# UK---Round 1---vs. Emory HM

## 1AC

### 1AC---Plan

#### Plan: The United States federal government should prohibit anticompetitive business practices in the delegation of generic Top-Level Domains by the private sector.

### 1AC---Internet Freedom ADV

#### Advantage One is Internet Freedom---

#### ICANN, the body governing allocation of internet domain names, shifted its allocation of generic Top-Level Domains, or gTLDs, to allow companies to buy domain names that mirror their trademarks, allowing explicitly anti-competitive deal-making

Nelson Drake 18, J.D. from American University’s Washington College of Law and a B.A. in Political Science from Georgia College and State University, “Going Rogue: The National Telecommunications And Information Administration's Transfer Of IANA Naming Functions To ICANN”, 3 Admin. L. Rev. Accord 83, 2018, lexis

II. THE IANA TRANSFER AND WHY IT MATTERS

As noted above, one of ICANN's powers with respect to the DNS and the IANA functions is its ability to adjudicate disputes about the existence of trademark rights in a domain name via the UDRP. This power was relatively uncontroversial because the UDRP's standard for determining the existence of trademark rights mirrored the USPTO's. However, **ICANN's introduction of its new TLD program has created new problems** because it permits trademark owners to purchase TLDs that mirror their trademarks. This is an issue because the prevailing policy of both ICANN and the USPTO was that TLDs are, generally, generic. 69 For example, under the Legal Rights Objections (LRO) period of the TLD application process, most trademark owners are unable to prevent the delegation of a TLD that matches their trademark. 70 These LRO decisions have since been supported by courts intent on maintaining the current policy. As a result, **plaintiffs have been unable to successfully bring a case against ICANN regarding the delegations of gTLDs.**

A. Image Online Design and the Trademark Perspective

The non-trademarkability of gTLDs was a primary issue in the case *Image Online Design, Inc. v. Internet Corp. for Assigned Names and Nos.*, which revolved around the delegation of the ".web" gTLD. 71 Image Online Design (IOD) is the operator of a registry for the ".web" TLD on a non-authoritative DNS, which means that it is not readily searchable by users without preconfiguring  [\*95]  their web browser. 72 However, this reconfiguration can be problematic because alternative DNS roots are not authoritative for ICANN-delegated TLDs, which could result in domain names that are identical to those on ICANN's root and a "naming collision" as discussed in Part I. 73

IOD's claim stemmed from the fact that ICANN did not consider IOD's 2000 application, and when ICANN moved forward with the ".web" delegation process, IOD sued for trademark infringement under their registered and common law ".web" trademarks. 74 In its defense, ICANN argued that: (1) the .web would not cause confusion because TLD registry services are a different class of goods than those protected by IOD's registrations and (2) that TLD's are not subject to trademark protection because they are generic. 75 Ultimately, the court ruled in favor of ICANN and summarily dismissed all of IOD's trademark claims. 76

The IOD's claim under 15 U.S.C. § 1125(a)(1) 77 and its common law trademark was the most important part of the court's ruling. In its opinion, the court reiterated a long-held standard of trademark law that **"TLDs are not generally source indicators."** 78 The court further supported its ruling by citing the official policy of the USPTO that states "[g]enerally, when a trademark . . . is composed, in whole or in part, of a domain name, neither the beginning of the URL ('http://www.') nor the TLD have any source-indicating significance." 79 The IOD attempted to refute this portion of the ruling by pointing out that the USPTO altered its position to require consideration of "any potential source-indicating function of the TLD. 80 In response, the court stated that the **only marks available for protection as a TLD are famous**  [\*96]  **marks**, such as .apple for Apple, Inc., and that some marks would continue to remain generic even if they are famous. 81 In the court's view, ".web" fell under the latter category because it would indicate a genus of a type of website available on the World Wide Web and not a particular company or manufacturer. 82

Because of the court's decision in Image Online Design, **corporate stakeholders are susceptible to competitive harm if ICANN uses its powers unfairly**, particularly if the harm is propagated at the behest of another stakeholder. The effects of this limitation are particularly acute considering the ICANN's own regulatory policies, which take a similar position on the existence of trademark rights in gTLDs moving forward. 83 Both the UDRP and LRO, ICANN's current dispute resolution policies intended to protect the rights of trademark owners, reiterate the common proposition that gTLDs are generally ineligible for trademark protection. 84 However, both panels governing these decisions have articulated that this general rule may have an exception. 85

While this may indicate that the perception that gTLDs are generic is shifting, in application both policies strongly indicate that trademarkability is the exception, not the rule. The LRO decisions, for instance, demonstrate that to successfully assert legal rights in a gTLD, the trademark owner must either be particularly famous or be able to point to facts indicating bad faith on the part of the applicant. 86 While the UDRP has indicated a departure from this rule, panel decisions are **not subject to precedent.** This means that trademark owners should not expect any consistency between panel decisions, and that these decisions will be extremely fact specific.

B. The Consequences of Image Online Design

The presumably generic gTLDs, the uncertainty of how this rule will be applied, and the amount of fame a trademark owner must possess to state a claim have **created an environment where only the largest private stakeholders can successfully assert a violation** of their trademark rights against ICANN in court. Even then, the success of these claims remains in doubt, especially if ICANN's decisionmaking becomes clouded by undue influence from other stakeholders. For example, in a matter involving Amazon, [\*97]  ICANN denied delegation of the ".amazon" gTLD for reasons of "public policy" following strong objections by Brazil. 87 After failing to have the decision changed using ICANN's appeal processes, Amazon challenged ICANN's decision and requested an independent review that found **ICANN caved to pressure from the Brazilian government and**, more concerningly, attempted to abuse its internal processes to the detriment of Amazon. 88

#### Anti-competitive allocation of gTLDs exponentially increases internet privatization and decks internet freedom

Daniela Spencer 14, J.D. candidate at the UC Berkeley School of Law, “Trademark Law: Much Ado About Nothing: ICANN's New gTLDs,” 2014, lexis

C. ICANN's Section 1 Antitrust Violations

Since there are currently a small number of gTLDs, critics have alleged that ICANN is hindering competition not only among registries, but also among consumers. 120 Since ICANN has unlimited contracts with registries, critics allege that ICANN is assisting in an agreement amongst registries to restrain trade, which is illegal under Section 1 of the Sherman Act. 121 Consumers have limited choices among existing registries, especially since many of them are not open to the public. As such, they are limited to using registries like VeriSign, which are well known and open to the public.

