer, the U.S. also benefits for many of the same reasons noted above: demand for U.S. products increases as incomes rise around the world, as does the variety of products the U.S. can import, and the prices of these goods typically fall. Taking the long view But it appears that President Trump sees the U.S. on the losing end of a failed relationship. It is unsurprising that tensions with Europe have come to the forefront over perceived imbalances in trade, particularly for a president who is not afraid to take long-time allies to task. This is because U.S. trade policy has arguably been overly optimistic in recent years, particularly with respect to China, whose accession to the WTO proved to be much more disruptive to labor markets around the world than was predicted. Previous U.S. administrations preferred patience over confrontation, leading to a perhaps inevitable backlash that has spilled into other relationships, such as the one with Europe. However, the U.S. relationship with Europe is clearly different, primarily because it is longstanding and has been largely one of equals. But also because their shared values mean that there are many non-economic issues — such as the spread of liberal democracy and the promotion of human rights — that get advanced by the close economic ties. It’s important to not underestimate what is at stake if the U.S.-Europe alliance is allowed to falter. Americans are likely in the midst of the most peaceful era in world history, and global economic integration, led from the beginning by the U.S. and Europe, has been a key contributing factor. Global extreme poverty is also at its lowest point ever, again in large part due to globalization. These are the byproducts and legacies of seven decades of expanding international trade and should not be taken for granted.

### U---AT Circuit Splits

#### Existing efforts won’t affect relations without a win.

Zakrzewski 21, reporter, citing William E. Kovacic, a former FTC chair. (Cat, 8-19-2021, "Lina Khan’s first big test as FTC chief: Defining Facebook as a monopoly", *Washington Post*, <https://www.washingtonpost.com/technology/2021/08/19/ftc-facebook-lawsuit-lina-khan-deadline/>)

So far, Khan has taken a series of steps to signal a shake-up has arrived at the FTC. She’s started hosting open meetings to open the agency’s business to the public, and she’s warned that greater scrutiny of mergers is on its way. But the challenge will be for the agency to remain focused on the most important cases, including Facebook, Kovacic said. “She has a downpour of demands from both ends of the avenue,” he said. And none of her other efforts will matter if she can’t show that she can win against companies, including Facebook, in court. “The real measure to business decision-makers of your effectiveness and seriousness is your ability to prosecute and win cases,” Kovacic said.

### U

#### Trade and relations are strong now.

Herszenhorn 10-8-2021, reporter @ Politico EU. (David M., "Biden’s top security adviser sees strong transatlantic alliance (and no jumping in lakes)", *POLITICO*, <https://www.politico.eu/article/jake-sullivan-biden-national-security-transatlantic/>)

He said the current state of transatlantic relations was far better than has been portrayed in recent weeks.

“My view is, actually if you look at the sum total of how our administration has dealt, both with the upsides — the Trade and Technology Council, Boeing-Airbus deal, the G7 communique, the US-EU summit, the NATO summit this year — and with the challenges, it reflects a complete commitment to diplomacy, to consultation, and it leverages personal relationships that have been built over time, that have been able to sustain us through difficult periods,” he said.

“The president’s own relationships and own credibility have been a huge asset in this regard,” Sullivan added. “And so we actually feel like we stand at a moment right now where both in our key bilateral relationships in Europe and in the NATO and EU contexts, we have a chance at a level of intensity and focus and purpose.”

#### Every speedbump in US-EU relations will be resolved.

Delaney 9-28-2021, the Post’s North America bureau chief. (Robert, "US says dispute with EU over industrial metals tariffs may be resolved soon", *South China Morning Post*, <https://www.scmp.com/news/china/article/3150341/us-says-dispute-european-union-over-industrial-metals-tariffs-may>)

The US government said on Monday that it may resolve a dispute with the European Union over punitive tariffs on industrial metals soon as part of efforts to clear outstanding issues that might hamper work at a trade and technology forum that starts this week. US Secretary of State Antony Blinken, US Trade Representative Katherine Tai and other senior officials from US President Joe Biden’s administration will host EU trade chief Valdis Dombrovskis in Pittsburgh, Pennsylvania, for the inaugural meeting of the US-EU Trade and Technology Council (TTC). Formation of the body was announced in June, when Biden visited Brussels, as a way to promote “a democratic model of digital governance,” and is seen as a wider push by the US leader to strengthen alliances that will push back against China. Talks to resolve the Section 232 tariffs placed on steel and aluminium are “on a separate track that was started back in June with the announcement that we would work with the European Union on these sectors, with the aim by the end of the year having a path forward, and those conversations have been ongoing, and will continue to to proceed”, a senior Biden administration official said. Asked about the prospects for a resolution on the issue at an event in Washington earlier on Monday, Dombrovskis was quoted by Politico as saying: “We can be moderately optimistic about being able to resolve this dispute and find this solution and, in essence, not continue this Trump-era approach of confrontation between EU and US in trade.” The meeting will take place just two weeks after a diplomatic row between the US and France caused when the secretly finalised submarine deal with Australia, part of the Aukus trilateral military partnership, was announced. The move led to Paris temporarily pulling its ambassador from Washington. One EU source familiar with the preparations for Wednesday’s meeting said that Dombrovskis’ delegation had “very broad support” from member states despite the diplomatic dust-up between the US and France, and that they were “resolving final outstanding minor issues” that will allow the two sides to issue a statement while in Pittsburgh. Without confirming that France specifically had any remaining issues, the source said 26 of the 27 EU states were on board with the TTC agenda. The agenda will include technology standards cooperation, supply chain security, data governance, “misuse of technology threatening security and human rights”, export controls and investment screening, according to another official in the US government briefing. He added that talks aimed at alleviating a semiconductor shortage is the first priority the two sides will cover. “The semiconductor shortage has been a top priority for the president [Biden] and his economic and national security teams,” he said. “It’s also been the top priority in Europe. We’ve been working overtime to address it.” The first official added that a deal by the two sides in June to end a damaging dispute over subsidies to rival plane makers Boeing and Airbus, and phase out billions of dollars in punitive tariffs would serve as a template for cooperation. The framework used to resolve that stand-off “will help strengthen the aerospace industry, help secure good-paying jobs on both sides of the Atlantic and suspend the [World Trade Organization] sanction tariffs for five years”, she said. “The deal also lays the groundwork to address our shared challenges with China and other non-market economies.”

#### Trade breakthroughs put the US and Europe in lockstep.

Burwell 21, \*Frances G. Burwell, distinguished fellow at the Atlantic Council; \*\*Kenneth Propp, nonresident senior fellow at the Atlantic Council. (6-21-2021, "The U.S. and EU Need to Get Serious About Transatlantic Tech", *National Interest*, <https://nationalinterest.org/feature/us-and-eu-need-get-serious-about-transatlantic-tech-188235>)

Wheels are up on President Joe Biden’s first international trip. As Biden jets back from his flurry of Summits with the G7 Summit, NATO, the European Union (EU), and finally with Russian president Vladimir Putin, his message was clear: America is back and intent on rebuilding its alliances. The successful summit tour was a welcome signal in transatlantic affairs, especially for the European Union, whose relationship with the United States suffered under the Trump administration. Yet these positive trends should not distract from the very real challenges that will define the U.S.-EU relationship in the digital arena. Talking Trade and Tech Following Biden’s meeting with European Commission President Ursula von der Leyen and Council President Charles Michel in Brussels, they made all the right signals about a restored U.S.-EU relationship. Both sides recommitted to resolving steel tariffs and broke ground on subsidies for aircraft manufacturers. The other agreements notwithstanding, one announcement stands out as a notable and a positive sign—Biden and the EU leadership launched a Trade and Technology Council (TTC) as a forum for high-level coordination on a wide range of digital issues, including artificial intelligence, cybersecurity, innovation and research, and transatlantic standards for emerging technologies. First proposed by the European Commission, the TTC intends to boost cooperation between two major digital markets. But another impetus for the launch of the TTC is Beijing. In recent years, U.S. and EU decisionmakers have gradually converged in their growing concerns about China’s efforts at technology and supply chain dominance across vital European economic sectors. China’s use of advanced surveillance technology to control its own people and the West’s reliance on Chinese-made critical medical supplies during the coronavirus pandemic have heightened these concerns. As strategic discourse in the United States and Europe has shifted back towards the traditional focus on great-power competition, an array of detailed digital policy questions—from artificial-intelligence regulation and data flows to global standard-setting—have increasingly come to the fore. Enter the TTC as part of a strategic transatlantic response toward China. As Biden’s national security advisor Jake Sullivan put it, the transatlantic allies should make sure “democracies and not anyone else, not China or other autocracies are writing the rules for trade and technology for the twenty-first century.” A focus on China and emerging technologies with yet-to-evolve regulatory frameworks certainly can bring new energy, new players, and a new sense of mission to the transatlantic table.

### L---Europe Has Monopolies

#### European economies are dominated by massive firms

Eeckhout 21, \*Jan, PhD, ICREA Research Professor @ Universitat Pompeu Fabra, BSE Research Professor, and Professor of Economics @ University College London. Interviewed by \*\*Nicholas Shaxson, journalist. (6-22-2021 [year double-checked with carbon dating], "Europe's monopoly Problem", *The Counterbalance*, <https://thecounterbalance.substack.com/p/europes-monopoly-problem>)

NS You have painted quite a stark picture of rising market power at a global level. But if you break it down geographically, patterns emerge. Thomas Philippon’s 2019 book The Great Reversal: How America Gave up on Free Markets argued that while market concentration has increased dramatically in the United States, it had not in Europe. This message doesn’t ring true for us at the Balanced Economy Project, given that European antitrust authorities have almost never blocked a merger, and giant firms now dominate pretty much every sector here.

