# 1AC

## 1AC---Extraterritoriality

### 1AC---Economic Development

#### Advantage 1 is Economic Development\*:

\*we have modified some of the rhetoric in these cards to strikethrough and/or replace the terms “developed countries” and “developing countries.”

#### The Supreme Court’s ruling in *Empagran* denied standing to foreign plaintiffs seeking remedy for antitrust injury sustained abroad.

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In F. Hoffman LaRoche Ltd. v. Empagran S.A., 542 US 155 (2004), the Supreme Court limited access to American courts by foreign plaintiffs suing under the Sherman Act based on foreign transactions. Jurisdiction over foreign antitrust claims is governed by the Foreign Trade Antitrust Improvements Act (“FTAIA”). However, rather than parsing this opaque and poorly drafted statute, the Court drew on the doctrine of prescriptive comity and held that where a statute is vague, it should be construed narrowly so as not to interfere with the prerogatives of co-sovereigns. Alternatively, the Court concluded that if the conduct in question would have been beyond the reach of the Sherman Act prior to the enactment of FTAIA, it would not be cognizable under the FTAA because that statute was designed to limit—not expand—jurisdiction over foreign claims. The Court found that there were no pre-FTAIA cases to support jurisdiction.

On remand, the D.C. Circuit ruled that even if foreign plaintiffs could show that “but for” participation of U.S. firms in the conspiracy, they would not have been injured, their claims would still be barred. The FTAIA contemplates that (1) the illegal foreign have a “direct, substantial and reasonably foreseeable effect” on U.S. commerce; and (2) such adverse effect on foreign commerce gives rise to claims by foreign plaintiffs. Incidental or “but for” linkage does not suffice; proximate cause is the standard.

Moreover, foreign claims based on foreign transactions are also barred under the doctrines of standing and antitrust injury. Antitrust courts have traditionally denied standing to firms that were neither competitors nor consumers in the U.S. market. Similarly, the doctrine of antitrust injury limits the universe of antitrust plaintiffs to those who have suffered injury of the kind that the antitrust laws are met to protect against and that flows from that which makes the conduct unlawful. The U.S. antitrust laws were not meant to protect plaintiffs who were not participants in the U.S. market. Empagran may not eliminate antitrust actions by foreign purchasers, but the decision is a major hurdle to their successful prosecution.

IN EMPAGRAN, 1 THE SUPREME COURT construed the Foreign Trade Antitrust Improvements Act 2 (FTAIA) to severely limit the extraterritorial reach of the Sherman Act. In the wake of Empagran and the D.C. Circuit’s subsequent ruling on remand in that case, 3 foreign plaintiffs asserting claims under U.S. antitrust laws for injuries based on transactions consummated abroad have been largely shut out of federal courts. Foreign plaintiffs, however, have not abandoned their efforts to obtain relief in American courts for anticompetitive acts committed in the international arena. Rather, they have turned to claims under various state laws, including state antitrust laws, state unfair trade practice laws, and common law relief under theories of unjust enrichment and restitution.

This article analyzes the viability of these state law claims and concludes that state law remedies are likely to be unavailable for injuries based on transactions consummated abroad, for the same reasons the FTAIA bars antitrust claims under federal law. Additionally, these state law claims are barred by the Supremacy Clause of the U.S. Constitution, the Foreign Commerce Clause, the Due Process Clause, and the doctrine of prescriptive comity.

Background

Historically, U.S. courts have been hesitant to apply American antitrust laws to conduct occurring outside of the country. In American Banana Co. v. United Fruit Co., the Supreme Court ruled that the Sherman Act must be “confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power.”4 As American traders became increasingly involved in the international arena, courts began to relax the hard-line view of American Banana. In Alcoa, the Second Circuit held that the Sherman Act does proscribe extraterritorial acts that are “intended to affect imports [into the United States] and did affect them.”5 At the same time, Alcoa made clear that “[w]e should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States.”6 Still, the court made no attempt to identify the point at which foreign acts were qualitatively and quantitatively sufficient to affect domestic commerce to confer jurisdiction on U.S. courts.

Congress enacted the FTAIA in 1982 to clarify the reach of the Sherman Act in matters involving foreign commerce. The statute, however, was inartfully drafted and led to more confusion than clarity among courts and litigants. The Supreme Court in Empagran granted certiorari to resolve a dispute among the circuits on construction of the FTAIA. 7 The D.C. Circuit had concluded that the FTAIA allowed subject matter jurisdiction over claims by plaintiffs located in the Ukraine, Australia, Ecuador, and Panama, each of whom alleged that they had suffered injuries from a global price-fixing cartel when they bought vitamins for delivery outside of the United States. The Supreme Court vacated, holding that the FTAIA bars the exercise of subject matter jurisdiction over Sherman Act claims by foreign plaintiffs claiming illegal conduct that “significantly and adversely affects both customers outside the United States and customers within the United States” if “the adverse foreign effect is independent of any adverse domestic effect,” that is, if “the conduct’s domestic effects did not help to bring about that foreign injury.”8

The Court articulated a two-pronged rationale for its interpretation of the FTAIA. First, under principles of prescriptive comity, ambiguous statutes—and the FTAIA is, at the very least, ambiguous—should generally be interpreted so as to “avoid unreasonable interference with the sovereign authority of other nations.”9 The Court concluded that the Sherman Act may not supersede a foreign nation’s determination of how best to protect its citizens in cases where foreign conduct causes foreign injury independent of domestic injury and that foreign injury alone gives rise to foreign plaintiffs’ claims. 10 The Court further observed, citing amici filings by foreign governments, that allowing foreign plaintiffs to proceed with treble damage claims under these circumstances “would unjustifiably permit their citizens to bypass their own less generous remedial schemes, thereby upsetting a balance of competing considerations that their own domestic antitrust laws embody.”11

Second, the Court found plaintiffs’ argument for expansive construction of the FTAIA unpersuasive. As a threshold matter, the FTAIA was meant to limit—not to expand—the reach of the Sherman Act in matters involving foreign commerce. Moreover, the Court found no case decided prior to the enactment of the FTAIA that would have upheld the exercise of jurisdiction over similar foreign claims. 12 Although the Court acknowledged that plaintiffs’ argument favoring jurisdiction presented “the more natural reading of the statutory language,” considerations of comity and history made clear that plaintiffs’ reading “is not consistent with the FTAIA’s basic intent.”13 Instead, the Court adopted the narrower reading championed by defendants because “[t]hat reading furthers the statute’s basic purposes, it properly reflects considerations of comity, and it is consistent with Sherman Act history.”14 The Court emphasized that its holding “assumed that the anticompetitive conduct here independently caused foreign injury; that is, the conduct’s domestic effects did not help to bring about that foreign injury.”15

On remand, the plaintiffs argued that their injury was not unrelated to the anticompetitive effects of the cartel on U.S. commerce, urging that but for defendants’ price-fixing activities in the United States, the international cartel would have collapsed. The plaintiffs maintained that, given the fact that vitamins are fungible and readily transportable, without U.S. participation in the conspiracy, foreign purchasers would have bought vitamins in the United States at competitive prices, instead of dealing with the cartel at supracompetitive prices. By incorporating the U.S market, the cartel cut off that avenue of arbitrage. Accordingly, the plaintiffs argued that the domestic effect of the cartel caused the plaintiffs’ foreign injury.

The D.C. Circuit disagreed. The court did acknowledge that the plaintiffs had painted a plausible scenario that but for supracompetitive prices in the United States resulting from cartel activities in the United States, they would not have been injured. 16 Nevertheless, the court held that “ ‘but-for’ causation between the domestic effects and the foreign injury claim is simply not sufficient to bring anticompetitive conduct within the FTAIA exception.”17 Rather, the statutory formulation calls for “a direct causal relationship, that is, proximate causation,” between domestic effects and foreign injury, a standard that is not satisfied by establishing a mere “but-for ‘nexus.’”18 The proximate cause standard under the FTAIA has proven to be a formidable barrier to foreign plaintiffs who seek to bring antitrust suits under U.S. law in American courts.

#### Gaps in enforcement and the presumption against extraterritoriality leave much of the Global South vulnerable to anticompetitive predation.

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Why should American law supplant, for example, Canada’s or Great Britain’s or Japan’s own determination about how best to protect Canadian or British or Japanese customers from anti-competitive conduct engaged in significant part by Canadian or British or Japanese or other foreign companies?1

Thus asked Justice Breyer in his 2004 opinion in F. Hoffman-La Roche, Ltd. v. Empagran, SA,2 a case brought in U.S. federal court as a class action on behalf of purchasers of certain vitamin products on foreign (non-U.S.) markets against members of a cartel. The question was, of course, rhetorical. There seems to be, at least prima facie, no good reason to impose U.S. antitrust law on other highly developed countries with their own functioning antitrust regimes, especially without or even against these countries’ will.3

But the question was also strangely misplaced. Although Canada, Great Britain, and Japan—the countries Breyer named—had urged the Court to dismiss the claims by foreign plaintiffs,4 the countries from which the named plaintiffs stemmed—Ecuador, Panama, and Ukraine—had remained silent.5 These last three countries are representatives of less developed countries, many of which do not have very effective antitrust regimes.6 With this in mind, Breyer’s question would better have read something like this: Why should American law supplant, for example, Ecuador, Panama, or Ukraine’s antitrust regimes, insofar as these countries are unable to protect their customers from anti-competitive conduct engaged in significant part by foreign companies?

This question is harder to dismiss. Arguably, supplanting these countries’ ineffective competition regimes would serve a purpose. The question would not be one of superseding foreign regimes when there are none. The question would be one of filling regulatory gaps. Vis-à-vis countries with functioning antitrust regimes, the question is which of several countries should regulate the cartel. Vis- à-vis countries without functioning antitrust regimes, the question is whether the cartel is regulated at all. If the developed country does not regulate, no other country does. Hence, the issue is not whether to defer to a foreign antitrust agency. Instead, the question is whether to defer to the cartel’s impunity. This policy decision would require quite a different justification.

~~Developing countries~~ [the Global South] would likely do better if they had effective antitrust regimes, and other articles in this issue discuss what is required for success. But we also need solutions for situations in which ~~developing countries do~~ [the Global South does] not (yet) have such regimes, or in which they are for other reasons incapable of dealing with an international cartel. This is the situation this article addresses. It develops an argument for when and why a developed country’s antitrust regime should supplant the regime of a developing country. The question is, essentially, when and why the developed country should take over, in part, regulation of the developing country’s market.

Some limitations should be mentioned. First, the article focuses on the regulation of cartels. Although supplanting antitrust law might well work also for other issues—for example, merger control or abuse of a dominant position— these issues would require different considerations, which the article does not address. Second, for purposes of the article, a developed country is defined as a country with, and a developing country as a country without, a functioning antitrust regime. The analysis is therefore not directly applicable to developing countries that have effective regimes. By contrast, some of the arguments may be applicable to small developed countries with limited resources.7

Part II begins by laying out the tension between the need for antitrust in developing countries and the obstacles these countries face in building their own regimes. It then argues for the possibility of one country’s antitrust institutions regulating another country’s market, as long as a jurisdictional basis exists. Part III discusses this idea of supplanting antitrust, its legal background, and the factors relevant for its justifiability. Part IV applies the idea of supplanting antitrust in three constellations: multinational cartels that affect markets in both developed and developing countries; transnational cartels in which cartels from developed countries target markets in developing countries; and domestic cartels that remain confined within the boundaries of the developing country. Part V discusses a number of possible objections.

II DEVELOPING COUNTRIES AND ANTITRUST REGULATION

A. Challenges

Once, establishing antitrust regimes was thought not to benefit developing countries.8 That view is no longer prevalent. Today, more than half of the ~~developing~~ [Global South] countries in the world have antitrust regimes.9

Having laws on the books represents, however, only a first step. A greater problem for many developing countries lies in building institutions 10 and enforcing existing antitrust laws. Here, the data are somewhat unclear. Levenstein and Suslow found in 2004 that actual enforcement of existing antitrust law was widely lacking.11 Waked, by contrast, suggests that developing countries do allocate resources to the enforcement of antitrust laws, though the degree depends on, amongst others, general macroeconomic development, openness to trade and imports, and level of corruption.12 Büthe and Aydin identify several factors that constrain ~~developing~~ countries [in the Global South]: limits in financial resources and expertise, unsupportive or hostile political–legal environments, limitations to legal culture, a lack of competition culture, and underdeveloped markets 13

The enforcement problem is exacerbated for transboundary cartels with actors from outside the ~~developing countries~~ [Global South] targeting the country’s markets.14 Often, less developed countries do not even appear to recognize the impact these cartels have on their economies.15 If cartel members act outside the country, agencies have difficulties detecting and scrutinizing the cartel.16 Where they do, the global market power of firms is often badly matched by the antitrust regimes of ~~developing countries~~ [Global South].17 Even if ~~developing countries~~ [Global South] have the resources and expertise to regulate small and midsize local cartels, they may well be unable to regulate bigger and transnational or multinational cartels.18 It may often be preferable for them to allocate scarce resources to the regulation of domestic cartels.

#### Instead, foreign plaintiffs were encouraged to rely on trickle-down enforcement from more developed antitrust regimes, which creates impunity for transboundary and multinational cartels.

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III. PART III: SHORTCOMINGS OF THE STATUS QUO

The current regulatory patchwork works relatively well for the key ~~developed~~ countries. The established competition agencies could overcome the hurdles of transnational cases if they so choose.[48](javascript:;) They have the necessary financial and human resources and expertise. This state of affairs may explain why the developed world stopped investing efforts in finding a multilateral solution to the problem of transnational anticompetitive conduct such as international cartels.

Even when foreign violators do not have assets in the ~~developed~~ states, they are unlikely to react to unfavourable enforcement outcomes by exiting the market because such markets are too important. The economic weight of a market helps to realize the potential of extraterritoriality. Economies that are less important from the violators’ perspective face a particularly uphill and unequal battle when challenging anticompetitive conduct.

In this regulatory context, the smaller and less developed countries are advised to focus their enforcement on domestic violations.[49](javascript:;) When it comes to transnational violations, such as international cartels, they are often recommended to rely on the enforcement efforts of [more] developed regimes.[50](javascript:;) That is, they are to depend on what can be called ‘trickle-down enforcement’. The implicit argument is: should an international cartel be investigated and sanctioned by one or more developed agencies, it will be disbanded and cause no further competitive harm. In other words, enforcement by more developed agencies can generate positive externalities, or spill-over effects for other regimes. Hence, there is an opportunity for enforcement free-riding. While this certainly happens, this proposition assumes that transnational violations affect developed and developing countries in a similar manner. This may be true when it comes to violations affecting virtually all world markets; in such casesprosecution effectively deals with the totality of the underlying anticompetitive conduct. For example, in the case of the Southeast Asian cartel of LCD screen manufacturers, enforcement by a number of agencies led to the restoration of competition.[51](javascript:;) Similarly, the operation of the vitamins cartel was global and attracted significant attention of enforcers in several jurisdictions.[52](javascript:;) However, not all transnational violations are omnipresent with sufficient impact on key economies to provoke vigorous enforcement and a complete discontinuation of the harmful practice. For example, the American Soda Ash Export Cartel (ANSAC), a U.S.-based export cartel, was found in breach of EU competition law in 1990.[53](javascript:;) However, this decision did not lead to its abandonment. ANSAC reorganized its activities in relation to the EU and continued operating in a business-as-usual manner in other markets. In 1996 it was challenged in India. The case failed due to the lack of an explicit textual basis in Indian law allowing for extraterritoriality. The judgment was rendered under severe pressure exerted by the United States. In 1999 the same cartel was challenged in South Africa, where—after nearly ten years of litigation—ANSAC settled.

Enforcement in the EU, India and South Africa did not lead to the break-up of ANSAC, which continues operating in various markets. This case underlines the gaps in the current regulatory framework. It shows that enforcement free-riding will not necessarily work. There may be no trickle down benefit to countries that forego domestic enforcement.

Moreover, reliance on enforcement activities of developed countries by other states is not always an option. While some transnational violations are truly global, many types of anticompetitive conduct are more limited in scope, depending on the nature and characteristic of the goods or services involved. There may be regional arrangements (for example, a regional cement cartel) or arrangements that affect only a specific group of countries (for example, a cartel concerning a good which is no longer sold in the ~~developed~~ [Global North] economies, but which is still offered in ~~developing countries~~ [the Global South]). In such cases there would be no enforcement by developed agencies to piggy-back on and therefore no trickle-down benefit, given that markets in developed economies would not be affected.

Due to the existing gaps in the regulatory framework, the recommendation to focus on domestic violations has had perhaps unintended, and somewhat perverse, consequences. Domestic infringements—which typically do not lead to transfer of wealth abroad—are pursued while transnational violations escape scrutiny, despite generally causing much greater harm [54](javascript:;) and often leading to outflow of wealth from the domestic economy. Even in cases of successful reliance on enforcement by agencies of other states (for example, in cases of truly global cartels) the transfer of wealth is not remedied. The rents extracted through supra-competitive prices are not even partially remedied by fines imposed on the violators, given that no sanctions are imposed in relation to the harm to the domestic market. Rather, the benefit is the prevention of future harm. This is only a partial success, but even this is not present in cases in which the foreign enforcement is either not robust enough to lead to discontinuation of the anticompetitive conduct in question or when such enforcement is simply missing. Hence, passive reliance on trickle-down enforcement is unsatisfactory.

Furthermore, even if free-riding on enforcement by other states can prevent future harm, this setup provides no deterrence, which is considered crucial in modern competition law. Transnational violators can feel safe and act with impunity. Any sanctions they may face will relate only to harm caused in the enforcing jurisdictions. Hence, there is no reason for them not to continue with existing—and not to create new—anticompetitive arrangements that extract wealth from markets in states that do not challenge transnational violations.[55](javascript:;) The situation is particularly grim in the case of anticompetitive practices that do not affect any major jurisdiction enforcing competition law robustly, since there will be no agency to piggy-back on and no possibility of a trickle-down benefit. The violation may remain completely off the radar should domestic agencies focus solely on domestic conduct. Moreover, even if the viability of a particular anticompetitive arrangement requires it to be global in scope, prospective violators may still find it profitable, even after taking into account any sanctions they may face in the key jurisdictions that actively challenge such transnational violations. Profits extracted from the non-enforcing jurisdictions may offset ‘related’ costs, that is sanctions imposed in the relatively few jurisdictions which do pursue such cases. This argument was made before the US Supreme Court in Empagran.[56](javascript:;) Such sanctions—especially if only financial in nature—can be seen as no more than just a selectively imposed tax on transnational anticompetitive activities. The availability of individual criminal sanctions in the form of imprisonment in some countries changes that dynamic, but does not fundamentally resolve the problem.

#### Cartels undermine good-faith market competition---that’s a precondition for recurrent economic development.

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Introduction

Microeconomic theory defines the market as perfect competition when firms provide goods at a price that equals their marginal cost. Some common characteristics of a perfectly competitive market include homogenous products, all buyers and sellers as price takers, there is complete information, and no entry and exit barriers. Under the assumption of prices equal marginal costs, firms would have no or little incentive to innovate.

It is reasonable to expect that most industries are characterized by some degree of heterogeneity and product differentiation. In this situation, the competition encourages profit-maximizing firms to innovate to achieve abnormal returns.

Rooted in management literature known as the resource-based view of the firm, Barney (1991) argues that sustainable competitive advantage derives from the resources and capabilities a firm controls that are valuable, rare, imperfectly imitable, and not substitutable. It is arguable that the firm's sustainable competitive advantage should be connected with the environment where the firm operates. Good faith competition incentivizes firms to build sustainable competitive advantages through R&D investments, product differentiation, advertising, and capital- and cost-efficiencies. Firms need to invest in tangible and intangible resources to create competitive advantages and generate abnormal returns (returns on equity higher than the cost of equity). Firms also need to continue investing in maintaining those advantages over time to create long-term value.

Kline and Rosenberg (2010) define the process of innovation as a series of changes that affect not only hardware but also production, markets, and organizations. In fair competition markets, a firm's search for creating competitive advantages provides a continuous investment process and stimulates innovation, providing economic growth, employment, and welfare enhancement (Baumol and Strom 2007, OECD 2007, Daniels 1996).

Sustainable economic growth has important implications for society. In the long run, economic growth is mainly explained by technological progress. Sustained economic growth has an amplified effect on per capita income, and it is an effective mechanism to reduce poverty rates (Barro and Sala-i-Martin 2004, Sala-i-Martin 2006, Dollar et al. 2013). United Nations' 2030 Agenda for Sustainable Development1 includes eradicating poverty as an indispensable requirement for sustainable development. In fair markets, firms competing for competitive advantages take a crucial role, bringing the power of innovation that generates economic growth, resulting in an improved standard of living for the wider society. However, some firms may have incentives to collude to obtain extra-profits, harming consumers and, at the same time, negatively affecting the power of innovation. Regulators have to ensure the fair functioning of markets.

II. Advantages of good faith competition

The positive effect on society of firms' rivalry is based on three central ideas. The first one is that firms pursue a profit maximization strategy and expect to achieve abnormal returns. The second one is that industries have some degree of heterogeneity and product differentiation. Lastly, firms compete in fair markets. In this scenario, firms pursuing abnormal returns will make investments in order to develop competitive advantages. Investment in R&D is one of the most important activities driving competitive advantage, and firms in competitive industries enter into innovation races to differentiate their products. Innovation affects long-term economic growth through technological progress. The European Central Bank supports innovation as an essential driver of economic progress that benefits consumers, businesses, and the economy as a whole.

Fair market competition is one of the pillars for obtaining positive effects from rivalry. National and supranational organizations acknowledge the benefits of good faith competition. The Autorité de la concurrence, the competition regulator in France, argues that competition forces companies to be innovative and to stimulate growth and jobs. The European Union states that having firms competing fairly in the market benefits society. Consumers receive higher quality products at better prices, and competition incentivizes firms to innovate to differentiate their products and make firms more competitive in global markets.

In fair markets, the search for competitive advantages stimulates innovation and strengthens long-term economic growth. The Presidency Report to the Council of the EU (September 20th, 2019) on developing long-term strategies of sustainable growth identifies Research and Innovation (R&I) as a critical driver in response to the main challenges of the European economic growth model. Economic growth does not need to be explosive but recurrent over the long term. An example of the positive effects of long-term economic growth on income per capita is the U.S. economy. The US GPD per capita grew at a yearly rate of 1.8% between 1870 and 2000, resulting in an increase of 10 times, from $3,340 to $33,330 measured in 1996 dollars. However, reducing the yearly growth rate to 0.8%, the per capita rent in 2000 would have been $9,450, only 2.8 times the value of 1870, and the U.S. would be ranked in 45th position instead of 2nd out of 150 countries (Barro and Sala i Martin 2004). Arguably, designing good faith competition markets is a natural mechanism to promote sustainable economic growth.

Fair competition stimulates innovation, which is the main contributor to sustainable economic well-being.

III. Market failures and the need for regulation to avoid firms' misconduct

Collusion is a market failure that occurs when firms in a market coordinate, restricting competition and negatively affecting prices, outputs, and innovation. Public institutions are making a great effort in detecting firms' collusion practices that harm competition. Research on cartel overcharge shows a significant increase in price attributable to collusion (Connor 2010; Smuda 2014; Boyer and Kotchoni 2015). Among other adverse effects, collusion may provoke an extraction of consumers' welfare in favor of the cartel firms, reducing firms' incentives to invest in innovation. It is important to contextualize the relevance of collusion agreements. Private International Cartels (PIC) database, developed by Professor John M. Connor, contains detailed information for price-fixing cartels detected between 1990 and 2017. Relative to the GDP, cartels operating in Europe are triple those operating in North America, while the affected sales' size is equal between both markets, with affected sales' totaling about $900 billion, of which global cartels account for 37%.

One clear example of market manipulation is the truck cartel. In July 2016, the European Commission ("E.C.") imposed a record fine of €3 billion to MAN, Volvo/Renault, Daimler, Iveco, and DAF for continuing collusion in the medium and heavy truck market. Over 14 years, the firms colluded on pricing, the introduction of new emission technologies, and passing on compliance costs with stricter emission rules. Scania was part of the cartel practices but did not accept the fine and initiated a separate legal proceeding to defend itself from the accusations. Scania was eventually declared guilty by the E.C. and received a fine of €880m2.

One essential piece to improving good faith competition is an efficient competition law that avoids firms' misconduct. Antitrust is considered as one of the most important public policies that has aimed at protecting a public good as well as protecting consumers from predatory business practices: good faith competition. There are substitute arguments on the necessity of governments' intervention. The theory of "public interest" is based on the assumption that government can solve inefficiencies caused by monopolistic conduct and externalities through intervention. The second stream of thought states that competition and private enforcement mitigate market failures within strong legal systems and well functioning courts (Coase 1960). Shleifer (2005) highlights that the enforcement environment determines the optimal intervention system (public regulation or court-based system).

In antitrust cases, victims can initiate an action from scratch (stand-alone) or after the competition body adopts an infringement decision (follow-on). Claimants initiating a standalone action have to prove the infringement, while in follow-on actions, the claimants benefit from the antitrust resolutions. Stand-alone damage actions have high barriers for victims due to the difficulties obtaining evidence of the infringement conduct. These actions are highly costly and risky. Therefore, it may not achieve the deterrence function for colluding firms.

Private enforcement is the necessary complement for public enforcement to have efficient competition law. However, a study commissioned by the EU in 2004 identified actions for damages against antitrust infringement were totally undeveloped. In 2014, the EU adopted antitrust actions for damages to eliminate obstacles to compensation for antitrust victims and better define the relationship between public and private enforcement. The Directive 2014/104/EU facilitates private enforcement through follow-on actions for damages on European Commission or national competition bodies' resolutions.

Among other changes, the Directive establishes that the competition regulators' final decision is binding before courts. It also states that there is a presumption that cartels cause harm3 , and cartel victims have to prove in national courts the amount of loss they suffered from an infringement. The Directive establishes a time-barred period of five years to bring cases to courts since the infringement has ceased, so victims will have had sufficient time to bring an action. Before the Directive enaction, limitation periods differed considerably among member states, and the starting period cannot be precisely identified.

While this new regulation facilitates victims' actions and incentivizes private enforcement, it is still complex in time and cost. The main difficulties that claimants face are related to proving and quantifying this misconduct's effects on their specific situation. The quantification of the economic effects usually requires a large sample of data and a high level of expertise to deal with it properly. It is difficult to prove the economic effects of the misconduct with single-case data.

The limitations associated with single enforcements have generated an opportunity for funds who are willing to invest in damage claims. Currently, litigation funds provide complete financing for the process under a profit-sharing structure, and even some investors are directly acquiring such claims4 .

