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#### RACIAL CAPITALISM:

#### The plan strengthens free markets and saves capitalism.

Parakkal & Bartz-Marvez 13, \*Assistant Professor of International Relations, Philadelphia University, \*\*Visiting Assistant Professor, Department of Economics, University of Miami. (Raju, Sherry, Winter 2013, “Capitalism, democratic capitalism, and the pursuit of antitrust laws”, The Antitrust Bulletin, Vol. 58, No. 4, DOI: 10.1177/0003603X1305800409)

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

#### Racial capitalism subordinates billions and threatens extinction.

Gonzalez 20, Morris I. Leibman Professor of Law at Loyola University Chicago School of Law and Professor Emerita at Seattle University School of Law. (Carmen, 10-27-2020, "Climate Change and Racial Capitalism", *LPE Project*, <https://lpeproject.org/blog/climate-change-and-racial-capitalism/>)

Racialized communities have borne the brunt of the carbon-based capitalist world economy from its colonial origins through the contemporary climate crisis. They have been enslaved, exploited, dispossessed, and subjected to both the physical violence of invasion and occupation and the structural “slow violence” of polluting industry. From the Niger Delta to the Canadian tar sands, racially subordinated populations living in the shadows of oil drilling, coal mining, oil and gas pipelines, power plants, refineries, and petrochemical plants are poisoned by toxic chemicals and treated as surplus and disposable. In my article in the inaugural issue of JLPE, I break new ground by examining climate change and climate change-induced displacement through the framework of racial capitalism. Drawing upon the work of political theorist Cedric Robinson and sociologist Aníbal Quijano, I treat racism and capitalism as inextricably intertwined. Robinson argues that capitalism emerged from a feudal order thoroughly infused with racial (or proto-racial) hierarchies. Quijano identifies Europe’s violent conquest of the Americas as the pivotal event that globalized white supremacy and established the capitalist world economy. Both have analyzed how racism makes oppression socially acceptable by portraying large segments of humanity as inferior, unworthy, and expendable. In my article, I focus on how the global capitalist order has used racism to create the conditions for the massive unchecked resource extraction that has caused global climate change and for pushing the burden of its impacts onto those who are most vulnerable and least responsible. CLIMATE INJUSTICE Climate change is caused primarily by the world’s most affluent inhabitants but threatens the lives and livelihoods of those who contributed least to the problem. As climate change intensifies, those most susceptible to climate-related disasters and displacement are also overwhelmingly persons classified as non-white. They reside in vulnerable geographic locations (such as coastal zones, the Arctic, and the Pacific island states), and have been deprived of the resources to protect themselves from harm through centuries of predatory economic policies. Despite the disproportionate impact of climate change on vulnerable populations who have been largely ignored due to their racialization, legal scholarship on climate displacement has often adopted a doctrinal approach that fails to analyze the underlying systemic causes of the climate crisis and its relationship to race and racism. I focus on international law in particular. CLIMATE CHANGE AND INTERNATIONAL LAW International law has mounted an inadequate response to the climate crisis. The climate treaties have failed to curb global temperature increases, and have delivered insufficient adaptation assistance to climate-vulnerable states and peoples. Even though climate-related disasters and slow-onset events (such as sea level rise) threaten to displace millions of people, international law provides very limited protection to persons who flee their country of origin to escape the ravages of climate change. Neither the 1951 Refugee Convention nor the treaties governing climate change requires countries to admit climate-displaced persons. Part of the problem is that international law has been complicit in the project of racial capitalism. As Antony Anghie explains, international law originates in the colonial encounter and has justified successive Northern interventions in the Global South through a variety of doctrines – including terra nullius, the doctrine of discovery, the mandate system, trusteeship, modernization, and development. International law has depicted Southern peoples as so primitive, savage, uncivilized, backward, and under-developed that their lives, livelihoods, and cultures are unworthy of protection. It has also created the rules and institutions of the capitalist world system through which Northern states and transnational corporations maintain an iron grip on the states and people of the South, including trade law, foreign investment law, and international financial institutions such as the World Bank and the International Monetary Fund. EMERGING LEGAL AND POLICY RESPONSES TO CLIMATE DISPLACEMENT In the absence of a binding legal framework, three emerging legal and policy responses to climate displacement threaten to reinforce racialized hierarchies and to trap large segments of humanity in places that are becoming uninhabitable. First, the national security response constructs climate-displaced persons as barbarians crashing the gates of civilization, and has fostered the criminalization, detention, and expulsion of migrants. Second, the humanitarian response reinforces racial hierarchies by portraying climate-displaced persons as primitive, backward, and in need of charity rather than justice. Its voluntary initiatives to protect disaster-displaced persons obscure the Global North’s responsibility for climate change and have little chance of succeeding at a time of rising nationalism and xenophobia. Third, the migration management response encourages climate-displaced persons to finance climate resilience in their home countries through temporary labor migration. This approach shifts responsibility for climate change adaptation from affluent states to exploitable workers from the world’s poorest and most climate-vulnerable populations. The exodus of able-bodied workers may also exacerbate the vulnerability of “trapped populations” (darker-skinned, older, disabled) by producing a brain drain, labor shortages, and reliance on erratic remittance flows. A JUST SOLUTION TO CLIMATE DISPLACEMENT? Another way is possible. Climate-vulnerable states and peoples have called for an approach to climate displacement grounded in their collective right to self-determination and to legal continuity as self-governing communities on the territories of other states. This proposal deserves consideration. Successful implementation of it requires a responsibility-based framework that imposes obligations on affluent states to finance the mobility decisions of climate-displaced populations based on their contribution to the climate crisis. The self-determination approach is an example of the ways that Southern states and peoples are developing counter-hegemonic interpretations of international law that will permit them to shape their own history and transcend the colonially-imposed borders that impede mobility and increase climate vulnerability. An analysis of climate displacement grounded in racial capitalism must identify who benefits from policies that stoke racism and militarize borders. These beneficiaries include the corporations that provide surveillance, border walls, and detention facilities; the security apparatus of the state; the businesses that exploit undocumented or incarcerated migrants; and the authoritarian populists who demonize migrants in order to persuade working class whites to support policies that intensify economic inequality and hasten catastrophic climate change. Although greenhouse gases do not respect national borders, national elites deploy racialized systems of border control to perpetuate the illusion that persons classified as white can somehow escape the economic and ecological ravages of capitalism by erecting walls and fortresses. Racism enables states and corporations to pursue policies catastrophic to the planet and its inhabitants because the worst and most immediate consequences are inflicted on stigmatized populations in the sacrifice zones of the fossil fuel economy. While focusing on the problem of climate displacement, the article uses the framework of racial capitalism to highlight how the struggles for racial, economic, and climate justice are interconnected and interdependent. Racism creates divisions between people whose economic and ecological vulnerability should serve as the basis for solidarity and resistance. As economic inequality increases and the planet’s ecosystems are brought to the brink of collapse, all but the ultra-affluent will become frontline communities in an increasingly damaged and dangerous world. Deconstructing racial hierarchies is necessary in order to foster the collective action required to avert climate catastrophe. Climate change is not an isolated crisis, but a symptom of an economic (dis)order that jeopardizes the future of life on this planet. Through a race-conscious analysis of climate change grounded in political economy, this article seeks to engage scholars in a variety of disciplines in order to develop more robust critiques of the laws, institutions, and ideologies that maintain racial capitalism and pose an existential threat to humanity.

#### Vote neg to reject the aff and affirm place-based cooperatives.

Bledsoe et al. 19, \*Adam, assistant professor in the Department of Geography and African American Studies Program at Florida State University. \*\*Tyler McCreary, assistant professor in the Department of Geography at Florida State University, \*\*\*Willie Jamaal Wright, assistant professor of geography at Florida State University. (“Theorizing diverse economies in the context of racial capitalism”, *Geoforum*, <https://doi.org/10.1016/j.geoforum.2019.07.004>)

As acknowledged in the literature above, unorthodox value systems and modes of production are often present within Black-led cooperatives. Through collective community-building initiatives by groups like Cooperation Jackson and Cooperative Community of New West Jackson, Jackson has risen as a promising place for the incubation and application of economic, spatial, and political alternatives. Applying the analytic of marronage to discussions of commoning can contribute timely, place-based contributions to the study of cooperatives and the commons. Thinking of the commons, particularly of urban commons, through a lens of marronage may help residents and organizers in selecting and acquiring common property as well as in recreating modes of living beyond and before the (re)imposition of capital. Though communities are adept at determining their needs, as efforts such as D-Town Farms and the CCNWJ indicate, making academic resources, concepts, and methods available to collective and cooperative practices may lead to any number of fruitful and unforeseen outcomes. Finally, as residents and researchers are not immune to the trappings of spatial imaginaries based in logics of individual ownership (see Wright and Herman, 2018), an analytic of marronage has the potential to influence the spatial imaginaries of residents and researchers, alike, so that more of us come to view landscapes of marronage as more than blank slates for capitalist development but as the future of innumerable publics.

7. Conclusion

Analyses of racial capitalism are necessary in the drive to create alternatives to capitalism. If diverse economies hope to address phenomena like urban decay, gentrification, and environmental degradation, they must first recognize that notions of racial difference make such arrangements possible. Urban disinvestment, the repurposing of urban space, and the treatment of spaces as empty contribute directly to the reproduction of capitalist modes of production. In the context of North America, these mechanisms of accumulation occur precisely because the communities most affected by them remain subordinated to logics of conquest. The afterlives of settler colonialism and chattel slavery inform the realities of present-day capitalism, as the displacement and spatial fixing of Indigenous and Black populations—central to the initial rise of global capitalism—continue to be central characteristics of capital accumulation. Creating alternatives to capitalism thus means first recognizing how conquest continues to structure capitalist modes of production.

In the examples given above, Black and Indigenous communities provide clear analyses of the logics and concrete economic factors that oppress them. In recognizing how economic abandonment and intentional disinvestment from city spaces serve to reproduce capitalism and oppress their communities, Black communities in Detroit and Jackson and Indigenous communities in Winnipeg and Minneapolis offer a grounded theory of racial capitalism. These communal analyses explore particular manifestations of present-day capitalism, uncovering how capital accumulation takes place via the oppression of racialized populations. More importantly, these communities push beyond a diagnosis of oppressive dynamics and create place-specific alternatives to the expressions of capitalism they encounter. The establishment of public housing in Winnipeg and Minneapolis and the cultivation of commons through practices of marronage in Detroit and Jackson both entail alternatives to the forms of capitalism that displace the Indigenous and Black communities present in those cities. These communities, then, employ an analysis of racial capitalism to enact diverse economies.

Literature on diverse economies and actual, material creations of alternatives to capitalism can look to examples like those described above as they try to envision and implement economies that do not reproduce capitalist modes of production. Winnipeg, Minneapolis, Detroit, and Jackson are hardly the only locations in which capitalism has taken hold, and different locations will have to wage their own struggles against the specific forms of capitalism they face. Nonetheless, the movements described in this paper offer an important blueprint for how analysis and praxis can walk hand in hand. To create futures not dominated by capitalism requires both an honest assessment of the workings of racial capitalism and the ability to create alternatives to such arrangements. Looking to examples like those above are a starting point from which we can take both of these steps.

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#### T: CONGRESS:

#### “Expand” requires a change in the law.

Hatter 90, District Judge. (Hatter, Opinion in In re Eastport Associates, 114 BR 686 - Dist. Court, CD California 1990. Google scholar caselaw. Date Accessed: 7-12-2021)

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

#### That must be a material modification of the language of the statute.

Iowa Supreme Court 4, Justice (Cady, Opinion in State v. Truesdell, 679 NW 2d 611 - Iowa: Supreme Court 2004. Google scholar caselaw, Accessed: 9-13-2021)

Generally, a material modification of the language of a statute gives rise to "a presumption that a change in the law was intended." Midwest Auto. III, LLC v. Iowa Dep't of Transp., 646 N.W.2d 417, 425 (Iowa 2002); see 1A Norman J. Singer, Statutes and Statutory Construction § 22.1, at 240-41 (6th ed.2002). The existence of this presumption is enhanced "when the amendment follows a contrary... judicial interpretation of an unambiguous statute." Midwest Auto. III, LLC, 646 N.W.2d at 425.

#### “Antitrust laws” AND “prohibitions” are statutory

Kalbfleisch 61, District Judge. (Kalbfleisch, Opinion in Paul M. Harrod Company v. AB Dick Company, 194 F. Supp. 502 - Dist. Court, ND Ohio 1961. Google scholar caselaw, Accessed: 9-11-2021)

The definition of "antitrust laws" in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term "antitrust laws" could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the prohibitions of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term "antitrust laws," as used in the statute, as to require no further discussion.

#### Violation---the aff isn’t Congress.

#### VOTE NEG:

#### First---Ground---Congressional change guarantees core DAs like horse-trading and politics and have link uniqueness because of decades of Congressional inertia.

#### Second---Limits---forces aff to have a comparative solvency advocate, which constrains aff choice. It’s try-or-die for an agential constraint because the topic is bidirectional and unlimited.