In your recent review of The Great Reversal I found a neat explanation for your difference in opinion about the US versus Europe. For Europe, Philippon used Orbis data from 2000-2014, which coincided roughly with the “China shock” after China entered the WTO in 2001, when its cheap exports pushed down prices (and markups). This flattened the graph for that particular period, giving an impression that Europe has been doing OK. For the US, older data was available, showing a longer trend of rising market power. But there is another dataset from Worldscope which now allows us to look further back in Europe, too, and this changes the picture:

JE Well, as I said in that review, Thomas’ book is a remarkable piece of research and I agree with 99 percent of it.

But you can see that from about 2000-2010, there is a flatness on the [above] graphs, with a sharp increase in markups before and after that time, for both Europe and the United States. We cannot conclude from this that there is a difference between the United States and Europe.

We also have some differences in emphasis, in terms of what has driven these changes. Thomas emphasises lax antitrust as the dominant explanation, whereas I think that technological change has also been important, in addition to lax antitrust. The shift of economic activity towards high markup, ‘superstar’ firms is driven by both factors, in my opinion. Globalisation is also part of that.

### L---Trade

#### Extraterritorial enforcement breaks down trade negotiations.

Hogue 16, senior associate in White & Case’s Global Competition Group. (J. Franck, “Recalling First Principles: The Importance of Comity in Avoiding Antitrust Imperialism”, 73 Wash. & Lee L. Rev. 533, pg. 535-537, <https://scholarlycommons.law.wlu.edu/wlulr/vol73/iss1/12> 535-537)

I would add a somewhat less apocalyptic source of conflict that may hamper the operation of global commerce: the overzealous extraterritorial application of antitrust laws. Each of the countries that supplied a part of Mr. Friedman’s computer have their own laws and regulations that govern the conduct of companies doing business within their borders, among them competition laws that delineate what is and what is not permissible.11 These regulations reflect the legal and commercial traditions unique to particular jurisdictions, and embody the differing choices made by these states. And, of course, the United States has its own innumerable laws that govern the conduct of commerce within its own borders.12 These are the product of the U.S. and Western commercial heritage. As to all of the countries, it has long been established in international law that principles of sovereignty permit these nations to apply their laws to conduct occurring within their territory.13 But conflict and friction in the international commercial system can occur when one nation seeks to apply its own laws to conduct that takes place within the borders of another nation.14 The extraterritorial application of antitrust regulations is a potent example. Conflict is particularly possible when it is American antitrust law that is urged to reach foreign commerce and conduct.15 **[BEGIN FOOTNOTE 15]** 15. See F. Hoffmann–La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 164 (2004) (“No one denies that America’s antitrust laws, when applied to foreign conduct, can interfere with a foreign nation’s ability independently to regulate its own commercial affairs.”); Motorola Mobility, 775 F.3d at 824 (stating that increasing “the global reach of the Sherman Act” would “creat[e] friction with many foreign countries”). **[END FOOTNOTE 15]** While such an application can be permissible in certain circumstances, there are constraints on the extraterritorial application of American antitrust laws to alleviate such friction.16 One such constraint, but certainly not the only one, is the Foreign Trade Antitrust Improvements Act (FTAIA).17

#### AND touches off mutual retaliation

Bradford 12, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. (Anu, “Antitrust Law in Global Markets”, Research Handbook on the Economics of Antitrust Law, Einer Elhauge, Ed., Edward Elgar Publishing, pg. 300-301, Available at: <https://scholarship.law.columbia.edu/faculty_scholarship/1976>

Enforcement conflicts also increase tensions among antitrust regulators. The McDonnell Douglas controversy escalated into a political battle where the US administration considered a range of actions against the Europeans in response to the European Commission’s threat to enjoin the merger, including the possibility of limiting transatlantic flights, imposing retaliatory tariffs on European aircrafts, and challenging the Commission’s decision before the WTO.116 The criticism was no less ~~muted~~ after the negative GE/ Honeywell decision. The US Secretary of the Treasury, Paul O’Neil, described the decision as being ‘off the wall’, adding that the Commission was ‘the closest thing you can find to an autocratic organization that can successfully impose their will on things that one would think are outside their scope of attention’.117 Similarly, when the European Court of First Instance handed down its judgment in the Microsoft case, Tom Barnett, the Assistant Attorney General for Antitrust at the time, criticized the judgment vocally, accusing the Europeans of ‘chilling innovation and discouraging competition’.118

### L---Diplomacy

#### Extraterritoriality causes diplomatic strife.

Park 17, Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. (S. Nathan, “Equity Extraterritoriality”, *Duke Journal of Comparative & International Law*, Vol 28:99, pg. 148-150, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil)

2. Strife in Diplomatic Relations

Because Equity Extraterritoriality infringes upon a foreign sovereign’s interest, it frequently causes diplomatic strife. The Argentina bond case, litigated before a New York federal court, provided anti-American fodder to Argentina’s politicians.232 Reporters for the Restatement have noted the level of friction and acrimony caused by extraterritorial discovery orders.233 Extraterritorial orders issued pursuant to U.S. antitrust laws have “provoked the loudest and most consistent foreign protests.”234 Discussing American antitrust laws, a Canadian government official did not mince words: “For one government to seek to resolve the conflict in its favor by invoking its national law before its domestic tribunals is not the rule of law but an application, in judicial guise, of the principle that economic might is right.”235 Foreign governments would file amicus curie briefs objecting to U.S. extraterritoriality, but the U.S. court’s deference to such views is not consistent. The In re Uranium Antitrust Litigation opinion is an example of hostility, in which the Seventh Circuit called the governments of Australia, Canada, South Africa, and the United Kingdom “surrogates” of the foreign corporation defendants who “subversively presented for them their case.”236 The Uranium court’s hostility toward the foreign states prompted the State Department to inform the court that the opinion “has caused serious embarrassment to the United States in its relations with some of our closest allies.”237

It is a significant problem that the unelected judiciary, which is often a state court or a federal court applying state law, is effecting foreign policy consequences. When a court issues an extraterritorial order, it is conducting an indirect type of diplomacy against its constitutional mandate.238 The problem is worse when a state law is involved. Territoriality principles prohibit a state law from being applied beyond state borders, much less beyond U.S. borders.239 Yet under Equity Extraterritoriality, a state law may be applied anywhere in the world, causing diplomatic strife with foreign sovereigns.

### L---Judicial Warfare

#### Courts will overrule foreign resistance---that leads to judicial turf wars that collapse relations

Park 17, Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. (S. Nathan, “Equity Extraterritoriality”, *Duke Journal of Comparative & International Law*, Vol 28:99, pg. 147-148, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil>)

B. First Problem of Equity Extraterritoriality: Problem of Extraterritoriality

By allowing U.S. courts to reach beyond U.S. borders, Equity Extraterritoriality causes problems usually associated with extraterritoriality, which may be categorized into three interrelated types: (1) interference with the interest of a foreign sovereign; (2) strife in diplomatic relations; and (3) conflicting legal obligations.

1. Interference with Foreign Sovereign Interest

Equity Extraterritoriality may infringe upon the interests of a foreign sovereign proper. U.S. courts regularly issue extraterritorial orders directly against foreign sovereigns. The Argentina bond litigation, of course, is the famous example.224 In another recent example, the federal court for the District of Maryland issued an anti-suit injunction directly against the Republic of Korea, prohibiting it from pursuing litigation in the Korean courts against a U.S. defense contractor regarding a contract to upgrade Korea’s F-16 fighter jets.225 When foreign sovereigns refuse to comply with a U.S. court’s Equity Extraterritoriality orders, the courts have held the foreign sovereigns in contempt. The federal court for the District of Columbia, for example, held the Russian government in contempt for failing to return religious books and artifacts, located in Russia, to a Jewish religious organization in New York.226

More commonly, Equity Extraterritoriality infringes upon a foreign sovereign’s regulatory or adjudicatory interests. A foreign sovereign, for example, may have an interest in protecting data and information originating from its territory. There is a significant amount of governmental interest in prescribing the extent to which sensitive personal data, such as medical or financial information, becomes available to third parties. Accordingly, a number of countries passed laws concerning bank secrecy and data privacy.227 Some countries passed “blocking statutes” specifically to express their disapproval of the U.S.-style extraterritorial discovery.228Yet the U.S. law on extraterritorial discovery does not merely disregard the foreign law regarding bank secrecy or data privacy, but overrules them as illegitimate.229 In doing so, the U.S. law all but made a dead letter out of a multilateral Hague Evidence Convention that the United States bargained for and signed—a “truly unprecedented attack on the basic mechanism of international treaties.”230 Another example is anti-suit injunctions issued by a U.S. court, which deprive the jurisdiction of a foreign court over the same matter, and sometimes lead to “inter-jurisdictional judicial warfare.”231

### !---xt: Jain---China AI

#### Chinese tech parity causes global war and existential AI.

Tinnirello 18, Doctor of Philosophy, independent researcher. (Maurizio, “Offensive Realism and the Insecure Structure of the International System Artificial Intelligence and Global Hegemony”, *Artificial Intelligence Safety and Security*, https://www.academia.edu/41644441/Offensive\_Realism\_and\_the\_Insecure\_Structure\_of\_the\_International\_System\_Artificial\_Intelligence\_and\_Global\_Hegemony)

