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#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

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Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

#### Capitalism causes existential climate change, nuclear war, democratic collapse, extreme inequality, and perpetual exploitation of the global south — try or die for a transition.

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

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

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

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

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

My operationalization of capitalism follows Oliver Cromwell Cox’s explication in Capitalism and American Leadership.17 Modern U.S. racial capitalism arose in the context of the First World War, when, as Cox explains, the United States took advantage of the conflict to capture the markets of South America, Asia, and Africa for its “over-expanded capacity.”18 Cox further expounds upon this auspicious moment of ascendant modern U.S. racial capitalism thus:

By 1914, the United States had brought its superb natural resources within reach of intensive exploitation. Under the stimulus of its foreign-trade outlets, the financial assistance of the older capitalist nations, and a flexible system of protective tariffs, the nation developed a magnificent work of transportation and communication so that its mines, factories, and farms became integrated into an effectively producing organism having easy access to its seaports.… [Likewise,] further internal expansion depended upon far greater emphasis on an ever widening foreign commerce.… Major entrepreneurs of the United States proceeded to step up their campaign for expansion abroad. The war accentuated this movement. It accelerated the growth of [modern] American [racial] capitalism and impressed upon its leaders as nothing had before the need for external markets.19

Relatedly, Peter James Hudson argues that the First World War fundamentally changed the terms of order of international finance, allowing New York to compete with London, Paris, and Berlin for the first time in the realm of global banking. This was not least because the Great War “drastically reordered global credit flows,” with the United States transforming from a debtor into a creditor nation.20 In addition to Latin American and Caribbean nations and businesses turning to the United States for financing and credit, domestic saving and investment patterns were altered to the benefit of imperial financial institutions like the City Bank.21

Although the United States is, to use Cox’s terminology, more a “lusty child of an already highly developed capitalism” than an exceptional capitalist power, the nation perfected its techniques of accumulation through its vast natural wealth, large domestic market, imbalance of Northern and Southern economies, and, importantly, through its lack of concern for the political and economic welfare of the overwhelming masses of its population, least of all the descendants of the enslaved.22 Modern U.S. racial capitalism is thus sustained by military expenditure, the maintenance of an extremely low standard of living in “dependent” countries, and the domestic superexploitation of Black toilers and laborers. Cox notes that Black labor has been the “chief human factor” in wealth production; as such, “the dominant economic class has always been at the motivating center of the spreads of racial antagonism. This is to be expected since the economic content of the antagonism, especially at its proliferating source in the South, has been precisely that of labor-capital relations.”23 In a general sense, racial capitalism in the United States constitutes “a peculiar variant of capitalist production” in which Blackness expresses a structural location at the bottom of the labor hierarchy characterized by depressed wages, working conditions, job opportunities, and widespread exclusion from labor unions.24

Furthermore, modern U.S. racial capitalism is rooted in the imbrication of anti-Blackness and antiradicalism. Anti-Blackness describes the reduction of Blackness to a category of abjection and subjection through narrations of absolute biological or cultural difference; ruling-class monopolization of political power; negative and derogatory mass media propaganda; the ascent of discriminatory legislation that maintains and reinscribes inequality, not least various modes of segregation; and social relations in which distrust and antipathy toward those racialized as Black is normalized and in which “interracial mass behavior involving violence assumes a continuously potential danger.”25 Anti-Blackness thus conceals the inherent contradiction of Blackness—value minus worth—obscuring and distorting its structural location by, as Ralph and Singhal remark, contorting it into only a “debilitated condition.”26 Antiradicalism can be understood as the physical and discursive repression and condemnation of anticapitalist and/or left-leaning ideas, politics, practices, and modes of organizing that are construed as subversive, seditious, and otherwise threatening to capitalist society. These include, but are not limited to, internationalism, anti-imperialism, anticolonialism, peace activism, and antisexism.

Anti-Blackness and antiradicalism function as the legitimating architecture of modern U.S. racial capitalism, which includes rationalizing discourses, cultural narratives, technologies of repression, legal structures, and social practices that inform and are informed by racial capitalism’s political economy.27 Throughout the twentieth century, anti-Blackness propelled the “Black Scare,” defined as the specter of racial, social, and economic domination of superior whites by inferior Black populations. Antiradicalism, in turn, was enunciated through the “Red Scare,” understood as the threat of communist takeover, infiltration, and disruption of the American way of life.28 For example, in the 1919 Justice Department Report, Radicalism and Sedition Among the Negroes, As Reflected in Their Publications, it was asserted that the radical antigovernment stance of a certain class of Negroes was manifested in their “ill-governed reaction toward race rioting,” “threat of retaliatory measures in connection with lynching,” open demand for social equality, identification with the Industrial Workers of the World (IWW), and “outspoken advocacy of the Bolshevik or Soviet doctrine.”29

Here, anti-Blackness, articulated through the fear of the “assertion of race consciousness,” was attached to the IWW and Bolshevism—in other words, to anticapitalism—to make it appear even more subversive and dangerous. Likewise, antiradicalism, expressed through the denigration of the IWW and Soviet Doctrine, was made to seem all the more threatening and antithetical to the social order in its linkage with Black insistence on equality and self-defense against racial terrorism. In this way, “defiance and insolently race-centered condemnation of the white race” and “the Negro seeing red” came to be understood as seditious in the context of modern U.S. racial capitalism.

The link between my theory of modern U.S. racial capitalism and Robinson’s catholic theory of racial capitalism, beyond his “suggest[ion] that it was there,” is vivified through the prison abolitionist and scholar Ruth Wilson Gilmore, who writes: “Capitalism…[is] never not racial.… Racial capitalism: a mode of production developed in agriculture, improved by enclosure in the Old World, and captive land and labor in the Americas, perfected in slavery’s time-motion, field factory choreography, its imperative forged on the anvils of imperial war-making monarchs.”30 Racial capitalism, she continues, “requires all kinds of scheming, including hard work by elites and their compradors in the overlapping and interlocking space-economies of the planet’s surface. They build and dismantle and reconfigure states, moving capacity into and out of the public realm. And they think very hard about money on the move.”31 Perhaps more than Gilmore, though, my approach aligns with that of Neville Alexander as described by Hudson.32 Like Alexander, who focused on South Africa, I offer a particularistic understanding of racial capitalism, mine being rooted in the political economy of Blackness and the legitimating architectures of anti-Blackness and antiradicalism in the United States. Gilmore qua Robinson offers a more universalist and transhistorical conception. Like Alexander, my theory of modern U.S. racial capitalism is primarily rooted in (Black) Marxist-Leninists and fellow travelers. This is an important epistemological distinction: whereas Robinson finds Marxism-Leninism to be, at best, inattentive to race, my theory of modern U.S. racial capitalism is rooted in the work of Black freedom fighters who, as Marxist-Leninists, were able to offer potent and enduring analyses and critiques of the conjunctural entanglements of racialism, white supremacy, and anti-Blackness, on the one hand, and capitalist exploitation and class antagonism on the other hand.33

Although Robinson draws on scholars like Fernand Braudel, Henri Pirenne, David Brion Davis, and Eli Heckscher to understand European history, socialist theory, and the European working class, the work of Black Marxists like James Ford, Walter Rodney, Amílcar Cabral, and Paul Robeson offer me those same intellectual, historical, and theoretical resources. Finally, I agree with Alexander that the resolution to racial capitalism is antiracist socialism, not a cultural-metaphysical Black radical tradition.

In what remains of this essay, I will draw on the work of Black Marxist-Leninists and anticapitalists to explicate the defining features of modern U.S. racial capitalism—war and militarism, imperialist accumulation, expropriation by domination, labor superexploitation, and property by dispossession. In this, I demonstrate that their critiques and analyses offer a blueprint for theorizing modern U.S. racial capitalism.

War and militarism facilitate the endless drive for profit. Military conflicts between imperial powers result in the reapportioning of boundaries, possessions, and spheres of influence that often exacerbate racial and spatial economic subjection. War and militarism also perpetuate the endless construction of “threats,” primarily in racialized and socialist states, against which to defend progress, prosperity, freedom, and security. The manufacturing of conflict legitimates the mobilization of extraordinary violence to expropriate untold resources that produce relations of underdevelopment, dependency, extraversion, and disarticulation in the Global South. Moreover, the ruling elite and labor aristocracy in imperialist countries, not least the United States, wage perpetual war to defend their way of life and standard of living against the racialized majority who, because they would benefit most from the redistribution of the world’s wealth and resources, represent a perpetual threat.

#### The alternative is to reject the aff and critically interrogate the neoliberal discourse of the 1AC — resisting capitalist pedagogy in educational spaces is the first step towards a broader movement away from Capitalism; COVID provides a unique transition opportunity.

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As educators, it is crucial for us to examine how we talk, teach, and write about inequality as an object of critique in an age of precarity, uncertainty and the current pandemic crisis. This is especially true at a time when a growing number of authoritarian regimes around the globe substitute replace thoughtful dialogue and critical engagement with the suppression of dissent and a culture of forgetting r. How do we situate our analysis of education as part of a broader discourse and mode of analysis that interrogates the promises, ideals, and claims of a substantive democracy? How do we fight against iniquitous relations of power and wealth that empty power of its emancipatory possibilities, and as Hannah Arendt has argued, “makes most people superfluous as human beings”? How might we understand how neoliberal ideology, with its appropriation of market-based values, regressive notions of freedom and agency, uses language to infiltrate daily life? How does a pandemic pedagogy in the service of neoliberalism produce identities defined by market values, and normalize a notion of responsibility and individuality that convinces people that whatever problem they face they have no one to blame but themselves? Repeated endlessly on right-wing media platforms, the underlying conditions that disproportionately produce chronic illness among poor people of color disappear among a public distracted, if not persuaded, by a pandemic pedagogy that celebrates unchecked self-interest, disdains social responsibility, and turns away from the reality of a society with deep-seated institutional rot and unravelling of social connections and the social contract.

Pandemic pedagogy thrives on inequality and becomes a militarized and heartless normalizing tool to convince the broader public that the lives of the elderly, sick, and vulnerable should be valued according to how much they contribute to the economy. And if they are willing to die in order not to be a drain on the economy, all well and good. Nothing escapes the cruel logic of neoliberalism with its arrogance and hubris on full display as it bathes in the glow of right-wing populism, ultra-nationalism, and neofascism. Its accoutrements of dictatorship are everywhere and can be seen in the swagger of militia that storm state capitals, in police who punch and pepper spray protesters and push elderly men to the ground, and in military forces on the streets without badges reinforcing a climate of fear, repression, and unaccountability. There is more at work here than a lack of humanity on the part of the Trump administration. As the Irish journalist Fintan O’Toole observes, there is also the deepening grip of a culture of cruelty and dehumanization. He writes:

“As a society the American people are being habituated into accepting cruelty on a wide scale. Americans are being taught by Trump and his administration not to see other people as human beings whose lives are as important as their own. Once that line has been crossed – and it is not just Trump and the people around him, but many of Trump’s supporters as well – then we know where that all leads, what the ultimate destination is. There is no mystery about it. We know what happens when a government and its leaders dehumanize large numbers of people.”

Depoliticization and the Authoritarian Turn

Neoliberalism is not only an economic system, it is also an ideological apparatus that relentlessly attempts to structure consciousness, values, desires, and modes of identification in ways that align individuals with its governing structures. Central to this pedagogical project is the attempt to prevent individuals from translating private issues and troubles into broader systemic considerations. By doing this, it becomes difficult for individuals to grasp the historical, social, economic, and political forces at work in shaping a social order as a human activity deeply immersed in specific relations of power. Neoliberalism’s attempt to erase or rewrite historical and social forces makes it difficult for individuals to imagine alternative notions of society, with themselves as collective actors, or view their problems as more than the limitations of faulty character, moral failure, or a problem of personal responsibility. Reducing individuals to isolated, discrete, hermetically-sealed human beings whose lives are shaped only by notions of self-reliance and self-sufficiency is a pedagogical strategy that utterly depoliticizes people, leading them to believe that however a society is shaped, it is part of a natural order. President Trump echoed this “no alternative” narrative when asked about celebrities and rich people having special access to being tested for the coronavirus while few others had access. He replied, “Perhaps that’s been the story of life.”

This individualization of the social with its mounting privatization, gated communities, and social atomization undermines collective action, any viable notion of solidarity, and weakens the notion of global connectivity. The philosopher Byung-Chul Han has rightly argued that contemporary neoliberal society is shaped by a dysfunctional notion of solitude and hermitically-sealed notions of agency, all of which undermine the values and social connections vital to a democracy. He writes:

“Those subject to the neoliberal economy do not constitute a we that is capable of collective action. The mounting egoization and atomization of society is making the space for collective action shrink… The general collapse of the collective and the communal has engulfed it. Solidarity is vanishing. Privatization now reaches into the depths of the soul itself. The erosion of the communal is making all collective efforts more and more unlikely.”

This panoptical nature of hyper-individualism is more aligned with shared fears than shared responsibilities. Under such circumstances, trust and the notion that all life is related become difficult to grasp as the myopic language of private self-interest inures individuals to wider social problems such as extreme inequality. There is no understanding in this discourse of the damage fanatical entrepreneurialism does to our embodied collectivity. Nor is there any value attributed to the important responsibilities, social values, and notion of the common good that exceeds who we are as individuals, or how we have been shaped by diverse social forces in particular ways.

It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable.

Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects.

The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.”

Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism and a halt to the spiraling militarism that has resulted in endless wars. This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited. Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics.

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself.

Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.”

Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history.

Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community.

The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy.

Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism.

Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

### 1NC — 2

#### “Business practices are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97 (KERRY LYNN MACINTOSH-Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline accessed online via KU libraries, date accessed 8/27/21)

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

**Prohibition requires forbidding a practice—the plan is only a hindrance**

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

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

**Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’**

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

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

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

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

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

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

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

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

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

Loevinger 61 (Honorable Lee Loevinger- Assistant Attorney General in charge of the Antitrust Division. “THE RULE OF REASON IN ANTITRUST LAW” , *Section of Antitrust Law* , 1961, Vol. 19, PROCEEDINGS AT THE ANNUAL MEETING, ST. LOUIS, MISSOURI, AUGUST 7 THROUGH 11, 1961 (1961), pp. 245-251, JSTOR accessed online via KU libraries, date accessed 9/13/21)

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

Thus, when the Sherman Act incorporated the common-law principles on this subject into federal statutory law 3 by adopting the concept of restraint of trade, it presumably imported both the principle that restrictions on competition are illegal and also the principle that in some circumstances a showing of reasonableness will legalize restrictions on competition. Nevertheless, when the question was first presented to the United States Supreme Court under the Sherman Act, it was clearly held (despite later disavowals4 ) that the justification of reasonableness was not available as a defense to a combination which had the effect of restraining trade.' Indeed, it was intimated that the question of reasonableness was not open to the courts in these actions at common law.6 However, when the Court reviewed this matter in Standard Oil Co. v. United States,7 it said in fairly explicit terms both that the Sherman Act prohibited only contracts or acts which unreasonably restrained competition and that the standard of reasonableness had been applied to all restraints of trade at the common law. The Court's assertion is somewhat weakened by the fact that it construed the rule of reason not as applying a standard for judging the character or consequences of the challenged conduct, but as a technique involving the application of human intelligence, or reason, to the problem of making a judgment about whether the conduct does restrain trade.'

#### VOTE NEG:

#### FIRST---Ground---balancing tests devastate core links, because they allow the practice when it’s beneficial. AND, creates a moving target, because the disallowed behavior is context-dependent. And bidirectionality---rule of reason creates legally protected practices

#### “Per se” is the only shot at unique links—topical affs impose rules not standards

Crane 7 Daniel A. Crane is Assistant Professor, Benjamin N. Cardozo School of Law, Yeshiva University, Rules Versus Standards in Antitrust Adjudication, 64 Wash. & Lee L. Rev. 49 (2007), https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss1/3

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

#### SECOND---limits---they lead to a wave of legal standard affs that avoid generics

### 1NC — 3

#### The United States federal government ought to rule that increased prohibitions by reducing state action immunity by the private sector in cases of non-politically accountable active supervision are mandated by Customary International Law.

#### The counterplan establishes CIL’s precedence over domestic law.

Karl M. **Meessen 84**. Professor of Public Law, International Law and European Law at the University of Augsburg. Special Consultant on International Economic Law of the International Advisory Panel of the American Law Institute regarding revision of the Restatement of the Foreign Relations Law of the United States. October 1984. “Antitrust Jurisdiction under Customary International Law.” The American Journal of International Law. Vol. 78. No. 4. pp. 789-790.

To date, international antitrust cases have only been brought before domestic courts. Those courts, of course, have to apply domestic law. International law is applicable only to the extent that domestic law so provides. Also, when a domestic court has to decide an individual case, it need not determine whether a certain rule is part of domestic law or of international law as long as it is satisfied that the rule exists. Before a domestic court, proof of the existence of a rule of unwritten law is brought by citing as many domestic precedents as possible. Again, it seems to be immaterial whether those precedents reflect customary international law or only domestic rules of conflict of laws. Thus, there seem to be good reasons to subscribe to Lowenfeld's preference for some blend of public law, public international law and private international law.34 In international antitrust practice, however, there are cases where it does matter whether an assumed rule is one of international law or of conflict of laws. Domestic law may attribute a different rank to the two sets of rules. In Germany, for instance, rules of general international law prevail over any statutory law.35 Similarly, within European Community law, secondary legislation enacted by organs of the Communities is void if it violates general international law.36 And, on the level of relations between sovereign states, domestic rules of conflict of laws cannot, of course, be relied upon at all. The two legal systems interact in the process of forming new rules of unwritten law. Rules of conflict of laws may be part of state practice and thereby contribute to the formation of customary international law, and rules of customary internationalaw may be referred to when ascertaining or interpreting principles of conflict of laws. But, in contrast to reciprocal influences on the contents of new rules, their actual creation follows entirely different lines. First, the emphasis in the creation of conflict-of-laws rules is on judge-made law. Domestic courts are easily accessible and may give regular guidance on the development of the law, whereas international adjudication is the exception rather than the rule. Customary international law is mainly formed by theit is hoped, parallel, but usually divergent-practice of some 160 independent states, acting through their legislative, executive and/or judicial branches. Second, the role of legal publicists in the creation of new rules is different as well. In conflict of laws, theoretical approaches may be conceived specifically for adoption into judge-made law. The function of scholars of international law offers less opportunity for creative thinking: they may compile and analyze state practice, but they cannot replace it with their own concepts. Finally, the perspective for analysis is different, too. The- perspective of conflict of laws lies within a state. It is directed to domestic interests, both public and private. Foreign interests are relevant only insofar as they form part of the state's foreign policy, for instance, if they reflect considerations of reciprocity. The perspective of international law stands above the sovereign states. It demands neutrality vis-a-vis the interests of particular states and it implies that, in general, the interests of the individual have to be articulated by sovereign states. These three differences should be kept in mind when state practice is surveyed and analyzed in the next two sections of this paper. They all derive from the same plain truth: domestic rules of conflict of laws make up part of one lawmaking system organized by one constitution and usually based on a broad consensus of values and interests. The decentralized making of international law does not enjoy any of those benefits and is therefore bound to offer a more modest yield of legal rules. But, as should also be remembered, modest answers of international law may often be supplemented by richer ones of conflict of laws.

#### CIL incorporation is key to US leadership in the international legal order---outweighs and turns every impact.

Noah Feldman 8. Professor of Law and Senior Fellow of the Society of Fellows, Harvard Law School, former senior constitutional advisor to the Coalition Provisional Authority in Iraq and advised the Iraqi Governing Council on drafting the interim constitution, former law clerk to Justice David H. Souter of the U.S. Supreme Court, J.D. Yale Law School, former Rhodes Scholar, D.Phil. Oriental Studies, Oxford University, A.B. Near Eastern Languages and Civilizations, Harvard University. “When Judges Make Foreign Policy.” 9/25/2008. http://www.nytimes.com/2008/09/28/magazine/28law-t.html?pagewanted=all&\_r=0