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#### POLITICS DA:

#### China bill passes now, it’s ToA and key to tech leadership

AFP 2-13-2021, News Agency, Karachi. ("US lawmakers advance China competition bill", *BOL News*, <https://www.bolnews.com/business/2022/02/us-lawmakers-advance-china-competition-bill/>)

WASHINGTON: US lawmakers have voted to green-light a multibillion-dollar bill aimed at jumpstarting high-tech research and manufacturing, countering China’s growing influence and easing a global shortage of computer chips. The House Democrats’ America Competes bill, their version of the Senate-passed $250-billion US Innovation and Competition Act, was approved in a 222-210 vote in the lower chamber. The legislative push came after the US Commerce Department warned that companies have an average of less than five days’ worth of semiconductor chips on hand, leaving them vulnerable to shutdowns. President Joe Biden wants to invest $52 billion in domestic research and production and, after sitting on the bill since it passed the Senate on a cross-party vote in June, House Speaker Nancy Pelosi recently listed the $350-billion package as a top priority. The package would mark a win that Biden would love to be able to trumpet at his State of the Union address on March 1, although it will now need to be reconciled with the Senate version, which could take several weeks. “The House took a critical vote today for stronger supply chains and lower prices, for more manufacturing, and good manufacturing jobs, right here in America, and for outcompeting China and the rest of the world in the 21st century,” the president said in a statement. ‘Predatory trade’ The White House sees the initiative as the main legislative tool to combat China’s growing prowess. Senior administration officials, including Commerce Secretary Gina Raimondo, had been pushing the House behind the scenes to move it quickly. Senate Majority Leader Chuck Schumer said Congress was one step closer to delivering “big, bold, bipartisan action” to boost US jobs and strengthen supply chains so businesses can compete with China, lower costs and “invest in our future.”

#### Antitrust reform trades off with other legislative priorities

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Tech leadership stops nuclear war.

Kroenig & Gopalaswamy 18, \*Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council. \*\*Director of the South Asia Center at the Atlantic Council. He holds a PhD in mechanical engineering with a specialization in numerical acoustics from Trinity College, Dublin. (Matthew & Bharath, 11-12-2018, "Will disruptive technology cause nuclear war?", *Bulletin of the Atomic Scientists*, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>)

Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

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#### CLIMATE PIC:

#### The United States federal government should substantially increase Federal Trade Commission exclusive rulemaking prohibitions on business anticompetitive business practices that do not significantly reduce greenhouse gas emissions by at least expanding the scope of its core antitrust laws to include tacit collusion.

#### The plan derails burgeoning corporate action to curb emissions.

Balmer 20, JD, associate in Tonkon Torp’s Litigation Department, former Senior Articles Editor of Ecology Law Quarterly. (Paul, 7-27-2020, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/>)

“The loftiest of purported motivations do not excuse anti-competitive collusion among rivals. That’s long-standing antitrust law.”[1] So begins a USA Today opinion piece by Makan Delrahim, Assistant Attorney General and head of the Antitrust Division. Delrahim was defending a Department of Justice (DOJ) investigation into four major automakers who had recently announced they would continue to meet California’s fuel efficiency standards even as the Trump Administration moved to roll back higher efficiency standards at the federal level.[2] The agreement between the automakers will likely lead to higher prices for consumers, which—regardless of other positive benefits—could be illegal under antitrust law. But should it be?

This debate about the goals of our antitrust laws emerges at a critical inflection point in competition law and corporation law generally. Corporations have emerged as powerful voices for social and political change, flexing lobbying muscle and changing their own behaviors to create policy impact on issues like gun control, anti-discrimination protection, and climate change. This increased action has led to formal acknowledgement that shareholder profit need not be the driving force of corporate decision making, reversing decades of focus on shareholder primacy.[3] At the same time, a growing body of literature critiques antitrust enforcement as being limited to too narrow a lens.[4] By focusing primarily on consumer welfare—as measured by prices—antitrust regulators ignore both broader, less tangible harms to society and also potential societal benefits that might flow from anticompetitive behavior.

Our antitrust laws must evolve to reflect the changing nature of corporate purpose and corporate social activism. Courts should not so quickly disregard the beneficial goals of business coordination, especially when those goals align with global commitments to address climate change. If our antitrust framework does not change, two types of conduct could be chilled. First, companies could be discouraged from coordinating with competitors to meet sustainability goals, like carbon emissions targets. This type of corporate collaboration on sustainability could be considered either an illegal agreement to fix prices or output. Second, a group of competitors refusing to work with a more polluting competitor could be considered an illegal group boycott. Further, and beyond the scope of this Article, companies with monopoly power could be discouraged from adopting “greener” practices if those commitments have the end result of raising consumer prices or increasing the costs of market entry for competitors.

#### Corporate leadership is key to stop existential warming.

Balmer 20, JD, associate in Tonkon Torp’s Litigation Department, former Senior Articles Editor of Ecology Law Quarterly. (Paul, 7-27-2020, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/>)

The growth of corporate activism can be traced to broader societal changes, such as the increased connectivity of people and markets in the Internet age.[19] At the same time, governmental gridlock and increasing political polarization have undermined the capacity of government institutions to function efficiently and greatly weakened public trust in government.[20] Corporations are filling this gap as traditional government services become increasingly privatized.[21] The growing corporate role in society has fed on itself, with increased stakes and visibility of corporate activism resulting in outsized political power and legal rights. Corporate-associated spending on politics has reached unprecedented, jaw-dropping levels.[22]

It is increasingly clear that America cannot address the existential reality of climate change without corporate buy-in, if not corporate leadership. It is beyond the scope of this Article to discuss the extent of the climate crisis or the necessary corporate response; it is enough to say that each passing week brings bad news about the extent of already irreversible damage from climate change.[23]

While the future costs of climate change will be immense, the costs of acting now to limit warming to habitable levels are also significant, on the measure of $3.5 trillion a year.[24] While governments around the world are expected to lead the necessary spending, a large portion of those costs will inevitably fall on companies, either through direct taxes like a carbon tax or increased costs of compliance, such as ending reliance on coal.[25] Even as global governmental efforts falter,[26] corporations are committing to act, both together[27] and independently.[28] The high costs of corporate climate engagement, both to the companies themselves and to our society,[29] have to be worth the last best chance to mitigate catastrophic climate change.

#### The PIC solves by immunizing emissions-reducing behavior from antitrust scrutiny.

Balmer 20, JD, associate in Tonkon Torp’s Litigation Department, former Senior Articles Editor of Ecology Law Quarterly. (Paul, 7-27-2020, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/>)

IV. Conclusion: An Antitrust Framework for the Twenty-First Century Economy

The threatened antitrust enforcement against the four automakers highlights the disconnect between corporate law and climate reality. An antitrust framework that never permits price increases resulting from coordinated action ignores both the possibility of consumer benefits beyond price as well as the changing nature of corporations. As corporations wrestle with potential legal duties to take environmental outcomes into consideration in corporate decisions,[83] they need to be able to consider a broader definition of consumer welfare. Antitrust law’s focus on short-term prices has helped mask long-term consumer harms and broader negative effects on society.[84] At the same time, corporations have been unable to successfully justify agreements that raise prices in order to achieve some societal benefit. Those two ~~blind~~ spots in competition law keep our legal framework stuck in a bygone era, prompting the need for change in at least three ways.

First, and at a minimum, courts need to revisit a jurisprudence that prizes low prices and market “efficiencies” as procompetitive justifications, but rejects justifications of social benefits. Courts must at least allow coordinating firms to offer cognizable counterarguments when their conduct is considered under the rule of reason. This realignment should accompany judicial acknowledgment that “consumer welfare” encompasses more than current or readily predictable price in an isolated market, and instead can include the long-term effects on things like consumer choice, consumer privacy, and local economic vitality.[85]

Second, Congress should pass legislation immunizing corporate cooperation that reduces energy consumption and curtails greenhouse gas emissions.[86] Congress has provided similar exemptions before, permitting specific industries like railroads, insurance companies, and agricultural cooperatives to coordinate on prices and terms of service where regulation was preferable to competition.[87] Allowing companies in the transportation sector—responsible for over 25 percent of U.S. emissions in 2018[88]—to coordinate on environmental efforts would be a common sense step in line with past practice.

#### That competes---it’s regulation, not antitrust.

Delrahim 17, JD, Former Assistant Attorney General @ the DoJ Antitrust Division, Adjunct Lecturer in Law @ the University of Pennsylvania. (Makan, 11-16-2017, “Antitrust and Deregulation”, Remarks as Prepared for Delivery at *American Bar Association Antitrust Section Fall Forum*, <https://www.justice.gov/opa/speech/file/1012086/download>)

First, antitrust is law enforcement, it’s not regulation. At its best, it supports reducing regulation, by encouraging competitive markets that, as a result, require less government intervention. That is to say, proper and timely antitrust enforcement helps competition police markets instead of bureaucrats in Washington, D.C. doing it. Vigorous antitrust enforcement plays an important role in building a less regulated economy in which innovation and business can thrive, and ultimately the American consumer can benefit.

The second answer relates to remedies—at times antitrust enforcers have experimented with allowing illegal mergers to proceed subject to certain behavioral commitments. That approach is fundamentally regulatory, imposing ongoing government oversight on what should preferably be a free market. And, as 11 Senators wrote to the Attorney General earlier this year, the “lack of enforceability and reliability of such conditions [can] render them insufficient” to protect consumers.1 As we reduce regulation across the government, I expect to cut back on the number of long-term consent decrees we have in place and to return to the preferred focus on structural relief to remedy mergers that violate the law and harm the American consumer.

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#### STATES COUNTERPLAN:

#### Text: The 50 US states should enact and enforce coordinated antitrust laws that prohibit tacit collusion.

#### States solve.

Arteaga 21, \*Juan A., JD @ Colombia Law, Chambers-ranked antitrust partner, Co-Chair of Crowell & Moring’s New York Antitrust Practice, former Deputy Assistant Attorney General for the U.S. Department of Justice Antitrust Division. \*\*Jordan Ludwig, JD @ Loyola, partner in the Antitrust & Competition Group @ Crowell & Moring (1-28-2021, "The Role of US State Antitrust Enforcement", Global Competition Review, Lexology, <https://www.lexology.com/library/detail.aspx?g=3523359d-e7d7-489f-8f18-c0e4db0801cf>)

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of

### 1NC

#### NOTICE-AND-COMMENT CP:

#### The United States federal government ought to initiate notice-and-comment rulemaking to substantially increase Federal Trade Commission exclusive rulemaking prohibitions on anticompetitive business practices by at least expanding the scope of its core antitrust laws to include tacit collusion and implement the results pursuant to APA protocol.

#### Solvency advocate is 1AC Ballou.

#### Fidelity to notice-and-comment competes on certainty and immediacy and straight turns the case.

Chopra & Khan 20, \*Rohit, MBA, Commissioner, Federal Trade Commission; & \*\*Lina M., JD, current chair of the Federal Trade Commission, Counsel of the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary. (2020, "The Case for “Unfair Methods of Competition” Rulemaking," *University of Chicago Law Review*, Vol. 87 Iss. 2, Article 4, pg. 367-370, Accessible at: <https://chicagounbound.uchicago.edu/uclrev/vol87/iss2/4>)

We see three major benefits to the FTC engaging in rulemaking under “unfair methods of competition,” even if the conduct could be condemned under other aspects of antitrust laws. As we describe above, the current approach generates ambiguity, is unduly burdensome, and suffers from a democratic participation deficit. Rulemaking can benefit the marketplace and the public on all of these fronts.

First, rulemaking would enable the Commission to issue clear rules to give market participants sufficient notice about what the law is, helping ensure that enforcement is predictable.43 The APA requires agencies engaging in rulemaking to provide the public with adequate notice of a proposed rule. The notice must include the substance of the rule, the legal authority under which the agency has proposed the rule, and the date the rule will come into effect.44 An agency must publish the final rule in the Federal Register at least thirty days before the rule becomes effective.45

These procedural requirements promote clear rules and provide clear notice. As the Supreme Court has stated, a “fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”46 Clear rules also help deliver consistent enforcement and predictable results. Reducing ambiguity about what the law is will enable market participants to channel their resources and behavior more productively and will allow market entrants and entrepreneurs to compete on more of a level playing field.