Autonomous Systems: Fueling the Security Dilemma Weaponry accumulation and security dilemmas do not cease; they just become transformed by technological advancements. Beyond the accumulation of conventional military capabilities, great powers will aim to obtain a significant advantage in AI development. The United States has no intention to lose the race on militarized AI. The long-term strategy is to maintain military supremacy in what former Secretary of Defense Ashton Carter referred to as the Third Offset: an evolution from purely conventional power to a more refined focus on the next weaponry that can offset rivals’ capabilities. This means looking into artificial intelligence and autonomous weapons that will provide power supremacy to the United States.45 The Third Offset aims as stated by former Deputy Secretary of Defense Robert O. Work are to “achieve comprehensive stability, reduce any incentive for preemption, and if we do come to blows, end it quickly before we trip over a nuclear threshold.”46 A plan for the next 30 years highlights this emphasis on U.S. autonomous weapons development, and the necessity of being at the forefront of autonomous systems: “[u]nmanned systems and autonomous software offer significant potential advantages for meeting the challenges of a newly forming adversarial environment.”47 General Paul J. Selva of the Air Force, and vice chairman of the Joint Chiefs of Staff, recently commented that the United States is within 10 years of creating a fully autonomous system that could decide when and whom to kill, although they had no interest in building one.48 He added that other countries are not far behind, and that someone would unleash it, eventually.49 If a devastating AI weapon is created and used, it is likely that others will advance research to obtain it in order to maintain or achieve hegemony. The race for nuclear weapons exemplified this, even before one was used in war.50 Who is ahead in this arms race is difficult to state. Yet, the United States has had to consider the possibility of not having overall power supremacy in autonomous systems. At the Space Symposium in 2016, Robert O. Work stated in relation to China and Russia: [W]e would once again be forced to contend with the re-emergence of great power competition. The resurgence of Russia and the rise of China will require that we exercise strategic muscles that we’ve allowed to atrophy since the end of the Cold War. […] And both countries are not just getting good in the usual domains of air, land, and sea, but also especially in cyber, electronic warfare, and space. As a result, our margin of technological superiority is slowly eroding, and addressing this issue is one of our most important strategic tasks, because too great an erosion of our technological superiority would ultimately undermine our conventional deterrence, raise a competitor’s incentives for preemption, contribute to crisis instability, and greatly raise the potential cost of any future U.S. military operation.51 Defense Secretary Jim Mattis commented at a Senate hearing that: “[f]or decades, the United States enjoyed uncontested or dominant superiority in every operating domain or realm. We could generally deploy our forces when we wanted, assemble them where we wanted and operate how we wanted. Today, every operating domain–outer space, air, sea, undersea, land and cyberspace– is contested.”52 Were Russia, China, or other powers to gain in AI superiority that could not be countered with the advantage the United States has in conventional hardware, it could signify the rise of a new regional hegemon. Although Russia is rushing to develop powerful autonomous systems,53 it is China that is probably going to challenge the United States in this arms race.54 Under President Xi Jinping’s vision to form a civil–military partnership on AI R&D, China hopes to develop AI power capabilities to surpass those of the United States, including some that aim to counter powerful U.S. weapons platforms.55 A statement from Lieutenant General Liu Guozhi, director of the Chinese Central Military Commission’s Science and Technology Commission, highlights not only the core premise of OR but also the condition of constant contact, and thus the necessity to achieve powerful militarized AI before their rivals: “Whoever doesn’t disrupt will be disrupted!”56 Within the AI literature, the militarization of autonomous systems might be construed as MAI; indeed, any technology used for killing might fit this description. However, OR tells us that states are rational, and thus maximizations of power are not simply isolated, irrational, and malevolent occurrences but rational initiatives that can be understood from a broader level of analysis. These offensive drives make sense within an international system where fear and insecurity, and the maximization of power, are not the anomaly but normalcy. AI scientists state that commercial R&D is well ahead of the military’s, and therefore AI R&D open source foundations could secure good AI. The basic line here is that commercializing AI and also banning autonomous technology for military application will prevent a dystopian scenario. A Chatham House research paper argues that banning militarized AI may not be efficient, as superior technology will be available in the commercial sector.57 Indeed, if powerful AI technology is available in the commercial sphere, it is unlikely that states will be impeded from gaining hold of it. It might take significant international treaties to prevent militaries worldwide using it, which still might not be enough if history tells us anything—international norms on climate change are still affected by considerable difficulties owing to economic and ideological pressures, as are treaties on nuclear weapons.58 Until smoothly running global governance is achieved, which perchance might never take place, we can expect struggles for hegemony to continue into the far future. EVOLVING AUTONOMY: BREAKING THE STOPPING POWER OF WATER There are no secrets about the world of nature. There are secrets about the thoughts and intentions of men. J. Robert Oppenheimer In the anarchic world of international politics, it is better to be Godzilla than Bambi. John Mearsheimer59 We have established that a nascent AI security dilemma is in motion. Great powers are rushing to develop powerful AI systems in order to gain commercial and military superiority. Currently, AI military technologies still operate on a rules-based level. This includes everything from the US$1 trillion dollar F-35 stealth manned fighter project60 described by former U.S. Deputy Secretary of Defense Robert O. Work not as a plane but as a “[…] flying sensor computer that sucks in an enormous amount of data, correlates it, analyzes it and displays it to the pilot on his helmet,”61 to the cheaper unmanned aerial vehicles (UAVs), including the autonomous U.S. navy fighter/bomber X-47.62 Though impressive in their own right, these technologies still cannot reason, which would require knowledge-based behavior. They can gather and relay information faster than humans, but they are still more automated than autonomous.63 Timeline predictions on AGI and superintelligence development suggest that in the near future these weapons systems will be able to perform complex and fast operations, matching our biological brains or better, providing a qualitative power advantage that could represent a more immediate and far-reaching threat to great powers. U.S. historian Alfred W. McCoy presents such a scenario from his analysis of previous and current U.S. military developments: It’s 2025 and an American “triple canopy” of advanced surveillance and armed drones fills the heavens from the lower- to the exo-atmosphere. A wonder of the modern age, it can deliver its weaponry anywhere on the planet with staggering speed, knock out an enemy’s satellite communications system, or follow individuals biometrically for great distances. Along with the country’s advanced cyberwar capacity, it’s also the most sophisticated militarized information system ever created and an insurance policy for U.S. global dominion deep into the twenty-first century.64 This leads us to envision a situation where autonomous systems, some in development at present,65 can hunt rival capabilities, avoid counterattacks, modify missions, and prioritize targets while in deployment, which could pose severe threats to battle groups, aerial vehicles, cyber systems, and defense environments highly supported by AI. The objective is to have these AI systems deployed for years and reach most places on the Earth, cyber, and the exo-atmosphere at hypersonic speeds without the need for human presence or constant input. Evidence suggests the United States is expecting that in the next major war, space capabilities, such as swarm of space nanodrones, and cyber capabilities enhanced by machine learning, will be key to maintaining supremacy.66 Great powers’ leaders will have a view of the theatre of operations, just like Dr. Strangelove had in the War Room in Stanley Kubrick’s dark comedy masterpiece. The U.S. Defense Advanced Research Projects Agency (DARPA) has already sought to develop a highly intelligent system, Deep Green, which would support strategic decisions in the theatre of operations through predictive capabilities, such as assessment of options and impact of decisions in real time.67 These types of real-time operational intelligent environments, improved by ever more sophisticated autonomous systems, will make the theatre of operations so large and complex that regions where states had hegemony will be erased, and a first strike could come from any sphere in which capability advantage could be had. This will increase the level of fear in great powers. Recently, a U.S. warship passed within 12 nautical miles of a Chinese-built reef in Spratly Islands, South China Sea.68 Encounters of this type can raise already high tensions between China, its neighbors, and the United States. Although moderately infrequent now, these incidents could become a very common occurrence as autonomous planes, submarines, boats, and swarms of drones are deployed, in addition to cyber elements in the fashion described by McCoy. Here we revisit the concepts developed by Harknett and Fischerkeller, who argue that as technology advances, especially AI and machine learning, it is expected that rival powers will be continuously trying to gain the initiative in this nontraditional theatre of operations, and thus persistent engagement or cyber persistence is the only way to advance a power’s security. This cyber persistence is needed in order not to lose the initiative due to the evolving nature of cyber and machine learning. This creates a “condition of constant contact.”69 Unable to successfully secure their regional hegemony, great powers will opt to improve the qualitative nature of their power to deploy it offensively. This would increase fear among great powers, generating a very dynamic and precarious security dilemma, as attacking will be the only strategy that can guarantee supremacy. Soon missiles will be more than exploding bombs; they will assess and develop strategic striking capabilities versus the defensive hardware of other powers, redeploy and build, and analyze theatres of operations at enormous speeds. Ultimately, the purpose of weaponry is to be effective in destroying the rival’s hardware, human operatives, and various bits of infrastructure. The increasing sophistication and speed at which progress is made on AI R&D will be vital to secure supremacy in the international system. Following OR’s third assumption, great powers possessing powerful AI will still not be able to know the intentions of their rivals. This uncertainty will lead to increasing militarization, in this case a never-before-experienced qualitative arms race that could plunge the world into a dark era of widespread conflicts and proxy wars. If powers still keep their nuclear deterrence, this fragile balance created by ever-evolving militarized AI could take us back to Cuba 1962. As AGI advances toward superintelligence, what scenarios can we envisage in relation to the international system? We assume we are still in a self-help world, in addition to the condition of constant contact underpinning powerful and disruptive drives for hegemony. Supposing militarized AGI has been achieved and has similar intelligence to humans, this momentous development can disrupt the international system if it can provide a power advantage against rivals—a weapons system that can define an era, as nuclear weapons did after World War II. We assume here that, despite the computing power of AGIs, humans are still in control—which is closer to the scenario the Pentagon envisages for the future of autonomous systems, where humans and AI work together in what they have conceptualized as the “centaur model.”70 The possession of AGI capabilities, just like power capabilities now, does not mean that there will be an imminent war, but an AGI security dilemma could escalate very rapidly, as AGI military technology allows powers to deploy their capabilities for longer, higher, and faster, and matching human intelligence. In relation to AGI and superintelligence, we could propose some situations to assess if they do allow a great power to become a global hegemon. For this we turn to some of Bostrom’s considerations on the speed of the transition from AGI to superintelligence, and possible consequences. Adding superintelligence to the discussion adds complexity and the possibility of existential risk for great powers. It is also important to remember that this is taking place at speeds beyond those of our biological brains, and that any humans involved in this might have artificially enhanced intelligence or perhaps exist as brain emulations, which could significantly increase their intelligence. Bostrom tells us that there are three possibilities for the transition between AGI and superintelligence: slow, moderate, and fast takeoff. A slow takeoff would occur over a long period of time, perhaps decades or centuries, allowing for political processes to adapt and create a strategy for how to deal with superintelligence. A moderate takeoff could take place over months or years. This scenario would not allow humans enough time to develop proper institutions, accords, and plans for contingency and could result in geopolitical, economic, and social conflict. Lastly, a fast takeoff could happen in minutes, hours, or days, not allowing for global coordination to take place or other types of responses to be put in place.71 Let us first consider a scenario where there is AGI parity between powers, and they are using these capabilities to solve global governance issues but at the same time to increase their power capabilities. It is likely that no international treaty could effectively prevent drives for hegemony, assuming the international system remains anarchic, knowing that superintelligence may soon be achieved. Moreover, let us remember that power competition in this era is persistently contested. The ability to maintain or gain regional hegemony, if not gone entirely, could be a constant and fast changing tit for tat. There would be no way to tell when the first power was transitioning from having AGI to having superintelligence. If a state achieved this after a fast takeoff, it could be an existential threat to other powers; thus there is the likelihood that intensified arms races and conflicts would occur beforehand. If there is parity among powers, it is unlikely that the stopping power of water can be broken in order to achieve global hegemony. A more probable result would be permanent confrontations between great powers, akin to the ones that took place during the Cold War, but perhaps more destructive, as AGI capabilities would destroy the enemies’ cyber infrastructure and meddle with economic, political, and health systems among others. Despite these smaller conflicts, great powers would still aim toward global hegemony as long as there was the latent possibility of superintelligence being achieved. It is more likely that a moderate takeoff, as Bostrom points out, could generate these turbulent times. However, if the international system remains anarchic, it is very possible that even a slow takeoff might be faster than the transformation of mankind toward greater levels of social technological development. The reaction to a world where great powers are on permanent offensive mode will drive the sophistication of AI even further. An arms race that could negate the stopping power of water would instill more insecurity and fear in great powers—possibly leading to preemptive war. History has shown us that even international law can fall victim to a great power set on using this doctrine to secure its existence or further its interests. The speeds at which power development could take place could make the doctrine of preemptive war more common. This would signify a visible increase in the historical contradictions that we face now, as well as an AGI security dilemma that could run out of control.