Every generation gets the Constitution that it deserves. As the central preoccupations of an era make their way into the legal system, the Supreme Court eventually weighs in, and nine lawyers in robes become oracles of our national identity. The 1930s had the Great Depression and the Supreme Court’s “switch in time” from mandating a laissez-faire economy to allowing New Deal regulation. The 1950s had the rise of the civil rights movement and Brown v. Board of Education. The 1970s had the struggle for personal autonomy and Roe v. Wade. Over the last two centuries, the court’s decisions, ranging from the dreadful to the inspiring, have always reflected and shaped who “we the people” think we are. During the boom years of the 1990s, globalization emerged as the most significant development in our national life. With Nafta and the Internet and big-box stores selling cheap goods from China, the line between national and international began to blur. In the seven years since 9/11, the question of how we relate to the world beyond our borders — and how we should — has become inescapable. The Supreme Court, as ever, is beginning to offer its own answers. As the United States tries to balance the benefits of multilateral alliances with the demands of unilateral self-protection, the court has started to address the legal counterparts of such existential matters. It is becoming increasingly clear that the defining constitutional problem for the present generation will be the nature of the relationship of the United States to what is somewhat optimistically called the international order. This problem has many dimensions. It includes mundane practical questions, like what force the United States should give to the law of the sea. It includes more symbolic questions, like whether high-ranking American officials can be held accountable for crimes against international law. And it includes questions of momentous consequence, like whether international law should be treated as law in the United States; what rights, if any, noncitizens have to come before American courts or tribunals; whether the protections of the Geneva Conventions apply to people that the U.S. government accuses of being terrorists; and whether the U.S. Supreme Court should consider the decisions of foreign or international tribunals when it interprets the Constitution. In recent years, two prominent schools of thought have emerged to answer these questions. One view, closely associated with the Bush administration, begins with the observation that law, in the age of modern liberal democracy, derives its legitimacy from being enacted by elected representatives of the people. From this standpoint, the Constitution is seen as facing inward, toward the Americans who made it, toward their rights and their security. For the most part, that is, the rights the Constitution provides are for citizens and provided only within the borders of the country. By these lights, any interpretation of the Constitution that restricts the nation’s security or sovereignty — for example, by extending constitutional rights to noncitizens encountered on battlefields overseas — is misguided and even dangerous. In the words of the conservative legal scholars Eric Posner and Jack Goldsmith (who is himself a former member of the Bush administration), the Constitution “was designed to create a more perfect domestic order, and its foreign relations mechanisms were crafted to enhance U.S. welfare.” A competing view, championed mostly by liberals, defines the rule of law differently: law is conceived not as a quintessentially national phenomenon but rather as a global ideal. The liberal position readily concedes that the Constitution specifies the law for the United States but stresses that a fuller, more complete conception of law demands that American law be pictured alongside international law and other (legitimate) national constitutions. The U.S. Constitution, on this cosmopolitan view, faces outward. It is a paradigm of the rule of law: rights similar to those it confers on Americans should protect all people everywhere, so that no one falls outside the reach of some legitimate legal order. What is most important about our Constitution, liberals stress, is not that it provides rights for us but that its vision of freedom ought to apply universally. The Supreme Court, whose new term begins Oct. 6, has become a battleground for these two worldviews. In the last term, which ended in June, the justices gave expression to both visions. In two cases in particular — one high-profile, the other largely overlooked — the justices divided into roughly two blocs, representing the “inward” and “outward” looking conceptions of the Constitution, with Justice Anthony Kennedy voting with liberals in one case and conservatives in the other. The Supreme Court is on the verge of several retirements; how the justices will address critical issues of American foreign policy in the future hangs very much in the balance. This may seem like an odd way of thinking about international affairs. In the coming presidential election, every voter understands that there is a choice to be made between the foreign-policy visions of John McCain and Barack Obama. What is less obvious, but no less important, is that Supreme Court appointments have become a de facto part of American foreign policy. The court, like the State Department and the Pentagon, now makes decisions in cases that directly change and shape our relationship with the world. And as the justices decide these cases, they are doing as much as anyone to shape America’s fortunes in an age of global terror and economic turmoil. What Conservatives Understand About International Law The debate between inward-looking conservatives and outward-looking liberals has recently taken a turn toward the shrill. Liberal lawyers do not simply accuse their conservative counterparts of denigrating the rule of law; they accuse them of violating it themselves. Calling last spring for the firing of the tenured Berkeley professor John Yoo, an architect of the Bush administration’s legal strategy in the war on terror, Marjorie Cohn, the president of the National Lawyers’ Guild, declared that “Yoo’s complicity in establishing the policy that led to the torture of prisoners constitutes a war crime under the U.S. War Crimes Act.” The conservatives’ arguments are no less heated: not only, they contend, do liberals paint a naïvely romantic picture of the world — one in which the United Nations and its agencies and courts would make law for Americans — but liberals are also endangering American lives. Dissenting this past June from the Supreme Court decision giving those held at Guantánamo Bay a right to challenge their detention, Justice Antonin Scalia wrote that the majority’s ruling “will almost certainly cause more Americans to be killed.” These sorts of accusations are overstated and unhelpful. Neither the liberal nor the conservative view corresponds to the stereotype assigned to it by its opponents. Notwithstanding their limitations, both views express values that are deeply grounded in the American constitutional tradition and in the rule of law. Each is necessary to help us make sense of the Constitution’s role in an increasingly complex global world. Consider first the conservative vision, which is sometimes called “sovereigntist” because it emphasizes the power and prerogative of the United States to act as if it is responsible to no one but itself. The Bush administration, through its characteristic combination of boldness, historical ambition and operational incompetence, has given sovereignty a bad name, much as it has for unilateralism. But the constitutional principle here is actually one that most liberals also fully embrace: namely, the principle of democracy. International law, as even its staunchest defenders must acknowledge, often fails to accord with democratic principle. Such law is not passed by a democratically elected Congress and signed by a democratically elected president. It is true that the U.S. Constitution says that international treaties signed by the president and approved by the Senate shall be the supreme law of the land, thereby conferring some democratic legitimacy on treaties. But a great deal of international law derives not from treaties signed by consenting nations but rather from the vague category of international custom, which over time can harden into binding law. For hundreds of years, until more formal treaties were adopted, custom was the main way international law was created, giving rise to the laws of war, for instance, and condemning terrorism and torture. Even today, the existence of a treaty among only a select group of nations can be invoked in international forums as evidence of an established custom — and nonparticipating countries can come to be bound by treaties that they themselves never signed. To conservatives, such international “law” is anathema. Even in cases in which explicit treaties among nations do exist, conservatives worry. Such treaties, after all, are increasingly interpreted by nondemocratic institutions like tribunals of the World Trade Organization or the United Nations’ International Court of Justice. Two hundred years ago, treaties tended to be simple agreements between two parties, with each reserving the right to interpret (and, if necessary, enforce) the treaty’s terms for itself. Today, though, many of the most important treaties — those governing trade, the environment and other crucial matters — involve a large number of nations that agree as a condition of the treaty to be bound by the decisions of an international body. To sign on to such a treaty, conservatives point out, confers future lawmaking authority on some unelected and thus undemocratic body. According to the sovereigntists, the United States, faced with such undemocratic regimes, should feel free to reject any undesirable verdict of a body like the International Court of Justice and embrace a policy more in line with U.S. interests — much in the way that Israel responded to the I.C.J.’s condemnation of the path of its security barrier on the West Bank. In a world where Libya can lead an international human rights commission, no international institution is free from the distortions that arise when all countries are treated as equals. Even within the distinguished higher echelons of the United Nations or European Union, there is a risk that bureaucrats may pursue policies that reflect the values and priorities of their own technocratic classes. The worst-case scenario, from the perspective of the conservatives, is one in which enemies of the United States engage in “lawfare,” opportunistically charging the country with violations of international law to impede it from rightfully ensuring its safety. Another key sovereigntist principle is the right of the United States, when acting abroad, to protect itself, whether fighting wars or preventing terrorist attacks. Historically, the court has given the president, as commander in chief, great latitude to act abroad as he sees fit. In situations in which Congress has explicitly authorized the president’s action, the court has recognized the prerogative as almost absolute. For instance, when the United States acquired Puerto Rico, Guam and the Philippines in the Spanish-American War, the Supreme Court allowed Congress and the president to govern those territories without extending constitutional rights to the residents. Similarly, after World War II, when Germans held by the United States in occupied Germany pending war-crimes charges petitioned for judicial review, the Supreme Court turned them away. Conservatives argue, not implausibly, that these historic decisions did not undermine the rule of law: they embodied it. The Supreme Court’s judgments derived, after all, from the Constitution itself and its own democratic pedigree. One central reason that the people of the United States formed the Constitution was in order to provide for the common defense. The Constitution does protect rights, according to this view — but they are the rights of citizens, not the rights of mankind in general or of foreigners who have never even set foot in the United States. What Liberals Understand About International Law From the liberal perspective, the vision espoused by the conservatives is crabbed and parochial. Of course the Constitution demands democracy and gives rights to American citizens. But, say the progressives, that does not explain why over the last two centuries the Constitution has become the very model of what a system of government under law looks like. The key to the Constitution’s global appeal, according to the liberal view, is that the document stands for the universal principle that state power over individuals may only ever be exercised through law — no matter what government is acting, and no matter where on earth. This outward-looking, “internationalist” conception of the Constitution respects the sovereignty of the United States and that of other countries — provided they deliver a just legal order to their citizens. But liberals point out that even a constitutional state that guarantees rights for its own citizens will not protect people in many places and times, often when rights are most sorely needed. In wartime, for instance, almost no nation will have an interest in protecting the rights of foreign enemies that it encounters. On the open seas, no domestic law applies. And for reasons of sheer practicality, no country’s laws regulate all its potential relations with all other states. To cover situations like these, where domestic law runs out of rope, is the task of international law. Such law seeks to ensure rights for all, not by replacing the domestic law of independent nations but by holding it to standards of universal justice and by supplementing it where it is incomplete or inadequate. From this perspective, international law is necessary to ensure that the rule of law will actually obtain in situations where individual states do not provide it. This is why, for liberals, it is essential that the United States comply with its international obligations. The framers of the Constitution were certainly eager to demonstrate such compliance. When they made treaties the law of the land, they were saying — according to an interpretation of Chief Justice John Marshall’s that dates back to 1829 — that the moment the Senate ratifies a treaty, it automatically becomes the supreme law of the land, binding in every court in the nation. Deepening their historical argument, the liberals also point out that from the earliest days of the United States, the nation’s courts applied customary international law, regularly deciding who owned ships captured on the high seas according to immemorial practice that was not found in any treaty. What is more, the framers’ reliance on international law and custom went to the very heart of their constitutional endeavor: what, otherwise, did the framers mean when they spoke in the Constitution about the declaration of war, or about letters of marque and reprisal, or about judicial authority over ambassadors? In practice, the internationalist camp argues for the prudent use of international legal materials in constitutional decision-making — not only for purposes of rhetoric and persuasion but also to provide rules and principles to help actually decide cases. For example, liberals argue that if the United States adopts laws designed to comply with the Geneva Conventions, the government is obligated to follow the treaty to the letter should the government invoke the authority to detain prisoners that the treaty confers. Likewise, when the United States has undertaken to comply with the decisions of international tribunals, those tribunals’ rulings must be treated as law, just as the treaties themselves are. Liberals concede that the framers showed respect for international law, in part, because their country was new and revolutionary, and they sought legitimacy in the community of nations. But the liberal view stresses that the tradition of respect continued even once the nation was well established, and that it was kept alive by successive generations for different but always compelling reasons. The United States helped found the United Nations after World War II, for instance, at what was then the nation’s moment of greatest global power. Franklin Delano Roosevelt’s idea, shared by liberals then and now, was that the international rule of law was good not just in principle but also in practice. As a country governed by law, we were asserting the superiority of our system to others governed by dictatorship. Moreover, since the United States was a permanent member of the Security Council, any compromises to our national sovereignty were more than outweighed by the tremendous benefits of having a legitimate international legal order through which, as a superpower, it could assert its will. As liberals see it, being a leading exponent of the rule of law internationally strengthens America’s ability to pressure or bully other countries to respect the rights of their own citizens. In this way, oddly enough, the liberal view is consonant with certain aspirations of the Bush administration. In Afghanistan, Iraq and beyond, President Bush has tried to export liberal constitutionalism, including both elections and basic rights. His “freedom agenda” is, in fact, a direct descendant of liberal internationalism, a policy associated with Woodrow Wilson and his plans to make the world safe for democracy through the work of international institutions. The Bush administration, of course, distrusts international organizations that continue in the tradition of the League of Nations, which Wilson helped to found (though he could not persuade his own country to join it). But Bush’s notion that America’s democratic Constitution should be an inspiration for the world is identifiably Wilsonian — as is the zeal to spread the good word, voluntarily when possible but by force if necessary. If the greatest tragedy of the Bush presidency is the enormous human cost of America’s ham-handed efforts to accomplish this worthy goal, a second, related tragedy is that the spreading of constitutional democracy is rarely talked about anymore as a liberal goal at all. The Court’s Liberal Victory Each constitutional worldview — the one conservative and inward-looking, the other liberal and outward-focused — has found exponents on the current Supreme Court. This past spring, in two cases before the court, each side won an important victory. The larger battle, however, was widely overlooked. The liberal victory was widely publicized, but its full implications were not often noted. As for the conservative win, its very existence went almost entirely unnoticed. The liberal victory, in the case of Boumediene v. Bush, took place against the backdrop of the detentions of suspected terrorists at Guantánamo Bay, Cuba. The detainees were being held there because the Bush administration’s lawyers were confident that, under the Supreme Court’s precedent, the detainees would not enjoy constitutional rights. Like the Germans denied review after World War II, the detainees were noncitizens who were neither arrested nor held in the United States. Guantánamo was leased from Cuba under a 1903 treaty, so it was not in the United States, and yet there was no tradition of applying Cuban law there. In light of these circumstances, the Bush administration seemed to believe it could treat Guantánamo as a law-free zone. Unlike Iraq, which the administration conceded was a war zone in which the Geneva Conventions applied, Guantánamo was initially considered legally off the grid. It is often said by liberal critics that Bush’s anti-terror policies ignored the Constitution and international law. But this is a misleading oversimplification. What the choice of Guantánamo demonstrates, rather, is the profoundly legalistic way in which those policies were designed. Using the law itself, the lawyers in the Bush administration set out to make Guantánamo into a legal vacuum. The court’s decision in Boumediene repudiated that attempt. The majority, led by Justice Kennedy, announced that for constitutional purposes, Guantánamo Bay was part of the United States: the detainees there enjoyed the same rights as if they had been held in Washington. The Boumediene decision was chiefly the accomplishment of Justice John Paul Stevens, who has made overturning the Bush detention policies into the legacy-defining task of his distinguished career. In key opinions issued in 2004 and 2006, Stevens chipped away at the special status asserted for Guantánamo, each time referring the matter of judicial review for the detainees back to Congress. But Congress repeatedly approved the administration’s proposals to deny access to the courts. To win the fight even against Congress, Stevens needed Kennedy to provide the fifth vote and hold that denying the Guantánamo detainees their day in court actually violated the Constitution. The opinion that Kennedy wrote for the court’s majority in Boumediene announced squarely that the Constitution applied to the detainees being held in Guantánamo. Kennedy insisted that he was not overruling the precedent of the German detainees who were denied review. Unlike the situation with the Germans after World War II, he argued, the Guantánamo detainees had not received a hearing; the Guantánamo naval base was entirely under U.S. control; and granting hearings was not so impractical that it would fundamentally disrupt the operation of the prison. In effect, however, Kennedy’s opinion rejected what the Bush administration claimed to be the rule that noncitizens held outside the United States were not entitled to constitutional protection. Having refused to overturn Roe v. Wade in the 1990s and having championed gay rights in recent years, Kennedy may now be depicted as an unlikely liberal hero — the latest in a line of Republican appointees (one of whom is John Paul Stevens) who gradually evolved into staunch exponents of liberal rights. The key to Kennedy’s reasoning in the Guantánamo case was his expansive conception of the rule of law. In the central paragraph of the decision, Kennedy explained his underlying logic: if Congress and the president had the power to take control of a territory and then determine that U.S. law does not apply there, “it would be possible for the political branches to govern without legal constraint,” he wrote. Government without courts, Kennedy suggested, was not constitutional government at all. “Our basic charter,” he went on, “cannot be contracted away like this.” What seemed to most offend Kennedy about Guantánamo, then, was precisely the effort by the executive branch, with the approval of Congress, to make Guantánamo into a place beyond the reach of any law. By insisting on its own authority, the court was striking a blow for law itself. In this way, the court embraced the ideal of the outward-looking Constitution: a document that protects the rights not only of citizens within the United States but also of noncitizens outside its formal borders. This Constitution, by extension, stands for the ideal of legal justice being made available to all persons — no matter where they might be. Holding that the Constitution did indeed follow the flag to Guantánamo was an act with tremendous international resonance. It can even be read as an attempt to hold the Bush administration to its own rhetoric about democracy. The rule of law, after all, is not solely an American ideal but one that is broadly shared globally. To insist that some law covers all people wherever they may be found underscores the universality that law aims to create. The Court’s Conservative Victory From the conservative point of view, of course, Kennedy’s decision did not follow from the basic principle of the rule of law. According to the four conservative dissenting justices, whose views closely tracked those of the Bush administration, the Constitution unquestionably binds the government. But according to their view, the Constitution also allows the president and Congress, acting together, to lease or even acquire territory and govern it without allowing recourse to the courts. Indeed, this view was precisely the one adopted by the Supreme Court after the Spanish-American War, when the United States was a rising imperial power. The dissenters in Boumediene actually agree with the liberals that law does apply to Guantánamo; they just maintain that the courts are not part of it. The conservative cause may have lost in Boumediene. It prevailed, however, in a case decided last March that garnered little public attention— but that was, in its own way, just as important to defining our constitutional era. The case, Medellín v. Texas, grew from a conflict between the Supreme Court and the International Court of Justice over death-row inmates in the United States who were apparently never told they had the right to speak to the embassies of their home countries, a right guaranteed by a treaty called the Vienna Convention on Consular Relations. The international court declared that the violation tainted the inmates’ convictions and insisted that they have their day in court to try to get them overturned. The Supreme Court disagreed. In his initial trial and appeal, José Medellín, the man who brought the Supreme Court case, did not raise his right to speak to his embassy — presumably because, having never been informed of the right, he had no idea that it existed. Under the arcane rules for postconviction judicial review, a defendant ordinarily cannot ask the courts to consider legal arguments that were not raised when he was tried in the first place. And in its decision, the court upheld those rules: the violation of the treaty, it held, did not demand any special exception to the usual rules governing review. The fact that the United States had violated its international-treaty obligation was of no use on death row. Medellín was executed by the State of Texas on Aug. 5. What made this conflict between the Supreme Court and the International Court of Justice particularly stark was that the Bush administration had for once taken the side of international law. Before the Supreme Court issued its opinion, President Bush issued a memorandum advising state courts to follow the judgment of the International Court of Justice. With the ruling of the Supreme Court on one side, and that of the international court — endorsed by the president — on the other, just what did the Constitution require the state courts to do? The United States signed three separate treaties stating that it undertook to obey the judgments of the International Court of Justice. But the Supreme Court bridled at the thought that the international court’s decision might trump its own. This was not just instinctive turf-protection, though that concern no doubt played a part. Never before had an international body replaced the Supreme Court in telling lower courts in the United States that their own procedural rules were unacceptable. The natural order of things seemed to be turned on its head. The Supreme Court held that the treaties obligating us to listen to the International Court of Justice were not binding law. Chief Justice John Roberts wrote that a careful reading of the text of the treaties revealed no intention to subject the United States to the judgments of the international court — not, that is, unless Congress passed a separate statute demanding such obedience. This opinion upended the rules for applying treaties in the U.S. courts. In dissent, Justice Breyer painted a grim picture of the consequences. If treaties were not automatically binding law unless they said so, he wrote, the applicability of some 70 treaties involving economic cooperation, consular relations and navigation was now thrown into doubt. The rest of the world, he intimated, would be left wondering whether the United States intended to obey its treaty obligations or not — which is not a trivial concern when the world also suspects the United States of ignoring its obligations of humane treatment under the Geneva Conventions. To Breyer, the decision was a reversal of nearly 180 years of precedent and a message to the world that the United States was prepared to play fast and loose with its international commitments. When the justices rejected the death-row appeal, they were acting on the basis of familiar conservative concerns. The judges of the International Court of Justice were not appointed according to any constitutional procedure. To let the international body decide matters of law that would be binding for state courts seemed fundamentally undemocratic — an unjust usurpation of the judicial function. It would be absurd for the Constitution, as the core document of our democracy, to require such a result. The old precedent regarding treaties was thus, according to the conservatives, truly obsolete. It made no sense to apply it in a globalized world where treaties are not just straightforward agreements between sovereign states; now, they often create irresponsible international tribunals to adjudicate their meaning. If the judgments of an international court were to be obligatory, a democratically legitimate body should say so explicitly — either the Senate that approved the treaty promising compliance or the whole Congress in a separate legal enactment. By its own lights, the Supreme Court in the Medellín case was reading the Constitution to guarantee us control over our own destiny. That meant turning away from international law in a systematic and profound sense. The cost to the United States might be real, but the court considered it justified by the preservation of our democratic sovereignty. Which Side Is Right? The Boumediene decision saw the Constitution as facing outward, expanding and promoting the rule of law throughout the world. The Medellín decision, by contrast, saw the Constitution as a domestic blueprint designed to preserve and protect the United States from foreign encroachment, even at some cost to the international rule of law. Underscoring the tension between the two cases is the fact that nearly all the justices of the Supreme Court voted consistently across both of them. The four conservatives — Justices Antonin Scalia, Clarence Thomas, John Roberts and Samuel Alito — dissented from the extension of habeas corpus rights to Guantánamo Bay in Boumediene and joined the majority opinion in Medellín that made it harder for treaties to become law. Meanwhile the court’s liberals — Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer — joined the majority in the Guantánamo case, and all but Stevens dissented in Medellín. (Though Stevens voted with the majority in that case, he did so seemingly only for tactical reasons; he wrote a separate, concurring opinion that did not embrace the logic of Roberts’s majority opinion.) The key vote in both cases was that of Kennedy. In both cases, he acted to uphold the prerogatives of the Supreme Court — against the president and Congress in the Guantánamo case, and against the international court in the Medellín decision. And Kennedy does argue that such judicial supremacy is crucial to the rule of law. But the other justices did not see the cases in those terms. To them, the cases were not primarily about the perennial issue of the division of powers between the different branches of government. To these eight justices, the cases were about what sort of Constitution we have: either outward-facing or inward-looking. Who is right? It is tempting to conclude that the Constitution must look inward and outward simultaneously. But embracing contradiction is not the answer, either. Instead what we need to resolve the present difficulty is a subtle shift in perspective. There is an important way in which neither of the predominant approaches to the Constitution and the international order can provide a fully satisfactory answer to the problem. Although they differ deeply about what the Constitution teaches, the two sides share a common image of what the Constitution is. Both imagine it to be a blueprint offering a coherent worldview that will allow us to reach the best results most of the time. According to this shared assumption, the way to find the real or the true Constitution is to identify the core values that the document and the precedents stand for, and to use these as principles to interpret the Constitution correctly. There is nothing wrong with this picture of constitutional interpretation when it is applied to the vast majority of constitutional decisions, from the right to bear arms to the meaning of equal protection of the laws. Deciding what deep principles emerge from our history can help resolve even problems unimagined by the framers, like those presented by abortion or claims to gay rights. Most of the time, constitutional interpretation proceeds in precisely this way — and so it should. But when we are talking about the basic direction the country needs to face in order to achieve its goals in the modern world, deriving principles from history is often inadequate to dictate outcomes. The national and global situations in which we find ourselves are ever-changing. The ship of state must navigate in waters that correspond to no existing chart. The complexity of the world, coupled with the profound changes in the role the United States plays in it, is a very different thing from, say, our progressive recognition that African-Americans, women, gays and lesbians deserve the same equality and respect as everybody else. For this reason, when the world has changed drastically, the Constitution has always had the flexibility to change along with it. The industrial economy, for example, was so much bigger and more complex than the economy of 1787 that the old constitutional order no longer worked. The New Deal ushered in systematic regulation and administrative agencies that had no real place in the three-branch system — but that we now accept as constitutional today. The original federal system limiting the power of the central government relative to the states also had to be reconfigured when the economy became truly national. The changed nature of the president’s war powers offers yet another pragmatic example of flexibility and change. Modern wars demand rapid decision-making and overwhelming concentrations of force; in the light of these needs, we have largely abandoned the framers’ model for war powers, which gave Congress much more authority than it is able to exercise today. On each occasion that the Supreme Court has had to confront such drastically changed circumstances, it has adopted the approach of seeing constitutional government as an ongoing experiment. Justice Oliver Wendell Holmes Jr. wrote that our system of government is an experiment, “as all life is an experiment.” Justice Robert Jackson, confronting the separation of powers — about which the Constitution is cryptic at best — admitted frankly that nothing in the document, the case law or the scholars’ writings got him any closer to an answer. Then he tried to come up with his own rules, designed to reflect political reality and the changed nature of the presidency. Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way. For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law. Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates new dangers of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over. On those occasions when the weak, using the machinery of courts, are able to vindicate their legal rights, the reason their demands are honored is generally that those who have the most influence in the system recognize it is in their own long-term interest to make the concession. Those who consider law a tool of the weak mistake these rare trade-offs for defeat, when — from the perspective of power — they are simply part of the cost of doing business. This is why, for example, the police and prosecutors embrace the Miranda warnings: they require that defendants be read their rights. But once the formality is satisfied, it is almost guaranteed that the defendants’ statements will be admissible into evidence. Applying the lesson that the world and the United States need law more than ever at this particular moment yields some specific conclusions. The executive branch certainly should be accorded considerable leeway in defending the nation from attacks by stateless groups like Al Qaeda. But it was an error of constitutional dimensions to choose Guantánamo as a global symbol of those efforts precisely because of the way it seemed to be outside the reach of our domestic Constitution, the law of any other country or international law itself. The Supreme Court therefore was right to reinsert Guantánamo in the legal grid — but not because this was definitively the best reading of the constitutional materials, which were contradictory and indeterminate. What justifies the decision is the practical necessity and importance of reassuring the citizens of the United States and the world at large that the United States had not given up the role it assumed after World War II as the chief proponent of the rule of law worldwide. Not every Supreme Court decision has this monumental symbolic effect — but the Boumediene case was guaranteed to be seen as either a victory or a defeat for the very idea of law itself. In an ideal world, the Supreme Court would not have had to send this message, and it could have avoided the substantial expansion of its own power to which it was driven by the foolishness of the Bush administration. The Medellín case is trickier. On one hand, globalization inevitably inserts us into an ever-widening array of treaty regimes, each with its own mechanism of adjudication. There is no turning back the clock to the simpler world of the framers. Joining the World Trade Organization, as we have, or the Kyoto Protocol, as we ultimately have not, does detract from the democratic legitimacy of the laws that govern us. This lesson can be easily learned from a glance at the European Union, where countries increasingly cede sovereign authority to the bureaucrats in Brussels. Under these circumstances, there is much to be said for requiring either the treaty ceding this authority to speak explicitly, or else for Congress to make this concession expressly, in full view of the public who elects it. On the other hand, there is the problem of timing. Had the United States not invaded Iraq under a claim of international law that many other countries rejected, or had the Guantánamo disaster been avoided by the exercise of wiser judgment, it would be relatively easy to conclude that the Supreme Court was right to pull us back from too rapid an entrance into an international order that undercuts our sovereignty. But the treaty decision came at just the moment when the United States was trying to reassert its commitment to the rule of law internationally. The conservatives who carried the day did not care. For them, upholding international judgments that differ from our own courts’ is inconsistent with our core constitutional values. The message sent, then, in the world and at home, is precisely the wrong one for this historical juncture, when the United States needs — at least for the moment — to convince the world that the project of international legality is one in which we believe. What the Election May Bring There are going to be many more opportunities in the coming years for the court to take a position on the Constitution and the international order. Should John McCain become president, there is good reason to believe he would be more committed than President Bush to the international rule of law. Influenced by his experience of being tortured in Vietnam, McCain has sponsored legislation requiring that U.S. government personnel comply with the Geneva requirement of humane treatment of prisoners. Yet McCain has also snubbed Justice Kennedy, promising to nominate justices like Roberts and Alito in their ideological orientation; justices of this persuasion are likely to see the Constitution in largely inward-looking terms. Meanwhile, Barack Obama, with his globalized upbringing and insistence on multilateralism, could be expected, as president, to nominate justices more sympathetic to an outward-looking Constitution. But if, as seems likely, the first retirees from the court are liberals, the best Obama could hope for would be to maintain the status quo — not to institutionalize a liberal majority for the future. Whichever candidate is elected, once the Bush administration is out of office, the war on terror will almost certainly be waged differently, and the constitutional issues that arise will not be exactly the same as before. Guantánamo Bay will probably be closed, and the legal team that planned it will be long gone. But most of its detainees will still have to be tried, and their appeals will reach the Supreme Court once again. Of course we will still want to catch terrorists — especially before they act — and we will have to figure out what to do with them when we do. No matter who is president, the United States will still find itself deeply enmeshed in the affairs of Afghanistan, even if in the next few years there are substantial troop withdrawals from Iraq. At the same time, the processes of globalization have not been turned back by the war on terror. The growing global financial crisis calls for more international regulation, not less. Conflicts between U.S. courts and international tribunals about the meaning of our international obligations are going to become more and more common, just as they have become for members of the European Union. Next time, the Supreme Court may not be able to avoid conflict by asserting that the courts are not obligated to listen to the international body. When that happens, new doctrines and solutions are going to have to be developed. In these all-important processes, as always in the history of the court, people are everything. Justices vary widely in temperament, ideology, intelligence and preparedness. The best justices can be really very impressive; the worst ones truly disastrous. Charged with interpreting the Constitution and therefore shaping its contemporary orientation, the Supreme Court needs to be extraordinarily sensitive to the demands of history. When the court gets it wrong, the consequences can be serious. The Constitution we get will still be the one we deserve, but our deserts need not be good ones. The Constitution, let us not forget, gave us slavery and segregation. It gave us dysfunctional limitations on progressive legislation that was desperately needed in the years before the Great Depression. We like to think the Constitution is always leading us toward a more perfect union. But this has not always been the case, and as with any experiment, there is no guarantee that it will be in the future.