Second, establishing rules could help relieve antitrust enforcement of steep costs and prolonged trials. Identifying ex ante what types of conduct constitute “unfair method[s] of competition” would obviate the need to establish the same exclusively through ex post, case-by-case adjudication. Targeting conduct through rulemaking, rather than adjudication, would likely lessen the burden of expert fees or protracted litigation, potentially saving significant resources on a present-value basis.47

Moreover, establishing a rule through APA rulemaking can be faster than litigating multiple cases on a similar subject matter. For taxpayers and market participants, the present value of net benefits through the promulgation of a clear rule that reduces the need for litigation is higher than pursuing multiple, protracted matters through litigation. At the same time, rulemaking is not so fast that it surprises market participants. Establishing a rule through participatory rulemaking can often be far more efficient. This is particularly important in the context of declining government enforcement relative to economic activity, as documented by the ABA.48

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

Given that the FTC has largely neglected this tool, some may question the Commission’s authority to issue competition rules and the legal status these rules would have.54 Indeed, a common misconception is that this authority is extremely limited because FTC rulemaking is subject to the extensive hurdles posed by the Magnuson-Moss Warranty–Federal Trade Commission Improvements Act55 (“Magnuson-Moss”). In reality, Magnuson-Moss governs only rulemakings interpreting “unfair or deceptive acts or practices.”56 For rules interpreting “unfair methods of competition,” the FTC has authority to engage in participatory rulemaking pursuant to the APA. Several antitrust scholars have affirmed this authority, and the Appendix lays out further background on and discussion of it.57

## ADV 1

#### 1---presumption. No 1AC ev says the FTC isn’t solving tacit collusion now.

#### 2---solvency takes decades.

Fukuyama et al. 21, \*Francis, Senior Fellow at Stanford University’s Freeman Spogli Institute for International Studies. \*\*Barak Richman, Katharine T. Bartlett Professor of Law and Professor of Business Administration at Duke University School of Law. \*\*\*Ashish Goel, Professor of Management Science and Engineering at Stanford University. They are members of the Working Group on Platform Scale for Stanford University’s Program on Democracy and the Internet. (January/February 2021, "How to Save Democracy From Technology", *Foreign Affairs*, https://www.foreignaffairs.com/articles/united-states/2020-11-24/fukuyama-how-save-democracy-technology)

Another approach to checking Internet platforms’ power is to promote greater competition. If there were a multiplicity of platforms, none would have the dominance enjoyed by Facebook and Google today. The problem, however, is that neither the United States nor the EU could likely break up Facebook or Google the way that Standard Oil and AT&T were broken up. Today’s technology companies would fiercely resist such an attempt, and even if they eventually lost, the process of breaking them up would take years, if not decades, to complete. Perhaps more important, it is not clear that breaking up Facebook, for example, would solve the underlying problem. There is a very good chance that a baby Facebook created by such a breakup would quickly grow to replace the parent. Even AT&T regained its dominance after being broken up in the 1980s. Social media’s rapid scalability would make that happen even faster.

#### 3---antitrust won’t save democracy.

Howell 21, PhD candidate at Harvard University studying the history of technology, labor and business. (Jordan, 1-31-2021, "Breaking up Big Tech can’t save American democracy by itself", *Washington Post*, https://www.washingtonpost.com/outlook/2021/01/31/breaking-up-big-tech-cant-save-american-democracy-by-itself/)

Despite these divisions, there is a growing bipartisan consensus that antitrust law could save American democracy from Big Tech. Sen. Josh Hawley (R-Mo.) has led the charge from the right, accusing it of censoring conservatives, squelching competition and dissolving the American family. On the left, Sen. Elizabeth Warren (D-Mass.) has argued that Big Tech needs to be broken up because it has “too much power over our economy, our society, and our democracy.” Are Hawley and Warren right?

A look at a prominent case of corporate regulation during the New Deal reminds us that antitrust is no panacea. In 1937, the Justice Department began antitrust action against Alcoa, a firm that one labor activist called a “masterpiece in monopoly.” Without a single competitor, Alcoa was the only game in town for aluminum production. While the antitrust case against Alcoa was initially dismissed, the government won its appeal in 1945, providing legislators with the power to bust the trust. Yet antitrust was only one of the tools New Dealers deployed to curb Alcoa’s power. What mattered more than antitrust was the idea of public utility, which stood at the heart of the New Deal regulatory state.

Why did this concept of public utility matter? The case against Alcoa was never just about aluminum. For New Dealers like Interior Secretary Harold Ickes, who called Alcoa “one of the worst monopolies that has ever been able to fasten itself upon American life,” it was about rivers. Per pound, aluminum production demanded roughly 10 times the energy as steel production. Since profits depended on cheap power, Alcoa built six dams on the Little Tennessee River during the first three decades of the 20th century to power its smelters at Baldwin, N.C., and Alcoa, Tenn. Alcoa had entered the hydropower business.

By the 1930s, however, many Americans believed river development was too important to be handed over to private interests. New Dealers promoted the re-engineering of the nation’s rivers as a means to stimulate the economy, tame private enterprise and shore up democracy. As William J. Novak has argued, this vision drew on a broad conception of public utility that legal scholars had developed during the Progressive Era. The Tennessee Valley Authority (TVA), launched in 1933, was a paradigmatic example. But the idea of public utility never resonated with Alcoa’s executives, who saw the TVA as a cheap imitation of itself.

The outbreak of war in Europe in 1939 accelerated the tensions between Alcoa and the American state, as demand for aluminum to build warplanes promised to turn Alcoa into a veritable behemoth. During the war, no firm received more government funds to build factories than Alcoa.

New Dealers saw the explosion of demand for aluminum as an opportunity to bend the industry to their needs. During the war, planners at the Bonneville Power Administration (BPA) and the TVA ensured that federal funds turned into factories that would fit their vision for regional economic development. Above all, this meant wartime aluminum plants had to consume publicly generated hydroelectricity. Private aluminum production became a critical source of revenue for the TVA and BPA.

Wartime planners at regional power agencies — especially the BPA — believed the future of public power depended on a competitive aluminum industry. Samuel Moment, the economist who wrote the blueprint for the aluminum industry’s postwar reconstruction, had worked as a planner at the BPA in Portland since 1940. In 1945, the conclusion of the antitrust suit against Alcoa empowered the Surplus Property Board (SPB) — the agency in charge of selling off government-financed war production facilities — to implement Moment’s plan. The SPB sold government-funded smelters and refineries that had been operated by Alcoa to two new competitors — Reynolds Metals and Kaiser Aluminum.

But a competitive aluminum industry was never an end in itself for New Dealers. It was a means to ensure public control of the nation’s rivers, which they believed would preserve democracy and spark regional economic development.

It is important to reckon with the flaws in this vision of public utility. In the Northwest, dam building during the New Deal inundated the homes, fishing sites and lands of many Indigenous peoples, including the Spokane, Wasco and Colville Nations. Consider the Spokane Nation, whose land and fishing sites were submerged by the Grand Coulee Dam in the 1940s. Only in 2020, after eight decades of activism, did the Spokane Nation receive federal compensation. All too often, Americans have mobilized the concept of the public good to dispossess Indigenous peoples of their land and water.

Even so, the interplay between public utility and antitrust during the New Deal contains lessons for the digital age. After the attack on the Capitol, many have applauded Trump’s excommunication from social media. But if democracy is to survive, a coterie of corporate elites cannot make such consequential political decisions. A more competitive tech industry — the solution offered by antitrust — will simply enlarge the number of elites making these decisions, without solving the fundamental problem.

Antitrust worked against Alcoa because there was a political consensus that certain economic and social domains — like river development — were too important to society to be outsourced to private business. This vision is worth remembering. If antitrust enables the state to create competition, the concept of public utility allows the state to redraw the line between public and private. While it has become commonplace to think of data as the oil of the 21st century, democracy would be better served by thinking of it more like a river. Until our digital communications sphere belongs to the public, Big Tech will remain a threat to democracy.

#### **4---Trump and the Capitol siege thump.**

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

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

#### 5---democracy doesn’t solve war---best models.

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

Conclusion

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

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

#### 6---multiple inflation thumpers.

WYFF 2-15-2022, citing Furman University professor of economics Jason Jones. (WYFF, "Inflation rate up 7.5%, will have noticeable impact for consumers, experts say", <https://www.wyff4.com/article/inflation-rate-hits-40-year-high-unclear-when-prices-will-drop/39080632>)

GREENVILLE, S.C. — Inflation has hit a 40-year high, jumping 7.5% since last year. The Labor Department reported said this is the highest year-over-year increase in inflation since 1982. An Upstate professor in economics says a one to two percent increase is normal from year to year, but this increase is something people are going to notice on a daily basis. "The prices of the food you buy, your entertainment, the gas," Furman University professor of economics Jason Jones said. "Anything rising. It's very noticeable right now." Jones says this increase was not entirely predictable, pointing to a number of factors for the high rate of inflation. "It is just the perfect storm," he said. "You have, both very high demand because there are a lot of people who have savings left over from all the stimulus money." Jones also acknowledges a wage increase, low unemployment rate and government spending as factors. "At the same time, the COVID restrictions and lockdowns also caused a lot of disruptions in the supply chain," he said. Jones says you'll also see prices hikes in the housing market and when buying a used car. "Now, there's a great fear that inflation is being caused by more than supply chain restrictions that are going to work their way through the economy, but it's getting entrenched because people are demanding higher wages, unemployment rates are so low," Jones said. Jones says there are a few things that could happen to help reign the economy back in, but there are no definitive timelines for when we can expect that to happen. "Supply chains, will they ease out?" Jones said. "Federal reserve increasing of the interest rate, will that work itself out? And will people sort of max out their spending of the savings?" He says that could happen all at once, or happen one by one. Jones also says, although wages have gone up over time, they still can't keep up with this record-setting inflation rate.

#### 7---turn. Higher wages trigger a wage-price spiral that cause rate hikes and recession.

Smialek 11-5-2021, writes about the Federal Reserve and the economy for The New York Times. She previously covered economics at Bloomberg News (Jeanna, “Wages are rising, but can they keep up with inflation?,” *New York Times*, <https://www.nytimes.com/2021/11/05/business/economy/wages-inflation.html>)

American workers are taking home bigger paychecks as employers pay up to attract and retain employees. But those same people are shelling out more for furniture, food and many other goods and services these days. It is not yet clear which side of that equation — higher pay or higher prices — is going to win out, but the answer could matter enormously for the Federal Reserve and the White House. There are a few ways this moment could evolve. Wage growth could remain strong, driven by a tight labor market, and overall inflation could simmer down as supply chain snarls unravel and a surge in demand for goods eases. That would benefit workers. But troubling outcomes are also possible, and high on the list of worries is what economists call a “wage-price spiral.” Employees could begin to demand higher pay because they need to keep up with a rising cost of living, and companies may pass those labor costs on to their customers, kicking off a vicious cycle. That could make today’s quick inflation last longer than policymakers expect. The stakes are high. What happens with wages will matter to families, businesses and central bankers — and the path ahead is far from certain. “It’s the several-trillion-dollar question,” said Nick Bunker, director of research for the hiring site Indeed. For now, wage growth is rapid — just not fast enough to keep up with prices. One way to measure the dynamic is through the Employment Cost Index, which is reported by the Labor Department every quarter. In the year through September, the index’s measure of wages and salaries jumped by 4.2 percent. But an inflation gauge that tracks consumer prices rose by 5.4 percent over the same period. A different measure of pay, an index that tracks hourly earnings, did rise faster than inflation in August and September after lagging it for much of the year. And an update to that gauge on Friday showed that wages climbed 0.4 percent in October, which is roughly in line with recent monthly price increases. Over the past year, that measure is up by 4.9 percent. But the data on hourly earnings have been distorted by the pandemic, because low-wage workers who left the job market early in 2020 are now trickling back in, jerking the average around. The upshot is that the tug of war between price increases and pay increases has yet to decisively swing in workers’ favor. Whether wage gains eventually eclipse inflation — and why — will be crucial for economic policymakers. Central bankers celebrate rising wages when they come from productivity increases and strong labor markets, but would worry if wages and inflation seemed to be egging each other upward. The Federal Reserve is “watching carefully,” for a troubling increase in wages, its chair, Jerome H. Powell, said on Wednesday, though he noted that the central bank did not see such a trend shaping up. Recruiters do report some early signs that inflation is factoring into pay decisions. Bill Kasko, president of Frontline Source Group, a job placement and staffing firm in Dallas, said that as gas prices in particular rise, employees are demanding either higher pay or work-from-home options to offset their increased commuting costs. “It becomes a topic of discussion in negotiations for salary,” Mr. Kasko said. But for the most part, today’s wage gains are tied to a different economic trend: red-hot demand for workers. Job openings are high, but many would-be employees remain on the labor market’s sidelines, either because they have chosen to retire early or because child care issues, virus concerns or other considerations have dissuaded them from working. Emily Longsworth Nixon, 27 and from Dallas, is one of Mr. Kasko’s employees. She tried to recruit a woman to an executive assistant position at a technology company that would have given her a $30,000 raise — and saw the candidate walk away for a counter offer of no additional pay but three work-from-home days each week. Covid’s impact on the supply chain continues. The pandemic has disrupted nearly every aspect of the global supply chain and made all kinds of products harder to find. In turn, scarcity has caused the prices of many things to go higher as inflation remains stubbornly high. Almost anything manufactured is in short supply. That includes everything from toilet paper to new cars. The disruptions go back to the beginning of the pandemic, when factories in Asia and Europe were forced to shut down and shipping companies cut their schedules. First, demand for home goods spiked. Money that Americans once spent on experiences were redirected to things for their homes. The surge clogged the system for transporting goods to the factories that needed them — like computer chips — and finished products piled up because of a shortage of shipping containers. Now, ports are struggling to keep up. In North America and Europe, where containers are arriving, the heavy influx of ships is overwhelming ports. With warehouses full, containers are piling up at ports. The chaos in global shipping is likely to persist as a result of the massive traffic jam. No one really knows when the crisis will end. Shortages and delays are likely to affect this year’s Christmas and holiday shopping season, but what happens after that is unclear. Jerome Powell, the Federal Reserve chair, said he expects supply chain problems to persist “likely well into next year.” “After that, I had my tail between my legs for a couple of days; I had never thought to ask that,” she said, adding that employers need to know their candidates like never before as workers flex their power, taking home raises and other perks. “Before Covid, it was an employer-driven market.” Those in-demand workers could end up being better off in the long run, should their pay continue to chug higher even as supply chains heal and prices for used cars and couches moderate, allowing them to afford more. Pay gains might also become more sustainable for employers as virus concerns fade and employees trickle back from the labor market’s sidelines. And even if rapid wage increases persist, it is not absolutely the case that employers will be forced to drastically raise prices. Businesses could stomach a hit to their profits instead, or they could invest in technology that improves worker productivity. If fewer waitresses can sell the same number of dinners because customers are ordering from QR codes, for instance, employers will have leeway to pay more without taking a hit to their bottom line. But a happy outcome is not guaranteed. If today’s high prices do drive tomorrow’s wage negotiations and set off an upward spiral, the result could be a longer period of high inflation that prods the Fed to raise interest rates to tamp down demand and cool off prices, slowing the economy and possibly even sending it back into a recession.