## ADVANTAGE ONE

### 2NC---!D---Leadership

#### No leadership impact.

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, <https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy>)

Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability.

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

Overall, proponents of the stabilizing power of U.S. hegemony should keep in mind one of the most basic observations from cognitive psychology: rarely are our actions as important to others’ calculations as we perceive them to be.44 The so‐​called egocentric bias, which is essentially ubiquitous in human interaction, suggests that although it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. Washington is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is.

The indispensability fallacy owes its existence to a couple of factors. First, although all people like to bask in the reflected glory of their country’s (or culture’s) unique, nonpareil stature, Americans have long been exceptional in their exceptionalism.45 The short history of the United States, which can easily be read as an almost uninterrupted and certainly unlikely story of success, has led to a (perhaps natural) belief that it is morally, culturally, and politically superior to other, lesser countries. It is no coincidence that the exceptional state would be called on by fate to maintain peace and justice in the world.

Americans have always combined that feeling of divine providence with a sense of mission to spread their ideals around the world and battle evil wherever it lurks. It is that sense of destiny, of being the object of history’s call, that most obviously separates the United States from other countries. Only an American president would claim that by entering World War I, “America had the infinite privilege of fulfilling her destiny and saving the world.“46

Although many states are motivated by humanitarian causes, no other seems to consider promoting its values to be a national duty in quite the same way that Americans do. “I believe that God wants everybody to be free,” said George W. Bush in 2004. “That’s what I believe. And that’s one part of my foreign policy.“47 When Madeleine Albright called the United States the “indispensable nation,” she was reflecting a traditional, deeply held belief of the American people.48 Exceptional nations, like exceptional people, have an obligation to assist the merely average.

Many of the factors that contribute to geopolitical fear — Manichaeism, religiosity, various vested interests, and neoconservatism — also help explain American exceptionalism and the indispensability fallacy. And unipolarity makes hegemonic delusions possible. With the great power of the United States comes a sense of great responsibility: to serve and protect humanity, to drive history in positive directions. More than any other single factor, the people of the United States tend to believe that they are indispensable because they are powerful, and power tends to blind states to their limitations. “Wealth shapes our international behavior and our image,” observed Derek Leebaert. “It brings with it the freedom to make wide‐​ranging choices well beyond common sense.“49 It is quite likely that the world does not need the United States to enforce peace. In fact, if virtually any of the overlapping and mutually reinforcing explanations for the current stability are correct, the trends in international security may well prove difficult to reverse. None of the contributing factors that are commonly suggested (economic development, complex interdependence, nuclear weapons, international institutions, democracy, shifting global norms on war) seem poised to disappear any time soon.50 The world will probably continue its peaceful ways for the near future, at the very least, no matter what the United States chooses to do or not do. As Robert Jervis concluded while pondering the likely effects of U.S. restraint on decisions made in foreign capitals, “It is very unlikely that pulling off the American security blanket would lead to thoughts of war.“51 The United States will remain fundamentally safe no matter what it does — in other words, despite widespread beliefs in its inherent indispensability to the contrary.

## ADVANTAGE TWO

### 2NC---Sovereignty Disputes

#### Sovereignty Disputes---the plan causes them.

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

With nowhere else to go, private litigants have naturally flocked to the United States for remedial assistance, creating an issue for developing antitrust regimes.12 Several implications attend foreign plaintiffs seeking recovery in the United States. American courts have recognized the importance of allowing foreign plaintiffs to bring claims in the United States under the Sherman Act.13 Before 2004, there was a significant chance that parties injured abroad by global cartels that directly harmed the United States would be able to sue in US courts to recover their losses.14 But, as illustrated above, private litigants applying US antitrust law for redressing harm that occurred abroad create tensions over sovereignty with other countries.

Start FN 15

15. See, e.g., Joseph P. Griffin, Extraterritoriality in U.S. and EU Antitrust Enforcement, 67 ANTITRUST L.J. 159, 160-61 (1999) (discussing that aggressive extraterritorial application of the Sherman Act brought “considerable backlash from foreign governments”); Mark S. Popofsky, Extraterritoriality in U.S. Jurisprudence, in 3 ISSUES IN COMPETITION LAW AND POLICY 2417, 2423 (2008) (describing the controversy associated with US antitrust law extraterritoriality with US trading partners). See also infra § III

End FN 15

# 1NR

## ADVANTAGE TWO

### 2NC---!D---Africa

#### No incentive for African escalation.

Thrall 15, MA, Scholar in Residence at University of Colorado Boulder. (Lloyd, “China's Expanding African Relations”, *RAND*, pg. 78-79, Accessible at: https://www.rand.org/pubs/research\_reports/RR905.html)

There is little credible potential for a Sino-American conflict over resources in Africa. Contrary to popular and perennial assumptions about resource wars, industry and energy analysis sources project adequate supply of conventional hydrocarbons beyond 2035.6 Given reservoir depletion curves, any tightening of supply would be gradual. The adequacy of supply is further augmented when tertiary production and unconventional sources are considered (such as shale and tar sands). U.S. strength in unconventional sources, and potential energy independence, further reduces the likelihood of a conflict. Even in a future with vastly inflated hydrocarbon prices, these costs pale in comparison to those associated with a Sino-American war, the economic costs of which likely fall more heavily on China than the United States.7 Global hydrocarbon resources are distributed via a fungible global market, with many stakeholders and moderate diversity of supply. This enables importing states to buy a predictable supply of hydrocarbons at reasonable and competing prices over long contracts. African sources do not constitute a majority of this supply chain, and supposed victory in a theoretical great-power resource war would not guarantee security of resource supply. In sum, the potential for either China or the United States to be willing to enter war with a nuclear adversary over African oil, let alone other, less valuable resources, is extraordinarily small.8