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

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

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

#### Violation: the aff applies exclusively to conduct in a specific segment of the private sector.

#### Vote neg:

#### FIRST---limits and ground---the number of potential subsets is infinite---any industry, product, single companies, individuals---undermines clash. Only big affs have link uniqueness.

#### SECOND----precision---our interp has intent to define, exclude and is in legislative context

### 1NC — 5

#### The Court will decline to overturn abortion precedent now---it hinges on a centrist bloc cajoled by Robert’s political capital.

Robinson ’21 [Kimberly; June 18; Reporter; Bloomberg Law, “Barrett Channels Roberts’ ‘Go-Slow’ Approach in Landmark Cases,” <https://news.bloomberglaw.com/us-law-week/barrett-channels-roberts-go-slow-approach-in-landmark-cases>]

The U.S. Supreme Court’s newest justice is showing signs that she’s more aligned with John Roberts and Brett Kavanaugh in the center than she is with her other conservative colleagues, refusing to support broad rulings that could shake the court’s credibility.

Amy Coney Barrett is “starting to show her stripes” as a moderate who prefers small movements in the law, not huge shifts, South Texas College of Law Houston professor [Josh Blackman](https://www.stcl.edu/about-us/faculty/josh-blackman/) said.

The justices handed down victories to both liberals and conservatives on Thursday saving the [Affordable Care Act](https://www.supremecourt.gov/opinions/20pdf/19-840_6jfm.pdf) again but siding with a religious group in the latest battle over [LGBT protections](https://www.supremecourt.gov/opinions/20pdf/19-123_g3bi.pdf).

Roberts, the chief justice, is viewed as an institutionalist who wants to conserve the public’s confidence in the court. So far, he favors incremental shifts in the law. “That’s been one of the Chief’s primary goals all along,” said Case Western Reserve law professor [Jonathan Adler](https://case.edu/law/our-school/faculty-directory/jonathan-h-adler).

He recently gained an ally in Kavanaugh in this pursuit, and it appears Barrett may join their ranks.

The court as a whole has has largely agreed in cases this year. The unanimous decision in the LGBT case was the 25th time the justices were unanimous in 41 rulings so far this term. There are 15 to go in coming days.

But the big test for Barrett will be next term starting in October when the justices will tackle hot-button issues like guns, abortion, and possibly affirmative action.

“It is a very conservative Court, even if we will only get glimpses of it this year,” said UC Berkeley law school Dean [Erwin Chemerinsky](https://www.law.berkeley.edu/our-faculty/faculty-profiles/erwin-chemerinsky/).

Kicking the Can

Both the Affordable Care Act and LGBT rulings were “very, very narrow,” Georgia State law professor [EricSegall](https://law.gsu.edu/profile/eric-j-segall/) said.

In the Obamacare case, California v. Texas, the 7-2 majority handed down a procedural ruling to avoid undoing the landmark 2010 law. The justices said red states led by Texas didn’t have a legal basis—or standing—to challenge it.

Only Justices Samuel Alito and Neil Gorsuch would have voted to gut the act, long a priority of Republicans.

The LGBT ruling, while unanimous in its outcome, was splintered in its reasoning. Hiding under the 9-0 breakdown was a dispute about whether to overturn the court’s divisive ruling in Employment Division v. Smith, which sparked the passage of the bipartisan Religious Freedom Protection Act and mini state versions across the country.

The court in Smith refused to require an exception from Oregon’s prohibition on peyote, saying religious objectors don’t get a free pass on “generally applicable” laws.

On opposite ends in the court’s LGBT ruling were the liberal justices—Stephen Breyer, Sonia Sotomayor, and Elena Kagan—along with Roberts, who wanted to uphold the court’s precedent in Smith, and the court’s most conservative members—Clarence Thomas, Alito, and Gorsuch—who wanted it overruled once and for all.

In the middle was Barrett, joined by Kavanaugh, who acknowledged Smith‘s shortcomings but was concerned with the fallout should the court overrule it. “Yet what should replace Smith?” Barrett asked in a short concurrence.

Both cases were a punt, Blackman said, with the issues likely to return to the court at some point in the future.

End of the World

But the ACA and LGBT cases, along with the extraordinary agreement all term, suggests a majority of the justices don’t think it’s the right time to make major changes in the law.

“In the throes of everything"—the pandemic, Barrett’s first term, Kavanaugh’s biting confirmation, calls for Breyer to retire, and the caustic 2020 presidential election—"they didn’t want to shock the world this year,” Segall said.

“Preserving the court’s own political capital is incredibly important to the justices because they know their only capital is the confidence of the American people,” he added.

Adler said the court has developed a sort of 3-3-3 split—that is, three liberals, three conservative justices willing to chuck precedents they don’t agree with, and three conservative justices hesitant to overturn cases they may disagree with. Roberts, Kavanaugh, and now, apparently, Barrett make up that last group.

Adler said that split will create some interesting pressures for the three justices in the middle next term, when—as Segall said—"the world will end.”

The end of the world was a reference—in part—to the court’s abortion case, which could call into question the landmark ruling in Roe v. Wade and later cases.

#### Antitrust expansion is judicial activism---crushes capital and legitimacy.

Yoo ’17 [John; 2017; Professor of Law at the University of California at Berkeley, Visiting Scholar at the American Enterprise Institute; University of Chicago Law Review, “Taming Judicial Activism: Judge Robert Bork's Coercing Virtue,” vol. 80]

Judge Bork describes that as law crosses borders, judicial activism spreads with it.11 He sees both phenomena as two sides of the coin, where the legalization of global affairs encourages judges to impose their own policy preferences.12 Extending a theme that runs consistently through his work on antitrust and constitutional law, Bork argues that judges possess neither democratic legitimacy nor special expertise to incorporate international norms. 13 Anyone who cares about democratic accountability should pay attention when unaccountable judges use judicial review to advance policy goals that would never survive at the ballot box. 14 Naturally, Bork does all this in his characteristically acerbic style.

Coercing Virtue is noteworthy for challenging internationalists-those who favor automatic American adoption of international law-on their own turf. Judge Bork does not only rely on the intentions of the Framers of the Constitution. He also looks at jurisprudence abroad to evaluate judicial decisions at home. Coercing Virtue is a comparative study that examines the convergence of judicial activism in the United States, Canada, and Israel.15 It shows that a dialogue among legal elites in these countries has led to both the import and export of judicial activism. 16 Judicial activism, indeed, has gone global.

Coercing Virtue influenced my work. In Taming Globalization, Professor Ku and I build on Judge Bork's legacy by examining globalization's effects on American constitutional law.17 We argue that globalization has placed pressure on federalism and separations of powers. 18 Like Judge Bork, we find several recent Supreme Court cases in the field wanting, particularly those relying on international and foreign legal sources as authority.19 To preserve the American bedrock principle of popular sovereignty, we argue for rejuvenating non-self-executing treaties and limiting Missouri v Holland.20 These foreign-affairs doctrines would limit judicial discretion and place the authority to adopt international law in the elected branches of government. Where Coercing Virtue diagnosed the problem, we hoped to identify solutions for the American constitutional and political system.

II. The Antidemocratic New Class

Coercing Virtue goes beyond the analysis of doctrine to seek the political underpinnings of the movement toward judicial activism on a global scale. Judge Bork takes issue with the cultural left, which he believes has commandeered the courts to advance its policy agenda.21 Members of the New Class, as Judge Bork calls it, "traffic, at wholesale or retail, in ideas, words, or images and have at best meager practical experience of the subjects on which they expound."22 According to Judge Bork, the New Class possesses an "impulse toward socialism" that manifests itself in both economic and cultural aspects of life.23 Because the New Class often operates as a political minority in individual countries, it must find ways to circumvent the results of elections.24 The judiciary makes for an ideal weapon because it allows a minority to win policies that cannot command majorities of the electorate.25

If confined to the ivory tower, socialist programs would pose little danger. But, Judge Bork argues, activist judges have taken up the New Class's agenda.26 Without any authority to make political choices, the courts must invent constitutional meaning to advance the cause of the New Class.27 Activist judges, he explains, "decide cases in ways that have no plausible connection to the law they purport to be applying, or [ ] stretch or even contradict the meaning of that law."28 "They arrive at results by announcing principles that were never contemplated by those who wrote and voted for the law."29

The critical question for conservatives is, why do judges adopt the New Class's agenda in the first place? Even if judges have discretion to choose between adopting an international law norm or not, they could always choose to defer to the political branches. It is here that Judge Bork's foray into political science and sociology becomes necessary. Lawyers and judges, he believes, have fallen sway to the siren song of the professoriate.30 Indeed, judges are "certified members of the intelligentsia," having passed through its training grounds of colleges and law schools.31 "The prestige of a judge depends on being thought well of in universities, law schools, and the media, all bastions of the New Class."32 Professors may think up destructive socialist ideas, and pundits may popularize them, but without the judges they would remain the fodder of debate societies. 33 Judges are the sharp end of the intellectuals' spear.

Judge Bork believes that judges became the engine room for the New Class. When activist judges take hold in a country, they shift its culture faster to the left.34 And when activist judges begin to copy similar examples from other countries, they accelerate the process even faster. The defects of judicial activism, he explains, will only become magnified, including the loss of democratic self-rule, the imposition of cultural values held by a minority, and the politicization of law.35 International law in the hands of such judges will be used to outmaneuver the US democratic process. 36 Judge Bork suspects that a kind of "sinister element" may exist in international law because the New Class may hope to have their views adopted abroad and then imposed here in the United States.37

#### Backsliding on reproductive freedom tips hotspots into global war and crushes diplomatic leverage---extinction.

Emond ’19 [Rachel; September 23; Scoville Fellow at the Center for Arms Control and Non-Proliferation; Inkstick Media, “How Anti-Choice Policies Increase the Likelihood of War,” <https://inkstickmedia.com/how-anti-choice-policies-increase-the-likelihood-of-war/>]

The political discourse surrounding abortion and health care has dominated election cycles and governance in the United States for quite some time, but its impact doesn’t end at the border. In some fragile communities throughout the world, the politicization of access to abortions in the United States could lead them into conflict.

Just three days after his inauguration in 2017, President Trump [signed](https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/) an extremely restrictive anti-choice policy that will likely have wide-reaching negative impacts on global peace and security and US influence abroad.

This policy is actually an updated version of the “Mexico City Policy,” the Reagan-era act that prohibited non-governmental organizations that provide abortion-related services from receiving any US federal funding related to family planning and reproductive health.

The Trump Administration’s version of the Mexico City Policy has gone a step further. It prohibits foreign non-governmental organizations that provide abortion-related services from receiving any form of US global health assistance.

Beyond family planning and reproductive health, US global health assistance also includes funding for organizations doing work related to maternal and child health; nutrition; HIV under the US President’s Emergency Plan for AIDS Relief (PEPFAR); prevention and treatment of malaria, tuberculosis and other diseases; and hygiene programs. Many of the organizations that receive US global health assistance also receive aid from non-US sources, and use those alternative sources of funding to pay for reproductive health programs and abortion-related services. The Trump Administration’s policy would take that option off the table, should an organization want to continue receiving US funds.

Opponents of the policy have dubbed it the “Global Gag Rule,” because of the way it prevents local-level health care providers from not only providing abortions, but also from advocating for the legalization of abortion and educating about abortion as an option. Originally reported by Casey Quackenbush in TIME, some critics say the policy “holds life-saving aid hostage to ideology.”

Throughout the last 33 years, the Mexico City Policy has been a political football between Administrations: repealed by Democrats and dutifully reinstated by Republicans. This process forces a domestically politicized issue onto the international stage and in practice, this policy can actually have dangerous effects on US security.

In communities in which conflict already exists or tensions are high, inadequate access to health care can exacerbate the prevailing issues. The reverse is also true. During an outbreak of violence, health issues, such as communicable disease outbreaks and maternal mortality all rise.

According to the World Health Organization, “Investing in health is investing in peace. Health needs and contributes to physical, psychological, social and economic security. Investing in health can reduce the risk of conflict as well as mitigate its impact… Placing social services high on the political agenda helps maintain social stability, and reduce militarization in situations where the risk of violent conflict is high.”

Recent publications by the [United States Institute of Peace](https://www.usip.org/sites/default/files/SR_301.pdf), the [World Health Organization](https://www.who.int/social_determinants/resources/csdh_media/promoting_equity_conflict_2007_en.pdf), and the journal on [Health Research Policy and Systems](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6376698/), have reported about the positive impact that effective health systems and equitable access to those systems has on reducing drivers of fragility, such as conflict or overall mortality rates. That is why development experts and global advocates for women’s rights believe that the newly expanded Mexico City Policy will affect the world’s most vulnerable individuals in the world’s most fragile communities.

Advocates of this policy contend that the effects of it will only be felt by abortion providers. In reality, it isn’t quite so simple.

In states such as [Madagascar](https://www.washingtonpost.com/graphics/2018/world/how-a-change-in-us-abortion-policy-reverberated-around-the-globe/?utm_term=.9c3fe386b27f), Kenya, and [Colombia](https://foreignpolicy.com/2019/06/19/how-trumps-global-gag-rule-is-killing-women-colombia/), those living in rural communities often depend on non-governmental organizations for their healthcare. These services are provided by clinics that provide a multitude of services, including those related to sexual and reproductive health, tuberculosis, HIV/AIDs, and malaria. Because the aid they receive is intermingled, it can be difficult for these organizations to completely change their service model in order to sign and comply with the US Mexico City Policy. When organizations either cannot or choose not to sign on to the policy, clinics end up closing. This severely limits already at-risk individuals from access to even the most basic of health needs.

Ironically, since the Mexico City Policy is cutting off access to family planning services, including contraception, it might actually be increasing demand for abortions. Since its most recent implementation, the Mexico City Policy has already resulted in tens of millions of dollars in [funding cuts](https://www.washingtonpost.com/graphics/2018/world/how-a-change-in-us-abortion-policy-reverberated-around-the-globe/?utm_term=.9c3fe386b27f). At the same time, there has been a [40% increase in abortions](https://www.theguardian.com/global-development/2019/jun/27/global-gag-rule-africa-abortion-study) in some African countries. Looking ahead, some experts are [estimating](https://www.vox.com/policy-and-politics/2017/5/24/15681216/trump-budget-cuts-funding-global-family-planning-famine-relief) this policy could [lead](https://www.vox.com/policy-and-politics/2017/5/24/15681216/trump-budget-cuts-funding-global-family-planning-famine-relief) to 15,000 maternal deaths, 8 million unwanted pregnancies, and up to 26 million fewer women and families with access to contraception and family planning services.

While the Mexico City Policy does not change the total amount of health-related aid appropriated by Congress, the policy considerably weakens the ability that local health providers have to effectively serve their communities. The on-again/off-again nature of the policy causes [extreme instability](https://reliefweb.int/report/world/donor-conditions-and-their-implications-humanitarian-response) among local healthcare providers, many of which are the sole location for such services in a region. This instability [leads to](https://reliefweb.int/report/world/donor-conditions-and-their-implications-humanitarian-response) staff layoffs, higher transaction costs, and confusion about access to care. It also prevents healthcare providers from conducting any long-term planning to better meet the needs of a community.

No matter the intention of its supporters, the Mexico City Policy damages the health care infrastructure in the countries that rely on American aid the most. This, in turn, increases the likelihood of conflict in these communities and severely undermines American soft power.

Soft power efforts — like the promotion of freedom, democracy, and human rights — have been a hallmark of the US foreign policy strategy for the [last 70 years](https://fas.org/sgp/crs/row/R44891.pdf).

One of the primary ways the United States has historically strengthened national security, promoted US values abroad, and improved its global influence is through investments in global development, including public health. In Fiscal Year 2019, the US contributed [$11 billion](https://www.kff.org/global-health-policy/fact-sheet/breaking-down-the-u-s-global-health-budget-by-program-area/) to global health funding through the US Agency for International Development (USAID) — more than any other contributor in the world. That funding is now entangled with the Mexico City Policy, directly undermining the goals of USAID. Further, in the developing world, the United States is now in constant competition with growing Chinese influence. By enacting policies that negate the reach of US soft power, the Trump Administration is actually weakening US security.

The US House of Representatives has made a move to end this dangerous policy. In the FY20 funding bill for the Department of State, Foreign Operations, and Related Programs (SFOPS), the House Appropriations Committee included a [permanent repeal](https://www.kff.org/news-summary/house-appropriations-committee-approves-fy-2020-state-foreign-operations-sfops-appropriations-bill/) of the Mexico City Policy, which was ultimately passed by the entire chamber. This repeal is sure to be a point of contention between the House and the Senate when coming to an agreement on a final funding package.

No matter what happens in Congress, the most heavily affected health care providers stay optimistic that they will eventually find the funding they need to operate in the interest of their communities. Even if they do, the damage to US influence is likely to last.

Advocates of the Mexico City Policy have clearly not thought through the implications of their policies or are not interested in the instability the policy has unleashed. Personal ideologies that are not even the law of the land in the United States should not take precedence over American security. There is no room for debate — comprehensive global health assistance is a fundamental factor in conflict prevention and stability. It is in the security interest of the US government to empower local health providers, allowing them to decide how best to serve their fragile communities. It’s time for the Mexico City Policy to be repealed and never replaced.

### 1NC — 6

#### The fifty states and relevant subnational entities should enact and substantially expand the scope of the Sherman Act by reducing state action immunity by the private sector in cases of non-politically accountable active supervision.

#### State antitrust is enforceable and solvent.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

### Adv 1

#### 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.

#### Economic security becomes the basis of liberal intervention – manifests in violence

Neocleous 8 – Mark Neocleous, Prof. of Government @ Brunel, 2008 [Critique of Security, p.101-105]