#### 8---no correlation between economic decline and war.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

## ADV 2

#### 1---advantage one turns advantage two. The plan requires an unexpected, significant and drawn-out expenditure of finite law enforcement resources

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

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

#### Resources are finite.

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

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

# 2NC

## States CP

### 2NC---AT Condo

#### C/I---we get what we had in the 1NC with no cross-apps across conditional worlds.

#### 1---innovation---new strats shouldn’t tie the neg’s hands---fallbacks enable breaking new args.

#### 2---neg flex---the topic’s huge and lacks generics, and the aff has infinite prep, advantage choice, and add-ons---so we need multiple options to compensate.

#### 3---info-processing---multiple options force 2AC efficiency and defense of a plan from multiple angles---key to critical thinking.

#### 4---logic---their interp means they can win if they’re worse than the squo, which preconditions to skills.

#### Defense:

#### Kicking advantages, theory, and straight turns ensure reciprocity.

#### Infinity procedurals and DAs non-unique skew.

#### Time constraints and net benefit requirements check.

#### Reasonability---concede it from T.

#### Reject the arg.

## N&C CP

#### AND the absence of the CP makes the plan unenforceable.

Souter 01, former Justice of the Supreme Court, delivering a Supreme Court Opinion. (David, 6-18-2001, "United States v. Mead Corporation, 533 U.S. 218", Published by the Climate Change and Public Health Law Blog @ LSU, <https://biotech.law.lsu.edu/cases/adlaw/mead.htm>)

The Federal Circuit, however, reversed the CIT and held that Customs classification rulings should not get Chevron deference, owing to differences from the regulations at issue in Haggar. Rulings are not preceded by notice and comment as under the Administrative Procedure Act (APA), 5 U. S. C. §553, they "do not carry the force of law and are not, like regulations, intended to clarify the rights and obligations of importers beyond the specific case under review." 185 F. 3d, at 1307. The appeals court thought classification rulings had a weaker Chevron claim even than Internal Revenue Service interpretive rulings, to which that court gives no deference; unlike rulings by the IRS, Customs rulings issue from many locations and need not be published. 185 F. 3d, at 1307-1308.

#### It confirms public perception of unaccountable leaders, shredding legitimacy---prior N&C key

Hickman 16, \*Kristin E., Harlan Albert Rogers Professor of Law, University of Minnesota Law School. \*\*Mark Thomson, Law clerk to the Honorable Ed Carnes, United States Court of Appeals for the Eleventh Circuit. (“Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment”, 101 Cornell L. Rev. 261, pg. 287-288, Available at: <https://scholarship.law.cornell.edu/clr/vol101/iss2/1>)

There are at least two other clear benefits of denying effect to postpromulgation notice and comment, both having to do with the way the public might perceive postpromulgation notice and comment. As some scholars have argued, citizens might not take seriously the opportunity to offer comments after a rule is in effect, believing that, because an agency has already committed to enforcing a particular rule, submitting comments would just be a waste of time.160 If a substantial portion of the public does not think it worthwhile to submit comments, that undermines the crowdsourcing rational of the notice and comment requirements. Thus, at least insomuch as the public is likely to treat the opportunity for prepromulgation comment more seriously than the opportunity for postpromulgation comment, postpromulgation notice and comment constitute an inadequate substitute for prepromulgation notice and comment.

Analogous reasoning can support an argument that postpromulgation notice and comment do not legitimize regulations to the same extent as prepromulgation notice and comment. To the extent the public is more likely to participate in prepromulgation comment periods—or just more likely to believe that prepromulgation notice and comment incorporate the full spectrum of public views on a rule—notice and comment procedures strengthen the perception that the resulting rules are the product of something resembling a democratic process. This, in turn, minimizes the degree to which the resulting rules are seen as democratically illegitimate.161 By contrast, if the public feels shut out of the regulatory process—as it might with postpromulgation notice and comment—the resulting rules will inevitably be perceived as less the product of a representative process and more the product of bureaucratic fiat.162 Refusing to give effect to postpromulgation notice and comment, then, might make sense from a legitimacy perspective.

#### 1---beginning N&C after already settling on a rule is fatal to the process

Yates 18, J.D. 2018, The George Washington University Law School. (James, September 2018, "Good Cause Is Cause for Concern," *George Washington Law Review* 86, No. 5, pg. 1452-1454)

B. Remedies to Address Good Cause Concerns

A failure to follow APA procedures presumptively warrants vacation of the rule. The executive and judiciary branches, however, have employed and analyzed several remedies that serve to justify invocations of good cause. These remedies include postpromulgation N&C, the harmless error doctrine, remand without vacatur, and a system of retrospective rulemaking.

Each of the purported remedies described in this Essay suffers from one common problem: they run the risk of triggering or promoting bias. Once an agency has promulgated a rule, with or without N&C, both the agency and the regulated parties will be discouraged from changing the rule. Whether it be agency bias or industry bias, there are significant risks to our democratic system where agencies are given a second shot at explaining away N&C or justifying an interim final rule postpromulgation. We may be willing to take this risk for rules with minimal societal impacts, but concern for bias is—or should be—enhanced when applied to major rules. Where rules have at least $100 million in consequences, agencies should not be free to skirt the democratizing procedures envisioned by the APA.

1. Postpromulgation N&C

The first of these remedies is postpromulgation N&C, where the agency provides an opportunity for public comment only after the rule is promulgated.9 1 Final rules justified on good cause grounds are often exempted from APA procedures. 92 Interim final rules, for example, are exempted from prepromulgation N&C but subjected to postpromulgation N&C. 93 Interim final rules have become popular for major rules, particularly during the Obama administration. 94

The major concern with interim final rules rests in bias. "Once an agency has publicly staked out a position and given effect to that position, . . . forces like regulatory inertia, status quo bias, confirmation bias, and commitment bias all make it less likely the agency will deviate from its position." 95 This proposition survives even in the face of postpromulgation comments that may call for change. Despite this concern, it is not clear whether postpromulgation N&C renders a good cause regulation unlawful.

Courts are divided on how to treat these rules.9 6 On the one hand, the APA's procedures were created to involve the public early in the rulemaking process, and failure to follow these procedures is fatal to the process.9 7 Treating postpromulgation N&C as a presumptive cure would "make the provisions of [section] 553 virtually unenforceable" because agencies could simply promulgate the rule and rely on postpromulgation procedures. 98 Scholars have also argued that regulated parties may not take postpromulgation N&C seriously if the rule is already in place. 99 Failure to include the public in early stages of the rulemaking process delegitimizes the rule itself. 00

#### 2---signaling. The plan shows there’s no cost to circumventing N&C, setting a precedent that ruins spillover

Hickman 16, \*Kristin E., Harlan Albert Rogers Professor of Law, University of Minnesota Law School. \*\*Mark Thomson, Law clerk to the Honorable Ed Carnes, United States Court of Appeals for the Eleventh Circuit. (“Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment”, 101 Cornell L. Rev. 261, pg. 286-287, Available at: <https://scholarship.law.cornell.edu/clr/vol101/iss2/1>)

The crux of the argument is twofold. First, giving effect to postpromulgation rulemaking would undoubtedly provide a powerful disincentive for agencies to comply with § 553’s prepromulgation notice and comment requirements when they seek to bind the actions of regulated parties.153 Notice-andcomment rulemaking takes time, ranging from months to years. While agencies may perceive value in obtaining outside input regarding their rulemaking initiatives, they may also sometimes see notice and comment procedures as an obstacle to getting things done and may be predisposed to interpret the exemptions from those requirements aggressively. To the extent agencies can rely on postpromulgation notice and comment to prop up procedurally invalid rules, they will be less inclined to follow the APA’s procedural requirements faithfully.154 By contrast, rigorous insistence on prepromulgation notice and comment—and nothing less—ensures scrupulous fidelity to the text of APA § 553.

#### Spillover relies on clear compliance.

Merrill 04, Charles Keller Beekman Professor of Law, Columbia University. (Thomas W., Dec. 2004, “Rethinking Article I, Section I: From Nondelegation to Exclusive Delegation”, *COLUMBIA LAW REVIEW*, Vol. 104, pg. 2156)

But this insight does not get us very far in choosing among the various conceptions of the constitutional allocation of legislative power. If lax nondelegation serves an important function in supporting judicial review, would strict nondelegation do better, or would this be overkill? More intriguingly, would exclusive delegation provide an adequate substitute for lax nondelegation in creating the appropriate sense that there are important constitutional stakes at issue in judicial review of agency action? My sense is that it would. Courts would be constitutionally required to identify clear evidence that legislative power has been delegated, and that the agency is acting within the sphere of its delegated authority. This would lend a sense of gravity to the process of review, which would have spillover effects for the judicial attitude in reviewing the legality of the agency's compliance with rulemaking procedures and its fidelity to any statutory directions Congress has provided.

#### The CP requires openness to revision.

Justia 18, legal information database. (Last reviewed: April 2018, "Notice and Comment Process for Agency Rulemaking", https://www.justia.com/administrative-law/rulemaking-writing-agency-regulations/notice-and-comment/)

Response to Public Comments

Agencies must consider all “relevant matter presented” during the comment period, and they must respond in some form to all comments received. They are not, however, required to take any specific action with regard to the rule itself. The publication of the final rule must include analyses of any relevant data or other materials submitted by the public and a justification of the form of the final rule in light of the comments the agency received.

If opposition to the proposed rule is exceptionally large or strident, the agency may decide to make substantial modifications and start the process over by publishing a new notice and opening a new comment period. Otherwise, the agency will publish its final findings along with the rule, which is codified in the Code of Federal Regulations.

#### AND delay.

Wolfman 14, \*Brian, JD, Associate Professor of Law @ Georgetown. \*\*Bradley Girard, Public-interest lawyer @ Americans United for Separation of Church and State (12-3-2014, "Argument analysis: "Interpretive rules," notice-and-comment rule making, and the tougher issues waiting in the wings", *SCOTUSblog*, <https://www.scotusblog.com/2014/12/argument-analysis-interpretive-rules-notice-and-comment-rule-making-and-the-tougher-issues-waiting-in-the-wings/>)

Under the Administrative Procedure Act (APA), federal agency rules can be “legislative” or “interpretive.” A legislative rule, like a statute, is said to bind the public and have the “force of law.” Under the APA, a legislative rule generally cannot be issued without notice and comment, a lengthy process in which an agency publishes a proposed rule and gives the public a chance to comment on it. The agency must give serious consideration to the comments before the rule may be finalized. Public comments sometimes significantly affect the content of legislative rules. The APA provides that when an agency amends a legislative rule, the amendment must go through notice and comment, just like the original rule.

By contrast, an interpretive rule is said only to advise the public of an agency’s view of what a law or regulation means. Supposedly, an interpretive rule does not bind the public or have the force of law. Interpretive rules come in many forms, such as guidance documents, agency manuals, and interpretive bulletins. The APA expressly provides that an interpretive rule need not go through notice and comment. An amendment of an interpretive rule is exempt from the notice-and-comment requirement, just like an original interpretive rule—at least, it seems, according to the APA’s text.

But in a series of cases known collectively as the Paralyzed Veterans doctrine, the D.C. Circuit has held that when an agency issues an interpretive rule that significantly revises an existing interpretive rule, the agency must take the revision through notice-and-comment rulemaking before the revision can take effect. In the case before the Court, in 2006, the Department of Labor (DOL) issued, without notice and comment, an interpretive rule which stated that mortgage-loan officers are not entitled to overtime pay under the Fair Labor Standards Act. In 2010, the DOL changed course and said, again without notice and comment, that mortgage-loan officers are entitled to overtime pay. Applying the Paralyzed Veterans doctrine, the D.C. Circuit below held that the 2010 interpretive rule significantly revised the 2006 interpretive rule and so is invalid because it was issued without notice and comment. One point to keep in mind: The D.C. Circuit assumed that the 2010 DOL rule is an interpretive rule, not a legislative rule.