### 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.

## DA---FTC

### !---Overview

#### Outweighs:

#### 1---magnitude.

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

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

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

#### Disease turns war---BUT the inverse isn’t true

Altman 10, PhD, adjunct associate professor of economics @ NYU (Daniel, “Causal Effects of Epidemics on Conflict: A Summary of the Evidence”, <http://www.danielaltman.com/data/Altman_EpidemicsConflict.pdf>)

The most difficult issue in interpreting the links between epidemics and conflict is that of causality. One can imagine several possible relationships between epidemics and conflict, with causality flowing in both directions. An epidemic may lead to conflict if it erodes economic conditions to the point where people are desperate enough to attack a ruling elite or to grab for resources in neighboring countries. Epidemics may also foment a civil conflict if a government’s inability to deal with them reduces confidence in its leadership. An epidemic may also export conflict, if refugees fleeing the spread of disease cause instability in the countries where they settle. Conversely, conflicts may help epidemics to spread. Military forces and their supply networks can cover great distances during a campaign, taking a disease along with them. Sometimes they may use sex as a weapon, creating contagion through forced intimacy. Disease also spreads easily in military camps, where many people are backed together in conditions that are not always sanitary. There are indirect effects, too; if a country is involved in conflict, it may also have less money to pay for the public health interventions that could stop a disease’s transmission. There is one important distinction to draw between these two directions of causality. Conflicts may worsen an epidemic, but they cannot start one (except via a biological weapon, which is virtually unheard of). Epidemics, by contrast, may be able to spark a conflict on their own or in combination with other factors. Epidemics and conflicts are both difficult to stop once they start, but this difference makes the first direction of causality – from epidemic to conflict – particularly interesting.

#### Health solves ag.

Lichtenwald 16, CEO of Medsphere Systems Corporation (Irv, “Is CMS Efforts Enough to Transform Rural Healthcare?,” <http://hitconsultant.net/2016/02/22/32016/>)

The scenario is far from unrealistic. For the most part, non-urban healthcare organizations are not doing well. In fact, almost every rural hospital in the country is operating near the margin or in the red. According to iVantage Health Analytics Senior Vice President Michal Topchik, speaking to Health Data Management, 67 rural hospitals have closed since 2010, and 283 were vulnerable to closure last year. Already in 2016 iVantage has identified 673 vulnerable rural hospitals, with 210 at very high risk. While only about 15 percent of the American population, roughly 46 million people, live in rural areas, they do some of the nation’s most essential work. Mostly, they grow food, produce energy or provide services to the people that grow food and produce energy. Obviously, the rural healthcare situation matters in terms of food and energy security at home, but also in terms of economics—the United States is by far the largest global exporter of food, with roughly $40 billion separating America from number two, and is on the cusp of ending energy imports for the first time since 1950. In reality, rural healthcare is transitioning, not disappearing, mostly because doing nothing is just bad economics. People in rural areas need care. If they can’t get it locally, they have to be flown to the nearest facility, which ends up being more expensive over the long term than funding a local hospital. To their credit, the Centers for Medicare and Medicaid Services (CMS) are already aware of the situation in rural America and have been taking steps toward fixing it. Speaking recently to the National Rural Health Association, CMS Acting Administrator Andy Slavitt explained that the agency is “establishing a CMS Rural Health Council to work across the entire agency to oversee our work in three strategic priority areas– first, improving access to care to all Americans in rural settings; second, supporting the unique economics of providing health care in rural America; and third making sure the health care innovation agenda appropriately fits rural health care markets.” As Slavitt points out, rural Americans tend to be older, earn less money and they generally lack health insurance—more than 60 percent of citizens without health insurance live in rural areas in states that have not expanded Medicaid through the Affordable Care Act. Nearly 75 percent of government health insurance exchange users make less than 250 percent of the federal poverty level—currently a bit less than $12,000 a year for an individual and slightly more than $24,000 for a family of four. So, if the argument could be made that rural America is home to the greatest number of healthcare challenges, then it also represents the greatest opportunity. If we can make affordable healthcare work outside urban areas, we may have a template applicable to other scenarios. On Slavitt’s first two points—access and economics—CMS is working to sign rural Americans up for health insurance and adjusting requirements and payment models for rural care. Which brings us to the “innovation agenda,” Slavitt’s term for the digitization of healthcare and the all-in bet the federal government has made on the benefits of health IT. The goal here is to transform rural hospitals and clinics into efficient, wired, lean operations that can absorb the realities of rural care and still operate in the black. With 35 percent of rural hospitals losing money and almost two-thirds running a negative operating margin, there’s simply no way rural facilities can invest in health IT without help. From CMS, that help takes the form of several planned or in-process programs: – Medicaid State Innovation Model grants for technical support in smaller rural hospitals – Aggregation of services in rural communities creating benefits from population health – The Frontier Community Health Integration Project (summer 2016), developing and testing new models in isolated areas using telemedicine and integration approaches – The ACO investment model for hospitals that can’t invest in ACO infrastructure; the model now serves 350,000 rural beneficiaries through 1,100 rural providers – Incorporating telemedicine where appropriate; CMS is publishing a Medicaid final rule that for the first time allows for face-to-face encounters using telehealth It’s clear that CMS understands we can’t leave rural hospitals to fend for themselves. But it also seems clear that a lot of hospitals invested in electronic health records (EHRs) they could ill afford to qualify for Meaningful Use funds—dollars that seldom covered implementation costs for solutions that didn’t yield significant cost savings and required additional technical personnel. By and large, that MU money has been dispensed. The carrot has been eaten. What Medicare- and Medicaid-heavy hospitals can expect next is two sticks: more stringent reporting requirements necessitating EHR use and direct penalties (for now) related to Meaningful Use non-compliance. “The high capital and operating costs associated with health IT, specifically EHRs, have put some hospitals in a difficult position,” wrote Becker’s Hospital CFO in a prescient January 2014 article. “Do they absorb the financial hit now, even if they know they can’t afford it? Most organizations are doing so …” Yes, CMS is trying to help lessen the impact of that metaphorical beating, but these rural hospitals also have to make decisions to help themselves. Too many are paying for systems they can’t afford to maintain. Moreover, they are unable to invest in necessary security, leaving them increasingly open to data breaches. Many are also still handicapped by the costs of ICD-10 transition, for which there was no federal reimbursement. Rural hospitals need a comprehensive EHR platform that integrates with a revenue cycle system so they can properly capture charges and manage the billing process, and effectively collect on previously lost billing. These systems need to be available as a subscription service so that rural hospitals don’t have to come up with huge money down. And they can’t require the hiring of an additional 50 application specialists to make the new systems work. “The benefits of IT are still to come,” Standard and Poor’s Marin Arrick told Becker’s Hospital CFO more than two years ago. Still the economic crisis in rural care rages on, certainly lessening access to care for millions of Americans and arguably impacting the labor force that produces food, energy, etc.

### 2AC 1---AT: Plan Civil

#### 1---Public authorities are definitely involved

Warin 13, PD, Partner @ (“The Global Reach of American Criminal Law ,” <https://www.gibsondunn.com/wp-content/uploads/documents/publications/Warin-TheGlobalReachofAmericanCriminalLaw-0213.pdf>

U.S. antitrust law has a similarly broad reach—for corporations and individuals. U.S. courts and enforcement agencies have long held that the Sherman Antitrust Act12—the main federal statute prohibiting anti-competitive conduct—applies to foreign conduct that is intended to produce and did produce substantial effect in the United States. DOJ and the United States’ Federal Trade Commission (“FTC”) enforce the federal antitrust laws, including the Sherman Antitrust Act.13 DOJ prosecutes antitrust violations both as criminal and civil offenses; the FTC prosecutes them only as civil offenses. Criminal prosecution may lead to severe penalties. Corporations convicted of a criminal violation of the Sherman Antitrust Act can be fined up to $100,000,000; and individuals can be fined up to $1,000,000 and receive a prison sentence of up to ten years. Several key U.S. court decisions recognize the extraterritorial reach of the U.S. antitrust laws. In a 1945 civil antitrust action, a U.S. appellate court held in United States v. Aluminum Co. of America14 that conduct perpetrated abroad could violate the Sherman Act if it was “intended to affect imports and did affect them.”15 In 1982, U.S. Congress adopted the Foreign Trade Antitrust Improvement Act (“FTAIA”)16 to limit the application of the Sherman Act in cases in which there was no effect on U.S. commerce. The FTAIA provided that the Sherman Act applied to foreign conduct (other than import commerce) that “has a direct, substantial, and reasonably foreseeable effect” on U.S. commerce. Eleven years later, the U.S. Supreme Court stated in with respect to import commerce that it was “well established . . . that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States.”17 In 1997, an appellate court extended this extraterritoriality test to a criminal matter involving a pricefixing conspiracy that occurred entirely in Japan.18 DOJ and the FTC reflected these principles in their 1995 guidance regarding their “international enforcement policy.”19 The 1995 Antitrust Enforcement Guidelines for International Operations firmly state that “[a]nticompetitive conduct that affects U.S. domestic or foreign commerce may violate the U.S. antitrust laws regardless of where such conduct occurs or the nationality of the parties involved.”20 DOJ has been successful in bringing criminal enforcement actions against foreign corporations and individuals. For example, Mitsubishi Corporation was found guilty of aiding and abetting a criminal violation of Section 1 of the Sherman Antitrust Act involving a price-fixing conspiracy among graphite electrode producers.21 Mitsubishi encouraged its 50%-owned U.S. producer of graphite electrodes to fix prices, participate in cartel meetings, sell products at fixed prices, and conceal the cartel activity. Mitsubishi was sentenced to a $134 million fine, one of the largest in the history of U.S. criminal antitrust enforcement. In another example, DOJ obtained convictions last year against Taiwanese company AU Optronics Corporation, its U.S. subsidiary, and two executives for fixing the prices of LCD panels sold into the United States, as agreed during meetings with their competitors occurring in Taiwan.22 AU Optronics was fined $500 million—“matching the largest fine imposed against a company for violating U.S. antitrust laws”—the gain that the jury found the company derived from the conspiracy, as well as was required to adopt an antitrust compliance program and retain an independent compliance monitor.23 The two Taiwanese executives were each sentenced to three years in prison and fined $200,000.24 Earlier that year, two Japanese suppliers of auto parts—Yazaki Corporation and DENSO Corporation—agreed to plead guilty and to pay criminal fines of $470 million and $78 million, respectively, for their roles in multiple auto parts price-fixing and bid-rigging conspiracies.25 Yazaki’s fine was the second largest criminal fine secured by DOJ’s Antitrust Division for a Sherman Act violation.26 This was also one of the many cartel investigations in which the Antitrust Division cooperated closely with foreign cartel authorities, including the European Commission, the Canadian Competition Bureau, and the Japanese Fair Trade Commission.27 With respect to individuals, DOJ continues to state that it is “committed to ensuring the culpable foreign nationals, just like U.S. co-conspirators, serve jail sentences in order to resolve their criminal liability.”28 In FY 2011, foreign executives faced average prison sentences of 10 months for antitrust violations.29 In FY 2012, DOJ continued to obtain long prison sentences for foreign nationals, including a 24-month sentence for two executives of Japan-based Yazaki Corporation, who voluntarily submitted to U.S. jurisdiction, imposed in connection with their involvement in international conspiracies to fix prices for auto parts sold to automobile manufacturers in the United States.30 Overall, approximately 97% of the $6.4 billion in criminal antitrust fines imposed in the United States from FY1997 to the end of FY2011 were “in connection with the prosecution of international cartel activity” and “51 foreign defendants from France, Germany, Japan, South Korea, Taiwan, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom” received prison sentences during the same period.31