In December 2020, the European Union adopted the Directive 2020/1828 on representative actions to protect consumers' collective interests. It is one additional step in the regulation process to protect consumers' interests against infringement actions.

The new regulation, jointly with the interest of funds to support these claims, enhances private enforcement in Europe, and it is an important element in promoting the good faith competition disincentivizing firms to collude.

IV. Conclusion

Within perfect competition, profits are zero at the maximum, and firms have little or no incentives to innovate because they cannot create sustainable competitive advantages. However, most industries have some degree of heterogeneity and differentiation. In product-differentiation markets and under good faith competition, profit-maximization firms have incentives to obtain abnormal returns through value-creating strategies that competitors cannot replicate. This search for competitive advantage creates a virtuous cycle of innovation, which is the pillar for economic growth, employment, and welfare enhancement.

Poverty reduction is one of the main goals of governments and multilateral organizations. Sustained economic growth is a powerful mechanism to reduce poverty providing new employment opportunities and making education more accessible to the wider population. It also incentivizes entrepreneurship. All these factors improve competitiveness, which results in more economic growth.

Markets have to operate in good faith to achieve the advantages of innovation. Governments have to ensure the fair-functioning of the markets. However, firms may try to extract consumers' welfare through anti-competitive agreements. Cartels are situations in which firms decide to cooperate and not compete, thereby injuring customers by rising prices, restricting production, or reducing their investments in R&D. These anti-competitive agreements reduce innovation and negatively affect economic growth.

Competition law plays an essential role in disincentivizing firms to collude. The interaction of antitrust regulation and private enforcement is a powerful instrument in deterring future antitrust violations and supporting good faith competition.

Sustainable growth is one dimension of sustainable development. The evaluation of sustainable development requires the inclusion of other relevant factors in the equation, such as reducing carbon emissions and global warming, reducing « with-in » countries' inequality, and ensuring equal opportunities for all.

There is an open discussion on the correct balance between the three dimensions of sustainable development- economic, environmental, and social. One example of the adequacy of the sustainability indicators is the recent research developed by Einsenmenger et al. (2020) that criticizes the overweight of economic growth versus ecological integrity in the SDGs of the U.N.'s 2030 Agenda for Sustainable Development. Some economic models offer a new approach for including sustainability factors in the equation. The so-called Doughnut Economy (Raworth 2017) includes planetary and social as upper and lower boundaries for economic growth. The planetary boundaries assure that economic growth does not put too much pressure on the planet's health and includes, among other concepts, climate change, ocean acidification, and the loss of biological diversity. The social boundaries include life's essentials, from food to healthcare and education. Lastly, there is a sweet spot area for economic growth within those two boundaries, environmentally friendly and socially.

In sum, there are multiple potential trade-offs between economic growth and social and environmental impacts, and each generation will have to decide what is the right balance. But whatever the chosen balance is, we argue that good faith competition is still a minimum requirement to promote long-term sustainable growth that helps reduce poverty and improve people's standard of living and well-being around the world.

#### The upside of market competition outweighs and solves alt causes to economic development.

Khameni 7, \*R. Shyam, Advisor, Competition Policy, in the Financial and Private Sector Development Vice-Presidency of the World Bank Group, Washington D.C., 2007, (“Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries,” (<https://documents1.worldbank.org/curated/en/397801468174885108/pdf/413340FIAS1Competition1Policy01PUBLIC1.pdf>)

A persistent challenge that faces the governments of least-developed countries as well as policy advisors at the Bretton Woods Institutions, the United Nations, and aid agencies is: how to foster sustainable broad-based economic growth, development, and poverty reduction. During the past two decades or more, various policy approaches have been explored. In the “first-generation reforms,” the World Bank Group and the International Monetary Fund (IMF), among others, focused on promoting the macroeconomic stability and trade integration of countries. Second-generation reforms moved from the broad policy environment to encourage more microeconomic changes, namely, improvements in the administrative, legal, and regulatory functions of the State. Of late, particular emphasis has been placed on the role of the public sector in establishing an “investment climate” conducive to promoting private sector-led investment, growth, and poverty alleviation.

The quality of a country’s investment climate determines the risks and transaction costs of investing in and operating a business. These risks and costs are in turn determined by the legal and regulatory framework, barriers to entry-exit, and conditions prevailing in markets for labor, finance, infrastructure services, and other productive inputs. Essentially, the quality of the investment climate will determine the mobility and speed with which resources can be redeployed from lower to higher productive uses. For this to occur effectively, the nature and degree of competition in markets plays a pivotal role. In this regard, there is significant economic evidence suggesting that private investment has grown faster in countries with better investment climates. Also, economies with competitive domestic markets tend to attract more domestic and foreign direct investment, have higher levels and rates of growth in per capita gross domestic product (GDP), and lower rates of poverty.1

Promoting effective competition is often argued on grounds that it spurs firms to focus on efficiency and improve consumer welfare by offering greater choice of higher-quality products and services at lower prices. However, it also promotes greater accountability and transparency in government-business relations and decision making, and contributes to reducing corruption, lobbying, and rent-seeking behavior. Additionally, by lowering barriers to entry, it provides opportunities for broad-based participation in the economy and for sharing in the benefits of economic growth. Without effective competition, firms are more likely to possess considerable market power, which enables them to earn excess profits and wield political influence to tilt public policy in their favor. There are also likely to be distorted price and profit signals and increased risk of misguided investment and output decisions, which can lead to economy-wide repercussions.

The merits and benefits of fostering open and competitive markets have been recognized in many countries that have adopted various macro- and microeconomic reforms. However, there is wide variation in the economic growth and development of nations. Casual observations indicate that there is also a wide variation in the nature and extent of competition prevailing within and across countries. Moreover, notwithstanding the merits and benefits of competition, there is no consensus or widespread support for promoting competition within and across countries—especially developing nations. This stems in part from the lack of understanding or appreciation of what effective competition can tangibly contribute to the betterment of the lives of ordinary citizens, and in part from ideological differences and the influence wielded by vested interest groups in both government and the economy at large. Although the differences in the economic growth and development of nations cannot purport to be explained by the differences in the prevailing degrees of competition, this paper argues that it is one of the important, if not critical explanatory factors. It is well established that least-developed economies are encumbered by limitations of human and physical capital, governance and institutional structures, and other resource constraints. But they are also prevented from achieving their potential by various types of public policy-based and private sector anticompetitive business practices. The primary message of this paper is that these countries need to take concrete, consistent, and coherent measures to integrate and promote effective competition policy as part of their overall government economic and regulatory framework. An effective competition policy should be viewed as the “fourth cornerstone” of this framework— along with sound monetary, fiscal, and commercial (international trade) policies.

#### Sustainable development defuses a confluence of threats to global security---extinction.

UNSC 17, \*United Nations Security Council, (December 20th, 2017, “Prevention, Development Must Be at Centre of All Efforts Tackling Emerging Complex Threats to International Peace, Secretary-General Tells Security Council”, https://www.un.org/press/en/2017/sc13131.doc.htm)

Prevention, Development Must Be at Centre of All Efforts Tackling Emerging Complex Threats to International Peace, Secretary-General Tells Security Council

Prevention and development must be at the centre of all efforts to address both the quantitative and qualitative changes that were emerging in threats around the world, the Secretary‑General of the United Nations told the Security Council today, as some 60 Member States participated in an all‑day debate tackling complex contemporary challenges to international peace and security.

António Guterres said the perils of nuclear weapons were once again front and centre, with tensions higher than those during the Cold War.  Climate change was a threat multiplier and technology advances had made it easier for extremists to communicate.  Conflicts were longer, with some lasting 20 years on average, and were more complex, with armed and extremist groups linked with each other and with the worldwide threat of terrorism.  Transnational drug smugglers and human traffickers were perpetuating the chaos and preying on refugees and migrants.

The changing nature of conflict meant rethinking approaches that included integrated action, he said, stressing that prevention must be at the centre of all efforts.  Development was one of the best instruments of prevention. The 2030 Agenda for Sustainable Development would help build peaceful societies. Respect for human rights was also essential and there was a need to invest in social cohesion so that all felt they had a stake in society.

He also emphasized that women’s participation was crucial to success, from conflict prevention to peacemaking and sustaining peace.  Where women were in power, societies flourished, he pointed out.  Sexual violence against women, therefore, must be addressed and justice pursued for perpetrators.

Prevention also included preventive diplomacy, he said, noting that the newly established High-level Advisory Board on Mediation had met for the first time.  The concept of human security was a useful frame of reference for that work, as it was people‑centred and holistic and emphasized the need to act early and prioritize the most vulnerable.

“Let us work together to enhance the Council’s focus on emerging situations, expand the toolbox, increase resources for prevention, and be more systematic in avoiding conflict and sustaining peace,” he said, emphasizing the need for Council unity.  Without it, he said, the parties to conflict might take more inflexible and intransigent positions, and the drivers of conflict might push situations to the point of no return.

Japan’s representative, Council President for December, spoke in his national capacity, noting that in the 25 years since the end of the Cold War, there had been a rise in complex contemporary challenges to international peace and security.  That included the proliferation of weapons of mass destruction, the expansion of terrorism, and non‑traditional challenges such as non‑State actors and inter‑State criminal organizations.

While the Council had been tackling those challenges, in most cases through a country or region‑specific context, he stressed that a human security approach was highly relevant when addressing complex contemporary challenges to international peace and security.  Such an approach placed the individual at the centre, based on a cross‑sectoral understanding of insecurities.  It also entailed a broadened understanding of threats and challenges.

In the ensuing debate, speakers emphasized the need to adjust to the changing challenges to international peace and security and welcomed the Secretary General’s reform of the Organization’s security pillar and other initiatives.  Many stressed the need to address root causes of instability and conflict, including climate change, non‑State armed groups, extremism and terrorism, as well as poverty and underdevelopment.

#### Independently, development deflates wars globally.

Cortright 16, \*David Cortright, Director of the Global Policy Initiative; Special Advisor for Policy Studies; Professor Emeritus of the Practice, Kroc Institute for International Peace Studies; (May 18th, 2016, “Linking Development and Peace: The Empirical Evidence”, https://peacepolicy.nd.edu/2016/05/18/linking-development-and-peace-the-empirical-evidence/)

The connections between development and peace are firmly supported by social science research. All the standard indicators of economic development, including per capita income, economic growth rates, levels of trade and investment, and degree of market openness, are significantly correlated with peace. Virtually every study on the causes of war finds a strong connection between low income and the likelihood of armed conflict. Economist Edward Miguel describes this link as “one of the most robust empirical relationships in the economic literature.” Irrespective of all other variables and indicators, poverty as measured by low income bears a strong and statistically significant relationship to increased risk of civil conflict.

No one has made this point more convincingly over the years than Paul Collier. He and his colleagues have shown that civil conflict is heavily concentrated in the poorest countries. The risk of civil war is strongly associated with joblessness, poverty and a general lack of development. They famously [conclude](https://openknowledge.worldbank.org/handle/10986/13938), “The key root cause of conflict is the failure of economic development.” They also make the reverse point. Raising economic growth rates and levels of per capita income may be “the single most important step that can be taken” to reduce the likelihood of armed conflict.

War is reverse development. It undermines economic well-being and reduces income levels. War may bring profit for the few, those ‘masters of war’ as Bob Dylan called them, but it creates economic misery for many. Once started, war becomes a self-sustaining system, an “economy of war” Mary Kaldor calls it in New and Old Wars, a feeding trough for profiteers, warlords and mobsters that becomes exceedingly difficult to stop.

War reduces life expectancy and destroys education and public health systems. It tears apart the social fabric. The [World Development Report 2011](http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf) calculates the cost of a major civil war as equivalent to more than 30 years of typical growth for a medium-size developing country. Trade levels take 20 years to recover. The negative economic impact of conflict helps to explain why countries at war are often caught in a deadly conflict trap, why the chief legacy of a civil war is another war.

#### Specifically, the Middle East---sluggish growth perpetuates proxy conflicts.

Eaton et al. 19, \*Tim Eaton, Senior Research Fellow, Middle East and North Africa Programme; \*Dr Renad Mansour, Senior Research Fellow, Middle East and North Africa Programme; Project Director, Iraq Initiative; \*[Dr Lina Khatib,](https://www.chathamhouse.org/about-us/our-people/lina-khatib) Director, Middle East and North Africa Programme; \*Dr Christine Cheng, Lecturer in War Studies, King's College London; \*Jihad Yazigi, Journalist and Analyst; (February 2019, “Conflict Economies in the Middle East and North Africa”, <https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/1-introduction>)

1. Introduction

The conflicts in Iraq, Libya, Syria and Yemen have killed hundreds of thousands of people and displaced millions. In Iraq, the defeat of Islamic State of Iraq and Syria (ISIS) is unlikely to lead to lasting stability because it does not address fundamental conditions on the ground which allow violent extremist groups to resurge every few years. In Libya’s fragmented political and security environment, a wide range of largely local actors continue to compete violently for influence, as evidenced by the latest major outbreak of fighting around Tripoli. In Syria, ISIS fighters have been forced out of their last enclave in Baghouz, while President Bashar al-Assad consolidates his control over territory in the rest of the country. In Yemen, a precarious ceasefire on the Red Sea coast has led to an intensification of battles between the Houthis and their rivals on other front lines.

Other states within the Middle East and North Africa (MENA) region, along with Western states, have often been active proxy participants in these conflicts, supporting certain groups over others in pursuit of national interests. The impacts have also been felt far beyond MENA borders, as refugees fleeing conflict areas have travelled to Europe and other Western countries, sparking outcry over a supposed ‘migration crisis’ which has in fact been instrumentalized by political actors.

Identity-based discourses

To explain the violence that has struck the region, many scholars, policymakers, journalists and pundits have focused their analysis on ideological and identity-based factors. Developments in Iraq, Syria and Yemen have been viewed predominantly through the lens of ethno-sectarian politics.[10](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-037) In Libya, significant attention has been paid to the development of Islamist and Salafi-jihadi movements since 2011, particularly in policy circles.[11](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-036) In Iraq, the conflict since 2003 has been explained as a sectarian battle between Shia and Sunni Arabs, with the assumption that these identities are easily carved out along ethno-sectarian lines.

Exclusively identity-centric explanations of conflict at times miss important realities on the ground

Such exclusively identity-centric explanations of conflict at times miss important realities on the ground. As the knowledge base around MENA political dynamics has expanded, so too has our common understanding of how ethnic and religious divisions in the region have intersected with other critical factors. This has enabled more accurate and layered analyses.[12](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-035) Chatham House research has sought to broaden policy analysis through its focus on the political economy of the conflicts in question.[13](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-034)

Exploring the political economy of war

Against this backdrop, this report seeks to expand the discourse by analysing economic drivers of conflict in Iraq, Libya, Syria and Yemen. Factors such as rent-seeking, economic coping strategies and local political expediency are key to understanding the civil wars in these countries, yet they tend to be under-emphasized. As the conflicts have progressed, the national and local economies in which they are embedded have likewise evolved.

Over the past several decades, research on the political economy of war has sought to explain the initiation,[14](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-033) duration [15](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-032) and character of war.[16](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-031) Initially, as with the MENA wars of today, the dominant discourse in studies of the 1990s civil wars was identity-centred.[17](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-030) Following ethnic cleansing in the former Yugoslavia, the Rwandan genocide, the end of apartheid in South Africa, and the violence of clan conflicts in Somalia, civil war was viewed largely as a product of group identity.[18](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-029) In contrast, the quantitative study of war economies that subsequently developed in the late 1990s and early 2000s contended that economic motivations – especially in resource-rich areas – rather than group identities provided greater explanatory power for the onset of armed conflict. On the qualitative side, case study research focusing largely on sub-Saharan Africa (and, to a lesser extent, on Latin America and Asia) showed that profit-based incentives are co-mingled with narratives of grievance and embedded in a larger global political economy.[19](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-028) The heart of that debate was about identifying economic self-interest as the main motivation for rebels joining and fighting civil wars.[20](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-027)

More recent work on horizontal inequality has added nuance to these discussions. It has moved beyond a binary ‘greed versus grievance’ distinction to illustrating how group grievances are constructed. Such research seeks to demonstrate empirically how an unequal distribution of power and resources between groups generates conditions for violent mobilization.[21](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-026) More generally, the incorporation of economic motives into analysis of civil war has revealed that members of rebel organizations, militias and paramilitaries have joined[22](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-025) and stayed in such groups[23](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-024) for a variety of reasons, and that the relative weighting of these imperatives can change over time. Individuals may join (or be forced to join) an armed group for one set of reasons, and stay for an entirely different set of reasons.

To date, the ‘political economy of war’ approach has had limited application in analysis of the MENA region.[24](https://www.chathamhouse.org/2019/06/conflict-economies-middle-east-and-north-africa-0/CHHJ6854-War-Economies-190620-1.xhtml#footnote-023) Yet we find that the insights of the literature associated with this approach resonate in each of our four case studies. We show how economic motivations at the individual and group level can offer an alternative or complementary explanation for armed group membership and armed group violence. While some people will fight to promote or defend a particular identity, others fight for economic survival or enrichment. For many more, these motivations are tied together, and separating out ‘greed’ and ‘grievance’ is a difficult, if not impossible, task. By focusing on conflict economies in a localized way, we aim to rebalance how the wars in Iraq, Libya, Syria and Yemen are portrayed and analysed. Even if economic motivations did not spark these wars initially, it is now clear that such motivations play a critical role in the persistence of open fighting, localized violence and coercion.

#### Middle East conflicts escalate to World War III.

Tonhnor 18, \*Author at Proutist Universal; (March 27th, 2018, “A Ticking Time Bomb: Proxy Wars and the Tragedy of the Kurds”, https://prout.info/blog/2018/03/27/a-ticking-time-bomb-proxy-wars-and-the-tragedy-of-the-kurds/)

Since the Arab Spring, the armed conflicts in the Middle East have escalated to a point where they pose the greatest risk to world peace in our times.

While the media is focusing on the threat posed by North Korea due to its nuclear weapons, the chances for an all-out escalation are small, for the reasons I outlined in a previous article. If we accept the premise that Kim Jong-un is a shrewd, calculating politician (and all signs indicates that he is) it does not matter if he is ruthless, cruel, and self-serving. Whatever nuclear arsenal he has, it is just a fraction of one percent of the size of the arsenal of the United States. Hence, he knows that he cannot possibly win a nuclear war with the United States.

By developing proven nuclear capabilities his negotiating power has vastly increased, and insures that nobody can take North Korea lightly. The timing of his recent diplomatic overtures towards South Korea has buttressed this point. He waited until he had proven that he had intercontinental missiles capable of striking the United States. He then turned down his aggressive rhetoric and instead turned up his charm. This is not the act of a madman. It is a clever political game.

Middle East Tinder Box

The situation in the Middle East is not so simple. We are not dealing with one regime in complete control over its armed forces, but rather a host of unstable states and armed groups of a number of persuasions and interests. In addition to this, the two most powerful countries in the world are actively involved in the war on one side or the other. While Russia has combat troops on the ground in Syria, the United States is actively supporting groups that are directly fighting Russian and Syrian government troops.

If we add the powerful regional powers, such as Iran, Israel, Turkey and Saudi Arabia, who all have their own strategic reasons to fight, we have a truly explosive mix. At present there is seemingly no way all parties can be satisfied. The region has become a battle ground for political influence and power.

Even though the conflict started out as a proxy fight, today the main protagonists are directly involved in the war. The United States has since decades had troops in Iraq and Afghanistan, and Russia now has a strong military presence in Syria. Depending on how the situation develops, the United States may increase its number of troops in Iraq, and may even decide to put troops on the ground in Syria to protect its strategic interests.

Most recently Turkey has launched a full scale offensive into Syria, attacking the Kurdish guerrilla fighters which are supported by the United States. This creates an unprecedented situation where two NATO allies are coming in direct military conflict with each other. The long term consequences of this is hard to foresee, but it could potentially destabilize an institution that has been the main military force in Europe since the Second World War.

Why is Turkey so keen on attacking the Kurds? To understand this, we need to take a look back in history.

A Brief History of the Kurds

Like the Rohingya, the Kurds are a people without a country. They emerged as a group in Iran during the Medieval Period, and are presently constituting a sizeable minority in Turkey, Iran, Iraq, and Syria. They have a distinct language that has strong similarities with Persian and Baluchi, suggesting a common ancestry. The first recorded military clash involved Arab Commander Utba ibn Farqad, who in 641 AD conquered a number of Kurdish forts. Since then the Kurds have throughout the centuries participated in many revolts, but although they managed to establish a number of Kurdish Principalities, mainly in the mountains, they never managed to get a state of their own.

Apart from wars, they have also been subjected to massacres, including the Massacre of Ganja in 1606, when all men, women and children of the Sunni Kurdish tribe of Jekirlu were killed.

Kurdish nationalism emerged at the end of the 19thcentury, and since then they have been striving for nationhood. The problem is that the Kurds are not in majority in any country, and to form a nation they would have to carve out a territory from Syria, Iraq, Turkey, Iran, and other nations, and none of these nations would allow something like that to happen. Hence, the Kurds have few friends in the region. Yet the Kurds are a sizeable minority, and so they cannot be ignored either. A minority group of 1% can be marginalized and even exterminated, but with a minority population close to 20% in Iraq, Syria and Turkey, this is not possible to achieve with the Kurds. For example, 19% of the population in Turkey is Kurdish, some 5 million people.

In the past 50 years, the Kurds have been fighting for autonomy and independence. While they managed to create an autonomous region in Northern Iraq, and recently had substantial military success in Syria and managed to carve out a sizeable territory there, they have had little success in Turkey. The Kurdish Workers’ Party, PKK, has for a long time been fighting for autonomy in Turkey, and from 1984 to 1999, and again from 2004 to 2012, the Turkish military engaged in open war with the PKK.

Fearing that the Kurds will use their newly gained territories in Northern Syria as a spring board to launch fresh guerrilla attacks across the border, Turkey has now decided to invade the Kurdish controlled areas of Iraq to create a buffer zone to prevent the PKK to operate from Iraq. This is a serious escalation in the conflict, as it is the first time in recent history a country in the Middle East is directly invading a neighbor state. This is naturally seen as a threat by the Syrian regime, so while fighting the Kurdish forces in other places, they have tacitly allowed the Kurdish YPG (“People’s Protection Unit”) to pass through government controlled areas to resupply the areas attacked by Turkey. It seems everyone is fighting everyone and nobody really knows who is an enemy and who is a friend.

Western Support for the Kurds

While the vast majority of Kurds are Sunni Muslims, there are also Shiites, Christians and even Jews among them. They are one of the few cultural groups in the Middle East which practice religious tolerance. For example, the Kurdish Regional Government in Northern Iraq rejected Islamic teachers from Bagdad, and declared that their schools should be religiously neutral. The bonds that keep the Kurdish nation together is cultural, and not religious. The Kurds have all the hallmarks of a distinct Samaj.

Kurdish women have generally a better standing in society than that of other women in the Middle East. They have actively taken part in both political and military struggles. ISIS fear the female Peshmerga and the YPJ (“Women’s Protection Force”) forces more than any other enemy, since being killed by a woman would send their souls to hell!

These characteristics have made them the ‘ideal’ partner for the Unites States. The civil war in Syria, has enabled the Kurds to capture much territory, and their clear intention is to hold on to it and create a Kurdish nation.

Unfortunately for the Kurds, the support from the West is purely tactical, and probably none of the Western powers would be happy to see the emergence of a Kurdish nation. A Kurdish nation would be fiercely opposed by all countries in the Middle East that have Kurdish minorities, and the West could politically not afford to back such a scenario.

The Endgame

While we can hope that the conflict is localized to the Middle East, there is no guarantee that it will not escalate to a worldwide conflict. But even in a best case scenario, the suffering in the region is far from over and millions more will die or be made refugees before it will get any better.

#### The plan solves---reinvigorating antitrust enforcement in the Middle East unlocks sweeping economic improvements.

World Bank 19, \*World Bank is an international financial institution that provides loans and grants to the governments of low- and middle-income countries for the purpose of pursuing capital projects; (October 2019, “Reaching New Heights: Promoting Fair Competition in the Middle East and North Africa”, https://thedocs.worldbank.org/en/doc/660811570642119982-0280022019/original/ENMEMReachingNewHeightsOCT19.pdf)

1A. Making MENA Markets Competitive10

Economies in the Middle East and North Africa (MENA) have two faces. One is the concentrated and sclerotic formal sector, often dominated by state-owned enterprises (SOEs) and politically connected private companies. That economy keeps out competitors, misallocates resources, and generates excessive profits for participants. The official economy coexists with an informal economy in which most of the population toils in relatively small operations at low wages and with few social protections.11

A powerful way to invigorate MENA economies would be to inject more competition. That would create a more efficient official economy and reduce informality.

Economists suggest that competition is a powerful tool for ensuring that resources are used in the best way that is technologically feasible—minimizing costs (and therefore prices) and helping ensure that goods and services are provided in the amount and variety consumers desire. As firms compete against each other to make a profit, they have an incentive to invest in research and development to improve the production of existing goods and services and to introduce new ones12. More competition also leads to higher growth in output per worker (productivity) and therefore is a key ingredient in long-run sustainable development13.

Market entry by new firms and the exit of inefficient companies are potent sources of competition. But in the MENA region there are often sizeable barriers that prevent new firms from entering existing markets and protections for inefficient ones. Ease of entry and exit is what determines contestability, and it is the result of the interplay between the available production technology and the regulatory framework in place.

Moreover, when state-owned enterprises (SOEs) are present, it is fundamental that they do not benefit from any type of advantage over their private competitors—whether by obtaining specific inputs (physical or financial) or by receiving easier market access. In brief, the institutional framework must be geared towards the principle of competitive neutrality—that all enterprises face the same set of rules whether they are public or private and that government involvement or ownership of a firm confers no special advantage.

Competition and contestability are essential to creating economic opportunity, which allows workers to help shape their destiny through personal initiative. Competition also increases the purchasing power of incomes, because firms find it harder to set prices above cost. Moreover, these effects are reinforced through cost-reducing technological progress and firm turnover, which allows the most productive firms to survive14. The overall effect is that competition can be an antidote to inequality15. As Eleanor Fox put it: “Markets empower people to help themselves. Markets and access to markets stand side by side with food, health, shelter, education, environment, infrastructure, and institutions as critical tools to combat the world’s greatest economic deprivations”16. But, as the father of modern economics, Adam Smith, recognized in The Wealth of Nations, a well-functioning competitive process cannot be taken for granted17.