In other words, the new international order moved very quickly to reassert the connection between economic and national security: the commitment to the former was simultaneously a commitment to the latter, and vice versa. As the doctrine of national security was being born, the major player on the international stage would aim to use perhaps its most important power of all – its economic strength – in order to re-order the world. And this re-ordering was conducted through the idea of ‘economic security’.99 Despite the fact that ‘economic security’ would never be formally deﬁned beyond ‘economic order’ or ‘economic well-being’,100 the signiﬁcant conceptual consistency between economic security and liberal order-building also had a strategic ideological role. By playing on notions of ‘economic well-being’, economic security seemed to emphasise economic and thus ‘human’ needs over military ones. The reshaping of global capital, international order and the exercise of state power could thus look decidedly liberal and ‘humanitarian’. This appearance helped co-opt the liberal Left into the process and, of course, played on individual desire for personal security by using notions such as ‘personal freedom’ and ‘social equality’.101 Marx and Engels once highlighted the historical role of the bour geoisie in shaping the world according to its own interests. The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. It must nestle everywhere, settle everywhere, establish connections everywhere . . . It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them . . . to become bourgeois in themselves. In one word, it creates a world after its own image.102 In the second half of the twentieth century this ability to ‘batter down all Chinese walls’ would still rest heavily on the logic of capital, but would also come about in part under the guise of security. The whole world became a garden to be cultivated – to be recast according to the logic of security. In the space of ﬁfteen years the concept ‘economic security’ had moved from connoting insurance policies for working people to the desire to shape the world in a capitalist fashion – and back again. In fact, it has constantly shifted between these registers ever since, being used for the constant reshaping of world order and resulting in a comprehensive level of intervention and policing all over the globe. Global order has come to be fabricated and administered according to a security doctrine underpinned by the logic of capital accumulation and a bourgeois conception of order. By incorporating within it a particular vision of economic order, the concept of national security implies the interrelatedness of so many different social, econ omic, political and military factors that more or less any development anywhere can be said to impact on liberal order in general and America’s core interests in particular. Not only could bourgeois Europe be recast around the regime of capital, but so too could the whole international order as capital not only nestled, settled and established connections, but also ‘secured’ everywhere. Security politics thereby became the basis of a distinctly liberal philosophy of global ‘intervention’, fusing global issues of economic management with domestic policy formations in an ambitious and frequently violent strategy. Here lies the Janus-faced character of American foreign policy.103 One face is the ‘good liberal cop’: friendly, prosperous and democratic, sending money and help around the globe when problems emerge, so that the world’s nations are shown how they can alleviate their misery and perhaps even enjoy some prosperity. The other face is the ‘bad liberal cop’: should one of these nations decide, either through parliamentary procedure, demands for self-determination or violent revolution to address its own social problems in ways that conﬂict with the interests of capital and the bourgeois concept of liberty, then the authoritarian dimension of liberalism shows its face; the ‘liberal moment’ becomes the moment of violence. This Janus-faced character has meant that through the mandate of security the US, as the national security state par excellence, has seen ﬁt to either overtly or covertly re-order the affairs of myriads of nations – those ‘rogue’ or ‘outlaw’ states on the ‘wrong side of history’.104 ‘Extrapolating the ﬁgures as best we can’, one CIA agent commented in 1991,‘there have been about 3,000 major covert operations and over 10,000 minor operations – all illegal, and all designed to disrupt, destabilize, or modify the activities of other countries’, adding that ‘every covert operation has been rationalized in terms of U.S. national security’.105 These would include ‘interventions’ in Greece, Italy, France, Turkey, Macedonia, the Ukraine, Cambodia, Indonesia, China, Korea, Burma, Vietnam, Thailand, Ecuador, Chile, Argentina, Brazil, Guatemala, Costa Rica, Cuba, the Dominican Republic, Uruguay, Bolivia, Grenada, Paraguay, Nicaragua, El Salvador, the Philippines, Honduras, Haiti, Venezuela, Panama, Angola, Ghana, Congo, South Africa, Albania, Lebanon, Grenada, Libya, Somalia, Ethiopia, Afghanistan, Iran, Iraq, and many more, and many of these more than once. Next up are the ‘60 or more’ countries identiﬁed as the bases of ‘terror cells’ by Bush in a speech on 1 June 2002.106 The methods used have varied: most popular has been the favoured technique of liberal security – ‘making the economy scream’ via controls, interventions and the imposition of neo-liberal regulations. But a wide range of other techniques have been used: terror bombing; subversion; rigging elections; the use of the CIA’s ‘Health Alteration Committee’ whose mandate was to ‘incapacitate’ foreign ofﬁcials; drug-trafﬁcking;107 and the sponsorship of terror groups, counterinsurgency agencies, death squads. Unsurprisingly, some plain old fascist groups and parties have been co-opted into the project, from the attempt at reviving the remnants of the Nazi collaborationist Vlasov Army for use against the USSR to the use of fascist forces to undermine democratically elected governments, such as in Chile; indeed, one of the reasons fascism ﬂowed into Latin America was because of the ideology of national security.108 Concomitantly, ‘national security’ has meant a policy of non-intervention where satisfactory ‘security partnerships’ could be established with certain authoritarian and military regimes: Spain under Franco, the Greek junta, Chile, Iraq, Iran, Korea, Indonesia, Cambodia, Taiwan, South Vietnam, the Philippines, Turkey, the ﬁve Central Asian republics that emerged with the break-up of the USSR, and China. Either way, the whole world was to be included in the new‘secure’ global liberal order. The result has been the slaughter of untold numbers. John Stock well, who was part of a CIA project in Angola which led to the deaths of over 20,000 people, puts it like this: Coming to grips with these U.S./CIA activities in broad numbers and ﬁguring out how many people have been killed in the jungles of Laos or the hills of Nicaragua is very difﬁcult. But, adding them up as best we can, we come up with a ﬁgure of six million people killed – and this is a minimum ﬁgure. Included are: one million killed in the Korean War, two million killed in the Vietnam War, 800,000 killed in Indonesia, one million in Cambodia, 20,000 killed in Angola – the operation I was part of – and 22,000 killed in Nicaragua.109 Note that the six million is a minimum ﬁgure, that he omits to mention rather a lot of other interventions, and that he was writing in 1991. This is security as the slaughter bench of history. All of this has been more than conﬁrmed by events in the twenty ﬁrst century: in a speech on 1 June 2002, which became the basis of the ofﬁcial National Security Strategy of the United States in September of that year, President Bush reiterated that the US has a unilateral right to overthrow any government in the world, and launched a new round of slaughtering to prove it. While much has been made about the supposedly ‘new’ doctrine of preemption in the early twenty-ﬁrst century, the policy of preemption has a long history as part of national security doctrine. The United States has long maintained the option of pre-emptive actions to counter a sufﬁcient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves . . . To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre emptively.110 In other words, the security policy of the world’s only superpower in its current ‘war on terror’ is still underpinned by a notion of liberal order-building based on a certain vision of ‘economic order’. The National Security Strategy concerns itself with a ‘single sustainable model for national success’ based on ‘political and economic liberty’, with whole sections devoted to the security beneﬁts of ‘economic liberty’, and the beneﬁts to liberty of the security strategy proposed.111 Economic security (that is, ‘capitalist accumulation’) in the guise of ‘national security’ is now used as the justiﬁcation for all kinds of ‘intervention’, still conducted where necessary in alliance with fascists, gangsters and drug cartels, and the proliferation of ‘national security’ type regimes has been the result. So while the national security state was in one sense a structural bi-product of the US’s place in global capitalism, it was also vital to the fabrication of an international order founded on the power of capital. National security, in effect, became the perfect strategic tool for landscaping the human garden.112 This was to also have huge domestic consequences, as the idea of containment would also come to reshape the American social order, helping fabricate a security apparatus intimately bound up with national identity and thus the politics of loyalty.

#### Organizing the economy around innovation creates economics of speed- leads to rapid investment shifting and product development- that’s unsustainable and makes financial collapse inevitable

**Goldman et al. 6 -** Professor of Sociology at Lewis & Clark College in Portland, Oregon (Robert Goldman, Stephen Papson, Noah Kersey, Landscapes of the Social Relations of Production in a Networked Society, Fast Capitalism 2.1, http://www.uta.edu/huma/agger/fastcapitalism/2\_1/SocialRelations.html)

These representations resemble what Thomas Friedman (1999) dubs the “Electronic Herd” in The Lexus and the Olive Tree. His metaphor embraces the volatility of markets in conjunction with the diffusion of capital across the electronic circuits of finance. According to Friedman, no corporation or nation-state can risk losing the favor of the Herd. In the global economy this can be catastrophic to market values. Those who comprise the Herd compete to maximize the rate of return on investments, which translates into manically scouring the planet for opportunities or cutting losses as quickly as possible when it is time to sell. The manic need to invest is matched by panic selling. Combined with the ability to transfer funds and monies electronically, a stock can be cut in half in hours, or a country’s currency thrown into crisis with a rapidity hitherto unknown. Friedman’s metaphor of the electronic herd pictures an economic elite dashing about in a global free market economy fueled by technological innovation and the liquidity of capital forms (currency, stocks, commodities). The figures who compose this grouping are constructed as dynamic, mobile, and technologically sophisticated. They fluidly traverse the world of nonplaces and occupy office suites in corporate towers surrounded by personal communication technologies. And yet, even in these idealized abstractions, uncertainties and anxieties seep through. Narratives of success are sprinkled with hints of impending crisis, or stories of those who made the wrong choices - the wrong office equipment, the wrong software, the wrong package delivery service. The exhilaration associated with accelerated social, economic, and technological change mixes with an undercurrent of apprehension. **Speed may mean winning, but it can also lead to crashing.** There are more losers than winners in casino capitalism. The landscape of risk is omnipresent.

#### Economic collapse predictions create self-fulfilling prophecies

Mckendrick 12 (Joe, Independent analyst who tracks the impact of information technology on management and markets, author of the SOA Manifesto, written for Forbes, ZDNet and Database Trends & Applications, 9/18/12, “Are economic downturns self-fulfilling prophecies,” <http://www.smartplanet.com/blog/business-brains/are-economic-downturns-self-fulfilling-prophecies/26329>)

There are tangible, and often painful, fundamentals that determine the course of the economy — unemployment, interest rates, housing prices, inflation, industrial production, government debt. But more than anything else, markets are psychology, and an atmosphere of fear and panic among producers and consumers leads to scaling back of purchases, which further exacerbates a downturn. Over the past few years in particular, there have been plenty of messages of impending doom circulating through the mass media. Like Eeyore, the miserable mule from Winnie-the-Pooh, many pundits ignore any bright spots and flood the airwaves with grim predictions of imminent collapse and despair just around the corner. In an economy heavily tied to consumer confidence, such talk could have far-reaching consequences. Such downbeat messages may eventually result in a self-fulfilling prophecy, actually translating into job losses. A new analysis by Sylvain Leduc and Zheng Liu, analysts at the Federal Reserve Bank of San Fransisco, says there is a statistically measurable impact from “talking down” the economy. The economists say that the atmosphere of uncertainty in the recent downturn of 2008-2009 added at least one to two percentage points to the unemployment rate: “During the Great Recession, the increase in uncertainty appears to have been much greater in magnitude…. Our model estimates that uncertainty has pushed up the U.S. unemployment rate by between one and two percentage points since the start of the financial crisis in 2008. To put this in perspective, had there been no increase in uncertainty in the past four years, the unemployment rate would have been closer to 6% or 7% than to the 8% to 9% actually registered.” Policymakers and pundits can’t be pollyanish in the face of economic troubles, of course. But the Fed authors suggest that as media channels fill up with dire and downbeat talk, fear levels go up, and people start to lose their jobs. “Heightened uncertainty acts like a decline in aggregate demand because it depresses economic activity and holds down inflation,” the Fed economists observe. Another thing is clear as well: when analysts and pundits put their Eeyore faces on, it doesn’t help anybody. What is needed is more discussion and ideas about solutions and disruptive innovation that create opportunities, improve our world, and provide people more control over their economic destiny.

### Adv 2

#### Federalism can’t solve warming

Livermore ‘17 (Michael; 8/8/17; J.D. from New York University, B.A. in English from the State University of New York, Associate Professor of Law at the University of Virginia; Climate Home, “Why state action is no answer to bonfire of US climate rules,” [http://www.climatechangenews.com/2017/08/08/state-action-no-answer-bonfire-us-climate-rules/; RP)](http://www.climatechangenews.com/2017/08/08/state-action-no-answer-bonfire-us-climate-rules/))

Some liberal-leaning states have responded by adopting more aggressive regulations. California has positioned itself as a leader in the fight to curb climate change. New York is restructuring its electricity market to facilitate clean energy. And Virginia’s Democratic governor, Terry McAuliffe, has ordered state environmental regulators to design a rule to cap carbon emissions from power plants. State experimentation may be the only way to break the gridlock on environmental issues that now overwhelms our national political institutions. However, without a broad mandate from the federal government to address urgent environmental problems, few red and purple states will follow California’s lead. In my view, giving too much power to the states will likely result in many states doing less, not more. What’s so great about the states? Politicians are happy to praise states’ rights, but they rarely say much about what federalism is supposed to accomplish. Granting more power to the states should not be an end unto itself. Rather, it’s a way to promote goals such as political responsiveness, experimentation and policy diversity. Many US environmental laws include roles for states and the federal government to work cooperatively to achieve shared objectives. Often, this involves the federal government setting strict goals, with states taking the lead on implementation and enforcement. This careful balance of federal and state power has been implemented by Republican and Democratic administrations alike. In recent years, scholars have expanded on Justice Brandeis’ famous “laboratories of democracy” model of federalism with the notion of “democratic experimentation.” Brandeis’ core insight, updated for contemporary society, is that decentralization lets state and local governments experiment with different policies to generate information about what works and what doesn’t. Other states and the national government can use those insights to generate better policy outcomes. California Governor Jerry Brown announces that his state will host an international climate change action summit in September 2018 – the first such meeting to be held in the United States. But as I have shown in recent work, there is no guarantee that state experimentation will produce neutral technical information. It also can generate political information that can be put to good or bad uses. For example, state experimentation with pollution controls may allow regulators to identify cheap ways to reduce emissions. On the other hand, big polluters may use the opportunity to figure out clever ways to avoid their obligations. This happened in the 1970s and ‘80’s after the Clean Air Act was enacted. State experimentation allowed polluters to learn that by building very tall smokestacks at electric power plants, they could send pollution downwind while keeping local officials happy. Experimentation resulted in information on how to push pollution around instead of cleaning it up, and utilities in midwest states used this knowledge to shift pollutants to states downwind in the Northeast. An elusive balance It makes rhetorical sense for the Trump administration to wrap its environmental agenda in federalism. Air and water pollution are unpopular, and conservation groups have called out Trump’s policies and budget for undoing “environmental safeguards.” Reframing deregulation as federalism turns the issue into a debate about how to allocate power between the national government and the states. But striking the right balance between federal and state power requires careful attention to context and the costs and benefits of decentralization. For example, Pruitt has formally proposed to rescind the Clean Water Rule, an Obama administration regulation that clarifies the jurisdiction of EPA and the Army Corps of Engineers to regulate smaller water bodies and wetlands under the Clean Water Act. One might think that without EPA on the beat, states will take a more central role in water pollution control. But in fact, many states have passed laws banning any clean water regulation that is more stringent than federal standards. Shifting responsibility in this area back to states will create a policy vacuum instead of space for experimentation. Less czreativity, not more There is even more need for a federal role in addressing problems that have global impacts, such as climate change. Once greenhouse gases are emitted, they do not just cause warming in the place where they were released. Instead, they mix in the atmosphere and contribute to climate change around the world. This means that no given jurisdiction pays the full cost of its emissions. Instead, in the language of economics, these impacts are externalities that are felt elsewhere. This is why a global agreement is needed to effectively slow climate change. The United States has already withdrawn from the Paris climate accord. If we pull back on regulating greenhouse gases nationally as well, many states will have little incentive to take action. Under the Obama administration’s Clean Power Plan, which Pruitt is reviewing and has told states to ignore, every state was required to figure out how to meet a carbon reduction goal. However, it did not dictate how they should do it. This approach would have produced valuable political information from red and purple states, which tend to rely more heavily than blue states on fossil fuels. By forcing Republican leaders to craft state climate policies and sell them to their constituents, the Clean Power Plan promoted what I consider truly useful experimentation that could have helped break the national gridlock on climate policy. Now, without a prod from the federal government, those experiments are unlikely to occur. EPA’s retreat will mean that we have less, not more, insight into smart and politically viable ways of cutting carbon emissions. Any regulation can be improved on, and the Trump administration could have risen to that challenge. Instead, the leadership at EPA is abdicating the agency’s traditional leadership role. In doing so, it is promoting stagnation and backsliding rather than innovation.

#### No cyber impact.

Lewis, ’20 — James Andrew Lewis, Senior Vice President and Director, Strategic Technologies Program, Distinguished Visiting Professor at The United States Naval Academy’s Center for Cyber Security Studies. (“Dismissing Cyber Catastrophe,” Published 17 August 2020, <https://www.csis.org/analysis/dismissing-cyber-catastrophe>, Accessed 31 July 2021, //Mojica)

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

This is a short overview of why catastrophe is unlikely. Several longer [CSIS reports](https://www.csis.org/analysis/rethinking-cybersecurity) go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often?

#### Cyberwar is a capitalist myth the 1AC uses to hoard intellectual property among the global elite and stifle “hacktivists” resisting capitalist globalization.

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CLASS CYBERWAR The world market is, however, not just a site of state conflict. It is also a vast field of frictions, sometimes explosive, sometimes silent, between capital and labor— ­an arena of class war. To miss this aspect of cyberwar is to fall into a conventional view of international politics as a chess game between competing national powers (Bonefeld 2006). Behind and within the contests of contending states lies a deeper set of conflicts; subtending and shaping the geopolitics of cyberwar is its role in the war of capital and labor, and in this war, too, virtual weaponry is wielded by both sides. The transfer of computers and networks from their military incubators to the civilian workplaces of North America and Europe was spurred by economic crisis. By the 1970s, the strike power of Fordist industrial workers was driving wage and welfare gains even as intercapitalist international competition was intensifying. With a relentless logic, the Pentagon’s new technologies, developed to fight state socialism, were switched to the home front. Cybernetic class war, waged from above, automated many manufacturing and office jobs; sent others offshore via telecommunication-­ controlled supply chains; and redirected profits to a financialization dependent on electronic stock markets, computer risk modeling, and high-­ speed algorithmic trading (Schiller 1999; Dyer-­ Witheford 2015). Over some forty years, capital’s “cybernetic offensive” ( Tiqqun 2001) broke the factory bases of the relatively well-­ waged mass worker of the planetary Northwest. There have been many Marxist attempts to describe the new, post-­ Fordist class composition that emerged. Michael Hardt and Antonio Negri (2000) suggest the mass worker has been replaced by “immaterial labor” involved in digital networks. We are critical of this formulation; it overlooks both the shift of industrial labor to Asia (where it drove China’s rise as a great power) and the generation of “surplus populations” thrown out of work in Rust Belt cities or inhabiting regions largely bypassed by digital supply chains, such as large sectors of Africa and the Middle East (Dyer-­Witheford 2015). But in regard to cyberwar, the “immaterial labor” thesis is important, because it highlights the centrality to digital conflict of a new type of technoscientific labor that saw itself not as “worker” but as “hacker.” 13 Military production was the birthplace of the hacker. The famous “hacker ethic” of innovation, openness, empowerment, and belief that “information wants to be free,” with its libertarian scorn of bureaucratic regimentation and corporate “suits,” was the ethic of experimental systems administrators and adventurous graduate students working on U.S. Defense Department university contracts (Levy 1984; Himanen 2002; Wark 2004). This young and overwhelmingly male hacker workforce (and its legends) flowed out into a still largely Pentagon-­ bankrolled Silicon Valley and thence into a wider digital economy. As it did so, hacking split into different lines. The dominant line was corporate, professional, and entrepreneurial. It led, via Bill Gates’s assertion of intellectual property rights in software, not only to Microsoft but onward to the corporate empires of Apple, Google, and Facebook. A minority trajectory pursued free software, cypherpunk encryption, digital commons, and the noncommercial distribution of network protocols. A third, subterranean break-­ off took hacking to profitable crime, raiding for credit card numbers, bank access, industrial secrets, and saleable software, a project that would attain a global scale. These threads constantly entangled with one another, frustrating attempts to find in the hacker a consistent politics, be it progressive or reactionary. 14 All have a place in the history of cyberwar. Commercialized and professionalized hacker labor and entrepreneurialism drove software and network companies fueled by military contracts. Criminal hacking, though pursued and prosecuted by national security states’ policing arms, also supplies these states’ cyberwar with black market weapons, such as previously unrecognized software vulnerabilities known as “zero-­ day exploits” or dual-­ purpose criminal– military ­ botnets. It also entered into an ambivalent revolving-­ door relation with cybersecurity firms, fluidly swapping black and white hacker hats. And from the minor line of free software and cypherpunk activism, and its meeting with antiauthoritarianism politics, came the connection between hacking and oppositional social movement: “hacktivism” (Greenberg 2012). The first of successive “firebrand waves of digital activism” (Karatzo-gianni 2015) sprang up in the 1990s within an alter-­ mondialisme protesting the negative consequences of neoliberal globalization. Primarily a North American and European movement, but with major connections to India and Latin America, counterglobalization brought the immaterial labor of antiauthoritarian hackers into contact with the very material concerns of industrial workers losing their jobs and peasants losing their land. One of its starting points was the use of computer networks by insurgent Mayan Zapatistas to publicize their armed resistance to free trade agreements between Mexico and the United States. The famous announcements by RAND consultants John Arquilla and David Ronfeldt (1993, 1996) that “cyber war is coming,” an early warning to the U.S. state that computer networks could be a medium of popular mobilization, were inspired by the eruption of “Zapatistas in cyberspace.” Digital circulation of Subcommandate Marcos’s poetic calls for resistance to neoliberal policies worldwide galvanized a “cyberleft” (Wolfson 2014) enabled by the increasing availability of personal computers and internet connections and the online experiences of young people versed in video games, music piracy, and the World Wide Web. Summit-­busting demonstrations, from Seattle to Genoa, were accompanied by indie media centers, the digital relay of information among activists, and distributed denial-­ of-­ service (DDoS) attacks on corporate and state websites. Julian Assange honed his hacking skills as an “alter-­globalist.” Electronic civil disobedience, digital whistleblowing, and virtual organizing wove what Harry Cleaver (1995) termed an “electronic fabric of struggle.” Then the tide of alter-­ globalization suddenly ebbed. The main cause was the chilling effect of the 2001 attacks on the World Trade Center and the subsequent “war on terror.” The decline of the cyberleft also, however, coincided with the U.S. dot-­com crash of 2000, in which attempts at corporate appropriation of the net expired in a sea of red ink and stock market scams, as innumerable sketchy start-­ ups failed to find a business model to capture networkers used to free content. This crash might have strengthened the anticapitalist movement. It was, however, contained by the U.S. Federal Reserve Bank’s drastic lowering of interest rates (a measure that would later boomerang in the much larger housing crash of 2008). In the dual meltdown of “dot-­coms” and “dot-­communists,” the former recovered first. The crisis of U.S. digital capital winnowed winners and losers from the excess of a speculative boom, refining the strategies of fresh entrants to the field and inaugurating a new phase of internet history. After a short hiatus, cybernetic capital rebuilt, with a new business model, “Web 2.0” (O’Reilly 2005). The technologies that enabled this transformation had strikingly varied origins, coming from both sides of capital’s class cyberwar. Twitter has its origins in TXTMob, an application first developed by the Institute for Applied Autonomy for the self-­organized coordination of protestors at the 2004 Democratic National Convention in Boston and the Republican National Convention in New York City (Radio Netherlands 2013). On the other hand, Google Maps grew out of the acquisition of Keyhole, a small Silicon Valley company supported by venture capital from the CIA’s venture capital front company In-­Q-­Tel that worked to “develop fast, accurate and searchable digital maps for the US Armed Forces” (Powers and Jablonski 2015, 84). As Mariana Mazzucato (2013) has shown, the research behind almost every component of Apple’s iPods, iPhones, and iPads was funded almost exclusively by government agencies, predominantly by the U.S. Department of Defense: in 2014, “the parent company of Siri’s creator, which was acquired by Apple in 2010, still [got] over half of its revenue from the Department of Defense” (Bienaimé 2014). The outcome of capital’s omnivorous appetite for innovation was a dramatic revision of digital political economy and usage. The key was recuperation of internet aspects that had frustrated the dot-­coms and energized the cyberleft: popular preference for conversations over published content and free over paid content. In Web 2.0, these seemingly subversive elements were mobilized for accumulation. The digital enterprise was reconceptualized as not “publisher” but “platform,” managing proprietorial software that offered users a launch point and tools for structured but self-­ directed network activities (Bratton 2016). Monitoring and measurement of these activities supplied data for the algorithmic targeting of advertisements. Google, Facebook, and Twitter were flagships, but other businesses adopted elements of the model: Apple made its hardware a platform for apps and music; Amazon algorithmically recommended an ever-­mounting heap of retail products. As oppositional energies declined, and “platform capitalism” (Srnicek 2016) burgeoned, driven by the free labor of user-­ provided content and the big-­ data flows of surveilled self-­ revelation, leftist digital optimism was replaced by Jody Dean’s (2009) diagnosis of a “communicative capitalism” fully capable of commodifying the compulsive loops of so-­ called social media. It was therefore startling when the economic crisis of 2008 brought a return of class struggle cyberwar. Wall Street’s subprime mortgage crisis, relayed around the world by some of the most advanced computer networks in existence, had brought the global economy to a brink from which it was only hauled back by the massive state intervention of bank bailouts and austerity budgets. Responses from below differed in specific zones of the world market. Nevertheless, by 2011, Eurozone anti-­austerity revolts, strike waves in China, the Arab Spring, and a sequence of “take the square” occupations that spread from Madrid to New York and Oakland and, later on, to Rio, Istanbul, and Kyiv constituted a new wave of social struggles. These tumults displayed the new class composition of digital capitalism: the layers of surplus populations (dramatized in the suicide of Mohamed Bouazizi, the impoverished street vendor whose death catalyzed popular revolt in Tunisia); the youths in edufactories and “the graduate student without a job” (Mason 2012); the neoindustrial proletarians leaping from dormitories in Foxconn plants; and the myriad precarious, low-­wage workers who filled squares from Cairo to New York. In many different, and specific to their, locales, the revolts could nonetheless be traced to common threads of indignation at oligarchy, corruption, inequality, and precarity. No aspect of these movements attracted more attention than the protestors’ use of social media, mobile communication, and digital networks. Reportage of Facebook, Twitter, or YouTube “revolutions” has certainly fetishized this activity (Dyer-­ Witheford 2015). Nonetheless, the 2011 unrests did occur within global populations for whom the use of networks, computers, and, especially, mobile phones was becoming ever more widespread, and who put them to use in rebellious demonstrations, riots, and assemblies. Observers such as Paolo Gerbaudo (2012) and Linda Herrera (2014) have convincingly described the importance of social media “take the square” occupations in Cairo, Madrid, New York, and elsewhere, in terms of the issuing of calls to occupation, logistical organization, circulation of news, and links into mainstream media coverage. The 2011 struggles also involved major leaks and hacks explicitly regarded by both the perpetrators and enraged state authorities as a form subversive cyberwar (Greenberg 2012). These included the disclosures of WikiLeaks (Assange 2012) and its battles against the retaliatory actions of the U.S. state; the DDoS counterstrikes in support of WikiLeaks by Anonymous (Coleman 2015); and other interventions, such as those of RedHack in Turkey in support of the Taksim Square occupation in Istanbul. The protagonists included defectors from the now digitized military– ­ industrial complex, such as Chelsea Manning and, later, Edward Snowden; veterans of hacker subcultures, such as Assange; and a younger generation of dissidents familiar with chat rooms, digital pranking, music piracy, and ready-­made hacking tools, such as those used by Anonymous (Deterritorial Support Group 2012). The groups involved in leaking and hacking sometimes gave direct support to street protests, as Anonymous did to the uprising in Tunisia ( Jordan 2015). More generally, there was a strong resonance between hacker activities and popular outrage against unaccountable, venal power; Anonymous’s masks appeared on streets and squares from Cairo to New York to Istanbul, becoming the most general icon of revolt.