#### That competes:

#### 1---should.

Nieto 9, Judge Henry Nieto, Colorado Court of Appeals. (8-20-2009, People v. Munoz, 240 P.3d 311 Colo. Ct. App. 2009)

"Should" is "used … to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (200(2) Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and could not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and not discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

#### 2---substantial.

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute: real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

#### 3---resolved.

Collins 14, Collins English Dictionary (Complete and Unabridged. 12th edition, HarperCollins Publishers 1991, 1994, 1998, 2000, 2003, 2014, http://www.thefreedictionary.com/resolved)

resolved [rɪˈzɒlvd] adj

fixed in purpose or intention; determined

#### b---adherence to N&C would likely produce a different, but better policy

Hickman 16, \*Kristin E., Harlan Albert Rogers Professor of Law, University of Minnesota Law School. \*\*Mark Thomson, Law clerk to the Honorable Ed Carnes, United States Court of Appeals for the Eleventh Circuit. (“Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment”, 101 Cornell L. Rev. 261, pg. 287-288, Available at: <https://scholarship.law.cornell.edu/clr/vol101/iss2/1>)

First, fairness militates in favor of placing the burden of proof on the agency because the consequences of forgoing prepromulgation notice and comment are often potentially severe. Relying solely on postpromulgation notice and comment in adopting a rule threatens to entirely freeze the public out of meaningful participation in the rulemaking process.254 Where an agency validly asserts an exception from APA notice-and-comment rulemaking requirements, the opportunity for comment postpromulgation is almost certainly preferable to the alternative, which is no chance for public participation at all.255 But, as several courts have recognized, in the absence of a valid exception, relying on postpromulgation procedures alone represents a complete failure on the part of the agency that disadvantages interested parties in a way that other, more technical procedural failures do not.256 Relying solely on postpromulgation procedures significantly increases the likelihood that helpful or valuable comments will be ignored, and thus that the rule in question will be different from what it would have been had procedures been followed.257 Moreover, because an agency has total control over whether it undertakes prepromulgation notice and comment, the agency alone is in a position to avoid the consequences of failing to comply with the APA. The potential consequences of ignoring notice and comment, combined with the agency’s ability to prevent such a defect in the first place, makes it fair to put the burden of proving harmlessness on the agency.

#### c---laws---regulations are distinct.

Yakima No Date, Yakima Regional Clean Air Agency. ("Law, Rule, Regulation and Policy", https://www.yakimacleanair.org/services/definitions.html)

Regulations are not laws themselves, but are legal directives written to explain how to implement statutes or laws. Local regulations must not be less stringent than the state regulations and state regulations must not be less stringent than the federal regulations.

#### Distinguishing between the two is key to education.

Carlson 17, nonprofit consulting. (Keith, 8-3-2017, "Laws vs. Regulations ... and Why the Difference Matters", *Indivisible Santa Barbara*, https://indivisiblesb.org/laws-vs-regulations-and-why-the-difference-matters/)

The term “laws” is commonly used to describe the overall system of rules enforced by society to govern behavior. When used in this sense, our laws include the rules made by Congress or other legislative bodies, e.g., state legislatures, by the executive branch through regulations, or by the courts through rulings that result in binding precedent. Although this all-encompassing, generic definition is useful in our everyday lives, having some knowledge of the finer points is helpful if we desire to impact public policy and its effects on our society.

Laws vs. Regulations

Congress passes national laws, often called Acts, such as the Affordable Care Act (ACA) and the Clean Air Act. The agencies, boards, and commissions empowered to enforce the Acts are authorized to adopt regulations that implement them; the federal regulations, therefore, follow from the Acts. These regulations have the force of law, fill gaps in the legislation, and help agencies carry out their duties and mission, as defined in the Acts. Federal regulations are published in The Code of Federal Regulations.

Federal regulations are created through a process known as rulemaking. If an agency wants to make, change, or delete a rule, the normal process is for the agency to publish the proposal in the Federal Register and seek public comments, which may include hearings in addition to written comments. After the agency considers the public’s comments and makes any revisions to the rule, it publishes the rule’s final version in the Federal Register, along with a description of the comments received, the agency’s response to those comments, and the date the rule goes into effect. The Administrative Procedure Act (APA) outlines required rulemaking procedures for Federal regulations.2

#### d---normal means.

Richman 20, Paul J. Kellner Professor, Columbia Law School. (Daniel C. “Defining Crime, Delegating Authority – How Different are Administrative Crimes?”, *Yale Journal on Regulation*, Forthcoming; Columbia Public Law Research Paper No. 14-680, pg. 49 Available at: https://scholarship.law.columbia.edu/faculty\_scholarship/2719

As Dan Kahan noted decades ago, agency rulemaking offers considerable advantage over what effectively has been a regime of judicial lawmaking empowered by common law or just plain vague statutory terms.331 Moreover, the risk of self-dealing highlighted by Gorsuch in Gundy and recognized by Kahan, is alleviated or even eliminated when agencies other than the Justice Department devise their own rules, according to proper rulemaking procedures, primarily for civil enforcement. Note how once can turn around the concern of Hessick and Hessick that agencies lack expertise when it comes to crime-definition.332 The story of congressional authorship in the federal criminal sphere, for nearly a half-century, has largely been one of reliance on Justice Department drafting -- whenever the Department could slip a “fix” into the omnibus bills that used to be a staple of criminal lawmaking333 or when it provided material for a Congress looking to make a “tough on crime” statement.334 Congress of course has the greatest “expertise” on retribution, but that fact is both tautological and troubling, and on even that score Congress’s habit of using criminal lawmaking more to loudly condemn than to actually apportion punishment diminishes any claim to actual expertise. Weighed against the risks of self-dealing or sloppiness created by the “normal” means of crime definition, administrative rulemaking that treats regulation as structuring primary behavior in a complex world -- drawing lines within spheres of socially productive activity between prohibited and allowed conduct -- rather than providing tools for the exercise of prosecutorial discretion sounds pretty appealing.

## PIC

#### Per se rulings are inflexible and chill conservation-oriented collaboration

Balmer 20, JD, associate in Tonkon Torp’s Litigation Department, former Senior Articles Editor of Ecology Law Quarterly. (Paul, 7-27-2020, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/>)

II. Antitrust Scrutiny of Corporate Collaboration

As corporations pursue socially responsible strategies—whether on climate change or other social causes—the threat of antitrust enforcement looms. This threat discourages collaboration among competitors, even to meet goals that are objectively positive for society.[30] Much of this chilling effect comes from the inconsistent and evolving nature of antitrust enforcement and a general lack of bright-line rules.

Section 1 of the Sherman Act, the 1890 seminal antitrust law, prohibits “[e]very contract, combination, . . . or conspiracy in restraint of trade or commerce.”[31] Although every competitive action, and certainly every contract and agreement, restrains trade in some manner, courts have enforced section 1 to prevent “unreasonably restrictive” contracts, combinations, and conspiracies.[32] Unreasonable restraints on trade, in turn, include those that “reduce output, raise price, or diminish competition with respect to quality, innovation, or consumer choice.”[33] But how those various bad outcomes interact, or when to prioritize lower prices over other antitrust goals, is unsettled and subject to frequent debate.[34]

Courts apply two different levels of analysis to challenged contracts, combinations, or conspiracies that restrain trade. The first type of analysis categorically rejects certain types of restraint as “per se unlawful” without a more searching inquiry into the economic context of the challenged conduct.[35] The second analysis is under the “rule of reason,” a more detailed burden-shifting framework that considers procompetitive benefits of the conduct alongside an economic analysis of the restraint’s harmful effects in a given market.[36] Over time, courts have moved towards applying the rule of reason.[37] Nevertheless, uncertainty over whether courts will consider an agreement per se unlawful has significant consequences for corporate collaboration for social good.

Both price-fixing and group boycotts are often considered per se illegal, regardless of ethical merit. While unlawful price-fixing can be as blatant as competitors setting the price of a common good to increase profits, unlawful price-fixing also encompasses “agreements to artificially reduce output,” which will in turn raise consumer prices.[38] Professor Inara Scott uses the example of the volatile and scantly regulated coffee market, where coffee farmers could conceivably agree on environmental, labor, and price standards in order to reduce volatility and reduce retail prices.[39] But such agreement, even to reduce prices, is likely to be considered per se illegal price-fixing.[40] Similarly, conservation agreements to harvest fewer fish from a shared area—artificially reducing output—could be considered per se unlawful price-fixing because of the outcome on consumer price, regardless of the conservation goals.[41] Likewise, the laudable policy goals of a group boycott had no impact on its per se illegality in Federal Trade Commission v. Superior Court Trial Lawyers Association, where a legal group’s refusal to represent indigent defendants until their compensation increased was held unlawful.[42] The protest succeeded in forcing the city government to increase compensation, but they still lost in court: the Supreme Court held that though the rates had been “unreasonably low” and the boycott’s cause was “worthwhile,” it was nonetheless a classic restraint of trade.[43] In Professor Scott’s coffee market example, a cooperative of coffee roasters likely could not refuse to work with a certain roaster in protest of objectionable practices, whether using child labor or wasteful techniques;[44] this kind of group boycott to encourage a competitor to adopt “greener” practices risks per se illegal classification. Because courts cannot even consider the obviously beneficial goals of those types of agreements, corporations would be wise to avoid them entirely.

#### The plan’s deterrent effect chills activism across the entire market

Balmer 20, JD, associate in Tonkon Torp’s Litigation Department, former Senior Articles Editor of Ecology Law Quarterly. (Paul, 7-27-2020, "Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/currents/colluding-to-save-the-world-how-antitrust-laws-discourage-corporations-from-taking-action-on-climate-change/>)

Even though DOJ quietly dropped the investigation in February 2020,[79] the market results of the probe itself were almost immediate and significant. In October 2019, just weeks after the antitrust investigation began, other major automakers joined the Trump Administration as parties in litigation over California’s right to set its own vehicle emissions standards,[80] even though automakers had once stood united behind the Obama Administration’s higher fuel efficiency standards.[81] DOJ’s abandoned investigation had sent a clear message to automakers: do not collude on car standards that will raise prices for consumers, or you will be investigated. With the threat of antitrust enforcement off the table for now, the Trump Administration finalized its dramatically lower fuel efficiency rule in March 2020.[82]

Despite the naked political motive and the arguably weak legal argument for antitrust enforcement against the four automakers in this case, the specter of antitrust liability will not be limited to the auto industry. At a time when companies are making serious commitments to address climate change, even the most progressive companies are likely to think twice about making commitments with competitors on any industry standard that could lead to higher consumer prices. Companies could be discouraged from moving forward on climate, at a time when bold action is needed most.

#### The PIC permits anti-competitive behavior with certain motivations and consequences---that’s a regulation, NOT prohibition.

Paul 17, Assistant Professor Wayne State University Law School. (Sanjukta M., “Uber as For-Profit Hiring Hall: A Price-Fixing Paradox and its Implications”, *Berkeley Journal of Employment and Labor Law*, Vol. 38, No. 2, pp. 233-263, https://www.jstor.org/stable/26356911)

The lawsuit is motivated in large part by Uber's "surge pricing" practice, wherein fares may rise up to tenfold the standard in times of high demand, and much of the attention on the case (as well as a good portion of the complaint and motion practice) has been focused on this.36 In its ruling on Kalanick's motion to dismiss, the court analyzed the plaintiffs allegations in terms of two possible species of price-fixing liability: a horizontal or a vertical price-fixing agreement or conspiracy. A horizontal conspiracy is an agreement between direct competitors on price; it is the paradigm case of price-fixing. As such, it is subject to the per se rule, which means that the agreement is prohibited on its face, regardless of its consequences or context.37 Not even the reasonableness of the resultant prices, nor other pro competitive effects of the agreements, are a defense.38 Generally speaking, vertical restraints involve agreements or conditions, regarding or affecting price, imposed by an actor upon downstream sellers. The regulation of vertical restraints affecting price is more complex and subject to more exceptions than that of horizontal restraints; courts consider such restraints' overall effects under the rule of reason?9 Unlike the per se rule, the rule of reason allows a decision-maker to consider the effects of an agreement arrangement to decide whether it ought to be permitted under antitrust.40 A court's analysis of vertical restraints under the rule of reason may include consideration of the primary actor's market power (whereas market power is not considered in the evaluation of horizontal restraints or agreements).41 Thus, for example, Uber's surge pricing practice may be relevant to liability under the vertical restraint theory, because it may tend to show that Uber has the market power to unilaterally set prices. However, the surge pricing issue is secondary under the core, horizontal restraint analysis. While it would certainly affect the extent of damages, liability ought to either attach or not attach on the basis of the app's mandatory pricing mechanism. This follows from the general rule that it is the fact of coordination in prices that is the issue, not whether the resultant price is reasonable or exorbitant, nor even whether the resultant price ultimately benefits the seller.

#### “Private sector” means all non-governmental entities.

Senate Report 95, Senate Report. 104-1. ( “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1>, Accessed: 9-10-2021)

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

#### Case-by-case oversight solves circumvention

DeJarnette 16, citing Inara Scott, assistant professor specializing in business law at Oregon State University. (Ben, 4-13-2016, "Are Antitrust Laws Standing in the Way of Climate Action?", *Pacific Standard*, <https://psmag.com/news/are-antitrust-laws-standing-in-the-way-of-climate-action>)

Scott envisions an antitrust system that, instead of flatly prohibiting collaboration, would allow companies to seek permission from regulators on a case-by-case basis. With enough oversight and transparency, she says, this system could allow pro-sustainability collaboration without opening the floodgates for anti-competitive collusion. And that would be a big win for the environment.