That means countries must undertake policies that foster competition. Those policies include an effective antitrust law that keeps in check restrictive practices of the private sector and of government interventions to preserve a level playing field—which means that any regulation that distorts markets in pursuit of the general interest18 should not create any unnecessary barriers. But it also means that when state owned enterprises (SOEs) are present or subsidy programs are involved, competitive neutrality should be ensured for all market participants (see Figure II.1).

In 1890, the United States recognized that legislation was needed to preserve and nurture competitive forces by passing the Sherman Act. The law was a reaction to the dangerous concentration of economic and political power in large companies and trusts that characterized the so-called Gilded Age19. Since then, almost every country has adopted some form of competition law, with a substantial acceleration during the past few decades20.

In the MENA region, four countries lack antitrust legislation—Iran, Lebanon, Libya and West Bank and Gaza–while Bahrain and Iraq have no competition authority to enforce their law (see Table II.1).

Extensive information exists about the competition frameworks of seven MENA countries—Algeria, Egypt, Jordan, Kuwait, Morocco, Oman, and Tunisia21. The evidence shows that they lack key elements of effective regimes, placing substantial costs on their economies. In addition, weak enforcement is a major problem. Its importance is demonstrated by the increase in the value of the divested assets that followed successes in breaking up market concentration.

The breakup of Standard Oil in the United States is a vivid example. When the U.S. government sued Standard Oil in 1906, the company controlled more than 90 percent of U.S. oil refining. After the courts broke Standard Oil into 34 entities in 1911, their combined stock value increased so rapidly that a few years later it was five times higher22. Such an experience is relevant for the MENA countries, where many economic sectors are dominated by few companies even though there are no technological reasons for such a level of market concentration. A striking example is exclusive import licensing for goods for which countries are not self-sufficient (see Box II.1).

Moreover, strong antitrust action can unleash substantial technological advancement, as suggested by two landmark U.S. cases—against IBM and Microsoft 23. The IBM case effectively opened the software industry by forcing IBM to stop selling computers and software as a package.24 The Microsoft case in 2001 likely kept the Seattle-based giant from trying to monopolize the nascent new economy by preemptively crushing companies such as Amazon, Facebook and Google (as it did to the competing web-browser Netscape, which sparked the antitrust action).

Lack of contestability in MENA is arguably a main culprit in the slow pace of technology adoption that has historically characterized the region, which significantly hurt its growth performance. Without substantial reforms to encourage competition, MENA countries risk missing the opportunities offered by digitization and the so-called Fourth Industrial Revolution (See Box II.2).

#### Lax cartel enforcement devastates Latin American development---supplanting competition law solves.

World Bank 21, \*World Bank is an international financial institution that provides loans and grants to the governments of low- and middle-income countries for the purpose of pursuing capital projects; (2021, “FIXING MARKETS, NOT PRICES”, <https://openknowledge.worldbank.org/bitstream/handle/10986/35985/Fixing-Markets-Not-Prices-Policy-Options-to-Tackle-Economic-Cartels-in-Latin-America-and-the-Caribbean.pdf?sequence=1&isAllowed=y>) //rhetoric modified

Cartels in LAC have affected hundreds of markets and the large majority went undetected22

Over the last 4 decades, more than 300 economic cartels have been revealed - mostly in markets that provide key inputs to firms or essential goods to families. Between 1980 and 2020, in over 300 incidences, firms supplying markets as critical as milk, sugar, poultry, transport, energy and medicines chose to jointly fix higher prices, restrict total production, divide or share markets, rig bids, or obstruct the entry of new competitors – that is, to create economic cartels. Instead of vying for consumers with better deals and higher quality, more than 2,500 firms and 153 trade associations engaged in these agreements in 19 different sectors.

Cartels affect important markets with large market players. Previous evidence of international cartels from 1990 to 2007 suggests that between USD 150 and 200 billion worth of sales in LAC were affected by discovered cartels, and consumers in this region paid overcharges of at least USD 35 billion from 1990 to 2007 (Ivaldi, Julien, Rey, Seabright, & Tirole, 2003).23 Based on newly available information, 89 of the firms that formed cartels in LAC had total revenues of USD 81 billion in 2019, equivalent to what would constitute the 8th largest GDP in LAC.24

The cartel activity revealed so far affects a significant share of the economy. Evidence based on a selected number of cartels in developing economies between 1995 and 2013 shows that affected sales of cartel members related to GDP at a given point in time reaches up to 6.4 percent. As much as 3.4-8.4 percent of imports in ~~developing~~ [Global South] countries may be affected by cartel agreements (Levenstein, Suslow, & Oswald, 2003). New evidence for LAC now reveals that the Competition Watchdog in El Salvador, even with limited cartel enforcement trajectory, has detected 7 cartels that affected sales in the amount to 0.4 to 0.8 percent of GDP between 2006 and 2011. This does not even take into account that some of the cartel agreements occurred at the upstream level and may have also affected the downstream industries (such as in the case of wheat and bread).

The true pervasiveness of economic cartel activity is at least tenfold. While over 300 cartels have been detected and dismantled by respective authorities in LAC, studies from advanced economies show that even mature competition authorities only detect between 10 and 20 percent of cartel activity (See Box 1). Given the incipient status or even entire lack of cartel enforcement in most parts of LAC, the extent to which consumers and businesses are affected is likely manifold. For example, of at least 84 large global cartels that were shown to fix prices in LAC at some point between 1990 and 2007, only four were investigated by authorities in this region (Connor, 2008).

Detection rates of cartel activity in LAC may be particularly low in some sectors, such as the financial sector. In the European Union (EU), 28 percent of cases against anti-competitive practices between 2013 and 2017 targeted the financial sector and revealed several high-profile price-fixing agreements in markets such as financial derivative products linked to the Euro Interbank Offered Rate (EURIBOR), Japanese Yen LIBOR, Swiss Franc IRDs and future Swiss Franc LIBOR. However, only one of seven mature competition authorities in LAC have opened antitrust investigations in the banking sector, and only one of them related to cartel activity: Mexico detected and fined agreements to manipulate sovereign bond prices (WBG, 2020). In Colombia, 2 banking associations, 14 banks and 2 payment systems network providers entered into commitments with the competition authority to end an investigation regarding an agreement among banks to fix interchange fees.2

Cartels hurt the poor, stifle growth and limit policy effectiveness

Cartels are particularly harmful for economic development objectives: By eliminating competition among firms, they lose incentives to innovate, and charge higher prices. These consequences disproportionately and directly affect the poorest households. Cartels limit growth by affecting productivity and competitiveness. Finally, cartels undermine effectiveness of public policies. Benefits of trade liberalization do not materialize when firms collude across borders or agree to block imports. Governments can procure fewer public goods and services (medicine, public works, school supplies, etc.) when procurement processes are rigged. The following section will briefly discuss the existing evidence and new insights from the novel data on LAC.

Economic cartels affect the poor. Cartels disproportionally affect poor households because they are common in markets affecting products in the basic consumption basket. At least 21 percent of the cartels detected involved basic consumption products such as sugar, toilet paper, wheat, poultry, milk, and medicines.26 Global estimates suggest consumers pay on average 49 percent more when buying from cartels, and 80 percent more when cartels are stronger.27 In LAC, in 65 percent of cartels detected over the last decades with information available on prices charged, consumers experienced overcharges ranging between 5-25 percent and in at least 4 percent of the cases, consumers had to pay as much as twice for the products and services. A simple comparison of public expenditure efficiency from South Africa suggests that public resources spent on cartel enforcement would be 38 times more effective in tackling poverty than cash transfers, when considering that part of the cash transferred to eligible household is spent on overcharges for basic food items (Purfield, et al., 2016).

Collusive agreements lower economic growth prospects by depressing productivity growth and reducing competitiveness. First, agreements among competitors to limit competition affect productivity. The introduction of anti-cartel policy is related to higher labor productivity growth in industries affected by collusive behavior, which otherwise record a 20 to 30 p.p. lower labor productivity growth (than industries without cartels) (OECD, 2014). Evidence from a 40-year long cartel in the United States suggests that quantity-productivity declined by 22 percent (Bridgman, Qi, & Schmitz Jr, 2009). Systematically allowing for cartel activity can further curb total productivity growth across the economy (Petit, Kemp, & Van Sinderen, 2015). Second, cartels distort important markets in LAC’s value chains. 34 percent of collusive agreements detected occurred in the manufacturing sector (Figure 1). Another 15 percent of cartels affected wholesale and retail trade activities transportation activities, respectively.28 Within the manufacturing sector, cartels across LAC region are particularly frequent in the meat processing activity in Brazil, Chile, and Panama, and in the manufacturing of basic chemicals in Argentina, Brazil, Colombia, Panama, and Peru.29 Within the wholesale and retail trade sector, trade of pharmaceutical goods are also found in Brazil, Chile, Honduras and El Salvador. In the transport sector, Chile fined six shipping lines with USD 95 million for colluding in multiple tender processes for providing maritime transport services to manufacturers and consignees of various car brands imported to Chile beginning in 2000. Mexico sanctioned seven shipping lines for engaging in nine collusive agreements and segmenting the car transport market into different routes between 2009 and 2012. Some of the sanctioned firms were also investigated in Chile and Peru (WBG-USAID, 2018) .

Cartel agreements undermine the benefits of trade opening and liberalization. In the Pacific Alliance30 – the group of countries with the lowest trade barriers in the region – at least 67 cartels were detected in sectors generally considered tradable, and a third of those operated in the market for more than 5 years. Even though Colombia is an open market economy, sugar traders from the region were able to sell in Colombian markets only after a decade-long cartel agreement by domestic sugar mills was broken up in 2015: 12 mills had been explicitly coordinating to obstruct sugar imports.31 Import competition does not preclude the formation of cartels in tradable goods. Such agreements can operate at the regional or even global level: In Chile, Peru, and Colombia, three international firms jointly raised prices for toilet paper by up to 30 percent for over 10 years (Dinamo, 2015). In smaller LAC economies, where connectivity issues are central to economic growth, such as those of the Caribbean Community (CARICOM), cartels have also been uncovered, for example in shipping services.32

When cartels raise prices, the state can provide fewer public goods and services and cartels can even distort the market of government bonds. At least one in four cartels formed among firms participating in government procurement process. In such cases, taxpayers bear the burden of the overcharges. In Peru, between 2010 and 2012, 31 providers of hemodialysis services rigged the bids by abstaining from participating in public tenders called by one of the Peruvian public healthcare administrators with the objective of increasing reference prices in subsequent tenders. This led to overcharges in each tender of approximately over USD 10 million.33 Similarly in 2014, Peru sanctioned an engineer’s cartel that affected public-construction contracts worth USD50 million which had been designated for the expansion of the public highway network34 (Martinez Licetti & Goodwin, 2015). In Mexico, seven banks entered into at least 142 agreements to manipulate the price of the Mexican sovereign bond market between 2010 and 2013 by limiting sales and acquisitions of bonds with losses to the market of over USD 1.443 million.35 In Colombia, the government and ultimately the taxpayers incurred in losses of at least USD 11 million for the overcharges paid in the construction of a major highway (Ruta del Sol II), due to an anticompetitive agreement that favored a particular group of firms in the concession process.36

Recent developments in LAC also suggest that economic cartels undermine public trust in market economies. In 2016, 73 percent of the population in Chile considered collusion to be a reproachable conduct, even more reproachable than violations of labor laws.37 This sentiment was preceded by several years of successful breakups of cartels, and a historic confirmation by the Supreme Court of the decision to fine a group of poultry producers for having agreed to limit output. The protests in 2019 were partly motivated by discontent with the private sector (Freire, 2020) . As part of the government’s response in form of an “anti-abuse agenda”, the executive submitted four bills to Congress in March 2020 aiming at increased enforcement of the laws against white collar crimes, including cartels.

On the upside, consumers and businesses benefit from effective anti-cartel enforcement. For example, so-called leniency programs – which offer firms the possibility to come clean about their involvement in cartel conduct in exchange for immunity or reduction of financial penalties - (and as we will see later) render any agreement less stable, because any member of the cartel has incentives to break out and report the cartel. Thus, these programs shorten the duration of harmful cartels and can even reduce the level of anti-competitive overcharges by cartels.38 Miller (2009) finds empirical support for these effects: the leniency program in the United States increased the rate of cartel detection by 62 percent and reduced the rate of cartel formation by 59 percent. Yusupova (2013) also finds that the 2009 revision of the Russian leniency program was effective in reducing the size and duration of cartels. Choi & Hahn (2014) show that the leniency program in Korea shortened cartel duration. Leniency programs can also speed up the process of breaking up cartels. Brener (2009) demonstrates how leniency reduces the average sanctioning process by 1.5 years on average. In Europe, nearly 60 percent of detected cartels are discovered through leniency (Jaspers, 2020). Overall, leniency programs can have significant effects on competition intensity. Klein (2011) revises data from 23 OECD countries and finds that leniency policies were associated with a decrease in the industry-level price-cost margin of 3 to 5 percent.

However, many LAC countries do not have any tools to deter and prevent economic cartels. 28 percent of countries in the region do not have an operational competition legal framework. In only 5 out of 15 countries where the legal framework is in place, there are effective anti-cartel enforcement tools.

#### LAC economic volatility causes democratic erosion and backsliding.

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Introduction

Latin America is experiencing one of the most difficult moments in its recent history as it confronts three overlapping crises: the coronavirus pandemic, a steep economic contraction, and high levels of political polarization and democratic erosion. No region has been more impacted by COVID-19, the disease caused by the coronavirus, than Latin America, both in human and economic terms.1 As of April 30, 2021, Latin America had a total of 28 million confirmed cases (out of a world total of 150 million) and just over 900,000 deaths (out of a world total of just over 3 million). With around 8 percent of the world’s population, the region has almost 19 percent of confirmed cases and 28 percent of total deaths. Also, as of April 30, Latin America had administered only 8 percent of the total vaccines.2

The economic impact has been equally devastating. The World Bank estimates that in 2020, 53 million Latin Americans saw their income fall below the region’s poverty line of $5.50 per day, pushing up the percentage of those living in poverty to an estimated 37.7 percent—a level not seen since 2006.3 According to the United Nations (UN) Economic Commission for Latin America and the Caribbean, Latin America is suffering its worst economic crisis in 120 years, with gross domestic product (GDP) having declined by a staggering 9.1 percent in 2020, eliminating most of the progress made during the commodity boom years (2003–2013). As might be expected, governments across the region are grappling with serious fiscal limitations and seem hard pressed to offer even basic responses to their population’s significant needs.4 All the while, a toxic mix of insecurity and pervasive social turmoil is undermining ~~[crippling]~~ most countries. As if this were not enough, the region faces what is arguably the most acute migration crisis of its history, with the exodus in recent years of more than 5 million Venezuelans.5

Several reasons explain why the region was hit so hard by the pandemic. First, even before the pandemic began, Latin America was economically vulnerable. Between 2014 and 2019, the region’s GDP per capita shrank 4 percent, largely as a result of significant declines in commodity prices.6 As part of these economic difficulties, chronic underinvestment in public health limited most countries’ capacity to treat COVID-19 patients, especially during the most acute periods of the disease. In addition, fiscal constraints limited governments’ ability to provide emergency cash-transfer payments to the poorest in their societies. Labor productivity and the job market were also hit hard by lockdown orders and workplace closures: only about 20 percent of existing jobs in Latin America could be performed remotely, compared to 40 percent in advanced economies and 26 percent in the rest of the emerging world.7

Second, the region entered the pandemic in a politically vulnerable condition. Throughout 2019, large-scale protests rocked Bolivia, Chile, Colombia, Ecuador, Haiti, and Venezuela, creating one of the most politically volatile years in memory.8 In most cases, social turmoil stemmed from popular frustration with low-quality public services, socioeconomic inequality, and detached political elites. Many people who joined Latin America’s new middle class during the commodity boom of the 2000s slid back into poverty during the 2010s, and faced the realization that both they and their children are unlikely to escape poverty for many years to come. Popular demands for economic justice and support became more intense and difficult for governments to satisfy, creating openings for radical antiestablishment figures to come to power, like President Jair Bolsonaro in Brazil or President Nayib Bukele in El Salvador.

Finally, the region is beset by severe political polarization and democratic backsliding.9 In Mexico, President Andrés Manuel López Obrador is undermining democracy by seeking to concentrate power in an already strong executive.10 In Nicaragua, the increasingly authoritarian administration of President Daniel Ortega has pushed through new laws to name “traitors” and to pressure media and human rights groups opposing his grip on power. At the time of writing, there have been twelve opponents detained since June 2.11 In El Salvador, Bukele has enacted a series of controversial policies that many observers believe represent a serious threat to democracy. Neighboring Honduras is not faring much better, as an inflammable mix of corruption, violence, and authoritarianism under President Orlando Hernández is generating massive outmigration. Ecuador recently has seen widespread discontent, while Peru witnessed massive protests and instability following the legislature’s ousting of caretaker President Martín Vizcarra in 2020.

Another regional trend, present in both Ecuador and Peru as well as in other countries, has been the acute fragmentation of political parties, which has made governance exceedingly difficult.12 Colombia is in the midst of a serious crisis with widespread protests and a resurgence of politically driven violence, with one social leader killed every forty-one hours.13 Argentina’s economy has hit rock bottom as its government aims to reach a deal with the International Monetary Fund while tackling high inflation rates. Following former U.S. president Donald Trump’s playbook, Brazil’s right-wing Bolsonaro continuously glorifies dictatorship and tests the resilience of Brazil’s democratic institutions. In May 2020, for instance, Bolsonaro, while facing allegations that he tried to meddle with law enforcement for personal reasons, had to be convinced by generals to not ask soldiers to close the Supreme Court.14 Chile, once regarded as one of the region’s few bright spots due to its economic growth and political stability, also has witnessed massive demonstrations and violent riots against the establishment. It now has the daunting task of attempting to design a new constitution even as it struggles to respond to the pandemic and undertake a rapid vaccination program to protect its citizens.

Given this complex set of interlinked social, economic, and political crises, Latin American governments and nongovernmental actors urgently need to work together to address collective challenges. The events of recent decades have shown that unless better regional mechanisms can be found, transnational and even domestic problems—from organized crime and environmental degradation to migration and lackluster economic growth—will become even more difficult to address, with potentially devastating long-term consequences. Yet traditional regional governance mechanisms seem paralyzed, lacking even the capacity to discuss the current untenable situation, let alone address it. The popular narrative is that regional cooperation across Latin America is practically nonexistent because its heads of states have insurmountable ideological differences and because the region’s dominant diplomatic institutions have failed to fulfill their purpose. In addition, domestic turmoil is fueling rising isolationism and “antiglobalism,” most prominently in Brazil. Such a pessimistic view, however, stifles any capacity to reimagine regional cooperation. The dramatic crisis in Latin America requires more creative thinking, not less, about ways to promote renewed channels for regional cooperation.15

#### Regional democratic backsliding enable Russia and China to spread authoritarianism globally.

Brands 19, \*Hal Brands, Henry Kissinger Distinguished Professor at Johns Hopkins University’s School of Advanced International Studies, and a scholar at the American Enterprise Institute; (February 10th, 2019, “South America Is a Battlefield in the New Cold War”, https://www.bloomberg.com/opinion/articles/2019-02-10/venezuela-crisis-south-america-is-a-battlefield-in-the-new-cold)

By the early 2000s, however, the climate was shifting. First came a new generation of leaders who viewed neoliberal economics as the source of the region’s persistent poverty and inequality. Governments led by the likes of Chávez in Venezuela, Evo Morales in Bolivia and Rafael Correa in Ecuador coupled populist political appeals and economic programs with a penchant for illiberalism and, in some cases, outright authoritarianism. They challenged the U.S. diplomatically and rhetorically, while establishing close ties with Cuba. This created a bloc of regional actors that opposed American power — just as outside actors were beginning to assert, or reassert, their own influence in the region.

China's Big Business in America's Backyard

As China’s economy has boomed over the last two decades, its presence in Latin America has grown as well. Chinese trade and investment has surged nearly everywhere, not just countries run by radical populists. Chinese commerce and loans have provided a lifeline to illiberal rulers such as Chávez and now Maduro by reducing their vulnerability to U.S. and Western pressure. Chinese military engagement followed, creating fears that Beijing may be trying to establish a strategic foothold in the Western Hemisphere. Although aspects of China’s relationship with Latin American countries remain controversial — some Chinese infrastructure projects have been criticized because they often employ Chinese rather than Latin American workers, for instance — Beijing has undoubtedly become a player in the Western Hemisphere.

Russia has provided economic and diplomatic support to Chavez, Maduro and other autocratic rulers such as Nicaragua’s Daniel Ortega. It has sold jets, tanks and other weapons to populist governments, and resumed providing military technology and oil to Cuba. Much to the concern of the U.S. government, the Kremlin has also been working to establish a significant intelligence presence in Nicaragua. As the Carnegie Endowment for International Peace observes, “Moscow’s approach to Latin America today echoes Soviet outreach in the 1960s through 1980s.”

Russian and Chinese relations with Latin American countries are often described as simply transactional, and it is true that both Moscow and Beijing can drive hard bargains for their support. One price of Russia’s continued backing of the Maduro regime has been a significant ownership stake in the Venezuelan oil industry. China, too, has seen Venezuela as an energy source, and its economic growth would have driven enhanced involvement in Latin America even in the absence of any geopolitical design.

But for both countries, that involvement also has a deeply competitive logic. Reaching into Latin America is a way of keeping the U.S. off-balance by exerting influence in Washington’s “near abroad.” It helps augment Beijing’s and Moscow’s global influence and stature at a time of intensifying rivalry with Washington. Finally, supporting autocratic regimes such as those in Caracas and Managua — whether quietly, as in China’s case, or more vocally, as in Russia’s — is a way of making sure that the world remains ideologically safe for authoritarianism in Beijing and Moscow, as well.

All this constitutes the backdrop to the Venezuelan crisis. The growth of Russian and Chinese influence in Latin America broadly, and Venezuela specifically, is a key reason the Trump administration has so uncharacteristically taken up the banner of human rights and democracy. By imposing harsh economic sanctions, calling for the military to desert Maduro, and backing the political opposition led by the Juan Guiadó, the Trump administration is seeking to deprive Moscow, Beijing and Havana of a critical partner in Latin America. And while Russia and China have responded very differently to this crisis, both are working, in their own ways, to protect that partner.

#### Democratic failure cascades and causes nuclear war.

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

### 1AC---Resource Cartels

#### Advantage 2 is Resource Cartels:

#### International cartels devastate competition in metals and minerals markets.

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Private companies’ attempts to manipulate prices and supply nevertheless remain a significant threat to metals markets, even if they tend to take more subtle forms than in the past. There were at least 15 cases where anti-trust authorities uncovered and punished attempts to form clandestine international private cartels in mining and primary metals between 2000 and 2010.33 Given that such ‘private international hardcore cartels’ present the most extreme form of anti-competitive practices – and that cartel members will make considerable efforts to conceal them – they could be the tip of the iceberg of manipulative practices in the sector.

#### That undermines efficiency innovations necessary to relieve stress on the environment and global resource production.

Kooroshy et al. 14, \*Jaakko Kooroshy was a Research Fellow in the Energy, Environment and Resources Department; \*Felix Preston is a Senior Research Fellow in the Energy, Environment and Resources Department; \*Siân Bradley is a Research Associate in the Energy, Environment and Resources Department; (December 2014, “Cartels and Competition in Minerals Markets: Challenges for Global Governance”, https://www.chathamhouse.org/sites/default/files/field/field\_document/20141219CartelsCompetitionMineralsMarketsKooroshyPrestonBradleyFinal.pdf)

Introduction

Global prosperity and security depend upon more efficient, sustainable and equitable consumption of key resources. The current outlook is one of volatility and continued pressure on global resource production systems, mounting environmental stress and potential political clashes over resource access. Looking to make the most of their natural endowments, many producer countries have also intervened more actively into markets, spurring debates about rising resource nationalism and a ‘new mercantilism’.7

International commerce is becoming a front line for such tensions over resources – at a time when the global economy is more dependent than ever on global markets and integrated supply chains. New actors, such as sovereign wealth funds and state-owned enterprises, and tightening links between physical and complex financial markets, further complicate the picture.

Policy debates on natural resources have often focused on energy, food and water, but metals and minerals are also vital for economic competitiveness and development. Large volumes are needed by emerging economies such as China and India for infrastructure, construction and industrial development. Equally, manufacturing sectors in advanced economies such as Germany and Japan depend on access to metals and mineral markets. Detailed data for Germany show that raw materials and components account for 30–60% of manufacturers’ production costs, while energy costs are typically below 10%.8

Metals and minerals have perhaps received less attention than other types of resources because price swings or supply disruptions have little immediate or obvious impact on individual consumers. But attempts to manipulate prices, restrict supplies or carve up international markets for metals and minerals can cause direct and indirect welfare losses for consuming industries. In many cases, these are ultimately passed down the supply chain to consumers around the world.

Such distortions can be considerable, as recent examples demonstrate. Companies that consume aluminium have calculated that artificial constraints on warehousing deliveries on the LME cost them at least $3bn a year.9 The moratoria on iron ore exports imposed by two Indian states to combat illegal mining in 2010 may have added as much as $40 per tonne, or more than 25%, to the price of iron ore in global markets.10 For European and Japanese steelmakers respectively, this could equate to a $5bn difference in the costs of raw material imports per year. For China, the impact could have been as large as $30bn per year.11

It is not only heavy industries or construction that depend on secure supplies; many of the technologies needed to unlock a resource efficiency revolution, advance low-carbon energy and boost food security also depend on the availability and affordability of minerals.12 Potash-based fertilizers could make an important contribution to closing yield gaps in many developing countries, but are often not affordable for low-income farmers. In the second half of 2013, potash prices dropped by over 20% when one of the two export cartels that control global supplies broke down. Speciality metals and minerals such as lithium, flake graphite and rare earths play a growing role for resource-efficient and low-carbon technologies.13 Price spikes and supply security concerns for these raw materials, some of which relate to export restrictions or other anti-competitive practices, can slow the diffusion of best-available technology, e.g. for electric vehicles or wind turbines.14

Allegations over anti-competitive activities in metals markets also have the potential to spill over into broader trade and diplomatic tensions between consumer and producer countries. International coordination mechanisms that exist for other types of resources (e.g. the International Energy Agency (IEA) for energy and Agricultural Market Information System (AMIS) for food) and that could help to defuse such tensions are largely absent for metals and minerals. For example, forming export cartels is still not illegal in most parts of the world, including the US, the EU, China and Japan, and the WTO framework lacks effective mechanisms to deal with cartel-like structures.15

Meanwhile, national authorities face the challenge of regulating supply chains that stretch across continents, where unclear jurisdiction, lack of coordination among regulators and poor data availability often give potential offenders the advantage.