#### Innovation can’t solve climate---relying on future technology distracts from mundane but necessary solutions now

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8.6 Expecting Miracles

Within political discussions of the great issues facing humanity at present—world poverty, inequality, energy crisis, resource depletion, environmental ills, global climate change, etc.—the idea of innovation plays a crucial role. Many observers are inclined to say, “If only we were innovative enough, these problems would likely be solved.”

Is this confidence warranted?

Will we innovate ourselves out of the rapidly widening gaps of inequality in wealth and income that afflict many world societies?

Will we innovate ourselves away from the utter dependence upon fossil fuels upon which modern civilization depends?

Will we innovate in ways that eliminate the rapidly moving threat that global climate crash poses to countless biological species, including our own?

A notable example of the widespread tendency to insert the idea of “innovation” when confronted with a world-historical crisis comes from the statements and practical commitments of Microsoft mogul Bill Gates. His vision of this strategy was briefly in a 2010 TED Talk on global warming, “Innovating to Zero.”[7](https://link.springer.com/chapter/10.1007/978-3-319-91134-2_8#Fn7)

“We need solutions,” Gates exclaimed, “either one or several that have unbelievable scale and unbelievable reliability….”.

“These breakthroughs, we need to move those at full speed, and we can measure that in terms of companies, pilot projects, regulatory things that have been changed.” Gates mused optimistically that if the expected technological miracles all happened as expected, the world could reach zero carbon emissions within the decades ahead.

To his credit, Gates has recently pledged $1 billion of his own wealth and organized a group of billionaire friends to support research and development on clean energy. Along with its anticipated role in combatting climate change, the project would also address several other global problems. “If we create the right environment for innovation,” Gates proclaimed at the project’s debut, “we can accelerate the pace of progress, develop and deploy new solutions, and eventually provide everyone with reliable, affordable energy that is carbon free. We can avoid the worst climate change scenarios while also lifting people out of poverty, growing food more efficiently, and saving lives by reducing pollution.”[8](https://link.springer.com/chapter/10.1007/978-3-319-91134-2_8#Fn8) Among the specific steps needed in his view are increased government and private funding for research on clean energy solutions accompanied by the creation of economic incentives that can speed such “solutions” into the market.

8.7 Procrastovation

One can compare the enthusiasm Mr. Gates and other techno-optimists of our time with reports on climate change and its consequences that issue from scientific organizations published in a steady stream these days. Conveying an increasing sense of urgency, many scientists and policymakers insist that the situation is already spinning out of control and that the time to cut carbon emissions is very short. Hence, international agreements reached in 2015 at the COP21 climate change conference in Paris established a limit of 2 °C increase by the end of the century with an urgent goal of no more than 1.5 degrees over preindustrial levels. While these targets are a strong step forward when compared to earlier negotiations, for many observers they seem too little, too late. As Professor Stefan Rahmstorf of the Postdam Institute for Climate Impact Research warns, “These [climate change records] are very worrying signs and I think it shows we are on a crash course with the Paris targets unless we change course very, very fast. I hope people realize that global warming is not something down the road, but it is here now and affecting us now.”[9](https://link.springer.com/chapter/10.1007/978-3-319-91134-2_8#Fn9)

As regards measures that could reduce carbon emissions, there are a number straightforward, readily alternatives in social policy that are often proposed: instituting stiff carbon taxes, drastically reducing energy use in housing and everyday patterns of consumer behavior, lowering automobile speed limits, drastically reducing airline travel, etc. The tendency to look toward expected technological miracles in the longer term rather than immediately deploy mundane alternatives is perhaps the primary contribution of the Cult of Innovation to today’s spiraling climate crisis. A good name for this deeply entrenched obsession would be “Procrastovation”—putting off until tomorrow the practical steps that could offer substantial improvement right away.

In that light, an important but seldom asked question is this: Today’s cherished rituals of Innovation/Procrastovation are an alternative to what?

While there are many conceivable answers, a good beginning would be to recognize the need for widespread democratic deliberation, inquiry, debate, and formation of a strong resolve to tackle serious problems that face the global community. A strategy of this kind was enthusiastically launched at the U.N. Rio Summit of 1992 and produced, among other accomplishments, an emphasis upon the challenge of balancing economic prosperity with measures to ensure long-term environmental well-being. Along similar lines, it seems sensible to reinvigorate widely known varieties of public planning, including plans for the deployment of technologies and institutional programs that already exist and likely to bring fruitful results.

If, as many climate scientists now insist, there is only a decade or two to achieve substantial reductions in the carbon emissions before the situation turns truly critical, can we afford to procrastovate any longer?

In fact, within the international community of those looking for effective remedies to address climate change, there is now a heated debate about pathways of deployment for existing problem-solving methods in contrast to exotic dreams for techno-magical devices anticipated on the distant horizon. Many have begun to identify the obsession with “innovation” as the last great excuse that prevents societies from taking the bold, quick, decisive steps needed to curtail the civilizational bad habits that have placed Earth’s biosphere in jeopardy.[10](https://link.springer.com/chapter/10.1007/978-3-319-91134-2_8#Fn10) As entrepreneur Jigar Shah observes, “Solar and wind are winning around the world not because of fundamental technological breakthroughs, but instead because after 30 years the banking sector is finally comfortable scaling up their use… I am not against innovation, but we don’t need to be telling people that we need it to reach the 2 degrees milestone being talked about in Paris. What we need is deployment” (Shah [2015](https://link.springer.com/chapter/10.1007/978-3-319-91134-2_8#CR17)).

Despite warnings of this kind, a stubborn preference for “innovation” over more conventional readily available approaches to problem-solving is common among those who imagine themselves to be the sole saving remnant—philanthropic visionaries guarding humanity’s future. Perhaps tendencies of this kind that such tendencies to stem from deeply ingrained occupational habits, ones that have worked so well in those in the world of business. For celebrities in Silicon Valley and other high tech meccas, “innovation” is what they know how to do, where they’ve been so successful. But as evidence of global poverty, inequality, energy crisis, and collapse of Earth’s climate system become more difficult to deny, our technical elites often revert to a kneejerk reflex, seeing such troubles an exciting opportunity for venture capital, a chance to launch a bunch of cool new “startups.”

#### Uncooperative Federalism is key to disaster response

Christina E. Wells 7, Enoch H. Crowder Professor of Law, University of Missouri-Columbia School of Law, 2006/2007, “ARTICLE: Katrina and the Rhetoric of Federalism,” Mississippi College Law Review, 26 Miss. C. L. Rev. 127

The Bush administration's response to Hurricane Katrina does, however, highlight some of the potential perils of cooperative federalism programs. On the one hand, having multiple levels of government provide disaster relief and response services may be both necessary and beneficial in that it provides a protective redundancy. n95 But such benefits do not always occur. Critics of cooperative federalism programs argue that their format of "shared political responsibility" make it increasingly difficult for citizens to "finger the culprits for government ... train-wrecks." n96 In a sense, when everyone is responsible, no one is responsible, and it becomes difficult to know which government officials are at fault for problems that result from cooperative federalism programs. As a result, officials can more easily shift blame - a phenomenon that was reflected in the federal government's response to Katrina.

The cooperative federalism at the core of disaster relief and response efforts allowed the federal government to focus blame elsewhere rather than on its own failings. Although ultimately unsuccessful on many levels, the White House succeeded in convincing the House and Senate to pass legislation giving the President authority over the National Guard in certain circumstances involving natural disasters. n97 There is little evidence that such a law is necessary or justified by the events that unfolded during Katrina. In fact, most of the investigatory findings suggest the opposite. But the Bush administration was able to point to Governor Blanco's refusal to voluntarily allow federal military officials to command Louisiana National Guard troops to bolster its claim that federalism hindered the federal government's response. n98 Despite the fact that myriad other problems [\*144] led to the ineffective military response, including poor preparation and execution by federal officials, the ability to legitimately claim that federalism was at fault eased the bill's passage through Congress.

The events of Hurricane Katrina may also reflect the concerns of those who fear that cooperative federalism programs will concentrate authority in the federal government. n99 There is little question that state and local governments implement national policy regarding disaster response and rescue. In fact, the federal government makes clear the importance of having a national policy, n100 especially via such tools as the NRP. To be sure, states and localities have some discretion to implement that plan, but conditional funding grants require fairly rigid adherence to federal standards. n101 Furthermore, state and local authorities had little input into the original development of the NRP. n102 As the federal government increasingly focused disaster response on terrorism after 9/11, n103 coupled with its enlarged law enforcement and surveillance powers generally, one could rightfully wonder whether concerns regarding federal concentration of power had merit.

#### Extinction

Arturo Casadevall 19. Department of Molecular Microbiology and Immunology, Johns Hopkins School of Public Health. 2019. “Global Catastrophic Threats from the Fungal Kingdom.” Global Catastrophic Biological Risks, edited by Thomas V. Inglesby and Amesh A. Adalja, Springer International Publishing, pp. 21–32. Springer Link, doi:10.1007/82\_2019\_161.

2 On the Nature of Fungal Catastrophic Threats

Fungal pathogens differ from such communicable pathogens as viruses in that do not need a host to survive. Most pathogenic fungi are environmental organisms capable of surviving in the environment without a need for a host. For example, the chytrid responsible for worldwide amphibian declines has caused the extinction of several species of frogs and yet survives in infected lakes even when its hosts are decimated. This non-dependence of hosts for survival means that selection pressures that could attenuate virulence will not necessarily apply. In addition, non-dependence on their hosts for survival means that fungal pathogens can drive a species to extinction.

The nature of the fungal threats differs depending on the possible targets and we will consider three major target categories: humans, agriculture, and materiel.

Humans. None of the currently known human pathogenic fungal species is likely to pose a catastrophic risk to humans unless there is a severe decline in the immunity of the population, as happened in certain groups with HIV infection or unless the fungal species is weaponized in some fashion to deliver overwhelming innocula and/or weaken the immune response. Of course, the emergence of a new fungal species with pathogenic potential for immunocompetent humans would be an unforeseen threat. Many new pathogenic fungi are reported yearly, but these tend to be isolated cases in association with severe immune deficiencies or unusual exposures. Nevertheless, recent years have witnessed the emergence of Candida auris as a major nosocomial pathogen, which appeared suddenly in 2009 without a yet identifiable origin (Forsberg et al. 2018). Although fungal pathogens are not usually considered as biological weapons for use against humans, some species have significant weapon potential (Casadevall and Pirofski 2006). As early as 1961, one authority wrote that “the fungi seem to be ideal warfare agents in many ways, such as ease of handling, ease of dissemination, resistance to damage by explosives, production of severe but temporary illness in most cases, ability to cause temporary, or permanent infection of local areas depending on the organism selected” (Furcolow 1961). The military had noted the high infectivity of Coccidioides spp., a fact that could have contributed to the designation of this organism as the sole fungal species in the original select agents list (Casadevall and Pirofski 2006).

Agriculture. In contrast to mammals, fungi are major pathogens for plants and the susceptibility of human plant food staples to fungal diseases means that fungal pathogens represent a tremendous threat to agriculture. Threats to agriculture that disrupt the food supply for humans or domesticated animals could rise to the threat level of potential global catastrophic threats if the food supply is diminished, with resulting famine and social instability. Several fungal species have been developed as agents of biological warfare including Puccinia graminis tritici (stem rust of wheat) (Rogers et al. 1999). Certainly, a simultaneous outbreak of fungal pathogens on major food crops such as wheat, corn, and rice would have a devastating effect on human and domestic animal food supplies. Today, the world’s bananas are being threatened by Pseudocercospora spp. (Churchill 2011). Since the major consumer strain of banana is maintained by grafting, breeding-resistant crops is not an option, and there is concern for a catastrophic decline in this food staple, which will reduce a major source of calories for humanity and income for subsistence farmers (Churchill 2011). The Irish potato famine of the mid-1840s stands out as a singular catastrophic event where a plant pathogen destroyed a food staple crop for a population. The pathogen responsible for the Irish potato famine, Phytophthora infestans, was considered a fungus until recently, given its morphological similarities to fungi (Goodwin et al. 1994), but was re-classified as oomycetes based on genomic analysis (Cooke et al. 2000). Despite the taxonomic change, this event serves to illustrate the catastrophic risks posed to agriculture by fungal pathogens.

Materiel. Although microbial destruction of equipment and materiel is not usually a consideration when evaluating biological risks to humans, human dependence of technology raises the possibility that fungal destruction of material can develop into a global catastrophic risk. Fungal deterioration of military equipment in the tropics was a major problem during theSecond World War. Fungi are known to contaminate spacecraft (Vesper et al. 2008), where they have been associated with damage to instruments. Mold contamination of human habitats can contribute to health problems and make them uninhabitable. The flooding of New Orleans after the Katrina and Rita hurricane led to mold contamination of homes resulting in high levels of mycotoxins (Centers for Disease Control and Prevention (CDC) 2006; Rao et al. 2007). Some of the molds that contaminated homes damaged after Katrina are reported to induce developmental defects in flies (Inamdar and Bennett 2015) although it has been difficult to establish an association between mold contamination and specific health effects in humans (Barbeau et al. 2010). Molds have been implicated in sick building syndrome where fungal products have been proposed to impact the health of human occupants (Straus 2011).

3 Some Considerations Specific to Fungal Threats

Trans-kingdom pathogenic potential. Several pathogenic fungi are remarkable in their host range. In contrast to many viral and bacterial pathogens that have a relatively narrow host range, fungi like Aspergillus and Fusarium spp. can cause disease in hosts of different kingdoms. For example, Fusarium oxysporum causes banana wilt in plants and severe infections in immunocompromised humans. This is important because it illustrates the potentially destructive capacity of this group of organisms. In general, most fungi with pathogenic potential for plants and ectothermic animals are not pathogenic for humans and mammals because their high basal temperatures create a thermal restriction zone (Robert and Casadevall 2009; Bergman and Casadevall 2010). Hence, the relative paucity of fungal species that are pathogenic to humans despite the enormous size of the fungal kingdom may be a result of the combination of high temperature and adaptive immunity. In fact, I have suggested that the remarkable resistance of mammals to fungal diseases is itself a product of selection by fungi at the end of Cretaceous when a fungal bloom may have kept down the reptiles favoring the mammals (Casadevall 2005; Casadevall 2012a).

Genetic flexibility and rapid evolution. Most fungal pathogenic species are capable of rapid evolution, which confers the capacity for rapid changes in phenotypes associated with virulence and drug susceptibility. The fact that most species are capable of both asexual and sexual reproduction means additional opportunities for gene exchange and recombination. The pace of fungal evolution can be so rapid that for organisms such as C. neoformans, which is capable of causing chronic infections lasting months if not years, new genetic variants can emerge during infection consistent within host adaptation and microevolution (Chen et al. 2017). From the catastrophic risk perspective, the ability of fungal species to change rapidly introduces concerns about the emergence of more pathogenic strains and increasing drug resistance.

Origin of virulence. With the exception of Candida spp. and dermatophytes, the overwhelming majority of human pathogenic fungi live in an environment where they are usually involved in degrading plant matter. Hence, in contrast to most viral, bacterial and protozoal pathogens infection by pathogenic fungi comes not from other hosts but directly from the environment. This raises the question of why do organisms that have no need for an animal host seem to have the capacity for mammalian virulence. Studies from several laboratories over the past two decades have implicated amoeba in the origin of virulence for environmental pathogenic fungi. The uncanny resemblance between amoeba- and macrophage-C. neoformans interactions suggested that such virulence factors as the capsule, melanin synthesis, and phospholipases were important for fungal survival after amoeba predation (Steenbergen et al. 2001). Similar observations were made with other pathogenic fungi such as Aspergillus, Histoplasma, and Sporothrix spp. (Steenbergen et al. 2004). According to this view, the capacity for virulence in soil pathogenic fungi emerges stochastically from interactions with third-party agents such as ameboid predators (Casadevall 2012b), with the majority of environmental fungi being unable to cause disease in mammals because of their thermal restriction zones caused by endothermy.

Prevention. Prevention of fungal disease is possible in individuals at high risk by the administration of antifungal agents prophylactically. The development of relatively non-toxic antifungal therapy in the form of oral azoles such as fluconazole has provided an effective option for preventing fungal disease high-risk individuals such as transplant recipients and those with advanced HIV infection. The availability of these effective oral drugs would provide a means for preventing disease in populations at risk from a natural or intentional release of pathogenic fungal spores. In contrast, there are no licensed vaccines available for any major human fungal pathogen. Numerous experimental vaccines that have shown efficacy in animal models of fungal disease but with the exception of a vaccine to prevent recurrent vaginal candidiasis (Edwards et al. 2018), none are close to clinical development. Azoles are also used in agriculture for the treatment and protection of crops.

Drug resistance. One of the characteristics of human fungal diseases is that these are often chronic and require prolonged antifungal drug therapy, which creates conditions for the selection of drug-resistant strains (Fisher et al. 2018). This combined with the widespread use of antifungal agents in agricultural settings has been associated with the emergence of resistance in many pathogenic fungi, including some like Aspergillus spp. that are acquired directly from the environment (Abdolrasouli et al. 2015; Chowdhary et al. 2013). Increasing drug resistance among human and plant pathogenic fungi means that this has to be an important consideration in a global catastrophic event involving pathogenic fungi.

Intercontinental spread. In contrast to viral and bacterial threats that usually require transport in infected hosts for dissemination across continents, fungal spores can disseminate and spread by air currents (Brown and Hovmoller 2002). Fungal spores comprise a large percentage of the particulate matter suspended in the air and the spore composition shows seasonal fluctuation (Frohlich-Nowoisky et al. 2009). The capacity for intercontinental spread by air currents is of significant concern for the emergence of pathogenic fungi for it implies that such outbreaks are not likely to be contained by the usual disease-control measures as quarantine and isolation.

Global warming and fungal diseases. The finding that the majority of fungal species cannot tolerate mammalian temperatures indicates that endothermy is a major source of protection against mycotic diseases (Robert and Casadevall 2009). In the early twenty-firstst century, there is strong evidence that the planet is warming as a result of the anthropomorphic release of greenhouse gases such as CO2. Hence, there is the concern that as the ambient temperature increases some fungi with pathogenic potential will adapt to the higher temperatures, which will allow them to survive at mammalian temperatures (Garcia-Solache and Casadevall 2010). Experimental fungal evolution has demonstrated that fungi can rapidly adapt to higher temperatures (de Crecy et al. 2009). Analysis of temperature tolerances in a fungal collection as a function of time suggests that basidiomyces are already adapting to global warming by becoming more thermotolerant (Robert et al. 2015). If this occurs, humanity could witness the emergence of new pathogenic fungal species (Garcia-Solache and Casadevall 2010).

Invasive fungal infections after natural disasters. Fungal infections following natural disasters can add to the initial calamity (Benedict and Park 2014). Coccidioidomycosis can follow earthquakes, which presumably reflects spore aerolization following shaking of soils (Schneider et al. 1997). Similarly, an outbreak of coccidioidomycosis was reported after a dust storm (Pappagianis and Einstein 1978). Recently, a cluster of soft tissue cases of mucormycosis, caused by Apophysomyces trapeziformis, followed a severe tornado in Joplin, MI, in individuals with skin injuries who were not immunocompromised (Austin et al. 2014). Aspiration of water during natural disasters such as tsunamis can cause a pneumonitis called “tsunami lung” and several fungal species have been associated with this condition [reviewed in (Benedict and Park 2014)] as well as occasional cases of systemic fungal infection (Kawakami et al. 2012; Nakamura et al. 2013). Although in the episodes alluded above only a few individuals have suffered serious mycotic diseases, their occurrence highlights a fungal threat that can complicate geological and atmospheric catastrophic events.

## 2NC

### Cap K

#### Fiat DA — Their model forwards a broken approach to political organizing, assuming the government will listen if we just ask them nicely. That reifies neoliberal logics and state control — only the alt proposes a clear road map for breaking down neoliberalism.

Quinn 16, Canadian writer and comedian based in London (R.J., December 10th, “Can I Talk to a Manager?” *Jacobin Magazine*, <https://jacobinmag.com/2018/12/liberalism-brexit-donald-trump>, Accessed 08-24-2021)

If Guy Debord were alive today, he might say that “in societies where the neoliberal conditions of political economy prevail, all of life presents itself as an immense accumulation of customer service interactions.” That is, to the liberal, all relationships are business transactions.

Nowhere is this tendency more apparent than in the contemporary liberal approach to political organizing, which seems to be reducible to a great cry of “Can I speak to a manager?” And nowhere was it better exemplified than in early October, when several thousand middle-class dog owners marched through central London to protest Brexit. Yet another outgrowth of the “People’s Vote” campaign (which is pushing for a redo of the Brexit referendum), the demonstration was called the “Wooferendum.”

The ur-concept of contemporary liberal politics is faith in the authority of a rule-governed order, and an expectation that the appointed minders of that rule-governed order will operate society, more or less, as a service to those who pay for it. In other words, “Excuse me, I do not mean to cause a fuss, but I’m not entirely satisfied.”

In the two years since its vote to leave the European Union, the UK has seen innumerable marches on parliament advancing the demand that the government cancel Brexit, or at least offer a People’s Vote. These marches, proudly unaffiliated with a political tendency, and frequently tinged with rhetoric suggesting that the Brexit vote was enabled by provincial rubes or spending skulduggery, have been an exhortation to the government of the day to just act, please. They are billed as marches politicians “cannot ignore,” that politicians have gone on to ignore. The political theory of change used by The Wooferendum, and others like it, is that once displeasure is voiced by enough people, the powerful — be they billionaires, political leaders, or whoever else — will then graciously remove the offending policy.

This phenomenon, of course, is hardly confined to the United Kingdom. In the United States, the years since Donald Trump’s election have been marked by a liberal obsession with the prospect of a released tax return or well-placed confession extracted by special counsel Robert Mueller to get rid of him. Just act, please.

“Speaking to the manager” is a sort of tyrannical helplessness; it is the haughty demand for intercession on one’s behalf by an array of greater forces you assume are servile. It is worded like a demand, but it is in fact a plea. It relies on a deeply held belief that society has been ordered for your benefit, because you bought it. And by repeatedly reminding those in charge that society is not entirely to your liking, a number of dutiful institutions or solicitous political Jeeveses will course correct and bring things “back to normal.”

It also assumes a hierarchical society, ordered like a restaurant: some eat, some serve, and there is a manager to keep it all going. This is why these same liberals tend to find the prospect of greater popular control over the media, economy, or society chilling, because they must confront the possibility that they will no longer be served and tended to.

We have been conditioned by the market to believe “the customer is always right.” But the power the customer holds over a business is a thin simulacrum of power. Power is classically understood as the ability to compel others to do what, but for you, they would not have done. Yet “consumer” power relies on businesses doing what customers say when it is in their interest to do so. The human construed as a customer can pull but one lever for change: “no.” The customer can decline to purchase, even voice displeasure, but the role of customer is inherently passive.