#### Corporate action is authentic and wipes out gigatons of emissions by itself

Woellert 21, Sustainability Editor @ Politico, citing analysis of BloombergNEF. (Lorraine, 4-27-2021, "Biden's unlikely new ally on climate change: Corporate America", *POLITICO*, <https://www.politico.com/news/2021/04/27/bidens-climate-change-corporate-america-484784>)

It’s a fight for survival, and profits. Some corporations are long on virtue-signaling and short on action, but many others, including HP, Microsoft Corp., General Motors Co., Danone S.A. and Gap Inc., are spending millions of dollars to push the boundaries of renewable energy, protect water resources, and deploy new technology as they rush to deal with climate change and gain a competitive edge. Their impact has been significant. As of last year, corporate buyers had reached deals for a combined 10.6 gigawatts of renewable capacity, the equivalent of 33 million solar panels. On Wall Street, firms with $37 trillion under management, including mutual fund giants State Street and Vanguard, have pledged to go net zero. If just 80 of the largest corporate emitters meet their pledged targets, they could reduce global emissions by more than 8 billion metric tons, or about 25 percent, according to an analysis by BloombergNEF. That’s the equivalent of zeroing out all emissions in the U.S. and Japan combined. “The magnitude of this is colossal,” BNEF analyst Kyle Harrison said. “This is only 80 companies, and what they can achieve is ridiculous.”

## ADV 1

#### They have generic ev about industry concentration rising, but there’s already a No Collusion Rule!

Brendan Ballou, (September 16, 2021). DOJ ATR Trial Attorney, Antitrust Division, U.S. Department of Justice, “The 'No Collusion' Rule” 32 Stanford Law & Policy Review 213 (2021), Available at SSRN: https://ssrn.com/abstract=3793881 (ermo/sms, Acc:1-7-2022)

Extreme critics will argue that tacit collusion—bluntly stated, price fixing— actually benefits people. They will argue that while consumers may suffer from price fixing, companies and their shareholders benefit. This may well be true: As in most price-fixing agreements, someone tends to gain. But American law rejects this argument completely with regards to explicit price fixing agreements.211 There is no reason to accept price fixing when it is done with a wink and a nod.212

More fundamentally, there is a question of what we want antitrust law to do. This is an issue much in debate, between those who argue that antitrust should remain narrowly focused on consumer welfare (to the extent it ever was), and those who urge a broader conception of the values that the laws were meant to protect. But one need not embrace the “Neo-Brandeisian”—or more pejoratively, “hipster”—school of thought to reasonably ask: Whose side should the antitrust laws be on? Even the founders of the Chicago-Harvard school believed that price-fixing had no benefit to consumers, and that government should intervene to stop it. Moreover, there is no economic difference between price-fixing done explicitly and price-fixing done implicitly, and much academic and judicial ink has been spilled in an attempt to find a legally meaningful distinction between the two. The No Collusion Rule helps to collapse this distinction, and confirm that antitrust laws should protect consumers over conspirators.

## ADV 2

#### New enforcement priorities trigger a tradeoff from health care

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” <https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit>)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony: “The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars

to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.” I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making. The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

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## ADV---Rulemaking

#### 4---no AI miscalc.

Loss & Johnson 19, \*works at the Center for Global Security Research at Lawrence Livermore National Laboratory. He was a Fulbright fellow at the Fletcher School of Law and Diplomacy at Tufts University and recently participated in the Center for Strategic and International Studies’ Nuclear Scholars Initiative. \*\*Ph.D. candidate in computer science at Brigham Young University. His research focuses on novel applications of game theory and network theory in order to enhance wargaming. (Rafael, Joseph, 9/19/19, "Will Artificial Intelligence Imperil Nuclear Deterrence?", *War on the Rocks*, https://warontherocks.com/2019/09/will-artificial-intelligence-imperil-nuclear-deterrence/)

Yet, some strategists warn that the same AI-infused capabilities that allow for more prompt and precise strikes against time-critical conventional targets could also undermine deterrence stability and increase the risk of nuclear use. Specifically, AI-driven improvements to intelligence, surveillance, and reconnaissance would threaten the survivability of heretofore secure second-strike nuclear forces by providing technologically advanced nations with the ability to find, identify, track, and destroy their adversaries’ mobile and concealed launch platforms. Transporter-erector launchers and ballistic missile submarines, traditionally used by nuclear powers to enhance the survivability of their deterrent forces, would be at greater risk. A country that acquired such an exquisite counter-force capability could not only hope to limit damage in case of a spiraling nuclear crisis but also negate its adversaries’ nuclear deterrence “in one swift blow.” Such an ability would undermine the nuclear deterrence calculus whereby the costs of imminent nuclear retaliation far outweigh any conceivable gains from aggression.

These expectations are exaggerated. During the 1991 Gulf War, U.S.-led coalition forces struggled hard to find, fix, and finish Iraqi Scud launchers despite overwhelming air and information superiority. Elusive, time-critical targets still seem to present a problem today. Facing a nuclear-armed adversary, such poor performance would prove disastrous. The prospect of just one enemy warhead surviving would give pause to any decisionmaker contemplating a preemptive counter-force strike. This is why nuclear weapons are such powerful deterrents after all and states who possess them go to great lengths to protect these assets. While some worry that AI could achieve near-perfect performance and thereby enable an effective counter-force capability, inherent technological limitations will prevent it from doing so for the foreseeable future. AI may bring modest improvements in certain areas, but it cannot fundamentally alter the calculus that underpins deterrence by punishment.

Enduring Obstacle

The limitations AI faces are twofold: poor data and the inability of even state-of-the-art AI to make up for poor data. Misguided beliefs about what AI can and cannot accomplish further impede realistic assessments.

The data used for training and operationalizing automated image-recognition algorithms suffers from multiple shortcomings. Training an AI to recognize objects of interest among other objects requires prelabeled datasets with both positive and negative examples. While pictures of commercial trucks are abundant, much fewer ground-truth pictures of mobile missile launchers are available. In addition to the ground-truth pictures potentially not representing all launcher models, this data imbalance in itself is consequential. To increase its accuracy with training data that includes fewer launchers than images of other vehicles, the AI would be incentivized to produce false negatives by misclassifying mobile launchers as non-launcher vehicles. Synthetic, e.g., manually warped, variations of missile-launcher images could be included to identify launchers that would otherwise go undetected. This would increase the number of false positives, however, because now trucks that resemble synthetic launchers would be misclassified.

Moreover, images are a poor representation of reality. Whereas humans can infer the function of an object from its external characteristics, AI still struggles to do so. This is not so much an issue where an object’s form is meant to inform about its function, like in handwriting or speech recognition. But a vehicle’s structure does not necessarily inform about its function — a problem for an AI tasked with differentiating between vehicles that carry and launch nuclear-armed ballistic missiles and those that do not. Pixilated, two-dimensional images are not only a poor representation of a vehicle’s function, but also of the three-dimensional object itself. Even though resolution can be increased and a three-dimensional representation constructed from images taken from different angles, this introduces the “curse of dimensionality.” With greater resolution and dimensional complexity, the number of discernable features increases, thus requiring exponentially more memory and running time

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for an AI to learn and analyze. AI’s inability to discard unimportant features further makes similar pictures seem increasingly dissimilar and vice versa.

Could clever, high-powered AI compensate for these data deficiencies? Machine-learning theory suggests not. When designing algorithms, AI researchers face trade-offs. Data describing real-world problems, particularly those that pertain to human interactions, are always incomplete and imperfect. Accordingly, researchers must specify which patterns AI is to learn. Intuitively it might seem reasonable for an algorithm to learn all patterns present in a particular data set, but many of these patterns will represent random events and noise or be the product of selection bias. Such an AI could also fail catastrophically when encountering new data. In turn, if an algorithm learns only the strongest patterns, it may perform poorly — although not catastrophically — on any one image. Consequently, attempts to improve an AI’s performance by reducing bias generally increase variance and vice versa. Additionally, while any tool can serve as a hammer, few will do a very good job at hammering. Likewise, no one algorithm can outperform all others on all possible problem sets. Neural networks are not universally better than decision trees, for example. Because there is an infinite number of design choices, there is no way to identify the best possible algorithm. And with new data, a heretofore near-perfect algorithm might no longer be the best choice. Invariably, some error is irreducible.

#### 5---no engineered diseases.

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

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

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

A History of Failures

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

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

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

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

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

Technical Challenges

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

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

#### 6---plan not sufficient for privacy leadership [KU = blue].

Matthew 1AC Slaughter 21 Dartmouth Business Dean, Former Member @ White House Council of Economic Advisers; and David McCormick; CEO @ Bridgewater Associates Former Senior Positions @ U.S. Commerce Department, the National Security Council, and U.S. Treasury Department; “Data Is Power: Washington Needs to Craft New Rules for the Digital Age,” *Foreign Affairs* 100(3), (ermo/sms, Acc:1-11-2022)

And the United States? At the federal level, the country has not settled on any legal framework. Nor, beyond the USMCA, has it engaged in any meaningful cross-border agreements on data flows. So far, the United States has not answered China's efforts with a coherent plan to shape technology standards or ensure widespread privacy protections. The United States' ad hoc responses and targeted efforts to encourage other countries to reject the Chinese company Huawei's 5G technology may work in the near term. But they do not constitute an effective long-term plan for harnessing the power of data.

## DA---China Bill

#### Key to democracy

Palmer 6-25-2021, senior fellow on the National Security and International Policy team at the Center for American Progress, and was the attaché for the U.S. Department of Energy in Beijing (Nina, “The Innovation and Competition Act is progressive policy,” *The Hill*, <https://thehill.com/opinion/technology/560198-the-innovation-and-competition-act-is-progressive-policy>)

Democrats and Republicans in Washington may have finally found an issue they can both support. Earlier in June, the U.S. Senate passed the U.S. Innovation and Competition Act (USICA) which proposes significant changes to science and technology policy with an eye to U.S. China policy. Approved by a surprisingly bipartisan 68-32 vote, the bill merges Senate Majority Leader Chuck Schumer’s (D-N.Y.) Endless Frontier Act and Sen. Robert Menendez’s (D-N.J.) Strategic Competition Act. President Joe Biden has urged speedy passage of the bill in the House, where it’s headed next.

Progressives in the House should support and advance this $250 billion bill, which contains strong provisions that will smartly make the U.S. more competitive, through investments in communities, innovation, improving racial and gender justice and income equality. The bill authorizes the most extensive investment in U.S. innovation infrastructure in a generation, building technology hubs in disadvantaged areas, increasing federal funding for both fundamental and applied research, increasing STEM scholarships and modernizing U.S. technology policymaking. The bill introduces measures to combat systemic sexism in the scientific community and targets minority-serving institutions (MSIs) for additional grants, scholarships and support. The bill also makes strides in recognizing and funding climate change mitigation measures, including clean energy development and conservation mechanisms. Most notably, it expands the definition of STEM to include energy and environmental studies, which will refocus a range of federal policies on these fields. The bill also prioritizes clean technologies for inclusion in the regional technology hub program.

It should not be surprising that USICA has received support from a broad range of stakeholders, including many progressives. The Thurgood Marshall College Fund voiced support for the bill’s $750 million grant program to build research capacity at Historically Black Colleges and Universities (HBCUs) and MSIs. The American Association of Universities, a group of 66 leading research universities, also praised the bill, calling it an “important step in renewing our country’s commitment to federally sponsored scientific research to better position the United States for a healthier, more secure, more prosperous future.” The bill also contains many of the policy recommendations from the Human Rights Watch regarding international responses to the Chinese government genocide of Uyghurs and other Muslim minorities in Xinjiang province.

So, what’s not to like? As USICA moves to the House, some progressive groups have voiced concerns about framing these investments around competition with China. But competition with China is not synonymous with conflict. We should ensure that we are building better, rather than racing to the bottom. That is precisely how this legislation is crafted. A competitive policy toward China that strengthens America should be welcomed by progressive, and all, policymakers.

Competing with China to innovate, provide international development aid and secure supply chains can result in positive-sum and highly progressive policies, pushing American innovation to greater heights and supporting a thriving economy for the American people. This bill is an opportunity to show the strength of democracy and deliver public goods domestically and abroad. This type of competition is not about China-bashing or xenophobia; rather, it provides an opportunity to address problems in the U.S. that need to be fixed. It creates space for healthy competition in areas where American strength and opportunity have atrophied and where we are being outpaced by China. Confronting the Chinese government’s human rights abuses, poor labor conditions, military excursions and instances of predatory aid are all fundamentally progressive positions that reinforce American values.

There are a few key areas of this bill that could benefit from more progressive activism in the House. The current bill expands research security initiatives and the role of the FBI in China policy without addressing systemic racism in these initiatives and institutions. It also authorizes $52 billion in economic aid to semiconductor manufacturers without assuring that the money is used for real investment and does not go to stock buybacks and other financial maneuvers. The bill can and should go further in protecting human rights in China. Progressives should advocate for inclusion of the main provisions of the Uyghur Forced Labor Prevention Act and the Hong Kong Safe Harbor Act in this legislation, both of which have strong bipartisan support.

Ultimately, passing a bill with such significant bipartisan support is, in itself, a win for the American people. This type of cooperation demonstrates to Americans and our allies that democratic governance is viable, that no matter how stark our differences, we can come together to expand economic progress and increase security.