#### 2---Civil and criminal sectors aren’t isolated.

Macy & Lee 17, \*Creighton J., Attorney, Baker McKenzie. Formerly served as chief of staff and senior counsel in the Department of Justice Antitrust Division, working as a senior advisor to the acting assistant attorney general on civil and criminal antitrust enforcement and policy matters, as well as budget and personnel issues. \*\*Craig Y., Attorney, Baker McKenzie. Leads the Firm’s global cartel task force (12-14-2017, "When Merger Review Turns Criminal", *American Bar Association*, https://www.americanbar.org/groups/business\_law/publications/blt/2017/12/07\_lee/)

But that separation of criminal and civil enforcement sections at the Antitrust Division does not create walls or silos. The different criminal offices often work together on large investigations and trials. Similarly, the size of many civil investigations requires pulling resources from the various civil sections, as well as from the Antitrust Division’s Appellate, International, and Competition Policy and Advocacy sections. But the collaboration does not end there. Coordination between the civil and criminal sections is the norm. Section managers meet regularly to discuss matters and often consult on an informal basis. Cross‑pollination occurs at the trial attorney level as attorneys are detailed to other sections for specific matters or periods of time. And understanding this collaboration between the civil and criminal sections is vital to attorneys and their clients subject to the merger review process. A recent case not only shows how in sync the Antitrust Division’s criminal and civil sections are, but also highlights the implications of that collaboration.

### 2AC 2 & 3---AT: Overload

#### 2---Enforcement high, resources key, sustained focus solves consolidation

King 21, John and Marylyn Mayo Chair in Health Law and Professor of Law at the University of Auckland (Jaime, “Stop Playing Health Care Antitrust Whack-A-Mole,” Harvard Bill of Health, <https://blog.petrieflom.law.harvard.edu/2021/05/17/health-care-consolidation-antitrust-enforcement/>)

The time has come to meaningfully address the most significant driver of health care costs in the United States — the consolidation of provider market power. Over the last 30 years, our health care markets have consolidated to the point that nearly 95% of metropolitan areas have highly concentrated hospital markets and nearly 80% have highly concentrated specialist physician markets. Market research has consistently found that increased consolidation leads to higher health care prices (sometimes as much as 40% more). Provider consolidation has also been associated with reductions in quality of care and wages for nurses. In consolidated provider markets, insurance companies often must choose between paying dominant providers supracompetitive rates or exiting the market. Unfortunately, insurers have little incentive to push back against provider rate demands because they have the ability to pass those rate increases directly to employers and individuals, in the form of higher premiums. In turn, employers take premium increases out of employee wages, contributing to the growing disparity between health care price growth and employee wages. As a result, rising health care premiums mean that every year, consumers pay more, but receive less. Dynamic health care antitrust enforcement is an idea whose time has finally come, but addressing the ills of consolidation in America’s health care system will require a comprehensive and multi-faceted approach. We have seen repeatedly how an entity with market power can respond quickly to negate the benefits of unilateral policy approaches, leading to an endless cycle of competition policy whack-a-mole. For instance, in the last decade, as health system merger and acquisition challenges became more successful, joint ventures and affiliations, especially with urgent care centers and private equity firms, became more frequent. Further, COVID-19 has exacerbated the threat of health care consolidation by leaving many independent hospitals and physician groups struggling financially and vulnerable to acquisition. Fortunately, the Biden/Harris administration appears uniquely poised to implement a comprehensive initiative to address health care consolidation. First and foremost, Biden has positioned key personnel with antitrust expertise, often with distinct knowledge of the health care industry, throughout his administration. For instance, the nomination of former California Attorney General Xavier Becerra, who championed health care antitrust efforts in the state, as Secretary of Health and Human Services was an inspired choice and presents a unique opportunity to enhance competition through Medicare policy. Biden’s appointment of Tim Wu to the National Economic Council and nomination of Lina Khan to one of five seats on the Federal Trade Commission (FTC) also signal a strong commitment to strengthening antitrust enforcement writ large. Second, the Biden administration should support recent efforts in Congress to address health care antitrust concerns. Senator Amy Klobuchar (D-MN) recently introduced a bill, the Competition and Antitrust Law Enforcement Reform Act, which introduces sweeping reforms that would expand funding to the Department of Justice (DOJ) and the Federal Trade Commission, strengthen prohibitions against anticompetitive mergers by forbidding mergers that “create an appreciable risk of materially lessening competition,” shift the burden of proof to require merging entities to demonstrate that the merger will not harm competition, and take steps to prevent dominant firms from engaging in anticompetitive conduct. Likewise, Senator Patty Murray’s (D-WA) Lower Health Care Costs Act of 2019 demonstrated a sophisticated understanding of how health care entities can use market power to obscure health care prices and negotiate anticompetitive contract terms, like all-or-nothing bargaining, gag clauses, and anti-steering provisions, and provided solid policy solutions to both issues. Providing support for bills like these will be essential to developing a comprehensive competition strategy. Third, on September 17, 2020, the Federal Trade Commission announced much needed plans to revamp the Merger Retrospective program. The Biden administration should provide substantial funding and resources to reinvigorate this program. Merger retrospectives, like Steven Tenn’s Sutter-Summit retrospective in 2008, have been pivotal and provided the FTC with much needed insight on how hospital mergers have leveraged the market power necessary to increase prices and harm consumer welfare. A newly revamped Merger Retrospective program holds great promise for antitrust enforcement in health care, especially if used to gain insight into whether and how vertical and cross-market health care mergers create anticompetitive harms. While a majority of consolidating transactions in health care include vertical or cross-market acquisitions, federal antitrust enforcement has been absent in this area. Fourth, Congress and the Trump Administration have moved mountains to expand price transparency in health care, which will greatly facilitate research into the effects of different types of health care consolidation and contracting practices on prices. The Biden Administration should stand firm on requiring hospitals, insurers, and self-insured employers to report negotiated health care prices, and dedicate resources to analyze that data to determine both the drivers of health care prices and the effectiveness of public policy initiatives designed to control prices. In addition, the Biden administration should promote transparency in health care consolidation by requiring all health care providers (hospitals, clinics, provider organizations, etc.) to report any material change in ownership to the Department of Health and Human Services and the FTC to allow the agencies to monitor consolidation patterns and look for stealth consolidation. All winds seem to blow in the direction of the Biden Administration taking significant action to address rampant consolidation in health care and its harms. Yet, doing so requires funding and willpower. Funding for the FTC and DOJ has decreased in relative dollars since 2010, despite a near doubling in merger filings. The FTC and DOJ need increased funding to expand their ability to review and challenge anticompetitive transactions and practices by dominant health care entities, revamp and expand the scope of their Merger Retrospective Review program, and provide technical assistance to state antitrust enforcers. Furthermore, the FTC should be granted the authority and requisite funding to challenge anticompetitive behavior by non-profit organizations, as they have developed a significant expertise in health care provider markets. Challenging the existing market dynamics in health care also demands the political will to take on some of the biggest industries in the nation (who make some of the largest lobbying contributions). As we have seen in recent challenges to the practices of dominant health care providers, the battle will be hard-fought. Yet, the alternative — allowing the health care industry to continue to siphon off ever-increasing portions of the economy and wages — is unacceptable and irresponsible. The Biden administration must make every attempt to improve the functioning of health care markets where possible, and implement price regulations in markets where competition has failed. Antitrust enforcement agencies must use the full force of their legal arsenal to restore competition in health care — and this may include breaking up large health systems that exploit their market power. For too long, the notion of “unscrambling the egg,” i.e., unwinding a previously consummated hospital merger, has been a non-starter in enforcement circles. To truly restore some form of competition in many health care markets, antitrust enforcers need to break up large systems, or at least have a credible threat of doing so. The Biden administration has an opportunity to reinvigorate our health care markets, but only if it is willing to adopt a bold, determined, and comprehensive competition strategy.