The purpose of this research paper is to identify and analyse the key policy challenges associated with anti-competitive practices in international metals and minerals markets. Such anti-competitive practices include producer-country cartels in the traditional sense, like the Organization of the Petroleum Exporting Countries (OPEC) but also other major sources of market distortions, including clandestine private cartels, unilateral export restrictions and more sophisticated forms of manipulation of physical and associated financial markets, e.g. through warehousing practices. In particular, the paper will address the following questions:

#### Climate-driven resource shocks cause extinction.

Klare 13, \*Michael T. Klare, The Nation’s defense correspondent, is professor emeritus of peace and world-security studies at Hampshire College and senior visiting fellow at the Arms Control Association in Washington, D.C.; (April 22nd, 2013, “How Resource Scarcity and Climate Change Could Produce a Global Explosion”, https://www.thenation.com/article/archive/how-resource-scarcity-and-climate-change-could-produce-global-explosion/)

It is safe to assume that climate change, especially when combined with growing supply shortages, will result in a significant reduction in the planet’s vital resources, augmenting the kinds of pressures that have historically led to conflict, even under better circumstances. In this way, according to the Chatham House report, climate change is best understood as a “threat multiplier…a key factor exacerbating existing resource vulnerability” in states already prone to such disorders.

Like [other experts](http://www.guardian.co.uk/global-development/2013/apr/13/climate-change-millions-starvation-scientists) on the subject, Chatham House’s analysts claim, for example, that climate change will reduce crop output in many areas, sending global food prices soaring and triggering unrest among those already pushed to the limit under existing conditions. “Increased frequency and severity of extreme weather events, such as droughts, heat waves and floods, will also result in much larger and frequent local harvest shocks around the world….These shocks will affect global food prices whenever key centers of agricultural production area are hit—further amplifying global food price volatility.” This, in turn, will increase the likelihood of civil unrest.

When, for instance, a [brutal heat wave](http://www.bbc.co.uk/news/business-10977955) decimated Russia’s wheat crop during the summer of 2010, the global price of wheat (and so of that staple of life, [bread](http://www.tomdispatch.com/archive/175419)) began an inexorable upward climb, reaching particularly high levels in North Africa and the Middle East. With local governments unwilling or unable to help desperate populations, anger over impossible-to-afford food merged with resentment toward autocratic regimes to trigger the massive popular outburst we know as the Arab Spring.

Many such explosions are likely in the future, Chatham House suggests, if current trends continue as climate change and resource scarcity meld into a single reality in our world. A single provocative question from that group should haunt us all: “Are we on the cusp of a new world order dominated by struggles over access to affordable resources?”

For the US intelligence community, which appears to have been influenced by the report, the response was blunt. In March, for the first time, Director of National Intelligence James R. Clapper [listed](http://www.upi.com/Top_News/US/2013/03/13/Official-US-faces-diverse-threats/UPI-15151363156505/) “competition and scarcity involving natural resources” as a national security threat on a par with global terrorism, cyberwar and nuclear proliferation.

“Many countries important to the United States are vulnerable to natural resource shocks that degrade economic development, frustrate attempts to democratize, raise the risk of regime-threatening instability, and aggravate regional tensions,” he wrote in his [prepared statement](http://www.dni.gov/index.php/newsroom/testimonies) for the Senate Select Committee on Intelligence. “Extreme weather events (floods, droughts, heat waves) will increasingly disrupt food and energy markets, exacerbating state weakness, forcing human migrations, and triggering riots, civil disobedience, and vandalism.”

There was a new phrase embedded in his comments: “resource shocks.” It catches something of the world we’re barreling toward, and the language is striking for an intelligence community that, like the government it serves, has largely played down or ignored the dangers of climate change. For the first time, senior government analysts may be coming to appreciate what energy experts, resource analysts and scientists have long been warning about: the unbridled consumption of the world’s natural resources, combined with the advent of extreme climate change, could produce a global explosion of human chaos and conflict. We are now heading directly into a resource-shock world.

#### And, international ag cartels dominate the industrial food chain, hammering global food security.

ETC 13, \*ETC, Action Group on Erosion, Technology and Concentration, staff and board members come from a variety of backgrounds, including community and regional planning, ecology and evolutionary biology, and political science; (September 2013, “Putting the Cartel before the Horse ...and Farm, Seeds, Soil, Peasants, etc.”, https://www.etcgroup.org/sites/www.etcgroup.org/files/CartelBeforeHorse11Sep2013.pdf)

Introduction: 3 Messages

ETC Group has been monitoring the power and global reach of agro-industrial corporations for several decades – including the increasingly consolidated control of agricultural inputs for the industrial food chain: proprietary seeds and livestock genetics, chemical pesticides and fertilizers and animal pharmaceuticals. Collectively, these inputs are the chemical and biological engines that drive industrial agriculture.

This update documents the continuing concentration (surprise, surprise), but it also brings us to three conclusions important to both peasant producers and policymakers…

1. Cartels are commonplace. Regulators have lost sight of the well-accepted economic principle that the market is neither free nor healthy whenever 4 companies control more than 50% of sales in any commercial sector. In this report, we show that the 4 firms / 50% line in the sand has been substantially surpassed by all but the complex fertilizer sector. Four firms control 58.2% of seeds; 61.9% of agrochemicals; 24.3% of fertilizers; 53.4% of animal pharmaceuticals; and, in livestock genetics, 97% of poultry and two-thirds of swine and cattle research. More disturbingly, the oligopoly paradigm has moved beyond individual sectors to the entire food system: the same six multinationals control 75% of all private sector plant breeding research; 60% of the commercial seed market and 76% of global agrochemical sales.1 Some also have links to animal pharmaceuticals. This creates a vulnerability in the world food system that we have not seen since the founding of the UN Food and Agriculture Organization. It’s time to dust off national competition / anti-combines policies and to consider international measures to defend global food security.

2. The “invisible hold” of the market is growing. For all the talk of the invisible hand of the free market, the market is evermore opaque and far from “free.” As the concentration grows, companies are more guarded with their information. Further, the investment companies that analyze markets have also become more concentrated and more proprietary (and their information is more expensive). As the “invisible hold” tightens, it is harder and harder for governments – and more so, peasants – to understand the level of food system control exercised by a handful of multinational enterprises. As a result, ETC’s data – in order to be accurate – is dependent upon 2011 figures. Be assured that corporate concentration in these sectors is not receding. Agribusiness must be legally obliged to provide full and timely data on sales and market share.

3. Climate research shows that we don’t know (that) we don’t know our food system: One positive outcome since our last update is that society in general – and governments in particular – are more aware of the threat posed by climate change to global food security. There is now a popular mantra (but not much movement) emphasizing the central importance of smallholder producers in meeting global food requirements in the decades ahead. We couldn’t agree more. To help policymakers move from mantra to marching orders, this Communiqué is accompanied by a poster contrasting the capacity of the Industrial Food Chain and the Peasant Food Web to address climate chaos. The poster raises 20 genuine questions. It is a work-in-progress. There may be more than one answer to the questions, but the data provides a basis for a fundamental change of mind and shift in policy direction. For some of the reasons cited already, the data policymakers need to make decisions are not always available (or accurate). As the United Nations Framework Convention on Climate Change prepares to receive the fifth assessment report of the Intergovernmental Panel on Climate Change over the coming months, we hope this report and accompanying poster will encourage a much needed constructive debate and complementary research on all of the issues we are raising.

Over the past half-century, the corporations that dominate the industrial food system have wrested control of the agricultural R&D agenda while concentrating power and influencing trade, aid and agricultural policies to fuel their own growth. There was cautious hope in the United States that a new era was dawning when, in 2009 – the first year of President Obama’s first term – the US Department of Agriculture and the Antitrust Division of the Department of Justice (DOJ) announced a joint investigation into anticompetitive practices in agriculture. The news that Monsanto specifically had been required to turn over internal documents related to seed prices raised the level of optimism. But when the DOJ dropped the Monsanto investigation almost 3 years later without explanation, it was clear that antitrust fervour had fizzled, despite the breathless claims2 (which happen to be true) that anticompetitive practices in agriculture pose a threat to public health and security.

#### Food wars go nuclear.

Cribb 19, \*Julian Cribb, Principal of Julian Cribb & Associates, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director of National Awareness at the Commonwealth Scientific and Industrial Research Organisation; (August 23rd, 2019, “FOOD AS AN EXISTENTIAL RISK”, <https://www.cambridge.org/core/books/abs/food-or-war/food-as-an-existential-risk/8C45279588CD572FE805B7E240DE7368>) //rhetoric modified

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twentyfirst century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to non- nuclear nations and potential terrorist organisations.

In early 2018 the hands of the ‘Doomsday Clock’, maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below).12

In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “a full range of nuclear-weapon-related activities, such as under- taking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons.”13 However, 71 other countries – including all the nuclear states – either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species.

In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed – but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk.14

As things stand, the only entities that can afford to own nuclear weapons are nations – and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or national- ism. The question is what to replace them with.

Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twentyfirst century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying.

It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell ~~invasion~~ [entry] by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands – but the possibility ought not to be ignored.

That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘it is clear that even nuclear war cannot be excluded as a political consequence of global warming’.15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

### 1AC---Solvency

#### Finally, solvency:

#### Plan: The United States federal government should substantially increase prohibitions on anticompetitive private cartel practices in cases where foreign plaintiffs cannot secure adequate relief in alternative fora.

#### The plan permits jurisdiction over *Empagran*-type cases only in instances where foreign plaintiffs don’t have an alternative forum for recovering damages---that maximizes cartel deterrence through harmonization of antitrust laws and preserves judicial economy.

Schmidt 6, \*Jonathan T. Schmidt. Antitrust lawyer. Master’s in Public Affairs from the Princeton School of Public and International Affairs. JD from Yale Law School. Former Fulbright Fellow in Peru, where he studied micro-enterprise lending; (2006, “Keeping U.S. Courts Open to Foreign Antitrust Plaintiffs: A Hybrid Approach to the Effective Deterrence of International Cartels.” <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=yjil>)

5. A New Approach to the Empagran Problem: Legislative Authorization to the Executive Branch To Limit Jurisdiction Based on the Principles of Foreign Non Conveniens

A better approach would systematize the executive branch's review of other countries' antitrust regimes, apply that executive determination categorically over a class of cases, and remove judicial discretion with respect to complying with that executive determination. Accordingly, I recommend that the DOJ 2 7 6 should annually review other countries' antitrust regimes to determine whether they provide private parties an adequate forum to recover damages from cartel activities. Congress should amend 277 section 12 of the Clayton Act to bar jurisdiction in cases involving international cartels in which (1) neither the plaintiff nor the defendant is a national of the United States, and (2) the plaintiff or defendant is a national of a country that the DOJ currently lists as one that provides plaintiffs with an adequate private remedy in the antitrust claim, except (3) when that country permits United States jurisdiction for reasons of judicial economy. Such a law would promote international judicial economy in a transparent and predictable manner that prevents forum shopping without greatly reducing the deterrent effect of United States law.

The principles underlying this proposed law are those of the doctrine of forum non conveniens as articulated in Piper. Thus, if plaintiffs can secure relief in their domestic courts for antitrust violations that involve foreign harms, they should not be able to sue a foreign defendant in U.S. courts simply because the damages available there may be more favorable. However, when a foreign plaintiff cannot secure relief in her domestic courts--either because the courts do not permit jurisdiction over the claims or because the statutory relief is not actually available-she should first turn to the court system in which the foreign defendant is located. Again, this result would accord with a concern for convenience and judicial economy. Only if the plaintiff cannot receive adequate relief in her home forum or the defendant's home forum should U.S. courts exercise jurisdiction, assuming the requisite showing of a link to domestic effect is made. Such an exercise of jurisdiction would not be an act of charity toward the plaintiff; it would recognize that affording such plaintiffs an opportunity for relief somewhere is necessary to deter the international cartels that harm American consumers and businesses.

Such a restriction of jurisdiction would not affect the ability of American plaintiffs to bring antitrust claims against anyone in the world, nor would it prevent U.S. courts from exercising jurisdiction over cases involving American defendants. Instead, this restriction on jurisdiction would apply only when neither the plaintiff nor the defendant was an American. In such situations, the United States retains an interest in ensuring that plaintiffs can receive adequate compensation because of its deterrent effect on international cartels that affect the United States. However, if such claims could be better heard before a foreign court, the United States should decline jurisdiction because of convenience and judicial economy.279

The DOJ's annual review of other countries' private antitrust remedies should be more than a broad "thumbs-up, thumbs-down" review; it should distinguish the types of claims for which a country's relief is adequate from those for which it is inadequate. For example, although Canada has a strong anti-cartel regime, it also protects its domestic export cartels.280 Such protectionist policies-of which the FTAIA is one-do not enhance worldwide deterrence,28' and when implemented by foreign governments, they specifically do not deter conduct harming American consumers. Therefore, the DOJ would list Canada as a country that provides an adequate forum except in cases involving Canadian export cartels. Similarly, other countries may not permit foreign plaintiffs to sue their domestic firms for participating in an international cartel, though domestic plaintiffs can bring such actions. In these situations, the DOJ would list those countries as providing an adequate forum for domestic plaintiffs, but U.S. jurisdiction would be permitted if the plaintiffs were foreigners who also lacked an adequate forum in their home country.

The definition of "adequate" relief is an important component of this proposal. Consistent with the principles of forum non conveniens articulated in Piper, the United States should not require that countries provide treble damages. The United States should decline jurisdiction in anti-cartel actions so long as plaintiffs can recover at least compensatory damages. America's mandatory treble damages regime is based on a policy choice in the United States regarding the proper mix of public and private enforcement. The fact that other governments do not provide treble damages may reflect other aspects of their systems, such as greater public fines, the availability of punitive damages, or the cost to plaintiffs of bringing actions for damages. The United States should not require treble damages as the sole mechanism of deterrence.

Refusing jurisdiction in international antitrust suits may sacrifice some global judicial economy. The nature of international cartel activities increases the possibility that the same defendants will simultaneously face multiple lawsuits in many countries. By splitting the plaintiffs' actions, these multiple lawsuits could complicate the suits, delay them, and make them more 282 expensive. For this reason, the U.S. courts could exercise jurisdiction if the nations implicated in the case ask it to do so. Admittedly, this is only a partial solution to the issue of global judicial economy. A more comprehensive solution will require additional political solutions, such as an international agreement permitting some form of transnational transfer or consolidation of cases. Such agreement is foreseeable, as informal collaboration already occurs with respect to public lawsuits against international cartel members.

This proposal would help achieve America's three goals with respect to international antitrust. First, the U.S. government would have a national policy with respect to jurisdiction in international cartel cases that distinguishes between those foreign antitrust regimes that are effective and those that are not. Second, such a policy would be consistent and predictable, facilitating international trade. Plaintiffs and defendants would know whether jurisdiction could be exercised before bringing a case. Plaintiffs from countries that the United States deems to have an effective antitrust regime would have no reason to bring a case in U.S. courts, and they would therefore need to turn to their home jurisdiction. In this manner, the policy would encourage other jurisdictions to enact policies that would be in harmony with those of the United States. For example, with respect to Canada, the exercise of U.S. jurisdiction with respect to a Canadian export cartel may cause Canadian lawmakers to tear down their measures protecting such cartels, especially if they wish to protect Canadian defendants from America's treble damages regime.283

[FOOTNOTE 283]

283. Indeed, America's treble damages regime would provide an incentive for foreign companies to lobby their countries to enact antitrust policies sufficiently strong to remove them from U.S. jurisdiction in Empagran-type suits.

[END FOOTNOTE 283]

Upon such action, the DOJ would determine that U.S. jurisdiction should no longer be granted in such cases. Thus, this proposal, like my suggested reforms of national amnesty programs, seeks to harmonize international antitrust policies and to do so in a manner that most effectively deters international cartels.

#### Only international, private antitrust enforcement maximizes deterrence---it enhances the cartel’s likelihood of being detected and makes operation in multiple countries cost-prohibitive.

Schmidt 6, \*Jonathan T. Schmidt. Antitrust lawyer. Master’s in Public Affairs from the Princeton School of Public and International Affairs. JD from Yale Law School. Former Fulbright Fellow in Peru, where he studied micro-enterprise lending; (2006, “Keeping U.S. Courts Open to Foreign Antitrust Plaintiffs: A Hybrid Approach to the Effective Deterrence of International Cartels.” <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=yjil>)

II. BACKGROUND

A core aspect of America's antitrust regime is its encouragement of private litigation as an enforcement device. Private litigation is thought to be particularly effective against cartels, as the consumers in a cartel market may often be among the first entities to detect the cartel's damaging collusive behavior, and awarding damages-particularly a multiple of the cartel's profits-may make the illegal conduct cost-prohibitive. Thus, private litigation is viewed as an important mechanism for achieving one of the fundamental goals of the antitrust acts: the maximum deterrence of cartels.26

Initially, the application of America's antitrust regime was contained within its borders. But as commerce became increasingly international after World War II, U.S. courts applied the antitrust laws extraterritorially. America's extraterritorial application of its antitrust laws created tension with its trading partners, who disagreed with the American approach of relying on private litigation and treble damages as an enforcement device. They viewed the extraterritorial application of U.S. law as an anticompetitive maneuver aimed at furthering U.S. trade objectives. In the late 1970s and early 1980s, many of these countries passed legislation to frustrate the extraterritorial application of America's antitrust laws. The U.S. Congress responded by passing the FTAIA. This law barred foreigners from using America's laws against American companies when American consumers were not harmed. The Empagran decision-and the governments' amici briefs-must be understood within this context of antitrust policy as trade policy.

A. The Sherman and Clayton Acts

The Sherman and Clayton Acts are the statutory foundation for private antitrust litigation in the United States. The Sherman Antitrust Act outlaws "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations., 27 Violations are felonies, with corporations and individuals facing civil and criminal penalties, including imprisonment.29

To expand the enforcement of the antitrust laws and to facilitate the compensation of the victims of antitrust harms, Congress adopted the Clayton Act. Section 4 of the Clayton Act creates a private cause of action for individuals and companies harmed by antitrust violations, 30 and section 12 grants jurisdiction over these lawsuits to any district in which the defendant does business.3' Plaintiffs in such lawsuits act as "private attorneys general, 32 who help alert authorities to violations of the antitrust laws while also punishing those violations. The Clayton Act allows private litigants to sue for treble damages. Treble damages enhance deterrence in two ways-they encourage private suits, which raise the probability the cartel will be detected,33 and they increase the penalty imposed on defendants found guilty of violating the acts.34 The Clayton Act has succeeded in encouraging such suits. 35

B. Cartels-An Introduction

Cartels are "unambiguously bad' 36 and "the most egregious violations of competition law."3 7 The collusion they engage in the "supreme evil of antitrust. ' '3s A cartel is a group of firms in an industry that should be competitors but have instead agreed to coordinate their activities so that they can raise prices and earn profits above competitive market levels. Cartels utilize a number of mechanisms to coordinate their activities, including horizontal price fixing,39 bid rigging, territorial division,40 non-territorial customer division, and market-share agreements. In addition to harming the consumers of their products by charging supra-competitive prices, cartels also reduce economic efficiency by causing consumers to purchase less of a product than they otherwise would buy and by reducing the competitive pressures that member firms face to control costs and to innovate.41

A cartel must overcome four challenges to operate successfully. First, the cartel's members must reach agreement to restrict the supply of a product and increase its price. A cartel restricts supply so that the loss from the lower quantity of sales is more than offset by the increase in the price of each remaining sale. The optimal cartel quantity and price is that of a monopoly producer, but cartels rarely achieve that optimal level because cheating by members and market entry by new producers increases market supply. Thus, a second challenge for a cartel is to ensure that its members follow the agreed course of action. Each cartel member has an incentive-to sell more than the agreed quantity of the product-at the cartel price or one slightly below it-to gain even more profit.42 Because cheating threatens the cartel's viability, cartels must monitor their members and punish cheating.4 3 But monitoring is difficult because of the third challenge inherent to cartels: their illegal actions force them to operate in secrecy to avoid detection.44 Yet even if, while operating in secret, cartels are able to monitor and punish cheaters, they still must prevent entry by other firms into the market. Entrants will be enticed by the opportunity to earn profits due to the extra-competitive cartel prices, and their entry will drive down the cartel's profits. To maintain its hold on the market, the cartel must prevent new entry, again without making the cartel visible. The complexity of addressing these four challenges leads many economists to conclude that cartels are "inherently unstable."43

Certain market characteristics are conducive to collusive activity. Cartels often operate in concentrated markets with few firms, permitting easier coordination and more reliable confidentiality.46 Markets with high initial investment costs are also conducive to cartel activity. These costs deter other firms from quickly entering the market to take advantage of the cartel's artificially high prices.47 Products that are homogenous and fungible also facilitate cartel activity. a Such products are usually uniformly priced, making it easier for cartels to monitor member prices. Finally, market structures, such as public disclosure laws regarding prices and quantities, can help cartels monitor their members' activities.

Market characteristics alone cannot sustain a cartel; cartel members must adopt a variety of practices to avoid detection and to enforce compliance. Cartels avoid detection by holding secret meetings, using code names, and creating legitimate-appearing trade associations to share information.49 Generally, cartel members meet periodically to review public and private sales and price figures from prior periods. They also force members who exceed their quotas to compensate the other members.50 Thus, cartels overcome their inherent instability by successfully providing supra-competitive profits to their members while maintaining the secrecy of their collusion and punishing any deviations. Indeed, based on the fact that twenty-four of the forty international cartels prosecuted in the 1990s had operated for at least four years, one study concluded, "market forces alone may be unable to quickly undermine attempts to fix prices, rig bids, allocate quotas, and market shares; perhaps implying a potential role for national anti-cartel enforcement." 51

C. International Cartels

Certain characteristics of the global marketplace increase the ability of international cartels to monitor their members and maintain secrecy. The publication of official import and export data facilitates the cartel's monitoring of its members. National differences in accounting, reporting requirements, and other legal mandates help cartels to hide their activities and profits. 53 National borders mask agreements to divide a product market among competitors,54 and they can facilitate the punishment of cheaters.55 Cartel members also frustrate the efforts of effective policing authorities by meeting and retaining records outside their jurisdictions.56

Almost invariably, any international cartel harms consumers in all of the countries in which its product is sold. If an international cartel does not raise prices everywhere, a product sold at a cheaper price in one country can be resold in another country where the price is higher. This arbitrage threat exists as long as transaction costs, including transportation costs, are low and the product is undifferentiated across the various countries. If the cartel's product is sold in the United States, the cartel must raise its price in the United States sufficiently so that it is not profitable to buy the product in the United States, ship it to another market, and sell it at or below the cartel price. Thus, because cartels must address the arbitrage threat by raising prices in all of the markets in which they operate, the harms caused by the cartels in those markets are interconnected.

To effectively deter cartels, the total expected penalty must at least equal the supra-competitive profits from participating in the cartel.57 Because an international cartel enjoys supra-competitive profits from its sales in other countries, "[tihe relevant expected penalty depends on the sum of the expected penalties in each nation., 58 According to the OECD, sanctions against cartels "are, on the whole, still inadequate" 59 in most countries. Therefore, cartels will raise their prices in the United States even though doing so increases the likelihood of the cartel's detection due to the United States's more rigorous antitrust regime. The international cartel will still harm American consumers because it can offset its expected American losses with its supra-competitive profits from countries where it has little fear of penalty. As a result, "the deterrent required to prevent a global cartel from including the United States is generally larger than the deterrent required to prevent a purely domestic cartel from forming." 60

#### Only the AFF’s bottom-up harmonization fills enforcement gaps---that must precede any effort to develop an international antitrust regime.

Schmidt 6, \*Jonathan T. Schmidt. Antitrust lawyer. Master’s in Public Affairs from the Princeton School of Public and International Affairs. JD from Yale Law School. Former Fulbright Fellow in Peru, where he studied micro-enterprise lending; (2006, “Keeping U.S. Courts Open to Foreign Antitrust Plaintiffs: A Hybrid Approach to the Effective Deterrence of International Cartels.” <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=yjil>)

My proposal is also consistent with the desire by many economists and legal scholars to see some form of global antitrust authority established. Eleanor Fox notes, "international antitrust has been a gleam in the eye of the world at least since the proposal of the Havana Charter in the 1940s.,,29' Yet while there are "seeds"2 for some sort of international antitrust charter, there is disagreement as to whether the international community should adopt a common international antitrust code,294 establish an oversight body along the lines of the World Trade Organization to ensure compliance with such a code, or create a world antitrust court to adjudicate important private international disputes.295 Indeed, the United States and the European Union-arguably the two jurisdictions that present the most agreement on the substantive aspects of international antitrust-occupy diametrically opposed positions with respect to the form international antitrust enforcement should take. The European Union favors binding dispute resolution in the WTO; the United States favors a more voluntary approach that focuses on technical assistance and the issuance of voluntary standards. Although there has been convergence in substantive antitrust policies, there, too, disagreement exists. The substantive disagreements led Judge Diane Wood, after proposing a baseline general international antitrust code, to note that in actually negotiating such a code, "the details would indeed be devilish" and to "wonder whether the effort it would take to achieve international consensus on all [of the areas of antitrust] would be worth it." 296 As an international antitrust regime is still such a distant possibility, I prefer to propose an improvement to the status quo rather than waiting for the intellectually best solution.

Absent an international agreement establishing some form of global antitrust regime, the international community needs to work to further harmonize their practices to fill the enforcement gaps that allow corporate criminals like cartels to thrive.297 I believe my proposal is the best mechanism-absent an international agreement-to encourage harmonization of antitrust policies with respect to international cartels. By exercising jurisdiction over claims by plaintiffs located in countries where the laws do not provide adequate relief, the United States implicitly encourages those countries to implement and enforce laws that provide such relief. Although other nations might respond negatively to America's judgment of their antitrust regimes, their objections should be mollified by the fact that such judgments are undertaken to limit, rather than extend, American power 298 through an exercise of jurisdictional restraint.

Still, international antitrust disagreements will persist, but such disagreements are not created by the United States. Instead, they reflect real policy differences between the United States and its trading allies regarding the degree to which all cartels, especially domestic export cartels, should be deterred, the viability of private antitrust suits as a means of policing cartel activities, and the ability of the United States to protect its consumers, even at the expense of foreign corporations. Empagran has not generated conflict; it has only revealed it. Accordingly, I reject the view that the absence of conflict, such as would result by closing our courts to Empagran-type suits, is equivalent to harmony. Instead, the closing of our courts to all Empagran-type suits would represent a surrender of America's interest in protecting its consumers from the harms of international cartels. At the least, such a capitulation of America's vital economic interests should not be achieved by judicial fiat.