#### Economic predictions link---empirics prove capitalist ideology produces inaccurate assessments and serial policy failure.

Rozga 20, J.D. @ BU and former FTC merger review and litigation expert (Kai, August 31st, “How tech forces a reckoning with prediction-based antitrust enforcement,” *Tech Law Decoded*, <https://techlawdecoded.com/how-tech-forces-a-reckoning-with-prediction-based-antitrust-enforcement/>, Accessed 09-12-2021)

The Economism guessing game

The Economism—as some call it—of antitrust has sought to make the analysis in competition cases more rational by requiring that, before intervening in markets, enforcers must make a strong showing of the expected actual effects on competition of a given merger or a monopolist’s conduct. (To be sure, it was not just an intellectual disagreement with the status quo that inspired this movement. It was an ideological one, too, guided by the belief that it was more often than not better to wait for free markets to correct themselves rather than have the government meddle in them.)

On its face, it may seem sensible that the enforcement of laws which serve to protect competition should turn on an assessment of actual competitive effects. But this shift has meant that governments (and also private plaintiffs) bringing an antitrust case are required to present more evidence to explain the competitive dynamics of a market and how the conduct of its actors impacts competition in it. This exacts a heavy toll on everyone involved. Any antitrust litigator can attest to how antitrust cases stand out from others in terms of length, complexity, and scale. They are fact-heavy and data-intensive. And in the end, it is a burden borne by everyone involved in the case—prosecutor, defendant, and judge alike.

But the burden of analyzing actual competitive effects is more than just a hassle. It is responsible for turning antitrust into a guessing game. In merger cases, this is largely a forward-looking exercise: predicting how a combination of two companies will impact competition by comparing the market’s expected competitive state if the merger goes through to its expected competitive state if it does not. In monopolization cases, a similar analysis of the impact on competition of a monopolist’s abusive conduct can either be forward-looking (for preventing future harms) or backward-looking (for righting past wrongs).

And it is through the competitive effects guessing game that Economism was thrust into the forefront of antitrust. That is because a predictive approach to enforcement would not have been possible without the belief that economic theories and models provided the scientific (hard “s”) rigor for understanding how a market operates and how the conduct of its actors impacts competition in it. Depending on how you look at it, making predictions with economic models in antitrust was either the root cause or a necessary by-product of shifting the focus to actual competitive effects. Either way, Economism became the beating heart of antitrust at the same time that the law’s enforcement became premised on making predictions about actual competitive effects.

The unproven and perhaps unprovable premise of Economism

Despite forming its foundational underpinning, the bedrock assumption in modern antitrust that lawyers supported by economic experts are capable of understanding and predicting complex markets remains unproven—if it is even provable. To the contrary, there is good reason for reserving doubt.

In Antifragile, uncertainty expert Nassim Taleb writes: “Man-made complex systems tend to develop cascades and runaway chains of reactions that decrease, even eliminate, predictability … the modern world may be increasing in technological knowledge, but, paradoxically, it is making things a lot more unpredictable.” Taleb is skeptical of what he calls “superfragile” predictions guided by economic theory and models which are inherently “unreliable for decision-making.” To him, “economics is like a fable—a fable writer is there to stimulate ideas, indirectly inspire practice perhaps, but certainly not to direct or determine practice.”

According to Taleb, policymaking that uses economic models to manage complex systems in a top-down fashion is bound to fragilize things—no matter how well-intentioned the intervention might be. His most poignant examples of the dangers of expert-guided prediction-making come from looking at economic policy which, in an attempt to minimize short-term gyrations in the economy and financial markets, instead sets them up for larger blow-ups with systemic consequences. He concludes that “even when an economic theory makes sense, its application cannot be imposed from a model, in a top-down manner.”

In Thinking, Fast and Slow, behavioral economist and decision-making researcher Daniel Kahnemann endorses a similar skepticism about relying on expert judgments to evaluate and make predictions about complex environments. Kahnemann summarizes research in various domains (medical, economic, etc.) finding that, due to limits and biases innate to human cognition, expert judgments amidst uncertainty and unpredictability—what he calls “low-validity” environments—are a dependably ineffective way to predict the future.

Antitrust operates in precisely the sort of environment that the works of Taleb and Kahnemann would suggest is poorly suited for subjective, predictive decision-making. The lawfulness of a merger is determined by predicting whether it will cause prices to go up, a monopolist’s abusive conduct by conjecturing whether prices were inflated over a surmised competitive level—everything heavily reliant on economic theories and models. And the fact-specific inquiry of every antitrust case—especially when any case involving dynamic tech markets—means that its practitioners never get exposed to the sort of “regularity” and “prolonged practice” that Kahnemann concludes is necessary for subjective expert judgments to acquire predictive validity. If anything, low validity is supercharged in digital markets operating in vast ecosystems of constantly-evolving and interrelated markets with complicated relationships among its players.

The works of Taleb and Kahnemann suggest that antitrust technocrats are on a fool’s errand that will result in inaccurate evaluations of market conditions and poor predictions about competitive effects. Bad competition policy will result, if for no other reason than the limits of human cognition and the complexities of the market environments being observed.

Pulling back the curtain on Economism in practice

Practitioners can also draw on their own experiences to find ample support for the skepticism that flows from the works of Taleb and Kahnemann about expert-based, predictive decision-making.

The pitfalls of Economism in antitrust can be seen in everyday practice. In merger cases, economic models are presented to predict future price increases by the merged companies. And parties looking to dodge enforcement actions in close-call cases hire economists to predict how a merger will lower costs, increase output, and improve innovation.

In private antitrust litigation, plaintiffs and defendants alike rely on armies of economists to make out the elements of a case or defend against it. Too often, the result is a series of warring expert reports submitted by uber-qualified economists with stellar reputations who—based on the exact same factual record—reach diametrically opposing positions about a market’s dynamics or likely competitive effects. Equally troubling is how the uncertainty of the expert opinions can be seen fading away by the time the court chooses a winner, as the prevailing view achieves a supreme prescience when cited by the judge in support of its decision.

Alarm bells should be going off. An academic field’s reputation would seem to be put in doubt, and with it the foundation of an influential body of law that shapes our economy and society. Instead, academics and policymakers are more likely to be heard describing the rigor and rationality that they believe neoliberal economic thinking has brought to antitrust enforcement. And while some reforms proposed by the mainstream antitrust community might seem dramatic within the existing paradigm, they are trivial when considering how none tackle the fundamental flaws of the status quo.

And so, paradoxically, as antitrust turns its focus on increasingly difficult-to-predict markets, it does so increasingly with Economism-driven prediction as its lodestar—like a captain that insists on navigating a ship with the stars even when it is obvious that clouds cover the night sky.

#### No alternative” is an elite fallacy — the pandemic provides a unique opening to challenge capitalism and unify globally.

Alexander and Gleeson, 20 \*Research Fellow with the Melbourne Sustainable Society Institute, University of Melbourne. \*\*Director of the Melbourne Sustainable Society Institute. (Samuel Alexander and Brendan Gleeson“EVERYTHING IS THINKABLE, SO WHAT IS TO BE DONE?” accessed online 9/16/2021 https://arena.org.au/everything-is-thinkable-so-what-is-to-be-done/)

The deep decarbonisation and degrowth required for such contraction would clearly require significant shifts in the ways our economies are structured, including exploring innovative new ways to govern access to land and housing, and having difficult but compassionate conversations about things such as redistribution and population growth. And, if the response to COVID-19 shows us anything, it is that governments can mobilise extraordinary amounts of money when there is political will. This is good news for funding a transition to renewable energy, if we can develop the political will. A degrowth transition would also mean a cultural recognition that high-consumption lifestyles are unsustainable and that only lifestyles of material sufficiency, moderation and frugality are consistent with social and ecological justice. This challenges us to reimagine the good life beyond consumer culture, thereby sowing the seeds of a politics and economics of sufficiency. Social movements will be needed to help create the support for these structural and cultural shifts. These might include post-consumerist movements that are prefiguring degrowth cultures of consumption by embracing material simplicity as a path to freedom, meaning and reduced ecological burdens; community-led resistance and renewal movements; transgressive and creative forms of the sharing economy as means of thriving even in a contracting biophysical economy; and other social movements and strategies that are seeking to develop new (or renewed) informal economies ‘beyond the market’. So, while the pandemic continues to unfold, as a society we need to consider whether our ambitions are merely to return to business as usual. Alternatively, shaken awake by this disruption, do we aspire to a radical and final break from neoliberal globalisation and aim to transition to a social form that prioritises human well-being and ecology over material accumulation? What now for degrowth? A cautionary tale There is no reason to believe that the current season of forced degrowth represents a permanent and final dislocation of the growth-machine ambitions of neoliberalism. The relatively recent experience of the 2008–09 Global Financial Crisis (GFC) and its aftermath is a worrying precedent. There was much joyous banging of cymbals and song from progressive interests as Keynesian desiderata were rediscovered and reapplied, especially and successfully by the Rudd government in Australia. The revealed downside of this reinstatement of ‘progress’ was a failure to grasp that Keynes’ theories predated political ecology and were intended to rescue, not transform, industrial capitalism. Hence, the way out of the GFC was a massive re-stimulation of consumption and all the ecological destruction that goes with it. After a major dip, carbon emissions were quickly restored and, after some mild disturbance, the planet was set back on its path to climate destruction. The shadow of Keynes lay heavy on the re-firing smokestack economies of the world. We fear this replay for the current crisis, our anxieties deepened by the observation earlier that neoliberalism is a particularly historically insentient beast. The forces willing snap back are immense and omnipresent throughout the Global North. It’s easy to highlight, not to say pillory, the ‘let’s reopen for business’ cant of President Trump, but, as Streeck reminds us, the European Union is a deeply neoliberal institution, essentially a free-trade bloc, that is equally committed in the current historical moment to the earliest possible resumption of the growth machine. The centre-left and green parties typically operate within the same growth paradigm, too often committed to little more than a limp ‘third way’ that talks of ‘greening capitalism’ or giving it a human face. But that is merely going down the wrong road more slowly. But caution is advised. The cloak of pessimism is too often the disguise of determinism, a tendency that we reject as bad science and politics. Both defeats and victories are snatched from the jaws of historical crises and it’s far too early now to say what will come from the current degrowth moment which we, with the support of Scott Morrison, can type as lockdown. We write, in April 2020, in the steaming mists of the volcanic eruption of the economy and of everyday life. New (or are some old?) social shadows and shapes are discernible: people (often harshly) freed from the neoliberal work frame and finding their way under a closely scripted regime of movement—and, critically, of consumption—laid down by a newly assertive state. A dialectical play of possibilities is evident, and they are certainly too many to try to list now. But we cannot fail to see on the one progressive hand the radical reassertion of the state and of its care infrastructure, as well as the freeing of households from the treadmill of the neoliberal work order (and all the fractured and gendered coping reflexes that went with it). Equally, we discern and recoil from the authoritarian possibilities unleashed by new state arrogation, especially in Anglophone nations, where populist conservatives reign. Who knows what will emerge from this historical clash of possibilities? Our bleakest vision is the emergence of authoritarian states that will ‘lockdown the snap back’—that is, reanimate the Earth-eating monster and drive us harder and faster to the graveside of capitalism. On better days, we hope-think for transition, however messy it might be, to a different social order that finally accepts new ideas of growth and progress. And what mature human being doesn’t desire a life marked by growth and self-realisation, a promise-idea seeded most wondrously by the Enlightenment? The simple point of degrowth, and of most radical thought traditions under capitalism, is that this journey mustn’t consume the social and ecological substrates that sustain us. Will crisis play a consciousness-raising role? It may be that ever-deepening crisis in the existing system of capitalism is the most likely spark for a paradigm shift in both the political economy of growth and its cultural underpinnings. To say this, however, is not to romanticise crisis like dreamy-eyed optimists. In fact, our view of change is based on a deep pessimism about the prospects of smoother and less disruptive modes of societal transformation. As the pandemic deepens or exacerbates the range of pre-existing crises, it seems that our collective task now is to ensure that these destabilised conditions are used to advance progressive humanitarian and ecological ends, rather than exploited to further entrench the austerity politics of neoliberalism. How to ground this great and terrible opportunity in everyday life? For those who recognise the potential in this moment to think and act differently, our basic function is to keep hopes of a radically different and more humane form of society alive. The encounter with crisis can play an essential consciousness-raising role, if it triggers a desire for and motivation towards learning about the structural underpinnings of the calamity itself. We believe that social movements should be preparing themselves to play that educational role, and in fact it is heartening to see this already unfolding in the many inspiring social responses to this tragic time. Among many examples of this, we highlight but one: David Holmgren and the permaculture movement, who are mobilising as we write for the creative renewal of our cities and suburbs. Holmgren’s relaunch of his brilliant RetroSuburbia: The Downshifter’s Guide to a Resilient Future during the pandemic exemplifies this vision and faith in grassroots activity. And, importantly, under its warm messaging about restoration of natural ecology and human values lies a serious prosecution of accumulative capitalism. In the midst of this pandemic, our challenge is to come together and set sail for newer, safer shores and resist the sirens of destruction that would woo us back to the sinking Atlantis of capitalism. This is not a time of species affirmation; it is the hour of gravest peril. It is also a reopening of human possibility. To liberate human prospect, we must cast down, not defend, the burning bridges of a dying capitalist order and be brave enough to entertain the possibility of a permanent and planned economics beyond growth. This pandemic is an ambivalent invitation, even an incitement, to humanity to confront this turning point in the human story with all the creativity, wisdom and compassion we can muster.

#### Ag collapse---short term.

Jamie Allinson et al 21. Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Chapter 1: M-C-M’ and the Death Cult. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

The Triassic-Permian ‘great dying’ was a megaphase change taking place through pulses lasting for tens of thousands of years, separated by interludes of hundreds of thousands of years, if not millions. The current mass extinction event is a megaphase change taking place in microphase time. Mass extinction is punctuated by the production of what the environmentalist Jonathan Lymbery calls ‘dead zones’: the conversion of wild ecosystems into dead monocultures. In Sumatra, these dead zones are made by burning rainforest and, amid the stench of death, planting palm crop. The palm oil is used in foods and household items, while the nut is used in animal feed. It is secured with barbed wire, and treated with poison, to prevent the crop from being eaten. Surviving animal life, and surrounding human communities, are pushed to the edges, to the brink of extinction. Agricultural workers are abused, underpaid, even enslaved. This is an example of what Moore would call ‘cheap food’, where the ‘value composition’ of the goods, the amount of waged labour necessary to produce each item is ‘below the systemwide average for all commodities’. In this case, a ‘cheap nature’ is produced by a distinctly capitalist form of territorialisation, wherein forestry is converted through deforestation into palm monoculture, while ‘cheap labour’ is secured partly through the dispossession of neighbouring human communities. More calories with less socially-necessary labour-time is cheap food. Cheap is not, of course, the same thing as efficient. Food production is, alongside fuel, a fulcrum of the capitalist organisation of work-energetics. It is one that, as with fossil fuels, wastes an incredible amount of the energy it extracts. According to the FAO (Food and Agriculture Organization of the United Nations), 30 per cent of cereals grown for human and animal consumption are wasted, along with almost half of all root crops, fruits and vegetables. To conclude from this grotesque squander that a ‘more efficient’ capitalism would ‘solve the problem’ of ‘the environment’ would be to fail to understand waste, capitalism and ecology: that the first is intrinsic to the second; that the second, whatever the degree to which it is inflected by the first, is inimical to the third. Capitalism also directly undermines its own productivity, precisely through its industrially-produced biospheric destruction. According to the UN, for example, there are at most sixty harvests remaining before the world’s soils are too exhausted to feed the planet. This edaphic impoverishment is a product, not a byproduct. It is the predictable, and long-predicted, consequence of intensive agriculture, over-grazing and the destruction of natural features (such as trees) that prevent erosion. Likewise, the death-drop of insect biomass, the decline of pollinating bees, are hastened by the extensive use of pesticides and fertilisers. Capitalist food production can only evade the problem – a problem, in its terms, of accumulation – either by establishing new ‘cheap natures’ through such means as deforestation, or by extracting rent from competitor producers through such means as intellectual property rights. For instance, since 1994’s notorious TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), through the rules of UPOV (Union for the Protection of New Plant Varieties), particularly the notorious UPOV 1991, and in the face of local fightbacks from Guatemala to Ghana, the World Trade Organisation has enforced property agreements outlawing the saving of seeds from one season to the next, thus sharply raising costs for farmers producing 70 per cent of the global food supply.

#### 2) Carbon bubble, peak oil.

Jeremy Rifkin 19. Honorary Doctorate in Economics at Hasselt University. Recipient of the 13th annual German Sustainability Award in December 2020. BS in Economics at UPenn – Wharton School. Founder of People’s Bicentennial Commission. The Green New Deal: Why the Fossil Fuel Civilization Will Collapse By 2028, and the Bold Economic Plan to Save Life on Earth. St Martin’s Press. P7-8. Google Book. //shree]

The Carbon Tracker Initiative, a London-based think tank serving the energy industry, reports that the steep decline in the price of generating solar and wind energy “will inevitably lead to trillions of dollars of stranded assets across the corporate sector and hit petro-states that fail to reinvent themselves,” while “putting trillions at risk for unsavvy investors oblivious to the speed of the unfolding energy transition.”19 “Stranded assets” are all the fossil fuels that will remain in the ground because of falling demand as well as the abandonment of pipelines, ocean platforms, storage facilities, energy generation plants, backup power plants, petrochemical processing facilities, and industries tightly coupled to the fossil fuel culture. Behind the scenes, a seismic struggle is taking place as four of the principal sectors responsible for global warming—the Information and Communications Technology (ICT)/telecommunications sector, the power and electric utility sector, the mobility and logistics sector, and the buildings sector—are beginning to decouple from the fossil fuel industry in favor of adopting the cheaper new green energies. The result is that within the fossil fuel industry, “around $100 trillion of assets could be ‘carbon stranded.’”20 The carbon bubble is the largest economic bubble in history. And studies and reports over the past twenty-four months—from within the global financial community, the insurance sector, global trade organizations, national governments, and many of the leading consulting agencies in the energy industry, the transportation sector, and the real estate sector—suggest that the imminent collapse of the fossil fuel industrial civilization could occur sometime between 2023 and 2030, as key sectors decouple from fossil fuels and rely on ever-cheaper solar, wind, and other renewable energies and accompanying zero-carbon technologies.21 The United States, currently the leading oil-producing nation, will be caught in the crosshairs between the plummeting price of solar and wind and the fallout from peak oil demand and accumulating stranded assets in the oil industry.22

#### 3) Mineral cycles---copper, lithium, manganese hit bottlenecks.

Nafeez Ahmed 20 M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

#### Nordhaus is from the Breakthrough Institute---reject it---full of bias, lobbying and fraud.

BNI 20, Beyond Nuclear International, “Exposed!” BNI, 9/28/2020, https://beyondnuclearinternational.org/2020/09/28/exposed/, kyujin

BREAKTHROUGH INSTITUTE

Shellenberger is co-founder of the Breakthrough Institute, a lobbying group masquerading as a “think tank”. The Breakthrough Institute has “a clear history as a contrarian outlet for information on climate change [which] regularly criticises environmental groups”, according to Paul Thacker. Breakthrough has also been described as a “program for hippie-punching your way to fame and fortune.”

Shellenberger co-founded the Breakthrough Institute with Ted Nordhaus, nephew of economist, William Nordhuas. William Nordhaus features in Merchants of Doubt – Naomi Oreskes and Erik Conway’s examination of the PR strategies used both by the tobacco and fossil fuel industries. His interventions in the 1990s helped set back essential action on climate change by decades.

Other figures associated with Shellenberger and the Breakthrough Institute include:

* Owen Paterson, one of the UK’s most prominent climate deniers who helped with the UK launch of the group’s Ecomodernist manifesto in 2015.
* Matt Ridley, coal mine owner, once hereditary Conservative Peer and famous climate delayer / ‘lukewarmist’ who spoke at the UK launch event.

#### Nordhaus isn’t optimistic, he’s naïve.

Richard Heinberg 18, Author of 13 books and a Senior Fellow with the Post Carbon Institute. His essays and articles have appeared in print or online at Nature, Reuters, The Wall Street Journal, The American Prospect, Public Policy Research, the Quarterly Review, Resilience, The Oil Drum, and Pacific Standard, among other publications, “Ted Nordhaus Is Wrong: We Are Exceeding Earth’s Carrying Capacity,” Undark, 7/26/2018, https://undark.org/2018/07/26/ted-nordhaus-carrying-capacity-ecology/, kyujin

IN HIS ARTICLE, “The Earth’s Carrying Capacity for Human Life is Not Fixed,” Ted Nordhaus, co-founder of the Breakthrough Institute, a California-based energy and environment think tank, seeks to enlist readers in his optimistic vision of the future. It’s a future in which there are many more people on the planet and each enjoys a high standard of living, while environmental impacts are reduced. It’s a cheery vision.

If only it were plausible.

Nordhaus’s argument hinges on dismissing the longstanding biological concept of “carrying capacity” — the number of organisms an environment can support without becoming degraded. “Applied to ecology, the concept [of carrying capacity] is problematic,” Nordhaus writes, arguing in a nutshell that the planet’s ability to support human civilization can be, one presumes, infinitely tweaked through a combination of social and physical engineering.

Few actual ecologists, however, would agree. Indeed, the concept of carrying capacity is useful in instance after instance — including modeling the population dynamics of nonhuman species, and in gauging the health of virtually any ecosystem, be it ocean, river, prairie, desert, or forest. While exact population numbers are sometimes difficult to predict on the basis of the carrying capacity concept, it is nevertheless clear that, wherever habitat is degraded, creatures suffer and their numbers decline.

The controversy deepens in applying the carrying capacity concept to humans. Nordhaus seems to think we are exceptions to the rules. Still, as archaeologists have affirmed, many past human societies consumed resources or polluted environments to the point of collapse. Granted, societies have failed for other reasons as well, including invasion, over-extension of empire, or natural climate change. Yet in cases where societies depleted forests, fisheries, freshwater, or topsoil, the consequences were dire.

But that was then. The core of Nordhaus’ case is that we are now living in a magical society that is immune to the ecological law of gravity. Yes, it is beyond dispute that the modern industrial world has been able to temporarily expand Earth’s carrying capacity for our species. As Nordhaus points out, population has grown dramatically (from less than a billion in 1800 to 7.6 billion today), and so has per capita consumption. No previous society was able to support so many people at such a high level of amenity. If we’ve managed to stretch carrying capacity this much already, why can’t we do so ad infinitum?

To answer the question, it’s first important to understand the basis of our success so far. Science and technology usually glean most of the credit, and they deserve their share. But sheer energy — the bulk of it from fossil fuels — has been at least as important a factor.

Chart, histogram

Description automatically generated

With lots of cheap energy, we were able to extract raw materials faster and in greater quantities, transport them further, and transform them through industrial processes into a breathtaking array of goods — including fertilizers, pesticides, and antibiotics, all of which tended to reduce human death rates.

But there was still another essential factor in our success: nature itself. Using science, technology, and cheap energy, we expanded farmlands, chain-sawed forests, exploited fisheries, mined minerals, pumped oil, and flattened mountains for their buried coal. And we did these things in a way that was not remotely sustainable. By harvesting renewable resources faster than they could regrow, by using non-renewable resources that could not be recycled, and by choking environments with industrial wastes, we were borrowing from future generations and from other species.

Nordhaus writes: “For decades, each increment of economic growth in developed economies has brought lower resource and energy use than the last.” This trend of severing the tie between GDP and energy/materials throughput is called “decoupling.” Many economists make big claims for past decoupling and promise much more of it in the future. But careful analysis of decoupling to date shows that most is attributable to accounting error. And to get the developing world up to the level of an average American’s energy usage would require nearly quadrupling global energy consumption, even assuming advances in efficiency. So, unless we find ways to make decoupling actually happen in the future more reliably and at higher rates, growing the global economy will require us to use more of the Earth’s depleted resources.