#### 3---Health care enforcement is high, but requires significant resources---new demands require cuts elsewhere

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

Antitrust enforcement vis-a-vis horizontal transactions among health care providers or payers is active, although enforcers do not have sufficient resources to be as active as needed. In the past few years, the DOJ, together with state plaintiffs, successfully blocked two proposed mega-mergers of large health insurers. In the past decade, the FTC and DOJ have successfully challenged over a dozen hospital mergers and a number of mergers among other health care providers, including matters settled with consent decrees requiring divestitures to preserve competition and matters the parties abandoned in the face of agency opposition. However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices.

#### 4---Health care enforcement is coming now---but it could be triaged in the case of overstretch

Galvin 9-10-2021 (Gaby, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators,” *Morning Consult*, <https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/>)

When President Joe Biden tapped vocal critics of big tech companies for key antitrust roles, companies like Amazon.com Inc. went on high alert. But he’s pledged to crack down on anticompetitive behavior across sectors — including “unchecked mergers” in health care, and former officials and industry watchers say hospitals and other groups should tread carefully. Officials like Lina Khan, who was sworn in as chair of the Federal Trade Commission in June, and Tim Wu of the White House’s National Economic Council, haven’t gone public with how they plan to tackle health care consolidation. But early action from the administration points to hospital price transparency and heightened merger scrutiny as top priorities. “This administration is going to take a stronger approach to any antitrust enforcement than we’ve previously seen,” said Alexis Gilman, an antitrust lawyer at Crowell & Moring who worked in the FTC’s competition bureau, primarily during the Obama administration. “The bar of scrutiny does seem to have been raised.” Biden laid out his broad antitrust agenda in an executive order in July that singled out rural hospital closures and higher hospital prices in markets with little competition as reasons to support stronger FTC guidelines for health care mergers. Now, Gilman said the FTC appears to be taking more time to review details on proposed mergers that may have otherwise been cleared quickly or seen as “non-problematic.” The FTC’s public stances so far “reflect an agency that believes that prior enforcement has been a bit lax, and they’re going to tighten that up,” Gilman said. Health systems feeling the heat Industry watchers are taking cues from Sutter Health’s $575 million antitrust settlement, which received final approval from a federal judge in late August after a yearslong legal battle over allegations that the nonprofit health system in California engaged in price gouging. Notably, Health and Human Services Secretary Xavier Becerra sued Sutter Health in 2018 when he was California’s attorney general, and before joining the Biden administration, he said in March that he would continue to promote health care competition so patients “aren’t left holding the bag when big players dominate the market.” Given Becerra’s involvement, the case could offer a roadmap for health care competition policy in the Biden era at both the state and federal levels, said Elizabeth Mitchell, president and chief executive of the Purchaser Business Group on Health, which helped bring together employers and unions to file the lawsuit against Sutter Health. “I think it is very important that some of what we achieved in the Sutter case is applied more broadly,” Mitchell said. That includes efforts to promote hospital price transparency, a priority left over from the Trump administration. Meanwhile, Gilman points to the Sutter Health case and a federal settlement with North Carolina-based Atrium Health in 2018 as signs that health systems should “be a bit more cautious” when drawing up contracts that could be seen as anti-competitive, such as those that include measures that ban insurers from “steering” patients toward less expensive medical care or revealing pricing information. “I think there is — as a result of those two enforcement actions — increased risk, at the least for the largest systems that have meaningful shares in their local markets,” Gilman said. Provider groups are readying their defenses. In August, the American Hospital Association sent a letter to antitrust officials calling for more reviews of health insurance companies, saying payers have “largely escaped close scrutiny for conduct and practices that adversely impact both consumers and providers.” The group declined an interview request. David Maas, an antitrust lawyer at Davis Wright Tremaine LLP who works with health care providers, noted that ramped-up scrutiny on hospitals could hurt smaller physician groups or rural hospitals that are the only option for care in some communities. “We already have aggressive enforcement in that space, and it often is good and leads to more competitive marketplaces,” Maas said. “But just in the interest of being more aggressive, to push for even more enforcement in health care, I think could lead to some unfortunate outcomes, because a lot of health care providers are struggling.” Hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared with 43 in the same time period last year, according to a Kaufman Hall analysis. While the number of deals has fallen, revenue is on par with previous years as health systems focus more on regional partnerships in new markets rather than acquiring smaller independent hospitals, the analysis said. Other health industries in regulatory crosshairs Hospitals aren’t the only health care groups getting a closer look in the Biden era. The FTC has also signaled interest in vertical mergers, when companies that don’t compete directly consolidate, and is looking to unwind life science company Illumina Inc.’s $7.1 billion acquisition of Grail Inc., which was finalized last month despite a lack of clearance from the FTC or European regulators. In Sept. 2 letters to GOP lawmakers who questioned the agency’s stance, Khan said the FTC is at a “crossroads” and has taken an “unduly permissive” approach in the past that’s allowed for massive companies to form across industries. Antitrust lawyers are closely watching the Illumina-Grail case, which will be “the first vertical merger case the FTC litigates in decades,” Gilman said. Another key deal to watch: Michigan-based Beaumont Health and Spectrum Health said last week they’re proceeding with a merger that would give the combined health system control of 22 hospitals, an outpatient business and a health plan covering 1 million people. If approved, the merger is expected to be finalized this fall. Collaborations between payers and providers — forming so-called “payviders” — have become increasingly common, with hospital systems launching their own health plans and health insurance giants such as UnitedHealth Group Inc. moving into health care delivery in recent years. “In the coming years, the for-profit insurers will start following United’s lead in acquiring, or effectively acquiring, more and more providers,” Maas said. Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals. “The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.” RELATED: Pharmacy Benefit Managers Are Feeling a Push From States to ‘Turn the Lights on’ to Their Business Practices Regulators picking their battles Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

#### 5---Law enforcement will be focused on health care now

Shryock 21, analyst @ Medical Economics (Todd, “Hospital consolidations in crosshairs of Biden administration,” *Medical Economics*, <https://www.medicaleconomics.com/view/hospital-consolidations-in-crosshairs-of-biden-administration>)

As part of a sweeping executive order, President Biden addressed hospital mergers and their sometimes negative effects on patients and the health care system. The order specifies that the Justice Department and Federal Trade Commission review and revise their merger guidelines to ensure patients are not harmed by the mergers. The administration points out that hospital consolidation has hit rural areas especially hard, leaving many patients without good options for convenient and affordable health care services. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year during the pandemic.

### 2AC 4---AT: Biden Thumps

#### 2---Biden argument is not a thumper---it’s delegated to a dozen agencies and health is a main focus.

Alex Gangitano 21. \*Reporter for The Hill. \*\*Lexi Lonas, Staff Writer for The Hill. “Biden declares war on anti-competitive practices with sweeping order.” The Hill. June 9th, 2021. [https://thehill.com/homenews/administration/562203-biden-to-sign-executive-order-on-anti-competitive-practices-in-tech?amp](about:blank)

In a fact sheet released by the White House Friday morning, the Biden administration said that anti-competitive practices across industries have driven up prices, made it harder for employees to bargain for a better wage and stunted economic growth. The executive order will direct over a dozen federal agencies to implement these 72 initiatives to promote competition in the U.S. The president has laid out a plan to promote competition in the health care sector, including directing the Food and Drug Administration (FDA) to work with states on importing prescription drugs from Canada, and direct officials to develop a "comprehensive plan" to lower drug prices in 45 days. In addition Biden will direct the Federal Trade Commission (FTC) to evaluate hospital mergers that could be harmful to patient care, especially in rural communities.