# 2AC---R3

## K---Settler Colonialism

### 2AC---Util

#### Weigh impacts using expected value, or magnitude times probability---it’s the only to ethically account for the underappreciated risk of high-magnitude threats.

Harris 17, \*John Harris is Politico’s editor-in-chief and author of The Survivor: Bill Clinton in the White House; \*Bryan Bender is Politico’s national security editor and author of You Are Not Forgotten. Both Harris and Bender covered the Pentagon during the tenure of Secretary of Defense William J. Perry; (January 6th, 2017, “Bill Perry Is Terrified. Why Aren’t You?”, https://www.politico.com/magazine/story/2017/01/william-perry-nuclear-weapons-proliferation-214604/)

And there’s one other difference from the Cold War: Americans no longer think about the threat every day.

Nuclear war isn’t the subtext of popular movies, or novels; disarmament has fallen far from the top of the policy priority list. The largest upcoming generation, the millennials, were raised in a time when the problem felt largely solved, and it’s easy for them to imagine it’s still quietly fading into history. The problem is, it’s no longer fading. “Today, the danger of some sort of a nuclear catastrophe is greater than it was during the Cold War,” Perry said in an interview in his Stanford office, “and most people are blissfully unaware of this danger.”

It is a turn of events that has an old man newly obsessed with a question: Why isn’t everyone as terrified as he is?

Perry’s hypothesis for the disconnect is that much of the population, especially that rising portion with no clear memories of the first Cold War, is suffering from a deficit of comprehension. Even a single nuclear explosion in a major city would represent an abrupt and possibly irreversible turn in modern life, upending the global economy, forcing every open society to suspend traditional liberties and remake itself into a security state. “The political, economic and social consequences are beyond what people understand,” Perry says. And yet many people place this scenario in roughly the same category as the meteor strike that supposedly wiped out the dinosaurs—frightening, to be sure, but something of an abstraction.

So Perry regards his last great contribution of a 65-year career as a crusade to stimulate the public imagination—to share the vivid details of his own nightmares. He is doing so in a recent memoir, in a busy public speaking schedule, in half-empty hearing rooms on Capitol Hill, and increasingly with an online presence aimed especially at young people. He has enlisted the help of his 28-year-old granddaughter to figure out how to engage a new generation, including [through a series of virtual lectures](https://lagunita.stanford.edu/courses/course-v1:Engineering+NuclearBrink+Fall2016/about) known as a MOOC, or massive open online course. He is eagerly signing up for “Ask Me Anything” chats on Reddit, in which some people still confuse him with William “The Refrigerator” Perry of NFL fame. He posts his ruminations on YouTube, where they give Katy Perry no run for her money, even as the most popular are closing in on 100,000 views. One of the nightmare scenarios Perry invokes most often is designed to roust policymakers who live and work in the nation’s capital. The terrorists would need enriched uranium. Due to the elaborate and highly industrial nature of production, hard to conceal from surveillance, fissile material is still hard to come by—but, alas, far from impossible. Once it is procured, with help from conspirators in a poorly secured overseas commercial power centrifuge facility, the rest of the plot as Perry imagines it is no great technological or logistical feat. The mechanics of building a crude nuclear device are easily within the reach of well-educated and well-funded militants. The crate would arrive at Dulles International Airport, disguised as agricultural freight. The truck bomb that detonates on Pennsylvania Avenue between the White House and Capitol instantly kills the president, vice president, House speaker, and 80,000 others. Where exactly is your office? Your house? And then, as Perry spins it forward, how credible would you find the warnings, soon delivered to news networks, that five more bombs are set to explode in unnamed U.S. cities, once a week for the next month, unless all U.S. military personnel overseas are withdrawn immediately? If this particular scenario does not resonate with you, Perry can easily rattle off a long roster of others—a regional war that escalates into a nuclear exchange, a miscalculation between Moscow and Washington, a computer glitch at the exact wrong moment. They are all ilks of the same theme—the dimly understood threat that the science of the 20th century is set to collide with the destructive passions of the 21st. “We’re going back to the kind of dangers we had during the Cold War,” Perry said. “I really thought in 1990, 1991, 1992, that we left those behind us. We’re starting to re-invent them. We and the Russians and others don’t understand that what we’re doing is re-creating those dangers—or maybe they don’t remember the dangers. For younger people, they didn’t live through those dangers. But when you live through a Cuban Missile Crisis up close and you live through a false alarm up close, you do understand how dangerous it is, and you believe you should do everything you could possibly do to [avoid] going back.” For people who follow the national security priesthood, the dire scenarios are all the more alarming for who is delivering them. Through his long years in government Perry invariably impressed colleagues as the calmest person in the room, relentlessly rational, such that people who did not know him well—his love of music and literature and travel—regarded his as a purely analytical mind, emotion subordinated to logic and duty. Starting in the 1950s as a technology executive and entrepreneur in some of the most secretive precincts of the defense industry, he gradually took on a series of high-level government assignments that gave him one of the most quietly influential careers of the Cold War and its aftermath. Fifteen years before serving as Bill Clinton’s secretary of defense, Perry was the Pentagon official in charge of weapons research during the Carter administration. It was from this perch that he may have had his most far-reaching impact, and left him in some circles as a legendary figure. He used his office to give an essential push to two ideas that transformed warfare over the next generation decisively to American advantage. One idea was stealth technology, which allowed U.S. warplanes to fly over enemy territory undetected. The other was precision-guided munitions, which allowed U.S. bombs to land with near-perfect accuracy. During the Clinton years, Perry so prized his privacy that he initially turned down the job of Defense secretary—changing his mind only after Clinton and Al Gore pleaded with him that the news media scrutiny wouldn’t be so bad. The reputation he built over a life in the public sphere is starkly at odds with this latest highly impassioned chapter of Perry’s career. Harold Brown, who also is 89, first recruited Perry into government, and was Perry’s boss while serving as Defense secretary in the Carter years. “No one would have thought of Bill Perry as a crusader,” he says. “But he is on a crusade.” Lee Perry, his wife of nearly 70 years, is living in an elder care facility, her once buoyant presence now lost to dementia. Perry himself, lucid as ever, has seen his physical frame become frail and stooped. Rather than slowing his schedule, he has accelerated his travels to plead with people to awaken to the danger. A trip to Washington includes a dinner with national security reporters and testimony on Capitol Hill. Back home in California, he’s at the Google campus to prod engineers to contemplate that their world may not last long enough for their dreams of technology riches to come true. He’s created an advocacy group, [the William J. Perry project](http://www.wjperryproject.org/), devoted to public education about nuclear weapons. He’s enlisted both his granddaughter and his 64-year-old daughter, Robin Perry, in the cause. But if his profile is rising, his style is essentially unchanged. He is a man known for self-effacement, trying to shape an era known for relentless self-promotion, a voice of quiet precision in a time of devil-take-the-hindmost bombast. The rational approach to problem-solving that propelled his career and won him adherents and friends in both political parties and even among some of America’s erstwhile enemies remains his guide—in this case, by endeavoring to calculate the possibilities and probabilities of a terrorist attack, regional nuclear war, or horrible miscalculation with Russia. “I want to be very clear,” he said. “I do not think it is a probability this year or next year or anytime in the foreseeable future. But the consequence is so great, we have to take it seriously. And there are things to greatly lower those possibilities that we’re simply not doing.” \*\*\* Perry really did not expect he would have to write this chapter of his public life. His official career closed with what seemed then an unambiguous sense of mission accomplished. By the time he arrived in the Pentagon’s top job in 1994, the Cold War was over, and the main item on the nuclear agenda seemed to be cleaning up no-longer-needed arsenals. As defense secretary, Perry stood with his Russian counterpart, Pavel Grachev, as they jointly blew up missile silos in the former Soviet Union and tilled sunflower seeds in the dirt. “I finally thought by the end of the ‘80s we lived through this horrible experience and it’s behind us,” Perry said. “When I was secretary, I fully believed it was behind us.” After leaving the Pentagon, he accepted an assignment from Clinton to negotiate an end to North Korea’s nuclear development program—and seemed agonizingly close to a breakthrough as the last days of the president’s term expired. Now, he sees his grandchildren inheriting a planet possibly more dangerous than it was during his public career. No one could doubt that the Sept. 11 terrorists would have gladly used nuclear bombs instead of airplanes if they had had them, and it seems only a matter of time until they try. Instead of a retreating threat in North Korea, that fanatical regime now possesses as many as eight nuclear bombs, and is just one member of a growing nuclear club. Far from a new partnership with Russia, Vladimir Putin has given old antagonisms a malevolent new face. American policymakers talk of spending up to $1 trillion to modernize the nuclear arsenal. And now comes Donald Trump with a long trail of statements effectively shrugging his shoulders about a world newly bristling with bombs and people with reasons to use them. Perry knew Hillary Clinton well professionally, and says he admired both her and Bill Clinton for their professional judgment though he was never a personal intimate of either. He was prescient before the election in expressing skepticism about how voters would respond to the dynastic premise of the Clinton campaign—a healthy democracy should grow new voices—but was as surprised as everyone else on Election Day. Donald Trump was not the voice he was looking for, to put it mildly, but he has responded to the Trump cyclone with modulated restraint. Perry said he assumes his most truculent rhetoric isn’t serious, the utterances of a man who assumed his words were for political effect only and had no real consequences. Now that they do, Perry is hoping to serve as a kind of ambassador to rationality. He said he is hoping for audiences soon, with Trump if the incoming president will see him, and certainly Trump’s national security team, which includes several people Perry knows, including Defense Secretary nominee James Mattis. There is little doubt the message if the meeting comes. “We are starting a new Cold War,” he says. “We seem to be sleepwalking into this new nuclear arms race. … We and the Russians and others don’t understand what we are doing.” “I am not suggesting that this Cold War and this arms race is identical to the old one,” Perry added. “But in many ways, it is just as bad, just as dangerous. And totally unnecessary.” \*\*\* Perry had been brooding over the question for a year. It was in the early 1950s, he was still in his 20s, and the subject was partial differential equations—the topic of his Ph.D. thesis. A particular problem had been absorbing him, day in and day out, hours and hours on end. Then, out of nowhere, a light came on. Math for Perry represented analytical discipline, a way of achieving mastery not only over numerical problems but any hard problem, by breaking it down into essential parts, distilling complexity into simplicity. | Photo via the William J. Perry Project “I woke up in the middle of the night, and it was all there,” Perry recalled. “It was all there, and I got out of bed and sat down. The next two or three hours, I wrote my thesis, and from the first word I wrote down, I never doubted what the last word was going to be: It was a magic moment.” The story is a reminder of something definitional about Bill Perry. Before he became in recent years an apostle of disarmament, before he sat atop the nation’s war-making apparatus in the 1990s, before he was the executive of a defense contractor specializing in the most complex arenas of Cold War surveillance in the 1960s, he was a young man in love with mathematics. In those days, Perry had planned on a career as a math professor. His attraction to math was not merely practical, in the way that engineers or architects rely on math. The appeal was just as much aesthetic, in ways that people who are not numbers people—political life tends to be dominated by word people—cannot easily comprehend. To Perry’s mind, there was a purity to math, a beauty to the patterns and relationships, that was not unlike music. Math for Perry represented analytical discipline, a way of achieving mastery not only over numerical problems but any hard problem, by breaking it down into essential parts, distilling complexity into simplicity. This trait was why Pentagon reporters in the 1990s liked spending time around Perry. When most public officials are asked a question, one studies the transcript later to decipher a succession of starts and stalls, sentence fragments and ellipses, that cumulatively convey an impressionistic sense of mind but no clear fixed meaning. Perry’s sentences, by contrast, always cut with surgical precision. It was one reason Clinton White House officials often held their breath when he gave interviews—Perry might make news by being clear on subjects, such as ethnic warfare in the Balkans or a nuclear showdown in North Korea, that the West Wing preferred to try to fog over.

“I’ve never been able to attack a policy problem with a mathematical formula,” he recalled, “but I have always believed that the rigorous way of thinking about a problem was good. It separated the fact from the bullshit, and that’s very important sometimes, to separate what you can from what you would hope you can do.”

Just how high is the risk? The answer is ultimately unknowable. Perry’s point, though, is that it’s a hell of a lot higher than you think. | M. Scott Mahaskey/POLITICO

Perry wishes more people were familiar with the concept of “expected value.” That is a statistical way of understanding events of very large magnitude that have a low probability. The large magnitude event could be something good, like winning a lottery ticket. Or it could be something bad, like a nuclear bomb exploding. Because the odds of winning the lottery are so low, the rational thing is to save your money and not buy the ticket. As for a nuclear explosion, by Perry’s lights, the consequences are so grave that the rational thing would be for people in the United States and everywhere to be in a state of peak alarm about their vulnerability, and for political debate to be dominated by discussion of how to reduce the risk.

And just how high is the risk? The answer of course is ultimately unknowable. Perry’s point, though, is that it’s a hell of a lot higher than you think.

Perry invites his listeners to consider all the various scenarios that might lead to a nuclear event. “Mathematically speaking, you add those all together in one year it is still just a possibility, not a probability,” he reckons. “But then you go out ten, twenty years and each time this possibility repeats itself, and then it starts to become a probability. How much time we have to get those possibility numbers lower, I don’t know. But sooner or later the odds are going to get us, I am afraid.”

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Almost uniquely among living Americans, Bill Perry has actually faced down the prospect of nuclear war before—twice. In the fall of 1962, Bill Perry was 35, father of five young children, living in the Bay Area and serving as director of Sylvania’s Electronic Defense Laboratories—driving his station wagon to recitals in between studying missile trajectories and the radius of nuclear detonations. Where he resided was not then called Silicon Valley, but the exuberance and spirit of creative possibility we now associate with the region was already evident. The giants then were Bill Hewlett and David Packard, men Perry deeply admired and wished to emulate in his own business career. The innovation engine at that time, however, was not consumer technology; it was the government’s appetite for advantage in a mortal struggle against a powerful Soviet foe. Perry was known as a star in the highly complex field of weapons surveillance and interpretation. So it was not a surprise, one bright October day, for Perry to get a call from Albert “Bud” Wheelon, a friend at the Central Intelligence Agency. Wheelon said he wanted Perry in Washington for a consultation. Perry said he’d juggle his schedule and be there the next week. “No,” Wheelon responded. “I need to see you right away.” Perry caught the red-eye from San Francisco, and went straight to the CIA, where he was handed photographs whose meaning was instantly clear to him. They were of Soviet missiles stationed in Cuba. For the next couple weeks, Perry would stay up past midnight each evening poring over the latest reconnaissance photos and help write the analysis that senior officials would present the next morning to President Kennedy. Perry experienced the crisis partly as ordinary citizen, hearing Kennedy on television draw an unambiguous line against Soviet missiles in this hemisphere and promising that any attack would be met with “a full retaliatory response.” But he possessed context, about the capabilities of weapons and the daily state of play in the crisis, that gave him a vantage point superior to that of all but perhaps a few dozen people. “I was part of a small team—six or eight people,” he recounted of those days 54 years earlier. “Half of them technical experts, half of them intelligence analysts, or photo interpreters. It was a minor role but I was seeing all the information coming in. I thought every day when I went back to the hotel it was the last day of my life because I knew exactly what nuclear weapons could do. I knew it was not just a lot of people getting killed. It was the end of civilization and I thought it was about to happen.” Left: A January 1963 aerial photo showing that the Soviets had disbanded medium- and intermediate-range ballistic missile sites in Cuba. Right: Soviet freighter Polzunov (top) loaded with nuclear missiles removed from Cuba, is escorted by American destroyer Vesole outside Cuban waters on trek back to Russia near end of Cuban Missile Crisis. | Defense Department; Carl Mydans/The LIFE Picture Collection/Getty Images It was years later that Perry, like other more senior participants in the crisis, learned how right that appraisal was. Nuclear bombs weren’t only heading toward Cuba on Soviet ships, as Kennedy believed and announced to Americans at the time. Some of them were already there, and local commanders had been given authority to use them if Americans launched a preemptive raid on Cuba, as Kennedy was being urged, goaded even, by Air Force Gen. Curtis LeMay and other military commanders. At the same time, Soviet submarines were armed and one commander had been on the verge of launching them until other officers on the vessel talked him out of it. Either event would have in turn sent U.S. missiles flying. The Cuban Missile Crisis recounting is one of the dramatic peaks in “My Journey on the Nuclear Brink,” the memoir Perry published last fall. It is a book laced with other close calls—like November 9, 1979, when Perry was awakened in the middle of the night by a watch officer at the North American Aerospace and Defense Command (NORAD) reporting that his computers showed 200 Soviet missiles in flight toward the United States. For a frozen moment, Perry thought: This is it—This is how it ends. The watch officer soon set him at ease. It was a computer error, and he was calling to see whether Perry, the technology expert, had any explanation. It took a couple days to discover the low-tech answer: Someone had carelessly left a crisis-simulation training tape in the computer. All was well. But what if this blunder had happened in the middle of a real crisis, with leaders in Washington and Moscow already on high alert? The inescapable conclusion was the same as it was in 1962: The world skirting nuclear Armageddon as much by good luck as by skilled crisis management. Perry is part of a distinct cohort in American history, one that didn’t come home with the large-living ethos of the World War II generation, but took responsibility for cleaning up the world that the war bequeathed. He was a 14-year-old in Butler, Pennsylvania when he heard the news of the Pearl Harbor attack in a friend’s living room, and had the disappointed realization that the war might be over by the time he was old enough to fight in it. That turned out to be true—he was just shy of 18 at war’s end—a fact that places Perry in what demographers have called the “Silent Generation,” too young for one war but already middle-aged by the time college campuses erupted over Vietnam. Like many in his generation, Perry was not so much silent as deeply dutiful, with an understated style that served as a genial, dry-witted exterior to a life in which success was defined by how faithfully one met his responsibilities. Perry said he became aware, first gradually and over time profoundly, of the surreal contradictions of his professional life. His work—first at Sylvania and then at ESL, a highly successful defense contracting firm he co-founded in 1963—was relentlessly logical, analyzing Soviet threats and intentions and coming up with rational responses to deter them. But each rational move was part of a supremely irrational dynamic—“mutually assured destruction”—that placed the threat of massive casualties at the heart of America’s basic strategic thinking. It was the kind of framework in which policymakers could accept that a mere 25 million people dead was good news. Also the kind that in one year alone led the United States to produce 8,000 nuclear bombs. By the end, the Cold War left the planet with about 70,000 bombs ([a total that](https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat) is now down to about 15,500). “I think probably everybody who was involved in nuclear weapons in those days would see the two sides of it,” Perry recalls, “the logic of deterrence and the madness of deterrence, and there was no mistake, I think, that the acronym was MAD.” \*\*\* Perry has been at the forefront of a movement that he considers the sane and only alternative, and he has joined forces with other leading Cold Warriors who in another era would likely have derided their vision as naïve. In January 2007, he was a co-author of a remarkable commentary that ran on the op-ed page of the Wall Street Journal. It was signed also by two former secretaries of state, George Schulz and Henry Kissinger and by Sam Nunn, a former chairman of the Senate Armed Services Committee—all leading military hawks and foreign policy realists who came together to argue for something radical: that the goal of U.S. policy should be not merely the reduction and control of atomic arms, it should be the ultimate elimination of all nuclear weapons. This sounded like gauzy utopianism, especially bizarre coming from supremely pragmatic men. But Perry and the others always made clear they were describing a long-term ideal, one that would only be achieved through a series of more incremental steps. The vision was stirring enough that it was endorsed by President Obama in his opening weeks in office, in a March 2009 address in Prague. In retrospect, Obama’s speech may have been the high point for the vision of abolition. “A huge amount of progress was made,” recalled Shultz, now 93. “Now it is going in the other direction.” “We have less danger of an all-out war with Russia,” in Nunn’s view. “But we have more danger of some type of accident, miscalculation, cyber interference, a terrorist group getting a nuclear weapon. It requires a lot more attention than world leaders are giving it.” Perry’s goal now is much more defensive than it was just a few years ago—halting what has become inexorable momentum toward reviving Cold War assumptions about the central role of nukes in national security. More recently he’s added yet another recruit to his cause: California Governor Jerry Brown. Brown, now 78, met Perry a year ago, after deciding that he wanted to devote his remaining time in public service mainly to what he sees as civilization’s two existential issues, climate change and nuclear weapons. Brown said he became fixated on spreading Perry’s message after reading his memoir: He recently gave a copy to President Obama and is trying to bend the ear of others with influence in Washington. If Bill Perry has a gift for understatement, Brown has a gift for the theatrical. In an interview at the governor’s mansion in Sacramento, he wonders why everyone is not paying attention to his new friend and his warnings for mankind. “He is at the brink! At the brink! Not WAS at the brink—IS at the brink,” Brown exclaimed. “But no one else is.” A California governor can have more influence, at least indirectly, than one might think, due to the state’s outsized role in policy debates and the fact that the University of California’s Board of Regents helps manage some of the nation’s top weapons laboratories, which study and design nuclear weapons. Brown, who was a vocal critic in the 1980s of what he called America's "nuclear addiction," reviewed Perry's recent memoir in the New York Review of Books, and said he is determined to help his new friend spread his message. “Everybody is, 'we are not at the brink,' and we have this guy Perry who says we are. It is the thesis that is being ignored." Even if more influential people wake up to Perry’s message—a nuclear event is more likely and will be more terrible than you realize—a hard questions remains: Now what? This is where Perry’s pragmatism comes back into play. The smartest move, he thinks, is to eliminate the riskiest part of the system. If we can’t eliminate all nukes, Perry argues, we could at least eliminate one leg of the so-called nuclear triad, intercontinental ballistic missiles. These are especially prone to an accidental nuclear war, if they are launched by accident or due to miscalculation by a leader operating with only minutes to spare. Nuclear weapons carried by submarines beneath the sea or aboard bomber planes, he argues, are logically more than enough to deter Russia.

The problem, he knows, is that logic is not necessarily the prevailing force in political debates. Psychology is, and this seems to be dictating not merely that we deter a Russian military force that is modernizing its weapons but that we have a force that is self-evidently superior to them.

It is an argument that strikes Perry as drearily familiar to the old days. Which leads him the conclusion that the only long-term way out is to persuade a younger generation to make a different choice.

His granddaughter, Lisa Perry, is precisely in the cohort he needs to reach. At first she had some uncomfortable news for her grandfather: Not many in her generation thought much about the issue.

“The more I learned from him about nuclear weapons the more concerned I was that my generation had this massive and dangerous blind spot in our understanding of the world,” she said in an interview. “Nuclear weapons are the biggest public health issue I can think of.”

But she has not lost hope that their efforts can make a difference, and today she has put her graduate studies in public health on hold to work full time for the Perry Project as its social media and web manager. “It can be easy to get discouraged about being able to do anything to change our course,” she said. “But the good news is that nuclear weapons are actually something that we as humans can control...but first we need to start the conversation.”

It was with her help that Perry went on Reddit to [field questions](https://www.reddit.com/r/IAmA/comments/4a0ga4/iam_william_j_perry_former_secretary_of_defense/) ranging from how his PhD in mathematics prepared him to what young people need to understand.

“As a 90s baby I never lived in the Cold War era,” wrote one participant, with the Reddit username BobinForApples. “What is one thing today's generations will never understand about life during the Cold War?”

Perry answered, as SecDef19: “Because you were born in the 1990s, you did not experience the daily terror of ‘duck and cover’ drills as my children did. Therefore the appropriate fear of nuclear weapons is not part of your heritage, but the danger is just as real now as it was then. It will be up to your generation to develop the policies to deal with the deadly nuclear legacy that is still very much with us.”

For the former defense secretary, the task now is to finally—belatedly—prove Einstein wrong. The physicist said in 1946: “The unleashed power of the atom has changed everything save our modes of thinking and we thus drift toward unparalleled catastrophe.”

In Perry’s view the only way to avoid it is by directly contemplating catastrophe—and doing so face to face with the world’s largest nuclear power, Russia, as he recently did in a forum in Luxembourg with several like-minded Russians he says are brave enough to speak out about nuclear dangers in the era of Putin.

### 2AC---AT 1NC 1 (Robinson)

#### Capitalism is antithetical to fascism---it strengthens autonomy and freedom from oppression.

Cudd 10, Anne Cudd is Professor of Philosophy and Associate Dean for Humanities, University of Kansas. She is the author of Analyzing Oppression (2006), and co-edited (with Anita Superson) Theorizing Backlash (2002) and (with Robin Andreason) Feminist Theory (2005). (2010, “Capitalism, For and Against A Feminist Debate”, Cambridge University Press)

Capitalist markets and freedom

Freedom is the ultimate appeal of capitalism. The early proponents of capitalism, such as Adam Smith , as well as more recent defenders, including economists from such diverse political motivations as Milton Friedman and Amartya Sen, have all defended capitalism on this ground. While efficiency and the ability to raise living standards is an important reason to maintain free markets, and an aspect of the freedom that Sen extols, the freedoms provided by capitalism are intrinsically valuable and partially constitutive of freedom. As Sen argues, regardless of the efficiencies of the market, “the more immediate case for the freedom of market transaction lies in the basic importance of that freedom itself.” 97 While securing this freedom is straight- forward and simple for middle and upper class men of the First World, for women and others oppressed by traditional norms of their cultures, the freedom to transact in the marketplace can be liberating on a far wider scale. Thus, I will argue as well that capitalism enhances women’s freedom.

The free market system of capitalism enhances freedom in three ways. Traditionally freedom of exchange has been seen as a basic form of individual freedom, with which it would be wrong to interfere, and in this sense is a basic, negative freedom like the freedom of speech, assembly, the press, or conscience. Gerald Gaus, a liberal defender of the morality of markets, summarizes the liberal case for freedom in capitalism: “classical liberalism embraces market relations because (but not, of course, only because) they (1) are essentially free, (2) respect the actual choices of individuals, and (3) legitimately express different individuals’ rational decisions about the proper choice between competing ends, goods, and values.” 98 Market freedom is necessary to respect individuals as free choosers and designers of their own “experiments in living,” as Mill famously puts it. 99 Free markets also have positive aspects, however, in providing opportunities by increasing persons’ material wealth in order to choose things that they value. Another aspect of the positive freedom that markets promote is the freedom of persons to develop their autonomy as decision makers, and to find opportunities to escape from oppressive traditional roles. Markets also promote a third, more controversial, sense of freedom in that they allow persons to interact in mutually beneficial ways even when they do not know each other or have any other traditional reason to care about the other. I call this sense of freedom “social freedom.” In each of these ways – negative, positive, and social – markets have much, and in some cases even more, to offer to women, as women have been more confined by traditional roles to a con- strained family life, deprived of a fair distribution of benefits and burdens of family life, and treated as second-class citizens in their communities. While capitalism has already, as we have seen, brought great advances in the realm of negative and positive liberties, capitalism’s ability to destruct the old and create new forms of community offer a vision of freedom that is yet to be fulfilled. In what follows I will explore each of the three senses of freedom to see how capitalism is related to its realization.