It is true that some past warnings about the consequences of overpopulation and overconsumption, framed as forecasts, proved wrong. Thomas Malthus famously thought famine would engulf humanity within decades; it didn’t. He failed to foresee industrial agriculture. Paul Ehrlich thought rapid population growth would lead to catastrophe in the 1980s, but he failed to anticipate the impacts of globalization and debt — which enables us to consume now and pay later. Peak oil analysts didn’t foresee the fracking frenzy. Yet cornucopian economists who perceive no problem in the expectation of endless growth on a finite planet likewise failed to foresee climate change, the exponential increase in extinction rates primarily as a result of human-caused habitat degradation, the collapse of fisheries from overfishing, and much, much more.

How can we judge whether cornucopians, or so-called Malthusians, will be right in the long run? One way would be to keep a running account of key biophysical factors on which the prospering of our species depends. If an alarm bell sounds for any of those key factors, we should sit up and pay attention. After all, Liebig’s Law (another foundation of ecology) tells us that growth limits are set not by total resources available, but by the single scarcest necessary resource.

Fortunately, somebody is keeping those accounts. Indeed, a cottage industry of environmental scientists, led by Johan Rockström of the Stockholm Resilience Center and Will Steffen of the Australian National University, has identified nine planetary boundaries that we transgress at our peril: climate change, ocean acidification, biosphere integrity, biochemical flows, land-system change, freshwater use, stratospheric ozone depletion, atmospheric aerosol loading, and the introduction of novel entities into environments.

We are currently exceeding the “safe” marks for four of these boundaries:

Chart, sunburst chart

Description automatically generated

Another way of keeping track is the ecological footprint, which measures human demand on nature in terms of the quantity of land and water it takes to support an economy sustainably. The Global Footprint Network calculates that humanity is currently exceeding Earth’s sustainable productivity by 60 percent. We do this, again, by drawing down resources that future generations and other species would otherwise use. So, as a result of our actions, Earth’s long-term carrying capacity for humans is actually declining. Nordhaus is right that it’s not a fixed quantity; the problem is that we’re reducing it rather than adding to it in a way that can be maintained.

DEVISE YOUR own scorecard. What warning signs would you expect to see if we humans were pressing at the limits of global carrying capacity? Resource depletion? Check. Pollution? Check. Dying oceans? Check. Human populations subjected to increasing stress? Double check.

Here’s one more that we probably should be paying more attention to: Wild terrestrial mammals now represent just 4.2 percent of terrestrial mammalian biomass, the balance — 95.8 percent — being livestock and humans. Maybe we could make some inroads on that remaining 4.2 percent, but it’s pretty clear from this single statistic that we humans have already commandeered most of the biosphere.

#### No decoupling — data that accounts for offshoring and rebound effects prove energy efficiency is getting worse. Staying below 1.5° is biophysically impossible under capitalism.

Albert 20, M.D. @ John Hopkins. BA in Evolutionary Biology (Michael, April, The Dangers of Decoupling: Earth System Crisis and the ‘Fourth Industrial Revolution’, *Global Policy*, Volume 11, Issue 2, DOI: 10.1111/1758-5899.12791)

Unfortunately for the ecomodernists, degrowth scholars and ecological economists have begun to poke holes in their optimistic assessments. Their response can be summarized according to three key counter-arguments: (1) the evidence that ecomodernists provide for relative decoupling is flawed and limited at best; (2) their evidence for the possibility of absolute decoupling is even weaker; and (3) even if absolute decoupling was possible in principle, there is even weaker evidence that this could occur with the necessary speed to stabilize the earth system before reaching irreversible tipping points.

First, claims that rich countries have seen relative or even absolute decoupling of economic growth from domestic material consumption have been shown to focus solely on correlations between national GDP and material throughput while ignoring the material-energetic costs embodied in imported consumer goods. For example, Thomas Wiedmann and colleagues show that while the EU, the US, and Japan have grown economically while stabilizing or even reducing domestic material consumption, a broader analysis of their material footprint embedded in their imports shows that it has kept pace with GDP growth. They conclude that ‘no decoupling has taken place over the past two decades for this group of developed countries’ (Wiedmann et al., 2015, p. 6273). Focusing on the global economy as a whole, Krausmann et al. show that its resource intensity improved over the course of the 20th century, though the early 21st century has seen a faster rate of growing resource consumption than global economic growth (cited in Hickel and Kallis, 2019). Thus, as Kallis and Hickel (Kallis and Hickel, 2019, p. 4; italics added) explain: ‘Global historical trends show relative decoupling but no evidence of absolute decoupling, and twenty-first century trends show not greater efficiency but rather worse efficiency, with re-coupling occurring’.

Second, given the limited evidence for even relative decoupling, it is little surprise that the evidential basis on which claims for the possibility of absolute decoupling rest is even flimsier. In the most comprehensive summary of the modeling evidence to date, Hickel and Kallis (2019) show that even the most optimistic scenarios fail to prove the possibility of absolute decoupling. For example, a modeling study by Schandl et al. (2016) shows that in a ‘high efficiency’ scenario, one that combines a high and rising carbon price plus a doubling in the rate of material efficiency improvement, global resource use grows more slowly (about a quarter the rate of GDP growth) but steadily to reach 95 billion tons in 2050, while global energy use grows from 14,253 million tons of oil equivalent in 2010 to 26, 932 million in 2050. The authors therefore conclude: ‘While some relative decoupling can be achieved in some scenarios, none would lead to an absolute reduction in ... materials footprint’ (Schandl et al., 2016, p. 8). A high efficiency scenario modeled by the UNEP comes to even less optimistic conclusions (with global resource use rising to 132 billion tons in 2050), since it incorporates the ‘rebound effect’ in which efficiency improvements lead to increased consumption due to resulting price reductions (Hickel and Kallis, 2019). In short, as they conclude, these ‘models suggest that absolute decoupling is not feasible on a global scale in the context of continued economic growth’ (Hickel and Kallis, 2019, p. 6).

Third, the critics show that even if absolute decoupling (from both emissions and total environmental impact) were possible in principle, this would need to occur fast enough to prevent transgression of ecological tipping points. Just focusing on the climate problem, the 2018 IPCC report claims that emissions must be reduced 7 per cent annually to reach net zero by 2050 in order to achieve the 1.5 C target, whereas they must reduce 4 per cent annually to reach net zero by 2075 for a shot at the 2 degree target (IPCC, 2018, p. 15). However, even under optimistic assumptions (e.g. a near-term implementation of a high and rising carbon price, alongside heroic carbon intensity improvements), studies suggest that annual declines of 3–4 per cent might be the fastest rate possible assuming continued economic growth (Hickel, 2019). Thus, it would most likely be impossible to meet the 1.5 C target in a context of continuous compound growth. While the 2 degree target might be feasible in this context (assuming implementation of a globally coordinated program starting in 2020), many argue that the IPCC’s estimates downplay the existence of positive feedbacks in the earth system (e.g. Steffen et al., 2018), and thus more rapid emissions cuts might be needed even for 2 degrees. On top of this, economic growth must also be decoupled from impacts on other ‘planetary boundaries’ that may have already been overshot, especially land-use change and biodiversity loss (Raworth, 2017). A number of ecologists believe that to bring humanity back into a ‘safe operating space’, total resource consumption should be reduced from roughly 70 to 50 gigatons per year (Hoekstra and Wiedmann, 2014), while a ‘half earth strategy’ should be implemented that protects 50 per cent of the planet’s surface from direct human interference (up from roughly 18 per cent today) (Wilson, 2017), possibly by 2050 to prevent tipping points in biodiversity loss and land-use change (Hickel and Kallis, 2019). Even if these claims are exaggerated, the magnitude of the overall decoupling challenge remains clear. It would mean that total resource consumption and land use needs to shrink, remain stable, or only increase moderately (depending on our assumptions regarding the further stress (if any) that planetary boundaries can handle) even as the total output of the global economy triples by 2060. It is thus not hyperbole to say, as Boris Frankel puts it, that this goal of absolute decoupling is ‘overwhelmingly staggering in its ambition and historical novelty’ (Frankel, 2018, p. 127).

#### Tech fails — doesn’t displace fossil fuels and increased consumption offsets efficiency gains.

Parrique et al. 19, Centre for Studies and Research in International Development (CERDI), University of Clermont Auvergne, France; Stockholm Resilience Centre (SRC), Stockholm University, Sweden, Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H. (Timothee, July, Decoupling Debunked: Evidence and arguments against green growth as a sole strategy for sustainability, *European Environmental Bureau*, https://mk0eeborgicuypctuf7e.kinstacdn.com/wp-content/uploads/2019/07/Decoupling-Debunked.pdf)

Not leading to relevant innovations

Innovation is not in and of itself a good thing for ecological sustainability. The desirable type of innovation is eco-innovation or one that results “in a reduction of environmental risk, pollution and other negative impacts of resources use compared to relevant alternatives” (Kemp and Pearson, 2008, p.5). But this is only one type among several. In general, firms have an incentive to innovate to economise on the most expensive factors of production to maximise profits. Because labour and capital are usually relatively more expensive than natural resources, more technological progress will likely continue to be directed towards labour- and capital-saving innovations, with limited benefits, if any, for resource productivity and a potential rise in absolute impacts due to more production. But decoupling will not occur if technological innovations contribute to saving labour and capital while leaving resource use and environmental degradation unchanged.

Another issue is that technologies do not only solve environmental problems but also tend to create new ones. Assuming that resource productivity becomes a priority over labour and capital productivity, there is still nothing preventing technological innovations from creating more damage. For example, research into processes of extractions can lead to better ways to locate resources (imaging technologies and data analytics), to extract them (horizontal drilling, hydraulic fracturing, and automated drilling operations), and to transport them (Arctic shipping routes). These innovations may target resource use but with a result opposite to the objective of decoupling, that is more extraction. And this is not even considering unintended side-effects, which often accompany the development of new technologies (Grunwald, 2018).

Not disruptive enough

Another problem has to do with the replacement of harmful technologies. Indeed, it is not enough for new technologies to emerge (innovation), they must also come to replace the old ones in a process of “exnovation” (Kimberly, 1981). What is required is a “push and pull strategy” (Rockström et al., 2017): pushing environmentally-friendly technologies into society and pulling harmful ones, like fossil-based infrastructure, out of it.

First, in reality, such a process is slow and difficult to trigger. Most polluting infrastructures (power plants, buildings and city structures, transport systems) require large investments, which then creates inertia and lock-in (Antal and van den Bergh, 2014, p. 3). Let us, for instance, consider the energy, buildings, and transport sectors, which account for the large majority of world energy consumption and greenhouse gas emissions. Initial lifetime for a nuclear or a coal power plant is about 40 years. Buildings can last at least as much. The average lifetime for a car is 12-15 years, and this is about what it takes for an innovation to spread in the vehicle fleet. The wide availability of petrol refuelling stations gives an infrastructural advantage to petrol-based cars, whereas this is the opposite situation for electric, gas, or hydrogen vehicles that would require different and new supporting infrastructures. Building a highway or a nuclear plant is a commitment to emit for at least as long as these infrastructures will last – Davis and Socolow (2014) speak of “committed emissions.”

Energy is a good case in point: using more renewable energy is not the same as using less fossil fuels. The history of energy use is not one of substitutions but rather of successive additions of new sources of energy. As new energy sources are discovered, developed, and deployed, the old sources do not decline, instead, total energy use grows with additional layers on the energy mix cake. York (2012) finds that each unit of energy use from non-fossil fuel sources displaced less than one-quarter of a unit of its fossil-fuel counterpart, showing empirical support for the claim that expanding renewable energies is far from enough to curb fossil fuel consumption. The relative part of coal in the global energy mix has been reduced since the advent of petroleum but this occurred in spite of absolute growth in the use of coal (Krausmann et al., 2009).

#### Capitalism causes endless warfare and imperial violence.

Robinson, 20 is Professor of Sociology, University of California at Santa Barbara. (WILLIAM I. ROBINSON “Militarised accumulation: the global war economy” accessed online 9/16/2021 <https://arena.org.au/global-capitalist-crisis-deadlier-than-coronavirus-part-ii/>)

Militarised accumulation: the global war economy Beyond financial speculation, debt-driven growth, and pillaging state finances, the transnational capitalist class (TCC) turned to another mechanism to sustain accumulation in the face of stagnation, what I have termed militarised accumulation. Savage global inequalities are politically explosive and to the extent that the system is simply unable to reverse them or to incorporate surplus humanity it turns to ever more violent forms of containment to manage immiserated populations. As popular discontent has spread in recent years, the dominant groups have imposed systems of mass social control, repression and warfare—from mass incarceration to deadly new modalities of policing and omnipresent systems of state and private surveillance—to contain the actual and the potential rebellion of the global working class and surplus humanity. Militarised accumulation refers to how the global economy is becoming ever more dependent on the development and deployment of systems of warfare, social control and repression, apart from political considerations, simply as a means of making profit and continuing to accumulate capital in the face of stagnation. As the crisis intensifies, militarised accumulation may take over as prime driver of the global economy. The so-called wars on drugs and terrorism, the undeclared wars on immigrants, refugees and gangs (and poor, dark-skinned and working-class youth more generally), the construction of border walls, immigration detention centres, prison-industrial complexes and systems of mass surveillance, and the spread of private security-guard and mercenary companies have all become major sources of profit-making and they will become more important to the system as economic depression sets in. The events of September 11, 2001, marked the start of an era of permanent global war in which logistics, warfare, intelligence, repression, surveillance and even military personnel are more and more the privatised domain of transnational capital. Criminalisation of surplus humanity activates state-sanctioned repression, opening up new profit-making opportunities for the TCC. The Pentagon budget increased 91 per cent in real terms between 1998 and 2011, while worldwide, total defence outlays grew by 50 per cent from 2006 to 2015, from $1.4 trillion to $2.03 trillion, some 3 per cent of gross world product, although this figure does not take into account hundreds of billions of dollars in ‘homeland security’ spending. In the decade from 2001 to 2011 military-industry profits nearly quadrupled. Led by the United States as the predominant world power, military expansion in different countries has taken place through parallel, and often conflictive, processes, yet all show the same relationship between state militarisation and global capital accumulation. But militarised accumulation involves vastly more than activities generated by state military budgets. There are immense sums involved in state spending and private corporate accumulation through militarisation and other forms of generating profit through repressive social control that do not involve militarisation per se. The various wars, conflicts, and campaigns of social control and repression around the world involve the fusion of private accumulation with state militarisation. In this relationship, the state facilitates the expansion of opportunities for private capital to accumulate through militarisation, such as by facilitating global weapons sales by military-industrial-security firms, the amounts of which have reached unprecedented levels. Global weapons sales by the top 100 weapons manufacturers and military service companies increased by 38 per cent between 2002 and 2016. Private military and security firms have proliferated worldwide and their deployment is not limited to the major conflict zones in the Middle East, South Asia and Africa. In his study Corporate Warriors, P. W. Singer documents how private military forces (PMFs) have come to play an ever more central role in military conflicts and wars. Beyond the many based in the United States, PMFs come from numerous countries around the world, including Russia, South Africa, Colombia, Mexico, India, the EU countries and Israel. PMF clients include states, corporations, landowners, non-governmental organisations, and even the Colombian and Mexican drug cartels. By 2018, private military companies employed some 15 million people around the world, deploying forces to guard corporate property, provide personal security for TCC executives and their families, collect data, conduct police, paramilitary, counterinsurgency and surveillance operations, carry out mass crowd control and repression of protesters, manage prisons, run private detention and interrogation facilities, and participate in outright warfare. In addition, there were an outstanding 20 million private security workers worldwide in 2017, and the industry was expected to be worth over $220 billion by 2020. In half of the world’s countries, private security agents outnumber police officers. Meanwhile, criminalisation of the poor, the racially oppressed, immigrants, refugees and other vulnerable communities activates ‘legitimate’ state repression to enforce the accumulation of capital, whereby the state turns to private capital to carry out the repression of those criminalised. There has been a rapid increase in imprisonment in countries around the world, led by the United States, which has been exporting its own system of mass incarceration. The global prison population grew by 24 per cent from 2000 to 2018. This carceral state opens up enormous opportunities at multiple levels for militarised accumulation. Worldwide there were in the early twenty-first century some 200 privately operated prisons on all continents and many more ‘public–private partnerships’ that involved privatised prison services and other forms of for-profit custodial services such as privatised electronic-monitoring programs. The countries that were developing private prisons ranged from most member states of the EU to Israel, Russia, Thailand, Hong Kong, South Africa, New Zealand, Ecuador, Australia, Costa Rica, Chile, Peru, Brazil and Canada. Every phase in the war on migrants and refugees has become a wellspring of profit-making, from private, for-profit detention centres and the provision of services inside public detention centres such as healthcare, food and phone systems to other ancillary activities of the deportation regime, such as government contracting of private charter flights to ferry deportees back home and the equipping of armies of border agents. In the United States, the border-security industry was set to double in value, from $305 billion in 2011 to some $740 billion in 2023. In Europe, the budget for the EU public–private border-security agency, Frontex, increased a whopping 3688 per cent between 2005 and 2016, while the European border-security market was expected to nearly double, from some $18 billion in 2015 to approximately $34 billion in 2022. When the health emergency comes to an end we may be left with a global economy even more dependent on this militarised accumulation than before the virus hit, and with the threat that the ruling groups will turn to war. Historically, wars have pulled the capitalist system out of crisis and have also served to deflect attention from political tensions and problems of legitimacy.

#### the Alt solves war---changes calculi that enable conflict.

Wills et al 20. Professor of History, Brooklyn College, CUNY. Joseph Entin, Professor of American Studies, Brooklyn College, CUNY. Richard Ohmann, Professor Emeritus of English, Wesleyan University. “’Resist, Rethink, and Restructure’: Teaching About Capitalism, War, and Empire in a Time of COVID-19.” Radical Teacher (117): 5-6. DOI: 10.5195/rt.2020.792

Moreover, endless spending on war has had dire consequences for those living within the United States and its territories. With monopoly capitalists, systems integrators, and military-intelligence contractors exercising undue influence over both federal and state spending, the United States has created international chaos and a “Homeland Security Bubble” on the verge of collapse. With the Bush administration gutting the Federal Emergency Management Agency (FEMA) and increasing its military-surveillance-prison budget year-after-year, the world has watched in horror as the United States fails to protect people within its own borders, beginning with Hurricane Katrina and thereafter showing its inability to meet the challenges of the next in a series of climate disasters. As the ongoing deregulation of the financial services sector continued during the first decade of the 21st century, George W. Bush also called upon Americans to mortgage their futures on consumption as a patriotic duty. When combined with risky financial instruments, and billion-dollar markets opened up for small- and medium-sized “Homeland Security” providers in North America, Internet and other forms of consumption also created the context for a real-estate bubble that collapsed in 2006 and ushered in the Great Recession of 2008. To make U.S. war-making less visible as the Obama administration focused on restoring an economy teetering on the brink of another depression, drone strikes became more common even if spending on the military declined from a then-high of $824 billion in 2008 to $621 in 2016.9

Over the past twenty years, the response to every crisis, at both the federal as well as state and local levels, has consistently centered on funding for war, policing, and surveillance, tax cuts for the ultra-wealthy, and austerity programs that have eviscerated budgets for public health, transportation, education, and other social-essential services. The Trump administration has merely made things much, much worse: “re-branding” the United States from a mythological nation of immigrants who welcome all-comers to a walled society intolerant of anyone other than those who are white, fomenting what Americans have described under right-wing dictatorships as “death squads” (white nationalists, the police, the military, second amendment revisionists, and others) to engage in an all-out war against black and brown people, and advancing a more rabid doctrine of private property rights at the expense of Americans, the undocumented, the global population, and other “barriers” to expansion as the country plunges more deeply into the authoritarian state Trump and his enablers fetish, no matter the cost. The 25 May 2020 public lynching of George Floyd by members of the Minneapolis Police Department is symptomatic of a much longer history, one we desperately need to unpack, not only for those who already understand that this nation needs structural change, but also for those who still refuse to come to terms with the United States’ catastrophic trajectory.

Drawing on his 20-year experience in studying, writing, and teaching about war, Vine provides a thoughtful and comprehensive list of suggestions about how we might more effectively engage people from a variety of backgrounds, respecting those we meet in the classroom where we find them, then gently guiding them through the mythology, misinformation, and mystification of the post-9/11 rationale for militarization, and on to alternative visions of the future. In addition to the many proposals and resources he offers, Vine suggests that we need to show how much wars have cost, and the trade-offs of war spending, including comparisons of military spending versus spending on universal free education and the eradication of student debt. He additionally cautions that we need to focus on the system rather than the soldier, making capitalism, settler-colonialism, Native Americans and indigenous communities, people of color, U.S. territories and overseas colonies and military bases, and the human toll of war and empire visible in ways that expose militarization as neither natural nor inevitable no matter the time period. Employing intersectionality more broadly also allows us to make displacement, racism, sexism, and hypermasculinity more visible, along with the militarization of policing in communities of color and poor neighborhoods, along the U.S.-Mexican border, and within white supremacist militia movements. At the same time, it offers the opportunity to connect these phenomena to dissent and anti-war, civil rights, and other social movements focused on “climate justice, universal health care, labor, racial justice, gender equality, and LGBTQI+ rights.” Doing so will have the added benefit of countering the historical amnesia and clouds of forgetfulness that have infused education in the United States.

Much of this work can be done, Vine suggests, by assigning research projects focused on investigating the long arm of institutions involved in the military-industrial-academic-prison-surveillance complex, and by turning classrooms into “war clinics,” ones that take people out of the classroom to work with various groups, including but not limited to Code Pink, the Costs of War Project, the Institute for Policy Studies, veterans groups, and anti-recruitment/war/military base movements. We would also suggest that readers of Radical Teacher delve into Vine’s latest book—The United States of War: A Global History of America’s Conflicts, from Columbus to the Islamic State (University of California Press, 2020)—along with Daniel Immerwahr’s How to Hide an Empire: A Short History of the United States (Vintage, 2020), both excellent primers about how the United States—along with the global capital markets, multinational corporations, and international organizations it has long dominated—has deepened the integration of an increasingly globalized military-industrial-intelligence complex.

All of this might seem like a heavy lift, but as we know from our own experiences on campus and beyond it, those who embrace capitalism as an article of faith do not necessarily know what it means or implies. Once defined and unpacked, however, capitalism’s profit motive, insatiable appetite for expansion, and internal contradictions make clearer the ways in which inhabitants of the United States, particularly since World War II, have slowly but surely acquiesced to the “privatization and militarization of everything,” to the belief that the nation’s imperial ambitions are for the greater good of humanity, that the benefits and conveniences of surveillance technologies developed for the military (the computer, the Internet, GPS tracking, drones, and so on) outweigh the costs; that is, until they learn about the provenance of the U.S. command economy, examine the numbers, and realize that they can never again unsee the bedeviling trade-offs they have unwittingly sanctioned: warmaking for profit versus healthcare and education; resource extraction versus environmental protections; surveillance versus convenience; and the snare and delusion that technologies can solve our larger political, social, and economic problems versus actually tackling them through structural change. As sociologist Vincent Mosco observed after the dot.com bubble burst at the turn of the 21st century, “Myth is not a gloss on reality; it embodies its own reality. These views are especially difficult for people to swallow as the chorus grows for the view that we are entering a new age, a time so significant that it merits the conclusion that we have entered ‘the end of history.’” But he also asserted that such myths fail “to consider the potential for a profound contradiction between the idea of a liberal democracy and the growing control of the world’s political economy by the concentrated power of its largest businesses.”10 As the rest of the essays in this volume make clear, we may live in the present, but we carry our histories with us; and therefore need to confront those histories, make them more visible, if we hope to change course.