#### China bill solves inflation’s root causes: the chip shortage and offshoring

DelBene 2-2-2022, represents Washington's 1st District and is chair of the New Democrat Coalition. (Suzan, "American competitiveness legislation is the key to tackling today's economic challenges, creating tomorrow's opportunities", *The Hill*, <https://thehill.com/blogs/congress-blog/technology/592447-american-competitiveness-legislation-is-the-key-to-tackling>)

The ongoing COVID-19 pandemic, supply chain disruptions, and decades of underinvestment in U.S. infrastructure and manufacturing have resulted in higher prices for Americans at the grocery store and gas pump. The Biden administration and Congress have already acted to ease inflation and clear bottlenecks by extending operations at major ports, releasing oil from the Strategic Petroleum Reserve, and enacting the bipartisan infrastructure law. But this can’t be the end of our work.

Right now, Congress can address the challenges facing families and keep the Biden Boom going by taking bipartisan action on American competitiveness legislation to secure our supply chains, cut costs, strengthen American leadership, spur innovation and create good-paying jobs that will set the U.S. up for long-term economic success. In December, the New Democrat Coalition announced our top priorities for this legislation and worked to ensure they were included in the House’s America COMPETES Act. Doing so will address many of the problems we face today, create opportunities for tomorrow, and help America succeed in the 21st century.

First and foremost, this legislation must address the global microchip shortage. From cars and clean energy technologies to cell phones and dishwashers, semiconductors and microchips are critical to the products Americans rely on every day. But the current global chip shortage is driving prices up for American consumers in many sectors. For example, new car prices rose by as much as 14% over the last year and used car prices rose 37%. Passing legislation that strengthens global supply chains and supports domestic manufacturing will not only bolster our supply of microchips, but also lower costs, create good American jobs, and help the U.S. lead in the global economy.

That’s a win, top to bottom.

To compete globally, we also need to leverage the talent of hard-working Americans in diverse communities across this country. Right now, jobs in the technology and innovation sectors are concentrated in just a handful of cities on the coasts. Just five U.S. cities account for 90% of the recent growth in innovation jobs. That’s a lot of untapped potential and communities being left behind. By investing in new innovation centers in regions outside of existing technology hubs like Silicon Valley, we can unlock the potential of communities like Madison, Wis., and Allentown, Pa., to attract new industries, tackle break-through challenges, and create the jobs of the future.

If we’re going to fill those jobs, we also need to support the next generation of high-tech and highly skilled American workers. I understand personally how important well-funded educational and research opportunities are to STEM jobs. Before I came to Congress, I was lucky to receive a quality education that prepared me for a job in science and technology. By expanding research fellowships and undergraduate research opportunities, specifically at historically Black colleges and universities, Hispanic-serving institutions, and tribal colleges and universities, American workers will gain the skills to thrive in the global economy. Increasing educational opportunities and funding will also ensure America leads the world as innovators and creators.

None of these investments happen in a bubble. America is made stronger through the support of our allies and close trading partners. That’s why we must leave behind the isolationist policies of the last administration and reclaim the mantle of being rule makers, not rule takers. We are in a global race for the future and if we don’t make these key investments, we put our national security, our allies, and our values at risk. As countries around the world ramp up their investments in science and technology, we must make sure we aren’t just keeping pace, but are staying one step ahead. This legislation levels the playing field so that the U.S. can fairly compete on the global stage.

We shouldn’t be intimidated by today’s economic challenges. We should be excited by the opportunities that lie ahead. President Biden recently said, "the best thing to tackle high prices is a more productive economy, with greater capacity to deliver goods and services to the American people." This legislation upholds and delivers on that promise. It’s going to be hard work, but Americans have never shied away from discovering and creating the future. New Dems will work with the Biden administration and our colleagues on both sides of the aisle and Capitol to get the final bill to the president’s desk as soon as possible.

#### China bill is first up and passes by spring. Other bills are noncontroversial shoo-ins.

Zhou 2-15-2022, Politics and Policy Reporter @ Vox (Li, "Why there’s been a surge of bipartisan activity in Congress", *Vox*, <https://www.vox.com/2022/2/15/22927345/congress-bipartisan-bills-forced-arbitration-postal-reform>)

In the past few weeks, Congress has been doing something that feels surprising: weighing a number of bipartisan bills on issues including sexual harassment and stock trading. Given Republicans’ willingness to block many of Democrats’ biggest priorities, this sudden influx of bipartisan activity seems unexpected. In reality, it follows longstanding historical patterns. One of the reasons lawmakers have turned to bipartisan bills is that more partisan measures have been unable to pass in recent months. Previously, the Freedom to Vote Act, legislation focused on voting rights protections, failed on the floor because it was blocked by Senate Republicans. The Build Back Better Act, Democrats’ sweeping social spending and climate measure, is also currently on pause as lawmakers scramble to figure out what Sen. Joe Manchin (D-WV) will accept. In the interim, lawmakers have focused their attention on legislation that could potentially get 60 votes in the Senate. (Since there are 50 Democrats in the Senate, they need at least 10 Republicans to vote with them to overcome a filibuster on most bills in the upper chamber.) “People realize we’re not going to get rid of the filibuster. If you want to get something done, you’ve got to work together,” Manchin told NBC News about the spike in bipartisan legislation. This trend is in line with past instances of unified government, says University of Utah political science professor James Curry, the co-author of a book on the subject called The Limits of Party. The party in power “tends to spend a lot of time passing things that are ambitious and trying to figure out how to do things on a single-party basis, until they meet reality,” says Curry. As a result, bipartisanship winds up being more common than people think it is — even when one party holds full control of Congress. “This is the norm,” Curry told Vox. “When it comes to making laws and policies, bipartisanship has ruled the day because it’s a necessity. Our system is set up to make it extremely hard to do things on a single party basis.” In their book, Curry and Princeton University political science professor Frances Lee note that most laws that have passed since the 1970s have been bipartisan. The bills under consideration also underscore the limits of bipartisanship. Broadly, they target issues that are important but less likely to be “hot-button” ones. On topics like police reform, gun control, and immigration, for example, this degree of bipartisanship would be difficult — or impossible — to find. The bipartisan measures lawmakers are looking at now are on less contentious subjects: postal reform, elections reform, and investments in the United States’ supply chain. These discussions also highlight the trade-offs that come with bipartisan lawmaking — many policies inevitably get watered down. For example, Democrats and Republicans recently reached a deal on a reauthorization of the Violence Against Women Act, legislation aimed at combating domestic abuse and sexual assault. The agreement, however, cuts a pivotal gun control provision advocates have long pushed for, because Republicans opposed it. The bipartisan legislation that Congress is working on runs the gamut from foreign policy to investments in innovation and technology. Some of these bills are getting close to passing, while others have yet to be voted on in either chamber. Here’s a rundown of a few of the bills that Congress is currently considering, organized by where they are in the process. Collectively, they illustrate what’s possible when lawmakers govern in a bipartisan way, as well as the constraints that come with doing so. Bills that have passed both chambers Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act: Last Thursday, the Senate passed a bill that bars companies from requiring employees to settle sexual assault and sexual harassment allegations through arbitration, a private process that has historically advantaged companies over their employees. That’s meant survivors weren’t able to take their claims to court and publicize them, allowing perpetrators to bury these cases with private settlements. Since the bill has already passed the House, it will next head to President Joe Biden’s desk, where he’s expected to sign it into law. Bills that have been passed by at least one chamber Postal Service Reform Act: This legislation aims to help the US Postal Service, which has been losing money for years, cut costs. The bill would do so by eliminating a requirement that the agency prefund retiree health benefits, and it would mandate that all employees enroll in Medicare, a move that’s expected to reduce the USPS’s premium expenses. All told, it’s expected to save the USPS up to $50 billion over a decade. Senate Majority Leader Chuck Schumer had planned to hold a vote on the bill as soon as this week, though opposition from Sen. Rick Scott (R-FL) has delayed the bill. What happens next: The Senate will likely pass this bill in early March, given Scott’s opposition. America COMPETES Act and the Innovation and Competition Act: Both the House and Senate have now passed legislation aimed at investing in the US’s semiconductor production and supply chain, and help the US compete with China and other nations. The House’s version is known as the America COMPETES Act, while the Senate’s version is called the Innovation and Competition Act. What happens next: The two bills now head to conference committee, where lawmakers will work out the differences between them. Senate Republicans have been skeptical of the House version because it includes more provisions to address climate change, while House Democrats felt like the Senate’s Innovation and Competition Act didn’t do enough on that issue. Both chambers will have to vote on a compromise deal after a conference agreement is reached. This process is expected to take weeks, setting up the final bill for passage later this spring.

#### **Guidelines are nonbinding and won’t be enforced.**

Holding et al. 21, \*Christopher, Chair of Goodwin’s Antitrust & Competition practice, \*Paul Jin, \*Andrew Lacy, \*Arman Oruc. (7-15-2021, "Biden Executive Order Calls for Heightened Antitrust Scrutiny", *JD Supra*, <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>)

KEY IMPLICATIONS:

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts; Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal; Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order; Past deals that are now viewed as potentially raising antitrust concerns may be subject to review and scrutiny; The agencies’ shift to more rigorous guidelines means it will be even more essential to negotiate antitrust risk provisions in agreements with a complete grasp of the substantive antitrust risk under this new landscape; and This novel proposal for the FTC to exercise rulemaking authority may impose new requirement on affected industries, but will also likely face litigation challenges.

#### No compartmentalization, especially when lobbies are involved

Sensiba 11-6-2020, MA @ American Military U, analyst @ Clean Technica (Jennifer, “Don’t Encourage Biden To Waste Political Capital,” Clean Technica, [https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/)](https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/)//BB)

If we want clean energy to succeed in the upcoming Biden administration, we have to (a) be realistic, and (b) fight like hell to keep him focused on it as much as possible. Political capital is scarce, and the threats to our future from climate change are real, so allowing the various Democratic lobbies to suck all of the oxygen out of the room is not an option. Here’s a quick rundown of the problem and some ideas on what we can do to help clean energy win. It’s All About Political Capital In short, political capital is a way to think about political power in democratic countries. Yes, winning elections does give some political power, but you can’t effectively use it unless you have coalitions, alliances, trust, goodwill, and influence. Your earned trust and connections are like money (capital). You can work hard to earn it and build it up, but it’s easy to spend it and even waste it, just like money. If you get power from an election and then quickly spend all of the political capital impressing loyalists, you’ll get to the point where you can’t win future elections (Trump is a great example of this), can’t get votes together for legislation, and can’t get people to help you in a variety of other ways. At worst, a political leader who has run completely out of political capital might not even be able to get normal citizens to follow laws. As the consent of the governed is withdrawn, you see protests, riots, violence, terrorism, and even war. For better or worse, Biden won’t start out with much political capital to begin with. After a narrowly won election, not taking the Senate (because many voters rejected Trump but voted for Republicans further down the ballot), and then extended accusations of cheating, it’s not going to be easy to get things done.

#### Biden gets the blame for agency action

Kovacs 18, Professor at the University of Rutgers School of Law, JD from Georgetown University Law Center, BA in Psychology from Yale University (Kathryn E., “Rules About Rulemaking and The Rise of the Unitary Executive,” *Administrative Law Review, 70 Admin. L. Rev. 515*, Lexis)

Clearly, there are other reasons for this phenomenon: among them, the President's desire to take political credit or, on the flip side, his recognition that, whatever the outcome, he will be saddled with the political blame. The American public seems to equate the President with the Fourth Branch. Advances in technology and media may be exacerbating this effect. This phenomenon, however, cuts both ways. The President may be inclined to make policy decisions himself so that he can take the credit if the outcome is politically popular, but he may prefer to leave policymaking to his subordinates so that he can distance himself if the outcome is not politically popular. This does not, therefore, account fully for the dramatic [\*557] rise in presidential direct action described below.

[FOOTNOTE]

Daniel A. Farber, Presidential Administration Under Trump 23 (Aug. 9, 2017) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3015591 (envisioning a "feedback cycle in which presidents take control of major agency decisions, fortifying the public's tendency to assign blame to the president for unpopular outcomes, which in turn strengthens the pressure on the president to assert control"); see also COOPER, supra note 333, at 65, 95; Cary Coglianese & Kristin Firth, Separation of Powers Legitimacy: An Empirical Inquiry into Norms About Power, 164 U. PA. L. REV. 1869, 1900 (2016) (finding that people are more likely to blame the President for poor agency outcomes than they are to credit him for positive agency outcomes); Kagan, supra note 1, at 2310; Stack, supra note 334, at 264, 317.