Negative freedom is the freedom not to be interfered with, and a list of such freedoms typically includes civil and political freedoms, but also the economic freedoms to engage in market transactions and to use or benefit from one’s legitimately owned property. These latter two – the freedom to exchange and the freedom to use or benefit from one’s property – are two of the hallmarks of capitalism as I have defined it in terms of the private ownership of capital, free wage labor, and free market conditions. I also added the freedom from discrimination constraint, which is another aspect of negative freedom. Capitalist systems, whether any of the forms discussed at the beginning of my contribution or the enlightened form that I defend, do place some constraints on trade. Taxation by government to provide public goods that the market does not efficiently provide or to internalize negative externalities that traders would otherwise ignore to the detriment of bystanders places legitimate constraints on trade. So, too, do reasonable restrictions on trade designed to certify the quality of some goods. But capitalism by definition defends the basic freedom to open or close a business, to contract one’s labor with the highest bidder, and to exchange goods without attend- ing to the social status of the trading partners. Negative freedoms for the serf, the bonded laborer, or the slave would be freedom to leave the master – to not be impeded, whether by custom or law – to freely engage in wage labor. The nondiscrimination constraint also comprises this freedom; it is the freedom not to be constrained by features about one that are fixed at birth and that have nothing to do with one’s talents or abilities.

As Sen explains, there are four ways in which free markets are needed now to uphold negative freedom or, put another way, to resist tyranny and enslavement. 100 First, they allow persons to escape the bonds of traditional labor bondage by being able to seek wage employment away from traditional bosses. In many rural areas people farm land for traditional landowners, and markets for labor allow them to escape this bondage. This is the freedom capitalism offers that Marx recognized as an improvement over feudalism, where serfs had no choice in their place or way of life. Second, the communism of Eastern Europe and the former Soviet Union, and still existing in North Korea and Cuba, denied the freedoms to engage in exchange or choose where one lives. That these freedoms are now less abridged makes it no less important to recognize that they are important negative freedoms that capitalism upholds. Third, free markets help to liberate children from bonded labor . Children in parts of South Asia are particularly susceptible to being placed in bondage to higher caste men, who put them to work making carpets or bricks for a very small pittance paid to their parents. The main reason for child labor is parental poverty. Where parents can earn more by their labor, they send their children to school. Even if the parents are still too poor or shortsighted or lack schools, if the children can earn wages by their labor, then they can do better than they do in bondage, where they have no income and no ability to resist harsh, violent treatment. Fourth, market employment for women is crucially important for their economic independence and for getting a better deal in intra-household distributions.

Outside employment gives women opportunities that are not directly tied to their menfolk. It makes them able to bargain for a better share of the family wealth and income, but also for less of the burden of chores, or enables them to pay others to do some of the work. The opportunity to work in the same kinds of jobs as men eventually wears away gender distinctions, or makes those distinctions less confining and more equal in terms of status. In this way, enlarging women’s negative freedom also tends toward enlarging their positive freedom.

Positive freedom is defined in two different ways: either as simply the positive supports that individual persons need in order to live a life with enough good choices to deserve the name freedom, or as also including the internal qualities of character that allow persons to be autonomous or self-lawmakers. The two are connected in that persons are typically unable to develop their capacities to plan their lives or live according to principles if they do not have enough to eat, or they have to worry about their physical health and security, or if they have not had an adequate education. Positive freedom in the sense of autonomy recognizes that completely unconstrained behavior is not necessarily action motivated by desires that are one’s own. And positive freedom in the sense of social supports recognizes that without the wherewithal (material and psychological) to act on one’s own desires, there can be no freedom. Sen refers to these as the process and opportunity aspects of freedom. 101 In this book I do not take a stand on which is the proper sense of positive freedom; both are clearly desirable as described. Instead, I argue that both senses of positive freedom are supported in capitalism, though not necessarily guaranteed. In the first sense, capitalism supports, but does not guarantee, the ability of persons to secure their own livelihood and material well-being. As we have seen, capitalism has increased life expectancy, improved health, and decreased fertility and child mortality on average. Increasing wealth is also correlated with increasing educational levels, and decreased fertility is correlated specifically with increasing female education. 102 Capitalism, as a highly cooperative and social form of production, requires socially coordinated and regulated efforts. Thus, capitalism is clearly a form of social provision in design as well as in outcome. Capitalism does not guarantee that any given individual will develop or exercise autonomy, but rather supplies external supports for autonomy by offering opportunities to plan and to raise one’s level of material well-being. In particular, capitalism does not guarantee that persons will develop autonomous desires, and in some ways may be seen as encouraging nonautonomous or what Kant would have called heteronomous desires, a point I will return to in section 6.

The most important objection against capitalism, however, is that it enables gross inequalities in wealth and income. When these inequalities also entail absolute impoverishment, so that persons do not have the ability to choose between decent ways of life, then this is clearly a failure. But capitalism raises the overall level of material wealth in a society, and so allows for the possibility of addressing such abject poverty. The fact that market interactions lead to inequalities is not, in itself, a denial of freedom. But it does pose the possibility of inequalities in power that can lead to positive and social unfreedoms, and indeed this is borne out in the actual world in many ways. Perhaps the worst sort is where wealth buys political influence in a nominally democratic country.

Before leaving the topic of inequality, however, it is important to point out that capitalism is not alone in supporting gross inequalities, but the way in which it does so is acceptable where it is not in other systems. North Korea, a socialist totalitarian system, creates gross inequalities of wealth through political power that controls resources. The leader and his minions live in vast wealth while much of the population teeters on the brink of famine. The communist systems of the Soviet Union and China were also notorious for the vast consumption and indulgence of their leaders compared with the average citizen, and notoriously one had to be a party member in the Soviet Union in order to own a car. Traditional societies are no better; the patriarchs of many such societies are rich while the young and the less powerful labor for far less. But in each of these cases the wealth comes not through productive effort, but rather through political control, and in some cases through inheritance. While the leader of North Korea is in charge simply by virtue of being the son of the previous leader, the richest capitalists in the world were not born to the previous generation of the wealthiest. It is true that Bill Gates and Warren Buffet were born to upper-middle-class families, but their vast wealth was earned through innovation, skills, and talents, and not through inheritance. This is not to say that inequality in wealth is not a problem, nor to say that opportunities to achieve great wealth are fairly distributed in capitalism. They are not, and that is a serious moral issue. But it is to say that socialist and traditional societies have at least equally difficult problems to address in terms of inequality in wealth and power . In the final section of my contribution, I will argue that an enlightened capitalism must do better to address inequalities that either amount to absolute poverty or cause political and social inequalities that deny free- dom. It is also important to note, however, that inequality that does not rule out good options for life does not seriously interfere with individual positive freedom, in either sense of the term. One need not live in the best of all possible worlds, after all, in order to be free enough to pursue one’s own projects.

Positive freedom as autonomy requires that one is not manipulated by the social structure under which one lives. One’s desires must be one’s own and one’s beliefs must be rationally generated for one’s actions to be entirely autonomous. Isaiah Berlin , who draws the distinction between negative and positive freedom in this latter way, ultimately rejects the idea of positive freedom because, he argues, to posit a breach of positive freedom one would have to impose desires on individuals that they do not acknowledge. 103 For governments to attempt to guarantee positive freedom, then, they would have to posit a good for their citizens and entice them to seek it, that is, in Rousseau’s famous phrase, to force their citizens to be free. Berlin, as a liberal, argues that freedom requires merely imposing no impediments to individuals’ given preferences. Positive freedom, Berlin concludes, insinuates a totalitarian menace.

Although Berlin’s is a commonly cited libertarian line of argument that is often aligned with defenders of capitalism, I want to argue that Berlin’s distinction between positive and negative freedom is drawn incorrectly, and that positive freedom in the sense of autonomy is not hostile to capitalism. It is especially important for women and other oppressed groups to attend to internal, psychological impediments to freedom that are generated by social constraints on what they can do and be. Negative and positive freedom cannot be easily separated for two reasons. First, a persistent lack of negative freedom for a social group harms the individuals of that group psychologically, causing them to lack positive freedom. Second, even though the idea that a government might posit an individual’s good for her raises the specter of totalitarianism, that fact does not vitiate the claim that an individual’s freedom can be compromised by a lack of vision of viable alternative options. A person can lack freedom with- out there being a clear way for the person to attain freedom in the future. Violations of negative freedom turn out to result in deeper harms that slide over into the kinds of harms that violations of positive freedom entail.

This is particularly the case for victims of oppression, and particularly for women. 104 Women are often convinced by many different social norms, expectations, and incentives to live within constraints that similarly placed (in terms of race, class, culture, and time period) men need not consider. This sort of internally constrained vision, whether it is because of false consciousness , shame, stereotype, or trauma, is the kind of violation of their positive freedom that should most concern feminists. Capitalism, by providing an option outside kin and traditional community norms for independence and social power, can allow women the wherewithal to escape these constraints. Even if a particular woman does not choose to work outside the home or compete in the marketplace as an entrepreneur, the fact that women have this option under capitalism increases the freedom of all women. Enlarging the set of things that women are seen as cap- able of can reduce the sense that women have that they are inferior, and this can increase their confidence in a wider set of social circumstances. It puts the lie to the idea that women are incapable, and helps women to stand up to ill-treatment and violence.

While many philosophers recognize negative and positive freedoms in quite similar ways, a third concept of freedom has been proposed by different philosophers in quite different ways. Quentin Skinner’s third concept of liberty is the lack of an ongoing threat to one’s freedom of thought and expression. 105 Skinner argues that this requires the existence of a noncoercive government or absence of a threat of domination by one. This form, however, is reducible to negative freedom from interference by government, insofar as it refers to legitimate forms of coercion. A legitimate government may legitimately apply coercive measures to assure the good of the whole or the protection of others who have a rightful claim to such protection, provided that the measures are, in Thomas Scanlon’s terms, something that no reason- able person could reject. Skinner clearly does not mean to rule that out, but rather to rule out coercion that is wrongful. Yet this is already covered under the concept of negative freedom; one is not free in the negative sense if one is coercively dominated by one’s government. However, it goes too far to suggest that one is not free if one is threatened by domination of a coercive government. In this sense Skinner’s third concept of freedom is similar to Philip Pettit’s view of freedom as nondomination. Both are mistaken to take the (implied) ability to pose a threat to be the same thing as a coercive threat.

If freedom in this third sense is compromised by even the threat of coercion or domination, then the free market is not free in this sense. But both Skinner and Pettit claim too much for a concept of freedom. As Gaus argues, it fails to distinguish between power to and power over. 106 Wealth gives one the power to afford many trades, but it does not give one the ability to exercise power over another by forcing a person to make a trade she or he does not want, and thereby limit that person’s liberty. While the classical liberal claims that market transactions are free as long as there is no force, fraud, or coercive threat, Pettit denies this with an argument that freedom requires nondomination, and one dominates another if one has the ability to exercise power over another (including by means of financial clout, technical advantage, or political power). To avoid domination, he argues, one has to have anti-power. Rule of law gives anti-power. Gaus argues that Pettit’s view is profoundly anti-market because the market will inevitably lead to unequal wealth and income, and this would always involves domination on Pettit’s understand- ing, since greater success would allow one to potentially exercise power over another. Thus, the market is full of relations of domination – everyone except Bill Gates is dominated, after all, on this analysis. Furthermore, since equals have equal ability to attack each other, if we all had equal power to achieve our ends, we would all be unfree. Such an analysis trivializes the concept of domination. If Skinner or Pettit are understood to sim- ply mean that freedom requires that there is no active threat or active domination, then this requirement can be seen as entailed already by negative freedom, since an active threat or domination is a direct constraint of one’s basic civil, political, and property rights. If Skinner or Pettit are taken to mean that there can be no potential threat, however, then their concept of freedom falls prey to this triviality objection. And insofar as these concepts are positive, that is, perhaps requiring social supports for individuals to be able to fully participate in social cooperation, they are reducible to positive freedom.

Berlin discussed and rejected a third sense of freedom that he finds in the claims of colonial oppressed persons, and which emerged in the writings of philosophers writing about colonial oppression, such as Jean-Paul Sartre and Frantz Fanon . Freeing oneself from oppression requires negative freedoms in the form of freedom of protest, and positive freedom. In progressive hands, “negative freedom is the capacity to destabilize identities and interrupt norms.” 107 This form of freedom, defended as well in Cynthia Willett’s Irony in the Age of Empire , is the desire for sociality and belonging within one’s group, and recognition of one’s social group and its distinctive values and norms from out- siders. She calls this third form of freedom, “solidarity.” Willett’s third freedom as solidarity requires something more than those two concepts, though. In particular, it requires the existence of social bonds that tie the individuals beyond their ability to resist and set themselves free. I want to resist the notion that this is a form of freedom, regardless of how good social bonds might feel. For they are the very forces of unfreedom in many cases. Bonds of solidarity both enable and constrain. The first, enabling, is indeed freedom, but the second, constraint, is not; it is the dark, exclusionary side of solidarity. Willett does not embrace any particular terms on which social solidarity might be forged. Cornel West’s appeal to nuclear family norms as form of third freedom raises her suspicions. She writes, “West’s appeal to the virtues of sacrifice may not subjugate women to patriarchal control, but it doesn’t sound like the battle cry for liberation that we might desire.” 108 But her suspicions here raise for me the question of why, then, she would align social bonds with freedom. If concepts of freedom proceed from sources of anxiety, I cannot think of anything that produces more anxiety than the requirement that I follow the norms of some particular community, without any opportunity to opt out of that community.

In my view we want freedom to pursue or reject social bonds – not to be dominated or threatened with constraints by others who would prevent our ability to pursue or imagine them. This is most important for members of social groups that have been oppressed for generations, as women have been. Such persons have a constrained vision of what is possible for them, and need to be able to see beyond these constraints that have been erected by others, but reinforced internally. Nonetheless, a third form of freedom can emerge under the right circumstances, namely the social conditions which allow and support individual autonomy for each person, which I call “social freedom.” Social freedom transcends positive freedom by considering the needs of each, not just of individuals one at a time. Autonomy requires an absence of oppressive social constraints that prevent free self- development. Systematic violence, economic discrimination and segregation, social shaming, and vicious stereotyping are among the most autonomy-defeating forces. Social freedom poses a collective obligation to provide for the education of the next generation, not because they are “our children,” as if we own them or they are our personal, genetic or property-inheriting legacy, but because children are at that stage where they need to be taught to develop their capacities if they are to be autonomous adults. Mill argued for this on the utilitarian grounds that more and higher quality pleasure is created that way. 109 Other moral and political theories can generate this obligation as well. For example, a contractarian can argue that by educating children in this way we provide more and better opportunities for cooperation for mutual advantage. A Kantian can simply argue that it is the only way to treat children as ends in themselves. Social freedom can be described as the Rawlsian union of social unions , which he argues arises in the society that is structured by his two principles of justice, and involves each taking pleasure in the achievements, the flourishing, of others. I take it that this is true of the society of free persons, which is not only free of cur- rent oppressions, but whose members seek to free all persons from oppression. For in such a society the individuals are able to seek their own good with good will toward others as well. They seek to encourage diversity and enhance the freedom of others. They take pleasure in and identify with the accomplishments of others. And further, they come to see their own freedom as connected to that of the others.

Capitalism supports social freedom, but, as with positive freedom, does not guarantee it. That would be too much to ask of an economic system alone. As I have argued elsewhere, capitalism embraces the positive aspects of competition. 110 Competition in capitalism is valuable because it allows many different persons to succeed at least in part. For businesses to be profitable there must be consumers to buy their products, and for there to be consumers to buy products, there must be a large sector of the population that earns enough through their labor to consume, and a significant number who can invest and create new opportunities for work. Capitalism thrives where the situation is more like what game theorists call a cooperative competition; that is, the players of the game have interests that are partly shared and partly opposed. The optimal and equilibrium outcome arises when each pursues a strategy that both maximizes their outcome, but also leads to the others being better off, as WE1 suggests. This contrasts sharply with the situation of either the zero-sum game, where there is only one winner and all the others are losers, or worse, a game in which, when each of the players pursues their own best strategies, a socially suboptimal outcome arises (such as in the Prisoner’s Dilemma).

This optimism about capitalism and its role in raising the sights of women is as applicable in poor, developing countries as it is in rich, First World ones. As Sen has argued, freedom is both constitutive of development seen in a progressive light, but also instrumental toward that form of development. Development as he understands it requires making human lives better on a variety of levels that he calls “capabilities.” Included among these capabilities are the abilities that I have listed as the interests of persons, and as the requirements of autonomy. Not only are negative and positive freedoms constitutive of development, though. Social freedom arises from the development of these freedoms as well. Capitalism is not the only route to development, but development seems, empirically, not to be complete without opening up markets to relatively free trade. Sen illustrates this by pointing to the development in China , which moved to a market-oriented economy in 1991. 111 While pre-reform China pursued basic education and health care for all, it lacked democratic freedoms, and this meant less responsiveness to famine and social crises. China suffered an enormous famine, in which 30 million people died, during the Great Leap Forward of 1958–61. Sen credits democracy with preventing any famine in India since independence in 1947. The development of capitalist markets has raised the overall level of income in China , however, to the point where it is unlikely to suffer another such catastrophe, despite the lack of democracy .

### 2AC---AT 1NC 2 (Hickel)

#### Capitalism is economically decolonizing now.

Smith 21, \*Noah Smith, Bloomberg Opinion columnist. He was an assistant professor of finance at Stony Brook University, and he blogs at Noahpinion; (April 2nd, 2021, “Against Hickelism”, https://noahpinion.substack.com/p/against-hickelism)

What Hickel gets wrong is his idea that Western powers, libertarian ideology, and international institutions have conspired to keep poor countries from adopting mixed approaches to their economies. In fact, activist state policies are quite common, and have contributed substantially to the poverty reduction documented above.

For example, take India. Dani Rodrik and Arvind Subramanian, in [a 2004 paper about India’s growth surge](https://www.imf.org/external/pubs/ft/staffp/2004/00-00/rodrik.pdf), write the following:

Most conventional accounts of India’s recent economic performance associate the pick-up in economic growth with the liberalization of 1991. This paper demonstrates that the transition to high growth occurred around 1980, a full decade before economic liberalization. We investigate a number of hypotheses about the causes of this growth—favorable external environment, fiscal stimulus, trade liberalization, internal liberalization, the green revolution, public investment—and find them wanting. We argue that growth was triggered by an attitudinal shift on the part of the national government towards a pro-business (as opposed to pro-liberalization) approach. We provide some evidence that is consistent with this argument. We also find that registered manufacturing built up in previous decades played an important role in influencing the pattern of growth across the Indian states.

In other words, India didn’t just liberalize things; it implemented its own version of a development state, and prospered as a result. The same is true of Southeast Asia, where Malaysia, Thailand, and to a lesser degree Indonesia have emerged as success stories and [have relied thoroughly](https://core.ac.uk/download/pdf/303071859.pdf) on development states and industrial policy. See Vietnam’s recent growth for another example.

In Latin America, it’s true that the Washington Consensus [slowed down structural change and productivity growth](https://rodrik.typepad.com/dani_rodriks_weblog/2010/06/the-most-telling-chart-i-have-seen-in-a-long-time.html). But that doesn’t mean Latin American governments had no role in reducing poverty. Bad advice may have held back the development state in Latin America, but governments there have engaged in extensive redistribution and better education.

A [series](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2304715) of [papers](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226538) by Nora Lustig, Luis F. Lopez-Calva, and Eduardo Ortiz-Juarez documents these policies. Inequality in Latin American countries fell substantially during the 2000s:

Lustig et al. find that roughly half of this was due to government transfers and pension policies, while the other half was due to increasing incomes for workers at the bottom of the distribution — which in turn was due to better education. So Latin American governments, though they didn’t pursue the kind of manufacturing-intensive, export-led development policy used by many Asian countries, did manage to cut poverty with government action.

#### Globalization is immensely beneficial for improving quality of life in the Global South---it’s also widely supported which proves their epistemic skepticism is from an ivory tower.

Horner et al. 18 (Rory, Global Development Institute, University of Manchester, Manchester, UK, “Globalisation, uneven development and the North–South ‘big switch’,” Cambridge Journal of Regions, Economy and Society 2018, 11, 17–33 doi:10.1093/cjres/rsx026, DOA: 11-12-2020) //Snowball //strikethrough of rhetoric

Citizen surveys further reveal dramatic changes in attitudes to globalisation across and within the global North and South. While such surveys have methodological limitations,1 the results indicate distinctive trends that support the thesis of the ‘big switch’. Among people in the global South, polls have consistently found quite positive attitudes towards globalisation. In 2007, the Times of India claimed that ‘Indians believe globalisation benefits their country’, citing a poll by the Chicago Council on Global Affairs and World Public Opinion that 54% of Indians answered ‘good’ compared to 30% ‘bad’ to the question of whether increasing economic connections ‘with others around the world is mostly good or bad’. More recently, Stokes (2016) reported on Pew Research Surveys from 2016 which found that 60% of Chinese think their country’s involvement in the global economy is good (compared to 23% who think it is bad), while 52% of Indians surveyed thought it was good compared to 25% who said it was a problem. A recent YouGov survey of 20,000 people across 19 countries found a majority believed that globalisation has been a force for good. That survey found the most enthusiasm for globalisation in East and South-East Asia, where over 70% in all countries believed it has been a force for good. The highest approval, 91%, was in Vietnam, a relative latecomer to globalisation (Smith, 2017).

By contrast, public support for globalisation in the global North has plummeted. Bhagwati (2004) cited an Environics International Survey presented at the 2002 World Economic Forum Meetings to argue that disillusionment with globalisation was not universal; ‘anti-globalisation sentiments are more prevalent in the rich countries of the North, while pluralities of policy makers and the public in the poor countries of the South see globalisation instead as a positive force’ (2004, 8). Although Bhagwati suggested this was an ‘ironic reversal’, it proved to be in line with a 2007 BBC World Service poll that found 57% of people in G7 countries thought the pace of globalisation was too rapid, whereas the majority of those in ~~developing~~ countries surveyed thought it was just right or too slow (e.g. IMF, 2008; Pieterse, 2012). A 2007 Pew Global Poll similarly found a decline in the percentage of people in many Northern countries who believed trade had a positive impact. In its analysis of the survey results, Kohut and Wilke (2008, 6–7) commented that ‘it is in economically stagnant Western countries that we see the most trepidation about globalisation’. Almost 10 years later, The Economist (2016) reported on a YouGov survey of 19 countries, which found that fewer than half of people in the USA, UK and France believed that globalisation is a ‘force for good’ in the world. This broad change in attitude toward globalisation is playing out in national electoral politics as well as gatherings such as the World Economic Forum and the meeting of the Asia-Pacific Economic Cooperation.

The ‘big switch’ and the geography of uneven development

The ‘big switch’ seemingly confounds the predictions of the most vocal proponents and critics of globalisation alike. Uneven development is dynamic and relates to differences both within and among countries (Sheppard, 2016). Naïve claims that the world is flat or that economic globalisation is ‘win-win’ have rightly been dismissed (Baldwin, 2016; Christopherson et al., 2008; Turok et al., 2017), yet it is also insufficient to suggest that globalisation simply leads to a reproduction of existing inequalities, overlooking how that unevenness may be changing as a result of new macroeconomic geographies (Peck, 2016). While trade theory could predict that there would be ‘losers’ in the global North from international economic integration, proponents of economic globalisation have asserted that they would be few in number and could be compensated. More recently, it appears that a large group of people feel more forsaken than compensated. Similarly, for those who embraced Marxian political economy, and warned of its negative consequences in the South, the apparent optimism and support for globalisation in the South may have been unexpected. The sceptical internationalists (e.g. Evans, 2008; Kaplinsky, 2001; Stiglitz, 2006) should be acknowledged, however, for forecasting downsides in the global North. As we outline below, many people in the global North have experienced relative stagnation, whereas, albeit from a very low starting point and amidst considerable inequality, many people (but not all) have experienced improved development outcomes in the global South. We then explore what this apparent ‘big switch’ may tell us about contemporary economic globalisation.

The new geography of global uneven development

Significant portions of the population in the USA and other countries in the global North have experienced limited, if any, income gains in an era of globalisation. Milanovic’s (2016) ‘elephant graph’ (Figure 1) has quickly become a popular way to demonstrate the relative stagnation experienced in North America and Europe in recent decades. Exploring changes in real incomes between 1988 and 2008, he showed that those who particularly lost out on any relative gain in income were the global upper middle class (those between the 75th and 90th percentiles on the global income distribution) and the poorest 5% of the world population. Of these least successful percentiles, 86% of the population were from mature economies in the global North (Lakner and Milanovic, 2016, 23). Considering these contrasts more widely, a growing body of evidence shows that the global North’s dominance in the global economy is receding, with the share of high-income countries in global GDP having fallen from 76.8% in 2000 to 65.2% in 2015 (see Figure 1).

A different picture emerges in the global South. In Figure 1, it was Asians who comprised 90% of the population in the percentiles which did best in terms of relative income gains from 1988 to 2008 (Lakner and Milanovic, 2016, 223). The UNDP has remarked that

A striking feature of the world scene in recent years is the transformation of many ~~developing~~ countries into dynamic economies…doing well in economic growth and trade … they are collectively bolstering world economic growth, lifting other ~~developing~~ economies, reducing poverty and increasing wealth on a grand scale. (UNDP, 2013, 43)

The share of global GDP of low and middleincome countries increased from 22.5% in 2000 to 34.1% in 2015 (Figure 2). Much of this increase is accounted for by China, as well as India and Brazil. Their share of global GDP, only 4.6% in 1960, 6.6% in 1990 and 9.3% in 2000, had almost doubled in the 21st century to 18% by 2015.

The development context of the global South has changed significantly since the turn of the Millennium, across a variety of important indicators. The total number of people in the world living on less than $1.90 per day (i.e. extreme poverty) has more than halved from 1.69 billion in 1999 to 766 million in 2013. At least by official estimates, the share of the population in the global South who are living in extreme poverty has fallen considerably this century. Whereas the percentage of the population in the global South with a daily consumption level of less than $1.90 was 33.4% in 1999, it was just 13.4% in 2013.2 The percentage of the world’s countries classified by the World Bank as low-income, albeit a very low threshold, more than halved within the first 15 years of the 21st century. Moreover, the total number of countries which are highly dependent on aid (having a net ODA > 9% of GNI) has fallen considerably, from 42 in 2000 to 29 in 2015, or from 34.1% to 23.2% of all low and middle-income countries with data available over that period.3

Considered overall, in comparison with the 1990s, the global South, in aggregate, now earns a much larger share of world GDP, has more middle-income countries, more middleclass people, less aid dependency, considerably greater life expectancy and lower child and maternal mortality. Table 1 provides some summary indicators for high-income countries (HICs) and low and middle-income countries (L&MICs), as somewhat imperfect approximations for global North and South.