### 2AC 7---Defense

#### Bioterror leads to extinction---there’s motive AND means

Ord 20, research fellow at the Future of Humanity Institute at Oxford University, has advised the World Health Organization, the World Bank, the World Economic Forum, and the UK Prime Minister’s Office and Cabinet Office. (Toby, 3-6-2020, "Why we need worst-case thinking to prevent pandemics", *The Guardian*, <https://www.theguardian.com/science/2020/mar/06/worst-case-thinking-prevent-pandemics-coronavirus-existential-risk>)

We have seen the indirect ways that our actions aid and abet the origination and spread of pandemics. But what about cases where we have a much more direct hand in the process – where we deliberately use, improve or create the pathogens? Our understanding and control of pathogens is very recent. Just 200 years ago, we didn’t even understand the basic cause of pandemics – a leading theory in the west claimed that disease was produced by a kind of gas. In just two centuries, we discovered it was caused by a diverse variety of microscopic agents and we worked out how to grow them in the lab, to breed them for different traits, to sequence their genomes, to implant new genes and to create entire functional viruses from their written code. This progress is continuing at a rapid pace. The past 10 years have seen major qualitative breakthroughs, such as the use of the gene editing tool Crispr to efficiently insert new genetic sequences into a genome, and the use of gene drives to efficiently replace populations of natural organisms in the wild with genetically modified versions. This progress in biotechnology seems unlikely to fizzle out anytime soon: there are no insurmountable challenges looming; no fundamental laws blocking further developments. But it would be optimistic to assume that this uncharted new terrain holds only familiar dangers. To start with, let’s set aside the risks from malicious intent, and consider only the risks that can arise from well-intentioned research. Most scientific and medical research poses a negligible risk of harms at the scale we are considering. But there is a small fraction that uses live pathogens of kinds that are known to threaten global harm. These include the agents that cause the Spanish flu, smallpox, Sars and H5N1 or avian flu. And a small part of this research involves making strains of these pathogens that pose even more danger than the natural types, increasing their transmissibility, lethality or resistance to vaccination or treatment. In 2012, a Dutch virologist, Ron Fouchier, published details of an experiment on the recent H5N1 strain of bird flu. This strain was extremely deadly, killing an estimated 60% of humans it infected – far beyond even the Spanish flu. Yet its inability to pass from human to human had so far prevented a pandemic. Fouchier wanted to find out whether (and how) H5N1 could naturally develop this ability. He passed the disease through a series of 10 ferrets, which are commonly used as a model for how influenza affects humans. By the time it passed to the final ferret, his strain of H5N1 had become directly transmissible between mammals. The work caused fierce controversy. Much of this was focused on the information contained in his work. The US National Science Advisory Board for Biosecurity ruled that his paper had to be stripped of some of its technical details before publication, to limit the ability of bad actors to cause a pandemic. And the Dutch government claimed that the research broke EU law on exporting information useful for bioweapons. But it is not the possibility of misuse that concerns me here. Fouchier’s research provides a clear example of well-intentioned scientists enhancing the destructive capabilities of pathogens known to threaten global catastrophe. Of course, such experiments are done in secure labs, with stringent safety standards. It is highly unlikely that in any particular case the enhanced pathogens would escape into the wild. But just how unlikely? Unfortunately, we don’t have good data, due to a lack of transparency about incident and escape rates. This prevents society from making well-informed decisions balancing the risks and benefits of this research, and it limits the ability of labs to learn from each other’s incidents. Security for highly dangerous pathogens has been deeply flawed, and remains insufficient. In 2001, Britain was struck by a devastating outbreak of foot-and-mouth disease in livestock. Six million animals were killed in an attempt to halt its spread, and the economic damages totalled £8bn. Then, in 2007, there was another outbreak, which was traced to a lab working on the disease. Foot-and-mouth was considered a highest-category pathogen, and required the highest level of biosecurity. Yet the virus escaped from a badly maintained pipe, leaking into the groundwater at the facility. After an investigation, the lab’s licence was renewed – only for another leak to occur two weeks later. In my view, this track record of escapes shows that even the highest biosafety level (BSL-4) is insufficient for working on pathogens that pose a risk of global pandemics on the scale of the Spanish flu or worse. Thirteen years since the last publicly acknowledged outbreak from a BSL-4 facility is not good enough. It doesn’t matter whether this is from insufficient standards, inspections, operations or penalties. What matters is the poor track record in the field, made worse by a lack of transparency and accountability. With current BSL-4 labs, an escape of a pandemic pathogen is only a matter of time. One of the most exciting trends in biotechnology is its rapid democratisation – the speed at which cutting-edge techniques can be adopted by students and amateurs. When a new breakthrough is achieved, the pool of people with the talent, training, resources and patience to reproduce it rapidly expands: from a handful of the world’s top biologists, to people with PhDs in the field, to millions of people with undergraduate-level biology. The Human Genome Project was the largest ever scientific collaboration in biology. It took 13 years and $500m to produce the full DNA sequence of the human genome. Just 15 years later, a genome can be sequenced for under $1,000, and within a single hour. The reverse process has become much easier, too: online DNA synthesis services allow anyone to upload a DNA sequence of their choice then have it constructed and shipped to their address. While still expensive, the price of synthesis has fallen by a factor of 1,000 in the past two decades, and continues to drop. The first ever uses of Crispr and gene drives were the biotechnology achievements of the decade. But within just two years, each of these technologies were used successfully by bright students participating in science competitions. Such democratisation promises to fuel a boom of entrepreneurial biotechnology. But since biotechnology can be misused to lethal effect, democratisation also means proliferation. As the pool of people with access to a technique grows, so does the chance it contains someone with malign intent. People with the motivation to wreak global destruction are mercifully rare. But they exist. Perhaps the best example is the Aum Shinrikyo cult in Japan, active between 1984 and 1995, which sought to bring about the destruction of humanity. It attracted several thousand members, including people with advanced skills in chemistry and biology. And it demonstrated that it was not mere misanthropic ideation. It launched multiple lethal attacks using VX gas and sarin gas, killing more than 20 people and injuring thousands. It attempted to weaponise anthrax, but did not succeed. What happens when the circle of people able to create a global pandemic becomes wide enough to include members of such a group? Or members of a terrorist organisation or rogue state that could try to build an omnicidal weapon for the purposes of extortion or deterrence? The main candidate for biological existential risk in the coming decades thus stems from technology – particularly the risk of misuse by states or small groups. But this is not a case in which the world is blissfully unaware of the risks. Bertrand Russell wrote of the danger of extinction from biowarfare to Einstein in 1955. And, in 1969, the possibility was raised by the American Nobel laureate for medicine, Joshua Lederberg: “As a scientist I am profoundly concerned about the continued involvement of the United States and other nations in the development of biological warfare. This process puts the very future of human life on earth in serious peril.”

#### Prefer ev that post-dates COVID

Ackerman & Peterson 20, Dr. Gary Ackerman is the Director, Center for Advanced Red Teaming, at the University at Albany, SUNY, and Associate Professor and Associate Dean, College of Emergency Preparedness, Homeland Security, Cybersecurity. Hayley Peterson is currently a graduate student at the University at Albany (SUNY), where she is obtaining a Master of Business Administration (MBA). (8/10/20, "The Top 10 Ways COVID-19 Could Impact Terrorism", *Homeland Security Today*, <https://www.hstoday.us/subject-matter-areas/counterterrorism/the-top-10-ways-covid-19-could-impact-terrorism/>)

6. Establishing Bioterrorism as a Viable Tactic

The proven inability of even highly developed countries to stop the spread of the virus has exposed the many weaknesses present in global public health systems. These will not go unnoticed by terrorist groups when they consider new ways to achieve their goals. Since a key strategy of terrorists is to inflict psychological damage on populations as a means of violent coercion, the pandemic’s societal and economic consequences provide a perfect script for the theatre of terrorism. Despite previous unsuccessful efforts, the possibility of replicating the death and disruption of the pandemic may make bioterrorism a newly attractive option. Conversely, for terrorists with well-defined, vulnerable constituencies, the indiscriminate spread of the disease would likely give them pause, at least when it comes to utilizing contagious pathogens.

### 2AC 9---AT: FTC Doesn’t Solve

#### Solves

LaPointe 21 (Jacqueline, “How Policy, Regulation Will Challenge Consolidation in Healthcare,” Recycle Intelligence, https://revcycleintelligence.com/news/how-policy-regulation-will-challenge-consolidation-in-healthcare)

However, the executive order has some serious implications for healthcare organizations—and not just hospitals and health systems—looking to join forces with others in their market. RevCycleIntelligence spoke with industry experts to learn what healthcare leaders need to know about the executive order and how it will impact consolidation in healthcare moving forward. WHAT WILL BE DIFFERENT? Antitrust enforcement should continue to be top of mind for hospital and health system leaders engaging in merger and acquisitions deals. But now more than ever, leaders should know that just because a deal passes the first hurdle does not mean it is out of the woods yet. “Hospital leaders should be mindful that the agencies can challenge consummated transactions at any time,” says Ken Vorrasi, antitrust litigation partner at Faegre Drinker. “They shouldn't take solace in the fact that they've received front-end Hart-Scott-Rodino clearance. In reviewing past transactions, the agencies—the FTC or state attorney general—could issue subpoenas and ask about price changes, what costs have been cut, what efficiencies have been realized, what quality benefits there are, and try to do an assessment as to whether or not the transaction was pro-competitive for insurers and patients or not.” The executive order highlights the FTC’s ability to challenge healthcare merger and acquisition deals that were not previously challenged by an administration. Prior to this order, the FTC has also recently revamped its Merger Retrospective Program to expand and formalize retrospective analyses of consummated mergers, including those in healthcare. But most notably, the FTC has unraveled a healthcare deal successfully in the past. In 2004, the FTC challenges Evanston Northwestern Healthcare Corporation's acquisition of Highland Park Hospital and eventually ordered a restoration of the competition lost as a result of the acquisition. This type of challenge is rare but could become more common. "It is fair to say that an action like that one is more realistic and likely today than it was before the executive order and the new antitrust leadership," Vorrasi stated. READ MORE: Rapid Pace of Health System Consolidation to Continue, Experts Say “Healthcare leaders also need to be mindful of the impact and assessing the risk with their transactions that are vertical in nature, whether upstream or downstream, because those transactions have the attention of the agencies as well.” While much attention has been paid to antitrust review of health system and hospital mergers, healthcare leaders should also not forget about vertical integration. “We’re going to see more scrutiny in these areas, particularly with the new vertical merger guidelines the FTC and DOJ issued in 2020. That is certainly top of mind to the FTC and the FTC has substantial experience with hospital-physician consolidation and continues to actively study its effects on competition and quality,” Vorrasi said.

1. [↑](#footnote-ref-1)