#### Executive action magnifies the link

Christenson 15, Associate Professor of Political Science and the Director of Advanced Programs @ Boston U (Dino, “Political Constraints on Unilateral Executive Action,” *Case Western Law Review*, 65.4)//BB

Moreover, other institutions, particularly Congress, may play an important role—even when presidents know that efforts to overturn an∂ executive action will fail—by engaging in the political debate and mobilizing public pressure against the president should he act unilaterally contra congressional preferences. Decades of political science scholarship have demonstrated that the public lacks systematic knowledge∂ of politics and therefore relies heavily on heuristics when forming their∂ political judgments.48 Political elites thus become key cue-givers who∂ help inform and shape public opinion.49 Finally, citizens acquire most∂ of their knowledge about politics from the mass media. Scholars have∂ long noted that the media depend on official Washington sources for∂ information. However, a robust literature in political communications∂ goes further and argues that the media tend “to ‘index’ the range of∂ voices and viewpoints in both news and editorials according to the∂ range of views expressed in mainstream government debate about a∂ given topic.”50 When other political actors, particularly members of∂ Congress, object and criticize presidential actions in the public sphere,∂ they are all but assured of receiving considerable media coverage, and∂ they are well-positioned to influence public opinion against the∂ executive branch.51∂ In essence, we argue that while the statutory and legal constraints∂ on presidential unilateral power are weak, the political constraints are∂ quite robust.52 Unilateral actions that could provoke public ire and∂ erode the president’s political capital, thereby undermining later efforts to pursue other aspects of the president’s programmatic agenda, may∂ fail a simple cost-benefit calculation. The informal political costs of∂ acting—even when Congress and the courts are almost certainly∂ unwilling or unable to strike down the action—may outweigh the policy∂ benefits of acting unilaterally. These political costs, which are not∂ accounted for in most extant models of unilateral politics, are tangible∂ and substantial; indeed, they may explain why presidents fail to act∂ unilaterally as aggressively and on as many issues across the gamut of∂ policy as formal models suggest they should.

#### But, link alone turns the case---even ambitious enforcement flounders with political backlash

Jones and Kovacic 20, \*Alison Jones is Professor of Law, King’s College London, London WC2R 2LS, United Kingdom \*William E. Kovacic, (“Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin,* 202, Vol. 65(2) 227-255, <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>)

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125 The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

#### Link turns case — political backlash and partisanship undermine anti-trust enforcement via agency appointments, judge selection, and partisan pressures.

Kovacic 14, Global Competition Professor of Law and Policy @ George Washington (William, Politics and Partisanship in U.S. Antitrust Enforcement, *Antitrust Law Journal*, 2014, Vol. 79, No. 2 (2014), pp. 687-711)

What accounts for these and other notable variations in federal enforcement activity? One common explanation is "politics"9 - a shorthand expression for the capacity of elections and elected officials to bend the antitrust enforcement system to serve a set of policy preferences or constituent desires. By this view, the political process affects enforcement through presidential elections, the selection of agency leadership, the intervention of executive branch and congressional officials in routine agency decision making, and the appointment of federal judges who hear antitrust cases. It is unsurprising that a regulatory system rich in power and prosecutorial discretion would have some connection to the political process. The substantial economic significance of the statutes whose enforcement is entrusted to the DOJ and the FTC ensures that elected officials will study what these agencies do and sometimes seek to influence the exercise of their prosecutorial authority. It is also difficult to imagine that a nation would give significant responsibility to law enforcement bodies without some means for elected officials to hold agency officials to account for their policy choices. Expansive grants of authority tend to come with accountability strings attached. For academics, practitioners, and public officials, the question is not whether political forces surround the DOJ and the FTC, or whether decisions by elected officials sometimes influence agency behavior. They assuredly do.11 The relevant queries are how, and how much? This Article addresses these questions by examining one dimension of the relationship between the federal antitrust agencies and the political process. It discusses how electoral politics can increase the influence of partisanship in the operation of the DOJ and the FTC. As used in this Article, partisanship is a determined commitment to party goals and causes. It manifests itself in a tendency to exaggerate the virtues of the party and to disregard or devalue the accomplishments of political rivals. Through the political appointment of the DOJ and FTC leadership, partisanship can spill over into the formulation and presentation of agency policy. As will be shown, partisanship can have destructive effects. Among other consequences, partisan attitudes can lead officials to act in ways that serve party goals at the expense of the agency's programs and reputation. The partisan tends to overlook how continuity of policy and incremental improvements have strengthened the DOJ and FTC antitrust programs regardless of which party controls the White House.12 Partisanship impedes the development of a norm that recognizes the importance of cumulative improvements, respects past contributions to agency effectiveness regardless of party origin, and encourages long-term investments that enhance the agency's capability and reputation.13 The striving for electoral success can beget partisanship, and, by eroding support for a norm that encourages cumulative investments for improvement over the long term, partisan attitudes can diminish agency effectiveness. In this sense, politics can influence federal antitrust enforcement, and influence it negatively.

#### It’s a heavy lift and requires pc – investing pc secures GOP support

Trubowitz 2021

Peter, LSE US Centre Director Professor, “Biden’s foreign policy will likely focus on rebuilding bridges with allies, pressing China, and ensuring international relationships benefit Americans again,” January 20, 2021 <https://blogs.lse.ac.uk/usappblog/2021/01/20/bidens-foreign-policy-will-likely-focus-on-rebuilding-bridges-with-allies-pressing-china-and-ensuring-international-relationships-benefit-americans-again/>

There are no magic bullets here, but there is much Biden can do. His campaign commitment to adopt federal “Buy American” policies to favor domestic producers is sensible and a political no-brainer. Investing in domestic priorities like infrastructure, education, and energy to create non-tradeable jobs and boost US competitiveness over the longer term is a heavier lift, politically. Still, some Republicans on Capitol Hill will find it in their political interests try to work with Biden on these efforts, especially if they are connected to recovering from the pandemic and making America more competitive vis a vis China. The more Biden invests intelligently here, the more it will ease anti-globalist pressures at home and strengthen US credibility as a reliable partner abroad. This is political capital well spent.

#### Biden’s negotiating experience and PC are key. Now is key

Clift 1-18-2022, covers politics for The Daily Beast (Eleanor, “Democrats Can Salvage Biden’s Presidency With These Three Simple Moves,” *The Daily Beast*, https://www.thedailybeast.com/democrats-can-salvage-bidens-presidency-with-these-three-simple-moves)

Biden ran on his long experience in the Senate and his belief that he could make the Congress work again. He was able to pass significant legislation on infrastructure with bipartisan support, and he could burnish his record with the U.S. Innovation and Competition Act (USICA). It passed the Senate in June (68 to 32) but has been languishing in the House along with the Creating Helpful Incentives to Produce Semiconductors for America Act (CHIPS), which is a component of the broader bill, USICA. Republicans and Democrats love this legislation because it stands up to China and it establishes new semiconductor facilities in the United States, along with a National Semiconductor Technology Center. Anybody paying attention to the supply chain crises knows there’s a crippling shortage of semiconductors. An analysis by Goldman Sachs found 169 industries are affected, with automobiles and electronics hit the hardest. This legislation could have passed and been signed by Biden six months ago, alleviating some of the supply chain issues that the administration is grappling with today. There’s still no timetable for passage, and no apparent rush by the House, where the leadership indicated it wanted to write its own bill as opposed to accepting what was sent over by the Senate. Back in the spring of 2021 when the CHIPS Act sailed through the Senate with 68 votes, everything seemed possible to achieve. “The mood was the sky’s the limit, and to some extent the administration got caught up in that,” says Bill Galston, a senior fellow in governance studies at The Brookings Institution. “After their stunning early victory with the American Rescue Plan, the administration may have concluded the force was with them — and so they outran their political supply lines.” This always happens, says Third Way’s Matt Bennett. “Presidents’ reach far exceeds their grasp. It happened to Clinton on health care, Obama on cap and trade (carbon tax) and Biden on voting rights, George W. Bush on privatizing social security and Trump on getting rid of the ACA (Affordable Care Act). Presidents always try for the moon, and they often fall short. It’s not unusual, not surprising, and now is the time when you take what you can get.”

#### Political capital is necessary and sufficient for the president to achieve priorities. Overwhelming empirics.

Siewert 18, PhD, dissertation to obtain the degree of Doctor of Philosophy in the Faculty of Social Sciences of the Johann Wolfgang Goethe University to Frankfurt am Main (Markus, “"It’s Never Easy for the President to Get Exactly What He Wants,” [https://d-nb.info/1164077325/34)](https://d-nb.info/1164077325/34)//BB)

One of the most important presidential strategies in the legislative arena is (trying) to set the agenda of Congress (see Wood 2009 for an extensive overview; Cohen 2012; Edwards and Wood 1999; Light 1999). The reasoning behind this is straightforward: Since presidents have only few tools at hand to sway lawmakers on how they cast their ballot, the focus of the White House is set at an earlier stage: by already influencing what is considered in the first place. Compared with the legislative prevalence of executives in parliamentarian democracies, presidents in the United States are clearly less able to dominate the agenda space. Yet based on his constitutional right to recommend legislation deemed necessary and appropriate (Art. II, Sec 3, U.S. Constitution), it is primarily the resources of the executive branch - i.e., the departmental bureaucracies, and the Executive Office of the President - which put the president into the position to exert policy leadership via drafting legislative proposals. Unmatched by any other single legislators or even Congress as a whole, John W. Kingdon is right to argue that “[…] no other single actor in the political system has quite the capability of the president to set agendas.” (Kingdon 2003, 24). Previous research has shown that defining the agenda is a promising strategy for the White House. Presidential initiatives, both major and minor ones, almost always find their way into the legislative hopper (Cameron and Park 2008, 51f; Cohen 2012, 24ff; Edwards and Barrett 2000, 116ff). Accordingly, legislation proposed by the administration makes up between 30% and 50% of the congressional calendar, while the remaining proportion is initiated by members of Congress, is based on recurring pieces of legislation, and are reaction to external events or imminent crises (Edwards and Barrett 2000, 112ff; Taylor 1998, 377ff; Theriault 2002). While this indeed makes the president the single most important agenda-setter, it also demonstrates that he does not dominate the legislative agenda of Congress (Sinclair 2006, 255–63). We can mainly identify three mechanisms how presidential agenda-setting affects the lawmaking process in Congress. First, it enables the president to define the boundaries of policies under consideration, and in this way to structure the following deliberation. In this sense, agenda setting is first and foremost about obtaining the Deutungshoheit - i.e., the prerogative of interpretation - over the policy debate through setting the terms of the debate, moving first on certain policy aspects, and via framing and priming of core arguments (Edwards and Wood 1999; Eshbaugh-Soha and Peake 2005). George W. Bush, for instance, during his 2000 presidential campaign advertised his plans for massive across the board tax breaks which, at that time, were perceived as a mere “pipe dream” on both sides of the political spectrum (Milbank 2001). Cutting taxes, and especially to this extent, did not rank high among the priorities of lawmakers nor the American public. The arrival of Bush in the White House, however, completely changed the dynamics of debate. It put the tax cut proposal upfront of the legislative agenda during his first half year as president, and Democrats in the end had to accept an amount of tax breaks which came up to more than double of what they called reasonable six months before during the election campaign. Bill Clinton, on the other hand, was largely rolled by the issue dynamics in the debates regarding the overhaul of the Internal Revenue Service in 1997. Favoring only minor reforms, he had to concede early on to pressures from the public and Congress who, fueled by several major scandals, thirsted for a largescale reorganization of the IRS instead of a fine-tuning approach preferred by Clinton (Broder 1997). Of course, these are only two illustrations highlighting how presidents can succeed but also fail in setting the tone of the debate from early stages and through this pre-structure the outcome of the lawmaking process. Second, presidential leadership at the agenda-setting stage helps to overcome collective action problems within Congress and among its 535 legislators by providing a focal point around which other political actors’ policy positions can crystalize (Cameron and Park 2008; Cohen 2012; Neustadt 1991, 8f). The USA PATRIOT Act can serve as a prime example in this regard, on which the New York Times stressed that “[b]y and large, the House and Senate bills both use as a starting point a proposal sent to Capitol Hill nearly two weeks ago by the White House.” (Lewis and Pear 2001). Since lawmakers in Congress today only have scarce resources to draft their own bills, presidential input from the beginning is often highly appreciated. Yet, a proposal from the White House furthermore fulfills the role of first mover draft upon which the subsequent debate can be structured. In this sense, it both offers a distinct policy outline upfront and provides guiding posts for the further deliberation process. Third, agenda-setting offers the White House the opportunity to highlight its priorities, how they are distributed across various policy issues, and in which way policies should be packaged (Rudalevige 2005, 437ff; Wayne 2009b, 317ff). Because the resources of any administration to lobby Congress are not infinite and the multiple political arenas are usually heavily crowded with myriad policy items and problems striving to be solved, the White House needs to prioritize its policy agenda. This involves, among other things, to select some issues over others, decide about their sequencing, how to pursue them, and how much political capital it wants or needs to spend on any given item. Therefore, the administration will focus on certain policies with more attention, on others with less, depending on the prioritization by the president but also upon other considerations, such as the overall density of the policy agenda or imminent pressures of the time. The trick is to not overwhelm Congress with the president’s initiatives. As Lyndon B. Johnson famously quipped, “Congress is like a Whiskey drinker. You can put an awful lot of whiskey into a man if you just let him sip it. But if you try to force the whole bottle down his throat at one time, he’ll throw it up.” (cited in Rudalevige 2002, 113). Thus, the failure to prioritize easily leads to overload of Pennsylvania Avenue with Congress at the one end, and to excessive demands and exhaustion for the White House at the other end. The rocky start of the Clinton administration underlines this argument: since the White House did not pursue a ‘rifle-approach’ to define clear policy priorities for its initial months and then execute them, it got lost in numerous legislative battles and mine-fields early on in its first year. Instead it followed a ‘shotgun-approach’ by addressing as many issues as possible at once leading to an overkill and chaos (Rockman 1996; Sinclair 2000b).