After two hundred years of a ‘divergence, big time’ (Pritchett, 1997) between developed and ~~developing~~ countries following the Industrial Revolution, recent measurements suggest a change in the pattern of global inequality across a number of indicators (Horner and Hulme, 2017). The Global GINI of income distribution across all individuals in the world has fallen from 69.7 in 1988 to 66.8 in 2008 and 62.5 in 2013 (World Bank, 2016, 81). Analysis presented in the World Bank’s Taking on Inequality (2016) suggests that, in 1998, 26% of global income inequality was related to differences within countries, with the remaining 74% relating to differences among countries. By 2013, these shares were 35 and 65%. Two hundred years of a great divergence between global North and South now seems to have had some reversal, although more than half of an individual’s income can be accounted for by the country where he/she lives or was born (Milanovic, 2013). Inter-country inequality, rather than intra-country inequality, is still dominant, but it accounts for a diminished share of income-based and other inequalities (World Bank, 2016).

### 2AC---AT 1NC 3 (Hicks)

#### Card’s about IP, which is not intrinsically colonial.

Gilden 18 (Andrew, Assistant Professor of Law, Willamette University College of Law, “SEX, DEATH, AND INTELLECTUAL PROPERTY,” Harvard Journal of Law & Technology Volume 32, Number 1 Fall 2018, Accessed via HeinOnline, DOA: 9-13-2021) //Snowball

The most robust embrace of IP ownership as a pathway to autonomy, community, equality, and cultural participation has emerged in the context of IP protections for indigenous peoples and racial minorities. Professor Madhavi Sunder's work has embraced the "affirmative" use of IP rights by traditional communities, such as by Indian artisans seeking protections for Darjeeling tea and Mysore silk, Native American tribes seeking protection of their spiritual symbols, and Australian Aboriginals seeking collective copyrights in their artistic work.243 Sunder observes that these groups' IP claims utilize the narrative of identity politics, cultural survival, and human rights, 244 mirroring how they assert IP rights for recognition and redistribution both for individual creators and the communities in which they are situated. 245 Professors Kristen Carpenter, Sonia Katyal, and Angela Riley similarly embrace IP ownership for indigenous cultural groups, conceiving of such rights as a form of "property in peoplehood.1 241 IP can be a tool for reshaping prejudicial public representations of certain groups, for example, where a Native American child "recognizes that using the Indian race as a mascot is a badge of inferiority" and does not see any other race similarly caricatured on a daily basis. 247 Professor K.J. Greene has critiqued the historical failure of the copyright system to protect the work of black artists, connecting this lack of recognition and compensation to "the systemic subordination based on race that characterized most of U.S. history." 248 For these scholars, the rights of exclusion afforded by IP are crucial steps toward cultural inclusion, fair representation, and equality.

Contemporary IP disputes emphasize that this desire for recognition, community, cultural participation, and dignified representation is even more universal. 249 Although vulnerabilities in social media environments certainly track social hierarchies more broadly, 250 vulnerabilities are nonetheless experienced across the lines of race, gender, class, and sexual orientation. 251 ' Anyone who releases cultural artifacts into a digital network- whether via text message, cloud storage, or Facebook - risks that artifact being used by others in ways that reshape their work, family, and romantic relationships and limit their ability to set the terms of their own cultural participation.252 When someone's public representation marks them merely as a source of sexual pleasure or as a consumable commercial resource, it ignores, debases, and potentially weakens the more complex web of cultural relationships in which that person is enmeshed.253 One might respond that such loss of control is sadly the price we pay by constantly using "free" digital networks, but such resignation cedes far too much power to those who seek to exploit our potential vulnerabilities.254 Disputes around sex, death, and IP reveal a diverse group of individuals looking to our legal system for ways to reassert agency in the face of vulnerability. IP laws, as written, often match these needs quite closely. These laws may have been designed with a narrow set of market-oriented concerns in mind, but they can evolve into a more capacious tool for managing boundaries in a social media environment and addressing a broader set of concerns. 255 The Internet lets us play, and IP provides some protection. 256

### 2AC---AT 1NC 4 (Koch)

#### 4---Techno optimism good. Clean energy is rapidly superseding fossil fuels which is sufficient to avoid tipping points.

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The change is much bigger than the turnover of American leadership. By the time the Biden presidency finds its footing in a vaccinated world, the bounds of climate possibility will have been remade. Just a half-decade ago, it was widely believed that a “business as usual” emissions path would bring the planet four or five degrees of warming — enough to make large parts of Earth effectively uninhabitable. Now, thanks to the rapid death of coal, the revolution in the price of renewable energy, and a global climate politics forged by a generational awakening, the [expectation](https://climateactiontracker.org/global/temperatures/) is for about three degrees. Recent pledges [could bring us closer to two](https://climateactiontracker.org/publications/global-update-paris-agreement-turning-point/). All of these projections sketch a hazardous and unequal future, and all are clouded with uncertainties — about the climate system, about technology, about the dexterity and intensity of human response, about how inequitably the most punishing impacts will be distributed. Yet if each half-degree of warming marks an entirely different level of suffering, we appear to have shaved a few of them off our likeliest end stage in not much time at all.

The next half-degrees will be harder to shave off, and the most crucial increment — getting from two degrees to 1.5 — perhaps impossible, dashing the dream of avoiding what was long described as “catastrophic” change. But for a climate alarmist like me, seeing clearly the state of the planet’s future now requires a conspicuous kind of double vision, in which a guarded optimism seems perhaps as reasonable as panic. Given how long we’ve waited to move, what counts now as a best-case outcome remains grim. It also appears, miraculously, within reach.

In December, a month after Biden was elected promising to return the U.S. to the Paris agreement, the U.N. celebrated five years since the signing of those accords. They were five of the six hottest on record. (The sixth was 2015, the year the agreement was signed.) They were also the years with the highest levels of carbon output in the history of humanity — with emissions equivalent to what was produced by all human and industrial activity from the speciation of Homo sapiens to the start of World War II.

They have also been the five years in which the nations of the world — and cities and regions, individuals and institutions, corporations and central banks — have made the most ambitious pledges of future climate action. Most of them were made in the past 12 months, in the face of the pandemic. Or, perhaps, to some degree, because of it — because the pandemic demanded a full-body jolt to the global political economy, provoking much more aggressive government spending, a much more accommodating perspective on debt, and a much greater openness to large-scale actions and investments of the kind that might plausibly reshape the world. And because decarbonization has come to seem, even to those economists and policy-makers blinded for decades to the moral and humanitarian cases for reform, a rational investment. “When I think about climate change,” Biden is fond of saying, “the word I think of is jobs.”

There are two ways of looking at these seemingly contradictory sets of facts. The first is that the distance between what is being done and what needs to be done is only growing. This is the finding of, among others, the U.N.’s comprehensive [“Emissions Gap” report](https://www.unenvironment.org/emissions-gap-report-2020), issued in December, which found that staying below two degrees of warming would require a tripling of stated ambitions. To bring the planet in reach of the 1.5-degree target — favored by activists, most scientists, and really anyone reading their work with open eyes — would require a quintupling. It is also the perspective of Greta Thunberg, who has spent the pandemic year castigating global leaders for paying mere lip service to far-off decarbonization targets and who called the E.U.’s new net-zero emissions law “surrender.”

The second is that all of the relevant curves are bending — too slowly but nevertheless in the right direction. The International Energy Agency, a notoriously conservative forecaster, recently [called](https://www.carbonbrief.org/solar-is-now-cheapest-electricity-in-history-confirms-iea#:~:text=Source%3A%20IEA%20World%20Energy%20Outlook%202020.&text=Together%2C%20low%2Dcarbon%20sources%20would,up%20from%2019%25%20in%202019.) solar power “the cheapest electricity in history” and projected that India will build 86 percent less new coal power capacity than it thought just one year ago. Today, business as usual no longer means a fivefold increase of coal use this century, as was once expected. It means pretty rapid decarbonization, at least by the standards of history, in which hardly any has ever taken place before.

Both of these perspectives are true. The gap is real, and the world risks tumbling into it, subjecting much of the global South to unconscionable punishments all the way down. But in the months since the pandemic wiped climate strikers off the streets, their concerns have seeped into not just public-opinion surveys but parliaments and presidencies, trade deals and the advertising business, finance and insurance — in short, all the citadels presiding over the ancien régime of fossil capital.

This is not exactly a climate revolution; the strikers and their allies didn’t win in the way they wanted to, at least not yet. But they did win something. Environmental anxieties haven’t toppled neoliberalism. Instead, to an unprecedented degree, they infiltrated it. (Or perhaps they were appropriated by it. It’s an open question.) Climate change isn’t an issue just for die-hards anymore — it’s for normies, sellouts, and anyone with their finger in the wind. It will take time, of course, for voters to see empty rhetoric for what it is, and for consumers to learn to distinguish, say, between the claims of guiltless airline tickets, or between carbon-free foods in the supermarket aisle. Harder still will be sorting through the differences between real corporate commitments like Microsoft’s and more evasive ones, like BP’s. Already, there is considerable consternation among climate activists that the public doesn’t understand the tricky math of “net-zero” on which so many of these commitments have been made—it is not a promise of ending emissions, but of offsetting some amount of them, in the future, with “negative emissions,” sometimes called “carbon dioxide removal,” though no approach of that kind is ready to go at anything like the necessary scale. And while some amount of skepticism about those commitments is surely warranted, it is also the case that, according to [a recent Bloomberg review](https://www.bloomberg.com/graphics/2020-company-emissions-pledges/), of 187 corporate climate pledges made for 2020 in 2015, 138 will be met. (Many of those promises were quite modest, but it is a much better performance than has been managed by the 189 parties to the Paris agreement, of which only two — Morocco and Gambia — are today [judged](https://climateactiontracker.org/countries/) fully “compatible” with the 1.5-degree goal, and only six more with the 2-degree target).

In the political sphere, the uneasy alliance between activists and those in power will be tested, producing new conflicts, or new equilibria, or both. Consider, though, that Varshini Prakash, whose [Sunrise Movement](https://www.sunrisemovement.org/) gave Biden’s primary candidacy an F, later helped write his climate plan along with Alexandria Ocasio-Cortez. Climate expertise has been distributed throughout the incoming administration, as was promised during a campaign that closed, remarkably, with a climate-focused advertising blitz. During the transition, Biden’s pick for director of the National Economic Council, Brian Deese, was targeted by the environmental left for his time with BlackRock, but even this purported stooge had been married by Bill McKibben, one of the godfathers of modern climate activism.

Elsewhere in the world, where 85 percent of global emissions are produced, the great infiltration of climate concerns represents what the British environmental [writer](https://www.businessgreen.com/blog-post/4025199/2020-crisis-crossroads-alternative-histories) James Murray has called “an alternative history to 2020” and what the scientist turned journalist Akshat Rathi [has declared](https://www.bloomberg.com/news/articles/2021-01-05/climate-action-is-embedding-into-how-the-world-works) “a strong sign that climate action is starting to be ‘institutionalized’ — that is, getting deeply embedded into how the world works.” This is not about coronavirus lockdowns producing emissions drops or “nature healing.” It is instead about long-standing trajectories passing obvious tipping points in coal use and political salience; promises and posturing by powerful if compromised institutions; and policy progress almost smuggled into place, all over the world, under cover of pandemic night. In the U.S., in the second coronavirus stimulus, [$35 billion in clean-energy spending](https://nymag.com/intelligencer/2020/12/what-is-in-covid-stimulus-omnibus-climate-pell-grants-medical-billing.html) passed in the Senate 92-6 — an effective down payment, energy researcher Varun Sivaram has estimated, on the innovation spending needed for a full electrification of the country. Did you even notice?

Biden’s climate plan now faces the challenge of a filibuster, a skeptical Supreme Court, and the mood of Senator Joe Manchin of West Virginia, which means American climate action over the next four years is probably more likely to be delivered piecemeal — through appropriations and stimulus, executive action, and regulation — than through a landmark Green New Deal–style piece of legislation. That does limit what can be achieved, but it also means avoiding a protracted battle over climate as a referendum on the identity of the nation. And at least nominally, having been pressured by activists to do so, Biden is promising to multiply the green spending in that recent stimulus by a factor of 60.

The numbers are numbingly large — reminders that in the midst of pandemic turmoil, the rules of state spending have been dramatically revised and perhaps even suspended. Is this global free-spending binge the beginning of a new era or merely a crisis interregnum to be followed by a new new austerity? “We don’t know what the recovery packages of COVID are going to be,” Christiana Figueres, one of the central architects of the Paris accords, told me this summer. “And honestly, the depth of decarbonization is going to largely depend on the characteristics of those recovery packages more than on anything else, because of their scale. We’re already at $12 trillion; we could go up to $20 trillion over the next 18 months. We have never seen — the world has never seen — $20 trillion go into the economy over such a short period of time. That is going to determine the logic, the structures, and certainly the carbon intensity of the global economy at least for a decade, if not more.”

For those dreaming of a climate recovery, the first round of spending was not so encouraging. The E.U. was the gold standard, promising that 30 percent of its stimulus would be earmarked for climate. The U.S. and China each pledged only a fraction of that (and in each case, there was fossil stimulus, too). But in October, a team of researchers including Joeri Rogelj of the Imperial College of London [calculated](https://www.reuters.com/article/climate-change-stimulus/tenth-of-pandemic-stimulus-spend-could-help-world-reach-climate-goals-study-idUSKBN271098) that just one-tenth of the COVID-19 stimulus spending already committed around the world, directed toward decarbonization during each of the next five years, would be sufficient to deliver the goals of the Paris agreement and stop global warming well below two degrees. That analysis may be a touch optimistic, but the level of spending seems, now, doable.

When Donald Trump was elected, trashing Paris, climate hawks were left hoping that the world would hang on for the length of his administration — insisting that, in the long term, the crisis couldn’t be solved without America at the helm. But the past four years of missing leadership have produced astonishing gains.

The price of solar energy has fallen ninefold over the past decade, as has the price of lithium batteries, critical to the growth of electric cars. The costs of utility-scale batteries, which could solve the “intermittency” (i.e., cloudy day) problem of renewables and help power whole cities in relatively short order, have fallen 70 percent since just 2015. Wind power is 40 percent cheaper than it was a decade ago, with offshore wind experiencing an even steeper decline. Overall, renewable energy is less expensive than dirty energy almost everywhere on the planet, and in many places it is simply cheaper to build new renewable capacity than to continue running the old fossil-fuel infrastructure. Oil demand and carbon emissions may both have peaked this year. Eighty percent of coal plants planned in Asia’s developing countries have been shelved.

This summer, I heard the Australian scientist and entrepreneur Saul Griffith talk about what it would take to get the U.S. within range of a 1.5 degree world. He said it would mean that beginning in 2021, this year, every single person buying a new car would have to be buying an electric one. That seems unrealistic, I thought, making a note of it as a useful benchmark illustrating just how far we have to go.

Then, in the fall, the U.K. pledged to ban nonelectrics by 2030—a once-unthinkable law coming both too slow and much more quickly than seemed possible not very long ago. Similar plans are now in place in 16 other countries, plus Massachusetts and California. Canada recently raised its tax on carbon sixfold. Italy cut its power-sector emissions 65 percent between 2012 and 2019, and Denmark is now aiming to reduce its overall emissions 70 percent by 2030. “We set ourselves challenges that on paper looked almost impossible,” the country’s minister for the environment, Dan Jørgensen, told me recently. “And I think experts in many countries said, when looking at Denmark, ‘This is going to be too expensive, this is going to lower their living standards, this is going to hurt their ability to compete.’ But actually I’m proud to say that the opposite has happened. Now, of course, we have set even higher standards.”

In the midst of the pandemic, new net-zero pledges, far more ambitious than those offered at Paris, were independently made by Japan, South Korea, the E.U., and, most significant, China, the world’s biggest emitter, which promised to reach an emissions peak by 2030 and get all the way to zero by 2060. China’s promise is so ambitious it has inspired one wave of debate among experts about whether it is even feasible — given that it would require, for instance, roughly twice as much renewable power to be installed every year for the next decade as Germany has operating nationwide today — and another debate about whether it has revived the possibility of that 1.5-degree target, with economic historian Adam Tooze writing, just after Xi Jinping’s surprise announcement in September, that it single-handedly “redefined the future prospects for humanity.” Together, the new net-zero pledges may have subtracted a full half-degree from ultimate warming. Add Biden’s campaign pledge of net zero by 2050, and you’ve got about two-thirds of global emissions at least nominally committed to firm, aggressive timelines to zero.

These are all just paper promises, of course, and the history of climate action is littered with the receipts of similar ones uncashed. Plot the growth of carbon concentration in the atmosphere against the sequence of climate-action conferences and a distressing pattern emerges: the World Meteorological Conference of 1979, the U.N. framework of 1992, the Kyoto protocol of 1997, the Copenhagen accord of 2009, and the 2015 Paris accords, all tracking an uninterrupted trajectory upward for carbon from a “safe” level under 350 parts per million, past 400, to 414 today, and pointing upward from there. Before the industrial revolution, humans had never known an atmosphere with even 300 parts per million. Inevitably now, within a few years, the concentration will reach levels not seen since 3.3 million years ago, when sea levels were 60 feet higher. For all their momentum, renewables still only make up 10 percent of global electricity production.

But alarmists have to take the good news where they find it. And while mood affiliation is not always the best guide to the state of the world, in 2020, for me, there were three main sources of hope.

The first is the fact that the age of climate denial is over thanks to extreme weather and the march of science and the historic labor of activists — climate strikers, Sunrise, Extinction Rebellion — whose success in raising alarm may have been so sudden that they brought an end to the age of climate Jeremiahs as well. Their voices now echo in some unlikely places. Exxon was booted from the S&P 500 within months of Tesla making Elon Musk the world’s richest man. The cultural cachet of oil companies is quickly approaching that of tobacco companies. Jair Bolsonaro of Brazil aside, practically every leader of every country and every major figure in every corporate and industrial sector now feels obligated — because of protest and social pressure, economic realities, and cultural expectation — to at least make a show of support for climate action. It would be nice not to have to count that as progress, but it is. The questions are: How much does it matter? And what will follow? Disinformation and human disregard are not the only instruments of delay, and the age of climate denial is likely to yield first not to an age of straightforward climate deliverance but to one characterized by climate hypocrisy, greenwashing, and gaslighting. But those things, ugly and maddening and even criminal as they are, have always been with us. It is the other thing that is new.

The second source of good news is the arrival on the global stage of climate self-interest. By this I don’t mean the profiteering logic of BlackRock, which opportunistically announced some half-hearted climate commitments last year, but rather the growing consensus in almost every part of the globe, and at almost every level of society and governance, that the world will be made better through decarbonization. A decade ago, many of the more ruthless capitalists to analyze that project deemed it too expensive to undertake. Today, it suddenly appears almost too good a deal to pass up. (A recent McKinsey [report](https://www.mckinsey.com/business-functions/sustainability/our-insights/how-the-european-union-could-achieve-net-zero-emissions-at-net-zero-cost): “Net-Zero Emissions at Net-Zero Cost.”)

The logic may be clearest in considering the effects of air pollution, which kills an estimated 9 million people per year. In India, where more than 8 percent of GDP is lost to pollution, poor air quality is also responsible for 350,000 miscarriages and stillbirths every year. Globally, coal kills one person for every thousand people it provides power to, and even in the U.S., with its enviably clean air, total decarbonization would be entirely paid for, Duke’s Drew Shindell [recently testified](https://www.vox.com/energy-and-environment/2020/8/12/21361498/climate-change-air-pollution-us-india-china-deaths) before Congress, just through the public-health benefits of cutting out fossil fuels. You don’t even have to calculate any of the other returns — more jobs, cheaper energy, new infrastructure. Of course, countries all around the world are incorporating those considerations too, turning the page on a generation of economic analysis that said decarbonization was too costly and its benefits too small to sell to the public as upside.

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What is perhaps most striking about all the new climate pledges is not just that they were made in the absence of American leadership but that they were made outside the boundaries of the Paris framework. They are not the result of geopolitical strong-arming or “Kumbaya” consensus. They are, instead, plans arrived at internally, in some cases secretly. This has been eye-opening for the many skeptics who worried for decades about climate’s collective-action problem — who warned that because the benefits of decarbonization were distributed globally while the costs were concentrated locally, nations would move only if all of their peers did too. But a [recent paper](https://www.mitpressjournals.org/doi/full/10.1162/glep_a_00578) by Matto Mildenberger and Michaël Alkin suggests this shouldn’t be a surprise. In their retrospective analysis, they found that, despite much consternation about designing climate policy to prevent countries from “cheating,” there was basically no evidence of any country ever pulling back from mitigation efforts to take a free ride on the good-faith efforts of others. There was, in other words, no collective-action problem on climate after all. For a generation, the argument for climate action was made on a moral basis. That case has only grown stronger. And now there are other powerful, more mercenary arguments to offer.

The third cause for optimism is that, while the timelines to tolerably disruptive climate outcomes have already evaporated, the timelines to the next set of benchmarks is much more forgiving. This is why Glen Peters, the research director at the Cicero Center for International Climate Research, often jokes that while keeping warming below two degrees is very hard, perhaps even impossible, keeping it below 2.5 degrees now looks like a walk in the park.

This isn’t to say we’re on a glide path to safety. At current emissions levels, the planet will entirely exhaust the carbon budget for 1.5 degrees in just seven years — stay merely level, in other words, and we’ll burn through the possibility of a relatively comfortable endgame within the decade. We could buy ourselves a little more time by starting to move quickly, but not that much more. To decarbonize fast enough to give the planet a decent chance of hitting that 1.5-degree target without any negative emissions would require getting all the way to net-zero emissions by around 2035. Simply running the cars and furnaces and fossil-fuel infrastructure that already exists to its expected retirement date would push the world past 1.5 degrees—without a single new gasoline SUV hitting the road, or a single new oil-heated home being built, or a single new coal plant opened.

A two-degree target, by contrast, yields a much longer timeline, requiring the world to achieve net-zero by 2070 or 2080 — without even the help of negative emissions. We’d have to cut carbon production in half in about three decades, rather than one. That pathway will almost certainly prove harder than it looks. The good news is that we seem to be beginning, at least, to try.

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#### The alt’s an overarching solution that shuts down Indigenous futures and reifies settler dominance

Busbridge 18, Research Fellow at the Centre for Dialogue, La Trobe University (Rachel Busbridge, 2018, “Israel-Palestine and the Settler Colonial ‘Turn’: From Interpretation to Decolonization,” Theory, Culture & Society Vol 35, Issue 1)

The prescription for decolonisation—that is, a normative project committed to the liberation of the colonised and the overturning of colonial relationships of power (Kohn & McBride, 2011: 3)—is indeed one of the most counterhegemonic implications of the settler colonial paradigm as applied to Israel-Palestine, potentially shifting it from a diagnostic frame to a prognostic one which offers a ‘proposed solution to the problem, or at least a plan of attack’ (Benford & Snow, 2000: 616). What, however, does the settler colonial paradigm offer by way of envisioning decolonisation? As Veracini (2007) notes, while settler colonial studies scholars have sought to address the lack of attention paid to the experiences of Indigenous peoples in conventional historiographical accounts of decolonisation (which have mostly focused on settler independence and the loosening of ties to the ‘motherland’), there is nevertheless a ‘narrative deficit’ when it comes to imagining settler decolonisation. While Veracini (2007) relates this deficit to a matter of conceptualisation, it is apparent that the structural perspective of the paradigm in many ways closes down possibilities of imagining the type of social and political transformation to which the notion of decolonisation aspires. In this regard, there is a worrying tendency (if not tautological discrepancy) in settler colonial studies, where the only solution to settler colonialism is decolonisation—which a faithful adherence to the paradigm renders largely unachievable, if not impossible. To understand why this is the case, it is necessary to return to Wolfe’s (2013a: 257) account of settler colonialism as guided by a ‘zero-sum logic whereby settler societies, for all their internal complexities, uniformly require the elimination of Native alternatives’. The structuralism of this account has immense power as a means of mapping forms of injustice and indignity as well as strategies of resistance and refusal, and Wolfe is careful to show how transmutations of the logic of elimination are complex, variable, discontinuous and uneven. Yet, in seeking to elucidate the logic of elimination as the overarching historical force guiding settler-native relations there is an operational weakness in the theory, whereby such a logic is simply there, omnipresent and manifest even when (and perhaps especially when) it appears not to be; the settler colonial studies scholar need only read it into a situation or context. It thus hurtles from the past to the present into the future, never to be fully extinguished until the native is, or until history itself ends. There is thus a powerful ontological (if not metaphysical) dimension to Wolfe’s account, where there is such thing as a ‘settler will’ that inherently desires the elimination of the native and the distinction between the settler and native can only ever be categorical, founded as it is on the ‘primal binarism of the frontier’ (2013a: 258). It is here that the differences between earlier settler colonial scholarship on Israel-Palestine and the recent settler colonial turn come into clearest view. While Jamal Hilal’s (1976) Marxist account of the conflict, for instance, engaged Palestinians and Jewish Israelis in terms of their relations to the means of production, Wolfe’s account brings its own ontology: the bourgeoisie/proletariat distinction becomes that of settler/native, and the class struggle the struggle between settler, who seeks to destroy and replace the native, and native, who can only ever push back. Indeed, if the settler colonial paradigm views history in similar teleological terms to the Marxist framework, it does not offer the same hopeful [construction] ~~vision~~ of a liberated future. After all, settler colonialism has only one story to tell— ‘either total victory or total failure’ (Veracini, 2007). Veracini’s attempt to disaggregate different forms of settler decolonisation is revealing of the difficulties that come along with this zero-sum perspective. It is significant to note that beyond settler evacuation (which may decolonise territory, he cautions, but not necessarily relationships) the picture he paints is a relatively bleak one. For Veracini (2011: 5), claims for decolonisation from Indigenous peoples in settler societies can take two broad forms: an ‘anticolonial rhetoric expressing a demand for indigenous sovereign independence and self-determination… and an “ultra”-colonial one that seeks a reconstituted partnership with the [settler state] and advocates a return to a relatively more respectful middle ground and “treaty” conditions’. While both, he suggests, are tempting strategies in the struggle for change, though ‘ultimately ineffective against settler colonial structures of domination’ (2011: 5), it is the latter strategy that invites Veracini’s most scathing assessment. As he writes, under settler colonial conditions the independent polity is the settler polity and sanctioning the equal rights of indigenous peoples has historically been used as a powerful weapon in the denial of indigenous entitlement and in the enactment of various forms of coercive assimilation. This decolonisation actually enhances the subjection of indigenous peoples… it is at best irrelevant and at worst detrimental to indigenous peoples in settler societies (2011: 6-7). The ‘primal binarism of the frontier’ plays a particularly ambivalent role in Veracini’s (2011: 6) formulation, where the categorical distinction between settler and native obstructs the ‘possibility of a genuinely decolonised relationship’ (by virtue of its lopsidedness) yet is a necessary political strategy to guard against the absorption of Indigenous people into the settler fold, which would represent settler colonialism’s final victory. The battle here is between a ‘settler colonialism [that] is designed to produce a fundamental discontinuity as its “logic of elimination” runs its course until it actually extinguishes the settler colonial relation’ and an anti-colonial struggle that ‘must aim to keep the settler-indigenous relationship going’ (2011: 7). In other words, the categorical distinction produced by the frontier must be maintained in order to struggle against its effects. Given the lack of options presented to Indigenous peoples by Veracini (2014: 315), his conclusion that settler decolonisation demands a ‘radical, post-settler colonial passage’ is perhaps not surprising – although he has ‘no suggestion as to how this may be achieved and [is] pessimistic about its feasibility’. Scholars have long reckoned with the ambivalence of the settler colonial situation, which is simultaneously colonial and postcolonial, colonising and decolonising (Curthoys, 1999: 288). Given the generally dreadful Fourth World circumstances facing many Indigenous peoples in settler societies, it could be argued that there is good reason for such pessimism. The settler colonial paradigm, in this sense, offers an important caution against celebratory narratives of progress. Wolfe (1994), it must be recalled, wrote the original articulation of his thesis precisely against the idea of ‘historical rupture’ that dominated in Australia post-Mabo, and was thus as much a scholarly intervention as it was a political challenge to the idea of Australia having broken with its colonial past. Nonetheless, the fatalism of the settler colonial paradigm—whereby decolonisation is by and large put beyond the realms of possibility—has seen it come under considerable critique for reifying settler colonialism as a transhistorical meta-structure where colonial relations of domination are inevitable