As a complement to Vine’s piece, William J. Astore shares his decades-long experiences as a retired lieutenant colonel, professor of history, academic administrator, author of books on Vietnam and the aerospace industry, and regular contributor to various publications, including TomDispatch.com, CounterPunch, and Truthout. His “Militarism and Education in America” makes another vital pedagogical intervention. Astore emphasizes the need for critical thinking about and resistance to what he describes as the “soft militarism” of American society, including but hardly limited to the commodification of an education “infused with militarism,” and a popular culture of films, literature, and performative acts that celebrate war and spectacular feats of violence. He also unveils many of the other ways in which the military influences education, including the hiring of retired generals and admirals to run universities “even though they have no experience in education,” military fly-overs at football games and other militaristic displays and celebrations, ROTC recruiting at high schools and on college campuses, funding to universities that push them to become “feeders to the military-industrial complex and the wider intelligence community,” pension plans heavily invested in military expansion, and every other act that sells education as a commodity “for private gain rather than a process of learning for the public good.” Among the antidotes he recommends, Astore suggests antiwar comic/graphic books that can reach wider audiences, “impact maps” that show the military suppliers who have entered states in which campus communities live, research into the “revolving door” between senior military officers and major defense contractors, and collaborative projects with organizations such as Veterans for Peace and About Face: Veterans Against the War.

As the rest of the essays in this volume make clear, we may live in the present, but we carry our histories with us; and therefore need to confront those histories, make them more visible, if we hope to change course.

### Adv 1

#### [2] — Countries turn inward — prefer post-COVID evidence.

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/)

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure.

I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do.

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

#### [3] — Empirics prove — downturn causes threat deflation.

Clary 15, PhD, Assistant Professor of Political Science @ the U of Albany. (Christopher, 04/21/15, “Economic Stress and International Cooperation: Evidence from International Rivalries”, *Massachusetts Institute of Technology Political Science Department*, Research Paper No. 2015-8; pg. 4)

Why Might Economic Crisis Cause Rivalry Termination?

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

## 1NR

### Adv 2

#### Their ev is fear-mongering — zero political setting, purpose, or capacity.

Wirtz 18 James J. Wirtz, National Security Affairs professor at the Naval Postgraduate School, former Director of the Global Center for Security Cooperation at the Defense Security Cooperation Agency, Political Science PhD from Colombia, internally citing Cyber War versus Cyber Realities, a book by Brandon Valeriano and Ryan C. Maness. [Cyber War or Monkey Business? International Journal of Intelligence and CounterIntelligence, 31(2), Taylor and Francis]//BPS

Between 4 and 7 September 2001, I attended the First Biennial Threat Reduction Conference that was sponsored by the Defense Threat Reduction Agency in Norfolk, Virginia. One of the panels featured a debate about the likelihood of mass casualty terrorism in the United States. One panelist asserted that such an event was unlikely—the Aum Shinrikyo sarin attack being a case in point. Although well-funded and left relatively unmolested by the authorities, cultists managed to kill only 13 people when they released a nerve agent in the Tokyo subway. Thus, inflicting mass casualties, even with sarin, was not easily accomplished. The threat of mass casualty terrorism was being exaggerated by scholars and pundits alike, the panelist asserted, urging the conferees to instead focus on plausible threats. The other panelist agreed that Aum Shinrikyo was inept but offered the obvious counterpoint: just because something has not occurred in the past does not guarantee that it will not occur in the future. The next morning, I contemplated this wonderfully “academic” debate on a pleasant United Airlines flight from Dulles to San Francisco. Soon afterwards it occurred to me that when it comes to picking an itinerary or making observations about the future, timing is everything. DOUBTING THE THREAT HYPE Brandon Valeriano and Ryan Maness acknowledge the “timing” problem inherent in their well-reasoned and empirically based assessment of state cyber conflicts that occurred between 2001 and 2011. Nevertheless, in their view, cyber war is mostly hype, created by over-imaginative academics and a cyber security industry ready to profit from cyber anxieties. By contrast, their analysis reveals that, at least in the period considered, cyber conflict was limited in both scope and severity, and was largely characterized by espionage or hooliganism (defacement of government websites) that generally produced no lasting impact. They note that in the vast majority of cases the incompetence of the victim or the aid of a witting or unwitting accomplice had facilitated penetration of some system. Here the 2015 hack of the U.S. Office of Personnel Management, which compromised the personal information of just about everyone who had ever applied for or possessed a U.S. security clearance, comes to mind. The Stuxnet attack against Iranian centrifuges, an outlier in their database, is used to illustrate their fundamental point: that the use of cyber warfare to inflict real damage is a rare and extraordinarily difficult endeavor that is probably within the technical reach of only a few states. Valeriano and Maness also back up their empirical observations with some theoretical musings about why the reality of cyber warfare is out of step with the cyber hype surrounding the issue. Zero-day exploits (using heretofore unknown system vulnerabilities) are fleeting in their efficacy; once revealed, they are quickly rectified. Because they begin to lose their effectiveness soon after they are employed, the tendency is to keep one’s powder dry, so to speak. Moreover, aggressive viruses can either propagate uncontrollably across the Internet or be repackaged and returned to the sender with unpredictable consequences. Because predicting the impact of more aggressive cyber attacks is difficult, states tend to exhibit restraint in their use of cyber weapons. Put somewhat differently, weapons that are likely to produce collateral damage or even fratricide are not readily embraced by military professionals. Although the authors do not mention it, attitudes toward the use of cyber weapons seem to mirror the history of biological warfare. Unleashing contagion is highly unpredictable; weapons with unknowable effects have little military utility. They might produce their intended impact, but there is no telling how far disease might spread. Because the same can be said for cyber weapons, restraint characterizes the way states engage in cyber conflict. Another theoretical insight offered by Valeriano and Maness is that cyber conflict is both profoundly political and strategic. Conflict is centered on a set of enduring rivalries: India and Pakistan, China and Japan, Russia and member states of the former Soviet Union, the United States and China, and the United States and Iran. With the exception of Stuxnet, these incidents tend to be limited, matching the “short-of-war” levels of acrimony present in these relationships. These observations are important because some policymakers and scholars tend to focus on what might happen in cyberspace, not why it might happen. For instance, it is theoretically possible to temporarily bring down the power grid in the United States, or to disrupt the stock market, or to cripple the banking system, creating significant disruption or even loss of life. But in focusing on these scenarios observers fail to stipulate the strategic purpose or the political setting that would motivate the launch of a highly devastating cyber attack. Admittedly, for those on the front lines of cyber defense, it might appear that the world has descended into a feral state of nature as they monitor thousands of attempts daily to hack into protected networks. Nevertheless, Valeriano and Maness correctly note that no one has yet died in a cyber attack, a requirement needed to turn an incident into a “war.” In a political and strategic sense, the world has not yet witnessed cyber war.

### T Per Se

#### It’s a distinction with a difference---‘rule of reason’ and ‘per se’ have precise meanings AND access literature with completely different base assumptions.

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

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

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

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

#### Per se is akin speed limit whereas the rule of reason is akin to weighing whether a driver drove unreasonably fast and if that had negative effects

Sucke 9, Associate Professor of Law @ U-Tenn (Maurice, “Does the Rule of Reason Violate the Rule of Law?,” UC Davis Law Review, Lexis)

But who has created this predicament? The Supreme Court. Over the past ninety years, the Court has supplied the Sherman Antitrust Act’s legal standards. In determining the legality of restraints of trade, the Supreme Court generally employs either a per se or rule-of-reason standard.10 Under the Court’s per se illegal rule, certain restraints of trade are deemed illegal without consideration of any defenses. These restraints are so likely to harm competition and to lack significant procompetitive benefits that, in the Court’s estimation, “they do not warrant the time and expense required for particularized inquiry into their effects.”11 Under the per se rule, once a plaintiff proves an agreement among competitors to engage in the prohibited conduct, the plaintiff wins.12 But the Court evaluates all other restraints under the rule of reason. This standard involves a flexible factual inquiry into a restraint’s overall competitive effect and “the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed.”13 The rule of reason also “varies in focus and detail depending on the nature of the agreement and market circumstances.”14 “Under this rule the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.”15 Despite its label, the rule of reason is not a directive defined ex ante (such as a speeding limit).16 Instead, the term embraces antitrust’s most vague and open-ended principles, making prospective compliance with its requirements exceedingly difficult.

**Per se is the only way to prohibit *practices***

Cooter 94 (Robert Cooter-Prof of Law, Boalt Hall, School of Law, University of California at Berkeley. EPSTEIN/TITLE VII SYMPOSIUM: “Market Affirmative Action,” 31 San Diego L. Rev. 133)

Although cartels are inherently unstable, the U.S. antitrust framework does not merely withhold enforcement from contracts to create cartels. In addition, the original U.S. legislation, which was enacted at the end of the nineteenth century, outlaws cartels and other "conspiracies against trade." 46 The courts have interpreted the law to **prohibit certain** collusive **practices ("per se prohibitions**"), such as retail price maintenance, regardless of whether collusion occurred in fact. 47 These prohibitions greatly increase the difficulty of sustaining a cartel. 48 Similarly, U.S. civil rights laws prohibit business practices involving "disparate treatment" of those persons belonging to any one or more protected classes. 49 The illegality of conducting certain business transactions with the intent to discriminate greatly increases the difficulties involved in explicit discrimination, especially in large organizations.

**The contrast is stark: per se is a bright line; rule of reason is a balancing test**

**Doherty 89** (Dennis O. Doherty, “Business Electronics Corp. V. Sharp Electronics Corp.: Monsanto's Progeny and the Congressional Proposal to Codify the Per Se Rule Against Vertical Price Fixing.,” 38 Cath. U.L. Rev. 963, 963-968, 1989)

A **per se rule** of **illegality** is generally a **conclusive presumption** that a **restraint** is **unreasonable**. 59 Courts apply the standard to conduct deemed to have a "pernicious" effect on competition, 60 that is, conduct that "almost always results in adverse competitive effects, and almost never is **justified** by business reasons." 61 The use of "almost" implies that the conduct may have procompetitive effects, but that collateral anticompetitive effects almost always outweigh these effects. The rationale for applying a **per se rule** is that it provides a "**bright line"** standard for the business and legal communities and results in administrative efficiency by deeming certain conduct illegal per se without proof of actual anticompetitive effects or injury. 62 A **rule of reason** standard, on the other hand, recognizes that certain restrictive conduct may promote economic efficiency or competition and attempts to **balance** these benefits against the **potential** **anticompetitive effects** of the **conduct** in order to determine whether the conduct is unreasonable. 63 The test, articulated by Justice Brandeis in Board of Trade of Chicago v. [\*971] United States, 64 requires a determination of whether the restraint merely regulates and thereby promotes competition, or whether it suppresses or destroys competition. 65 The typical **rule of reason** case requires a **complex** and time-consuming examination of the **specific conduct**, the product and geographic markets, the adverse and beneficial impact of this conduct on those markets, and the motives and justifications for the conduct. 66 Restraints that are not illegal per se are subjected to the rule of reason standard. A rule of reason action can be an extremely expensive process and is often difficult for a plaintiff to win. A per se standard avoids this costly fact-finding process because it requires proof only of the existence of the conduct.

#### the aff’s new legal principles are *already accounted for*

Hovenkamp, Assistant Professor, USC Gould School of Law, ‘19

(Erik, “Platform Antitrust,” 44 Iowa J. Corp. L. 713)

The question of law addressed in AmEx III is extremely broad in scope, as it bears on the application of antitrust law to all kinds of restrictive practices that might be undertaken by transaction platforms. As noted above, while facially a holding about market definition, the Supreme Court's decision is in fact a major alteration of the rule of reason's burden shifting framework. The Court's analysis was guided principally by a number of antitrust academics that focus most of their attention on a simple point-in effect that "both sides matter," and that it would be inappropriate to focus on one side myopically. 26 While correct, this point was actually never in dispute. Even the district court, whose market definition was formally limited to the merchant side of the market, 27 expressly emphasized the importance of accounting for the market's two-sidedness. 28 Indeed, its analysis gives substantial attention to cardholders, and it even concluded that they were likely injured in addition to merchants. 2 9 Despite this, the AmEx III majority chastised the district court's approach as "looking at only one side of the platform in isolation."' 30 It is indeed true that a platform's conduct may have countervailing effects within the two sides, and that this requires courts to take the market's two-sidedness into account. 31 But it does not follow that the appropriate way to deal with this is to require a plaintiff to "net out" all such considerations merely in order to support its prima facie case-before the defendant has substantiated its asserted efficiency defense. This approach is also a substantial deviation from precedent. Most difficult cases evaluated under the rule of reason involve potential countervailing pro- and anticompetitive effects. 32 And the courts developed a multi-stage burden shifting framework precisely to deal with this difficulty. By construction, this framework contemplates that a plaintiff can carry its initial burden without having shown that the defendant's conduct is definitively anticompetitive on the whole; that is why it is merely the first stage among several. Far from providing any necessary reform, the AmEx III decision merely developed a "law of the horse": a needless construction of new legal principles when the old ones would do just fine (and likely much better).33 It is true that platform economics has important implications for antitrust policy and practice; this Article gives substantial attention to that fact. But such considerations can already be accounted for-both more practicably and more reliably-within the rule of reason's existing structure. To that end, a much better approach would be to maintain careful consideration of platform economics throughout the established burden shifting framework, which is designed to work through complex cases in incremental steps and to cast light on countervailing effects through an efficient allocation of burdens.

#### That means it doesn’t expand

Clements 08 – Judge, Virginia Appeals Court

Jean Harrison Clements, Wise v. Velazquez, 2008 Va. App. LEXIS 489, Court of Appeals of Virginia, November 2008, LexisNexis

Discounting the terms of the award subject entirely to father's discretion, it is clear that the trial court awarded grandmother essentially the same visitation it had previously awarded her in the July 30, 2004 consent order--a minimum each month of two full days--except that father now had complete discretionary control over when the two days of visitation would occur since the visitation was no longer required to be on Saturdays. Thus, in light of the fact that the current visitation order provides the same amount of visitation that the original consent order did, and actually provides father more discretionary control over that visitation, we cannot say that the trial court's award of visitation to grandmother constitutes an expansion of the scope of visitation beyond what was originally agreed upon by the parties and ordered by the court in the July 30, 2004 consent visitation order.

#### Per se expands the scope

Richman 84 (Daniel C. Richman-J.D., Yale University, 1984. “Antitrust Standing, Antitrust Injury, and the Per Se Standard” , *The Yale Law Journal*, Vol. 93: 1309, 1984, Hein accessed online via KU Libraries, date accessed 9/4/21)

As merely a "special case" of the rule of reason,' the per se standard is not intended to condemn conduct that the rule of reason would not bar. Nonetheless, the per se rules have often operated to expand the scope of antitrust liability.15 In part, this expansion has been caused by the questionable validity of the presumptions made by certain per se rules. Expectations that vertical price fixing' 6 and certain kinds of boycotts' will in variably disrupt competition may well be unfounded. The leverage theory, which underlies the per se rule against tying arrangements and argues that a firm can use its power in one market to force its way into another market, has been especially criticized."8 By freezing certain theories into mechanically applied rules and by obstructing further analysis, the per se standard may condemn conduct that would have passed muster under the rule of reason. 9 Even if the government were the sole enforcer of the antitrust laws, this overbreadth would impose a cost on defendants in the form of increased liability, and on society by deterring socially efficient activities. The existence of the private action for treble damages, however, has created a second, less noticed, cost of the per se standard.

**Our interpretation centers the affirmative action in contrast to Chicago School rolling back antitrust**

**Doherty 89** (Dennis O. Doherty, “Business Electronics Corp. V. Sharp Electronics Corp.: Monsanto's Progeny and the Congressional Proposal to Codify the Per Se Rule Against Vertical Price Fixing.,” 38 Cath. U.L. Rev. 963, 963-968, 1989)

Antitrust laws protect competition, not competitors. 1 Protection of vigorous price competition as a means of promoting consumer welfare 2 and economic efficiency has always been at the heart of this maxim. Section 1 of the **Sherman** Antitrust Act **proscribes attempts** to unreasonably interfere with the free-market forces that **determine prices**. 3 In 1911, the United States Supreme Court first established that vertical price fixing was just such an unreasonable restraint of trade. 4 Although Congress permitted a "fair trade" exemption to the Sherman Act for a time, 5 in the ensuing seventy-eight years the Court reaffirmed the per se proscription against vertical price fixing in every case in which the issue arose. 6 Recently, however, the executive and judicial branches of the Federal Government have challenged this absolute proscription against vertical price fixing as potentially creating market imperfections and discouraging efficient economic behavior. 7 Theorists from the "Chicago School" of antitrust law propounded an [\*964] "**efficiency" theory** that urges the **elimination** of the **per se rule** because vertical price fixing may promote efficiency and competition. 8 The Chicago School 9 conflicts with traditional antitrust theory, which supports per se prohibitions against vertical price fixing and advocates the view that reasonable and vigorous price competition is more economically efficient and beneficial. 10 The Chicago School's efficiency theory, however, has gained acceptance in modern legal circles 11 and has created a movement to overturn the precedent establishing vertical price fixing as illegal per se. The efficiency theories of the Chicago School gained powerful proponents in the Reagan administration. 12 Despite empirical studies indicating the adverse economic effects of vertical price fixing, 13 the Reagan administration [\*965] used the efficiency theory to defend its attempt to overturn the absolute proscription against this type of conduct. 14 Two developments evidenced the administration's effort to eliminate or limit the application of the per se standard. First, the United States Department of Justice (DOJ) established a policy to intervene on behalf of defendants in private vertical price fixing actions. 15 Second, the DOJ effectively abdicated responsibility for government enforcement of the vertical price fixing laws 16 by ignoring or distinguishing the per se rule. 17 The judiciary's view of vertical restraints also took on a decidedly Chicago School flavor. The Supreme Court's decision in Continental T.V., Inc. v. GTE Sylvania, Inc., 18 which applied the rule of reason to vertical nonprice restraints, evidenced the efficiency theory's impact on the legal treatment of vertical restraints. 19 Seven years later, in Monsanto Co. v. Spray-Rite Service Corp., 20 the Court relied on the **efficiency rationale** enunciated in Sylvania 21 [\*966] to **narrow** the **breadth** of the **absolute prohibition** against vertical price fixing by imposing a **greater burden of proof** on **plaintiffs**. 22 This new evidentiary standard raised questions about the quantum of proof needed to prove a violation of the rule against vertical price fixing and consequently created confusion in the lower courts. 23 Four years later, Business Electronics Corp. v. Sharp Electronics Corp. 24 answered the question as to what quantum of evidence satisfied the Monsanto evidentiary standard. Sharp Electronics Corporation (Sharp), a manufacturer of electronic products, granted Business Electronics Corporation (BEC), a discount retailer of electronic products, the sole Sharp dealership in the Houston area in 1968. 25 After disagreements between Sharp and BEC over sales quotas and discounting, Sharp granted a second dealership in the Houston area to Hartwell. 26 Upset about BEC's discounting and alleged "free riding" 27 practices, Hartwell approached BEC in an effort to convince BEC to end these practices and also complained to Sharp. 28 With no resolution forthcoming, Hartwell presented an ultimatum to Sharp in June 1973 threatening to end their relationship unless Sharp terminated BEC. 29 Sharp did so, 30 and BEC brought suit alleging that Sharp and Hartwell had conspired to terminate BEC in violation of section 1 of the Sherman Act. 31 Sharp contended that it terminated BEC because of poor sales performance. 32 BEC countered that its termination resulted from an agreement between [\*967] Sharp and Hartwell to eliminate price competition. 33 The case went to the jury with instructions that BEC's termination would violate section 1 of the Sherman Act if Sharp and Hartwell had agreed to terminate BEC because of its price cutting policy. 34 The jury found in favor of BEC. 35 On appeal, the United States Court of Appeals for the Fifth Circuit reversed and remanded. 36 The Fifth Circuit found error in the trial court's jury instruction that a finding of an agreement between Sharp and Hartwell to terminate BEC for its price cutting established a per se violation of the Sherman Act. 37 Holding that a manufacturer's termination of a dealer would be per se illegal only if effected pursuant to a price maintenance agreement with another dealer, 38 the court of appeals concluded that the evidence might be sufficient to find that Sharp terminated BEC pursuant to such a price agreement, and remanded the case for further proceedings consistent with its opinion. 39 However, in a short concurring opinion, one of the circuit judges invited the United States Supreme Court to address the confusing and uncertain area of vertical restraints. 40 When BEC appealed, the Supreme Court granted certiorari. 41 The Supreme Court affirmed the Fifth Circuit's decision, holding that a vertical restraint of trade was not a per se violation under section 1 of the Sherman Act unless it included an agreement on prices or price levels. 42 Writing for the majority, Justice Scalia reasoned that **vertical restraints** may promote economic efficiency and competition, 43 **and concluded** that economic analysis supported the view that the **appropriate standard** for **non-price restraints** was the **rule of reason**. 44 The Court again used the theoretical efficiencies and procompetitive benefits of vertical restraints to narrow the absolute prohibition against vertical price fixing. 45 The Court would not [\*968] permit a jury to infer a vertical price fixing agreement merely from a dealer's termination following the complaints of a competing dealer. 46 Instead, the Court held that the plaintiff must present sufficient direct or circumstantial evidence to prove the existence of an explicit price agreement between the manufacturer and the complaining dealer. 47

#### That’s the only way to make “prohibitions” matter

Kaplow 87 (Louis KAPLOW-Professor, Harvard Law School; Faculty Research Fellow, National Bureau of Economic Research. “ANTITRUST, LAW & ECONOMICS, AND THE COURTS” , LAW AND CONTEMPORARY PROBLEMS Vol 50., No. 4 , <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3926&context=lcp> , Autumn 1987, date accessed 9/7/21)

Robert Bork, who perhaps devotes the most attention to the issue, has recognized that "competition" has meanings in regular usage other than the one he advocates.it 5 He claims, however, that various reasons justify his interpretation and that his reading "[s]urely . . . is consistent with everyday speech."i1I Yet because most who speak on the subject do not even understand what Bork and other Chicago School adherents mean by efficiency, the notion that theirs is one of the common uses of "competition" is problematic. Although hardly decisive, standard dictionary definitions of "competition" offer as a synonym "rivalry," the Chicago School's excluded meaning, and all the definitions offered refer to the rivalry concept, none admitting the Chicago School's meaning.' 52 Not only does the Chicago School economic interpretation directly contradict common usage, 153 it also is inconsistent with the usage of the term by economists, who do mean rivalry rather than economic efficiency when they refer to "competition." The standard definitions of perfect competition and monopolistic competition, both of which stress rivalry,' 54 make this fact apparent. Moreover, economists have no reason to define "competition" as "efficiency" because they have explicitly adopted separate terms for the two concepts. Economic theorists go about proving that competition produces efficiency in some circumstances and inefficiency in others; the language by which they describe their efforts clearly reveals that they use "competition" to describe the process of interaction (existence of rivalry, specified in various ways) and "efficiency" to characterize the properties of the result of many processes, of which competition is only one.' 55 It is clear that "competition" means economic efficiency in the minds of a few antitrust advocates and no one else. 156

[[BEGIN FOOTNOTE 156]]

156. Robert Bork goes so far as to argue that to the extent Congress meant something other than "what we usually think of as competition"-i.e., if Congress meant rivalry and not efficiency-it constitutes "a fraud upon the electorate." Bork, supra note 50, at 9 (emphasis added).

Another problem is that the Chicago School interpretation of "competition," when combined with their view that many practices cited in those sections of the antitrust laws referring to injury to competition are never anticompetitive in the sense of impairing efficiency, essentially reads much of the antitrust prohibitions out of existence. See supra at 208-09; Fox, supra note 77, at 572-73. Although this is defended as the only way to make sense of the provisions, such a conflict would not arise if "competition" were read in a manner more in accord with common usage and the legislative history of the provisions.

[[END FOOTNOTE 156]]