(Macoun & Strakosch, 2013: 435; Snelgrove et al., 2014: 9). Not only does Wolfe’s ontology erase contingency, heterogeneity and (crucially) agency (Merlan, 1997; Rowse, 2014), but its polarised framework effectively ‘puts politics to death’ (Svirsky, 2014: 327). In response to such critiques, Wolfe (2013a: 213) suggests that ‘the repudiation of binarism’ may just represent a ‘settler perspective’. However, as Elizabeth Povinelli (1997: 22) has astutely shown, it is in this regard that the totalising logic of Wolfe’s structure of invasion rests on a disciplinary gesture where ‘any discussion which does not insist on the polarity of the [settler] colonial project’ is assimilationist, worse still, genocidal in effect if not intent. Any attempt to ‘explore the dialogical or hybrid nature of colonial subjectivity’—which would entail working beyond the bounds of absolute polarity—is disciplined as complicit in the settler colonial project itself, leaving ‘the only nonassimilationist position one that adheres strictly and solely to a critique of [settler] state discourse’. This gesture not only disallows the possibility of counter-publics and strategic alliances (even limited ones), but also comes dangerously close to ‘resistance as acquiescence’ insofar as the settler colonial studies scholar may malign the structures set in play by settler colonialism, but only from a safe distance unsullied by the messiness of ambivalences and contradictions of settler and Native subjectivities and relations. Opposition is thus left as our only option, but, as we know from critical anti-colonial and postcolonial scholarship, opposition in itself is not decolonisation. In his defense of settler colonial studies against criticisms that it is unable to account for political action, Veracini (2014: 312) has maintained that settler colonialism is an interpretive paradigm, not a transformative one: ‘settler colonial studies’, he writes, ‘is only ultimately accountable for the way it is effective in explaining things’. Yet, as I have already noted, this is not precisely the case in the context of Israel-Palestine. Not only is the settler colonial paradigm increasingly associated with particular normative projects, namely a critique of the two-state solution and advocacy for a single democratic state (e.g. Collins, 2011), but both Veracini and Wolfe have ventured into the question of ‘solutions’ in their respective accounts of the dynamics of Zionist settler colonialism. While they are quite divergent in their readings of what it would mean to decolonise Israel-Palestine, I suggest that they are nevertheless indicative of the limitations of the settler colonial paradigm’s structural perspective, which flattens manifestations of settler colonialism and lends itself to certain parameters. These parameters neglect important differences between Israel-Palestine and its typical sites of comparison—not least of which is the relative ‘completeness’ of settler ethnic cleansing efforts and the political geographies and modes of legal governance they produce (Gordon & Ram, 2016)—, which have important implications for any project of decolonisation. After all, if there is there is no one-size-fits-all model of colonialism, there is no route to decolonisation appropriate to all contexts (see Kohn & McBride, 2011). In this last section, I want to engage Veracini and Wolfe’s accounts as a means to trace some of these areas of neglect, and, in so doing, gesture towards issues in need of serious reckoning in the settler-colonial paradigm’s prescription for decolonisation. For Veracini (2013: 26), the conflict is best understood in terms of how the Zionist settler colonial project to establish a Jewish-majority state in historic Palestine is complicated and compromised by the ongoing occupation. If success is a matter of perceived legitimacy, Veracini takes 1967 as marking a decline in the success of Israeli settler colonial practice and suggests that the occupation itself is an instance of failed settler colonialism, insofar as Israel has largely failed in having its West Bank settlements recognised as part of the settler colonial state (p. 30). When settler colonialism fails in its attempt to extinguish the colonial relation, he asserts, it reverts to colonialism where the colonial relation is underscored. This explains both the permanency of the occupation—if ‘the Occupation was established as a means to enable permanent settlements, now it is the settlements that perpetuate the need for permanent occupation’—and the radical turn to the Right inside Israel, which has seen ‘the integration of Israeli Arabs… progressively reversed’ and the ‘autonomy of the settler colonial project eroded’ by an increasing reliance on external support from international allies and the Jewish diaspora (pp. 32-3). This ‘simultaneous coexistence of successful and failed settler colonialisms’ (p. 39) means that ‘approaching the conflict would probably require a suite of solutions’ (p. 27). Nevertheless, Veracini is rather coy about what these may be. On the one hand, he emphasises that the ‘decolonisation paradigm’ is only really available to the West Bank and Gaza Strip, and that other frameworks must be made available to Palestinians inside Israel and those in the diaspora who, by virtue of the success of the Israeli settler project inside Israel, have effectively had decolonisation taken off the table (p. 40). On the other hand, he seems to suggest that any solution will nonetheless be unable to escape the colonial conditions that have shaped it. If two-states is a ‘colonial solution’, because ‘internationally sanctioned Palestinian independence (and associated forms of neo-colonial dependency)… should be seen as the colonial occupation’s logical outcome, not its demise’, onestate ‘turns out to be the settler colonial solution’ because it signals the permanency of the settler polity (p. 33, 39). Wolfe (2012), in contrast, is far more direct about his preference for a single democratic and secular state in Israel-Palestine. The two-state solution, he suggests, is not only ‘liberal subterfuge’, but an oxymoron, because of its inability to reckon with the ways in which the ‘New Jew’ Zionism has sought to construct needs the contrapuntal presence of the Palestinians to come into being—without the Palestinians, Israel would fracture under the weight of its own internal diversity (pp. 319-20). Wolfe is especially troubled by the religious/secular division that plagues Zionism as an ostensibly secular national movement framed around the notion of Jewish return, and which has become more politically salient with the religious-national settlement movement that has taken hold in Israeli politics since the late 1970s. The ‘ascendancy of [this] religious element’ is of particular concern, loading the settler will to eliminate the native with an additional theological dimension; should Israel ‘be finally cleansed of its Natives’, he warns, it would only be ‘left with a choice between theocracy and implosion’ (p. 318). Thus the appeal of a single state solution: not only does it deal with the tricky questions of territory and sovereignty in one fell swoop, but it also does away with this risk of theocracy. Additionally, it dissolves the ‘irreducible contradictions between Zionism’s twin goals of territorial expansion and ethno-racial exclusiveness’: ‘in a secular state… that exists for its citizens rather than co-religionists this intractable problem disappears’ (p. 321). The desire for ethnic purity that has characterised Zionism to date becomes its greatest asset in this regard, namely because it does not allow for the assimilation of Palestinians. Thus, for Wolfe, [r]ather than absorbing the colonised population into the ranks of the colonisers, and thereby eliminating that population, a secular democracy does not require the elimination of either—or, better, any— of its constituent ethnicities. That is the whole point (p. 321). In this sense, ‘a unified state not only dismantles Zionism. In the process, it dismantles settler colonialism’ (p. 321). If Veracini offers a seemingly impossible vision of decolonisation in IsraelPalestine, where any solution would be compromised by the colonial conditions preceding it, Wolfe’s vision seems in comparison impossibly easy: not only can Zionism be dismantled, but so too can settler colonialism. This is in stark (and surprising) contrast to his generally fatalistic take on structural transformation in settler colonial societies. It is, however, particularly revealing of the tendency in settler colonial scholarship to regard Zionism as purely settler colonial and the conflict akin to any other settler colonial context (e.g. Collins, 2011). Both Veracini and Wolfe are guilty of this, even as they are otherwise attentive to many of the particularities of the conflict. Wolfe (2013b: 9), for instance, identifies ‘Zionism as settler colonialism pure and simple’, if not a particularly voracious form stuck at the frontier stage. Likewise, Veracini (2015: 1-2) suggests that the ‘settlement, nothing else, [is] the absolute core of Zionist practice’, going so far as to claim that ‘what is in front of us is not a conflict situation, it is actually a postconflict’ (‘postconflicts’, he notes, ‘are rarely peaceful’). Tim Rowse (2014) has argued the tendency towards ahistorical and decontextualised analysis in settler colonial studies means that it misses much about the variety of geographical and regional forms settler colonialism takes. It is equally important, however, to recognise that the settler colonial frame itself is by no means ahistorical or decontextualised. To the contrary, settler colonial studies is very much an Antipodean perspective, having emerged primarily within an Australian context, and it is fair to say that this is evidenced in its main preoccupation with white settler societies. While all transnational frames have to be developed somewhere, the structural emphasis of the settler colonial paradigm not only obfuscates this local heritage but means that its vernacularisation is often replication, which is where the ‘imported institution remains largely unchanged from its transnational prototype [and] the adaptation is superficial and primarily decorative’ (Merry, 2006: 44). This can be evidenced in Wolfe and Veracini’s respective accounts of decolonising Israel-Palestine, which leave the national dimensions of the conflict under-examined and fail to address the unique affective and socio-political resonances of the native/settler distinction in the Israeli-Palestinian context. As Wolfe (2012: 287) points out, the circumstances and intentions of settler colonisers is inconsequential from a Native point of view, and both he and Veracini perhaps quite rightly prioritise the historical outcomes of Zionism (namely, the displacement of the Palestinians) over all other meanings attached to it. Nevertheless, it is important to recognise that there is a strong nationalist aspect to Zionism, which is after all a national movement geared towards Jewish self-determination. This marks it as a particularly unique— although not singular—form of settler colonialism. In contrast to settler colonies like Australia where the drive for a settler identity separate from the metropole only emerged much later, the impetus towards an exclusive form of settler self-determination has shaped almost all aspects of the conflict in Israel-Palestine since at least the second aliyah that reached Palestine between 1904 and 1914 (see Shafir, 1989). Of course, Zionism is not the only colonialist project to be carried out in the name of ostensibly nationalist ideals—the French colonisation of Algeria is widely cited as a case in point (Pappe, 2008: 612-3). Yet, it does mean that understanding Zionism’s nationalist impulse is crucial to understandings its political strengths and continued affective resonance; ‘a simple dismissal of Zionism’, Jacqueline Rose (2005: 13) appeals, ‘fatally undermines the case it is intended to promote’. Moreover, as Pappe (2008: 613) stresses, ‘labelling Zionism as nationalist or national [by no means] absolve[s] it from the accusations of dispossession and occupation’ (my emphasis). Nor does it lessen its crimes against the Palestinian people. While the Palestinian anti-colonialism has historically been entangled with a broader pan-Arabism, it is similarly impossible to understand it outside of a nationalist vocabulary and the struggle for national self-determination (Said, 1979). Given that the settler paradigm is nominally able to incorporate the Palestinian struggle for national self-determination under the rubric of decolonisation, it is striking that neither Wolfe nor Veracini reckon in any rigorous way with implications of Palestinian nationalism in their respective accounts.5 Wolfe’s (2012: 231) one-state, for instance, ‘does not require the elimination of its constituent ethnicities’, neglecting not only that the affirmation of those ethnicities is also a powerful political driver in the ongoing conflict, but that the affirmation of identity for colonised peoples has been a defining feature of decolonising projects in general (Fanon, 1967). Veracini’s (2013) efforts at disentangling the colonial from the settler colonial would similarly seem to reinforce the Green Line’s fragmentation of the Palestinian polity into those in the ‘territories’ and those inside ‘Israel proper’, thus undermining the paradigm’s potential to aid Palestinian nation-building efforts. The lack of attention paid to the Jewish drive for ethno-national selfdetermination, however, is not surprising. From the perspective of settler colonial studies, the question of settler self-determination is an especially fraught one: not only is it seen as a particular historical relic (loosening ties to the ‘motherland’), but settler colonial scholarship has concerned itself precisely with critiquing how the notion of settler self-determination legitimises continued dominance over Indigenous peoples. Additionally, in the context of contemporary white settler societies like Australia, Canada and the United States, the claim for ethno-national self-determination simply does not make sense (save for a few at the very periphery of politics) given that the shape of the polity is more civic than ethnic. Indeed, it is the settler colonial polity’s ability to subsume Indigenous alterity that is regarded as most troubling in the settler colonial paradigm; assimilation is, after all, the final stage in the logic of elimination (Wolfe, 1994). It is from this perspective that we can make sense of Veracini’s insistence that the one-state is the settler colonial solution. Yet, as Wolfe makes clear, Zionism has little capacity to assimilate Palestinians: the lines of identity, driven as they are by a dichotomy of Jew/non-Jew determined by a tribal notion of maternal blood-lineage, are simply too firm for serious parallels to be made between Israel and the white settler societies with which it is typically compared. While Wolfe’s (2012: 320) account is more sensitive to these dynamics, his vision of a secular, civic, inclusive and plural united state (which he interestingly addresses to European Ashkenazi Jews) would nevertheless seem to leave aside the ways in which such plurality is fiercely charged in the Israeli-Palestinian context—and is, most certainly, also characterised by a religious dimension for Israelis and Palestinians alike. In this regard, Wolfe replicates much debate on the one-state solution, which presumes that Jews would be incorporated into a single state as a neutral and repentant collectivity (Farsakh, 2011: 70). If even a one-state solution would have to reckon with the reality that the very presence of Israeli Jews as a settler collective is grounded on a history of dispossession and occupation, then surely dismantling Zionism—as per Wolfe’s wish—is not enough to dismantle settler colonialism. Perhaps the question is less one of dismantling Zionism than it is of decolonising Jewish Israeli identity and its settler colonial privileges, which, as Theodora Todorova (2015) argues, are most powerfully connected to the Jewish right to return—a right in turn denied to the Palestinians. This is something missed by Veracini, who takes the intimate connections between Israel and the Jewish diaspora as a sign of weakness in the settler colonial project, when this complicated entanglement with diaspora is in fact constitutive of Zionist settler colonialism. If Wolfe and Veracini fail to fully engage the conflict’s nationalist dimensions, they are also strangely silent on the resonances and implications of the settler/native distinction in the Israeli-Palestinian context. Indeed, one of the weaknesses of the settler colonial paradigm as a whole is its inability to fully reckon with Indigenous and settler identities as interactive, mutable and contingent processes of social signification. For Wolfe, the native/settler distinction is only socially constructed insofar as it is forged at the moment the settler decides she wants to stay; yet, as Francesca Merlan (2009) has argued, ‘Indigeneity’ as a transnational category cannot be understood outside of the historical processes

### 2AC---AT 1NC 6 (Dalley)

#### Preventing extinction counters the core of the modern colonial mission

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What has this day been for, if its future is only now? What kinds of pedagogies might we enact under the threat and fact of erasure? How can we teach a pedagogy of extinction that remains firmly political, hopeful, committed to ever-widening communal formations? By “pedagogy of extinction” I mean to signal a tentacular pedagogy — to borrow from Donna Haraway (2016) — that will not separate the teaching-learning of histories of extinction produced through the systemic force of colonization and its ecological legacies from all those who are becoming extinct in the wake of the Anthropocene and the irreversibility of our collective end. At the end of The TimeEaters, the pedagogical errand is confronted by the extinction of its target. In response to this jam, the pedagogue determines to teach his alien friend the art of protest (in the form of letter writing, which feels touchingly retro as it aims toward the future). The errand here is an insistence, an unrelenting pedagogy of hopeful protest in the now, regardless of what gets scheduled for us tomorrow. Humanimal Projects If the future in The Time-Eaters is precarious for the alien friend, what is the future of the human child who is also (always) animal? For Kathryn Bond Stockton (2009: 5), the figure of the child is “precisely who we are not and, in fact, never were. It is the act of adults looking back. It is a ghostly, unreachable fancy, making us wonder.” In the poetic prose collection Humanimal: A Project for Future Children, Bhanu Kapil (2009) undertakes her “project” for and through the queer historical animal-child, one for whom the future ultimately comes through other bodies. As she undertakes this project, Kapil is accompanied by a French filmmaking crew to West Bengal to research the alleged true story of two “wolf girls,” Amala and Kamala, found living in the wild in 1921 by the Reverend Joseph Singh. Humanimal upturns history for a future that has already passed; Kapil’s errand into this wild past unfolds the missionary logic of a wildness that must be forcibly converted. As the bodies of the wolf girls emerge through this text, they are tangled up with other bodies — those of the missionary and Kapil herself — who are likewise becoming animal through their accounts of their fantastical engagements with the wild girls. Humanimal opens with an explicative passage about the Reverend Singh, the missionary who claimed to have discovered and captured the wolf girls and later wrote about his work to civilize them: In the jungle, on a Mission to convert the tribal population, Singh had heard stories of “two white ghosts” roaming with a mother wolf and her pack of cubs. He decided to track them. Upon discovering the “terrible creatures” to be human, he killed the wolves and brought the children back to his churchrun orphanage, the Home, in Midnapure. For the next decade, he documented his attempt to teach the girls language, upright movement, and a moral life. Despite his e¦orts, Amala died within a year of capture, of nephritis. Kamala lived to be about sixteen, when she died of TB. (Kapil 2009: x) I’m fascinated here by Kapil’s elucidation of a relay of errands — a mission within Singh’s mission, that is, the movement from an errand to convert tribal communities into another adjacent errand that dispels the logic of the ghost to capture and civilize the wild girls. This second pursuit is a “sidetrack,” an errand that strays from but remains staunchly within the logic of the first. They are crucially linked by conversion, by a logic of capture that is at the heart of the colonial mission. Taking up the missionary’s voice, Kapil writes that Singh killed the wolf pack before capturing one of the girls in a bedsheet: “I cut a hole,” Singh states, “and removed her from the cave” (14). So begins Singh’s pedagogy of conversion, a pedagogy that is also a civilizing cut. And his engagement with this civilizing errand, this pedagogy of cut, is one that continuously mimics the very thing it seeks so willfully to convert: “Accused by an orphan of biting, Kamala is called into Joseph’s study where he bites her back. Beats her with a bamboo wand, then pricks her in the palm with its tip” (41). Kapil emphasizes the savagery of civility in capture and its attempt to tame, questioning the line that separates civility from the wild it so relentlessly desires to control. Singh’s own errand-pursuing body becomes itself errant. Even before he captures and cuts the girls into civilization, his own body is already animal, a being whose “hide shivers” as he encroaches on the gendered bodies of the wolf girls to civilize them (22). My interest is in how one colonial errand gives rise to the advent of another and in how this relay might be perverted and redirected toward the decolonial wild. Kapil’s poetic decolonial errand is trans-temporally tentacular: into Bengal, into history, into the wilderness where the wolf girls may once have lived, she begins to uproot the grand colonial errand. In Humanimal, the future child for whom she writes is the wolf child of the past, a girl whose “new, animal mother” will come (has already come, will come again) to cross over with her “into the green” (18). And Kapil herself is as much this wolf girl as she is the one of the past and the one of the future. She embodies her errand: “To write this, the memoir of your body, I slip my arms into the sleeves of your shirt. I slip my arms into yours, to become four-limbed” (15). Constructing memory becomes a requisite labor of intimacy, a mission against the Mission, a strategy for messing with time — reversing and bringing forward the acts of becoming animal, becoming human, becoming civilized, becoming hybrid with, as, and for the other. Kapil writes herself into the body of the historic wolf child and, in so doing, takes on the violence of an intimate history that has sought forcibly to convert the wild. This is yet another kind of pedagogy operating in the text that stands fiercely against the pedagogy of the colonial cut. Kapil’s is a self-rendering pedagogy, a willingness to becoming other-animal, a recognition of the mythical but no less embodied trace of the animal girl who is in you. Who is you. Whose own tortured body has also been and is still becoming yours. Through her journey to Bengal and the writing of her collection, Kapil undertakes missions against the Mission. Errands against colonial force. Errands of wild embrace. Wild errands. From within the colonial errand that we are all living out, Dodge and Kapil point us — from very different locations and through divergent forms — toward how we might dispatch resistant errand-acts that create static in the delivery of the almighty colonial message. If we can conceive of the colonial errand as a kind of permeating noise, we might also follow Michel Serres (2007: 69) in beginning to attune ourselves to other forms of resistant noise that are also always sounding: “There are always multiple systems at play, making noise, even while we live in a world in which it appears that there is only one system, one dominant form of noise we have been socialized into hearing.” Dodge and Kapil take up errands that make noise within and against the false sense of a dominant and dominating sound track. Theirs are errands that bloom through bodyminds in ways that disrupt the cut and capture of the grand colonial message. Errands that set out not to deliver already prescribed messages from on high, but to dispatch and receive messages from the past and the future, from this world and others, through errands that do not lay claim to globalizing authority and civilizing modes of forced obedience.

Wild Extinction

I am summoning an embodied embrace of strange errand making, of transmissions that have no precise destination and no claims to authority, that take up force but refuse its controlled propagation. Against mastery, I am calling for a wild proliferation of texts and/as bodies that are radically hybrid, whose lives — our lives, whoever and whatever we are — might be lived in collective friction against the errands upon which we are founded. I am wandering toward this wild, with ghosts haunting alongside me, gathering messages from friends and strangers and running with them as we move with disorientation not into some wilderness out there, but into and for our own bewildering surround. I am led back to pedagogies of extinction, toward Halberstam’s sanctuary in the wild and the intimate commitment to staying lost. The wild errand sutures these possibilities, aiming for a lost sanctuary — gathering and distributing messages as we head toward a place we cannot (yet? ever?) reach. Perhaps it seems ridiculous to point out that some of us have never been extinct before. The trajectory of the colonial errand has delivered us to this breaking point, to a practice of consumption so enormous that it now devours itself. Our wild errands will spring from the disorientations we feel and sanctuaries we build in the shadows of this colonial force and will not be acts of shelter from the fact of extinction but will be shelters that foster a politics of living into and through our messages of refusal. Into the kind of world we won’t stop dreaming up and stitching together. The errand is act, is place, is temporality, is politics, is an unmapped trail that is being invented and navigated as it is being anarchically sounded and overgrown. The colonial errand, so crucial to the logic of modernity, has run us into our own impending extinction

. The misfit craft of the wild errand pops up to confront this end without surrender. It does so without giving up on the work of justice, on forms of redress for those capitalist errands that keep being made and delivered against life. The wild errand is an act of teaching ourselves how to live under and against erasure. What I am calling wild extinction is, counterintuitively, a profoundly hopeful politics even while it pronounces its grounded sense that ours is a perishing life-form. While the colonial errand into the wilderness has driven some to extinction, and is still delivering others closer to it, wild errands bloom through the cracks and fissures of a seemingly impermeable concrete colonialism. The wild errand is a politics that mushrooms against those historically rooted forms of insidious erranding from above. In Anna Lowenhaupt Tsing’s (2015: 2) beautiful account of mushrooms that grow in and because of capitalist ruin, she tells us that “the uncontrolled lives of mushrooms are a gift — and a guide — when the controlled world we thought we had fails.” She reminds us that the mushroom’s willingness to emerge in and through devastation “allows us to explore the ruin that has become our collective home” (3). The wild errand is a style of living together into this blasted landscape — into the settler colony we keep calling home.

### 2AC---AT 1NC 7 (Alternative)

#### GBTL is the wrong approach – prioritize legal affordance of self-determination.

\*JAR = Justice as Restoration = GBTL

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Still, while JAR is the most normatively attractive of the three theoretical clusters, JAR theory is not the final stop on the theoretical journey to justice for Indians. JAR theory is susceptible to criticism on several grounds. As compelling as the argument that non-Indian land owners are obligated to vacate their entitlements in favor of the descendants of their Indian predecessors-in-title may be, principles of equity, as JAS theory is quick to assert, should proscribe the wholescale evacuation of millions of acres of land and the forced relocation of innocent and newly-homeless non-Indians to places uncertain. Even if equity alone is not sufficient to counsel prudence, the prospect that non-Indians threatened in the security of their property interests might organize to induce political action resulting in further abridgement of Indian resources and rights must be accounted for in any theory of Indian justice. If the only remedy for a past injustice is a present injustice, a perpetual cycle of bloody conflict over land is inevitable. However, the most radical of JAR theorists are practically oblivious to the broad externalities the restorative element of their philosophy might spawn: despite warnings that it is now much too late to “give back Manhattan,” some insist that nothing short of the dissolution of the U.S. will suffice if we are to “tak[e] seriously . . . morality and justice.” If politics is the art of the possible, a theory that insists on the dismemberment of the modern-day U.S. or other forms of “radical social surgery” 345is too fantastic to be given serious consideration as a political proposal. Furthermore, if JAR may conceivably go too far in pressing for land restoration, like JAC theory it does not go far enough toward facilitating Indian self-determination because it does not recognize, let alone engage, federal Indian law as the primary variable preventing the balancing of the moral equation. Compensation and apologies, gestures potentially part of an amicable settlement, do not contribute directly to the reinvestiture of sovereignty in Indian tribes. Only a comprehensive program of legal reform that dispenses with doctrines and precedents perpetuating the denial of Indian rights will create the preconditions for Indian self-determination.