As of September 2013, fifty-three percent of all registered websites had the gTLD of .com, owned by VeriSign. The next highest percentage of websites (5.7 percent) were registered under the TLD of .net, which VeriSign  [\*880]  also owns. 122 In 2006, the Ninth Circuit found that ICANN awarded VeriSign the contract for .com without any bidding. 123 As such, one private company is essentially controlling close to sixty percent of the market with collusion from ICANN. 124

There is no indication that there are any alternative products or possible substitutes to the favorite .com gTLD. 125 Additionally, unlike in a standard market, where the product is relatively elastic and responds to changes in price, in this system, sellers have little incentive to offer low prices in a market where demand is inelastic.126 ICANN has no incentive to discourage or prevent individual registry operators like VeriSign from charging high prices because consumers have nowhere else to turn. In the last few years, the demand for .com has increased, as demonstrated by its growing percentage of use while the prices have stayed stable. 127

 [\*881]  However, despite its prima facie appearance of restricting competition, the agreement between VeriSign and ICANN does not actually restrain commerce in the relevant market. Consumers do not choose .com due to a conspiracy between VeriSign and ICANN to reduce access to other gTLDs, but rather due to outside pressures to use .com. 128 As such, even the advent of hundreds of new gTLDs would not produce an appreciable or effective increase in competition. Despite its claim, ICANN's new program probably will not increase competition in any meaningful way. 129

D. Potential for Other Antitrust Violations Due to gTLDs

In a hearing to the House of Representatives in 2011, Federal Trade Commission chairman Jon Leibowitz said, "We worry that if ICANN goes broadly and doesn't ensure accuracy, it's going to be exponentially worse. There is going to be a burden on businesses, which will have to defensively register. We see a lot of cost but not a lot of benefit."130 Currently, there are a number of worries that big name players will monopolize the Internet. Donuts, Inc. 131 has applied for 307 gTLDs, Neustar has applied for 234, Google has applied for 101, and Amazon has applied for seventy-eight. 132 John M. Simpson, the director of Consumer Watchdog's Privacy Project, wrote to the chairman of Senate Commerce, Science, and Transportation Committee:

If these applications are granted, large parts of the internet would be privatised. It is one thing to own a domain associated with your brand, but it is a huge problem to take control of generic strings. Both Google and Amazon are already dominant players on the internet. Allowing them further control by buying generic domain [\*882] strings would threaten the free and open Internet that consumers rely upon. 133

#### Extinction---internet freedom solves every impact

Tony Blair 21, Former prime minister of Great Britain and founder and executive chairman of the Tony Blair Institute for Global Change, “The Progressive Case for Universal Internet Access: How to Close the Digital Divide by 2030,” 3/2/21, https://institute.global/policy/progressive-case-universal-internet-access-how-close-digital-divide-2030

Today, the internet is the beating heart of the world. And just as the roads, railways and canals provided the arteries for commerce in the Industrial Revolution, today’s network infrastructure is the circulatory system on which much of modern life depends. Without it, the ramifications of Covid-19 would have been far more severe.

That we have been able to use the internet to mitigate the impact of the pandemic is a small relief, but the Covid-19 crisis has emphasised the importance of everyone being connected in the future. Eradicating extreme poverty, solving the global education crisis, building better health-care systems and responding to pandemics effectively all require connectivity. For low-income countries, being largely excluded from the exponential potential of the internet means that they cannot transform their nations. It is extraordinary that today half the world remains offline.

Closing the digital divide by 2030 should be one of the primary global policy priorities. Accelerating internet expansion will drive economic growth and enable progress and – as this report from my Institute demonstrates – the benefits of investment vastly offset the costs. It outlines the urgent action required on stimulating demand, regulatory reform and greater global coordination, and how a new digital coalition needs to be formed to transform opportunity and access for billions of people.

But prioritising internet access is not only about poverty alleviation. During these past years of isolationist and unilateralist policymaking by Western governments, China has been taking a more dominant role in developing economies. It has been investing in digital hardware infrastructure, taking an active role within international bodies and influencing the standards and values that underpin the internet.

This requires strong global leadership. Collaborating with China, as well as competing. Stewarding the right global coalitions around investment to achieve universal internet access. Leadership with the vision, commitment and confidence to establish the internet for a prosperous and inclusive global society.

We’ve lost our way on this in recent years, but an open and connected world will be the lifeblood for our future growth. It’s time that we make it a reality.

#### Corporate control undermines internet connectivity and interdependence

Julius Genachowski & Lee C. Bollinger 13, Former Chairman of the U.S. Federal Communications Commission; President of Columbia University, “The Plot to Block Internet Freedom,” Foreign Policy, 4/16/13, https://foreignpolicy.com/2013/04/16/the-plot-to-block-internet-freedom/

The Internet has created an extraordinary new democratic forum for people around the world to express their opinions. It is revolutionizing global access to information: Today, more than 1 billion people worldwide have access to the Internet, and at current growth rates, 5 billion people — about 70 percent of the world’s population — will be connected in five years.

But this growth trajectory is not inevitable, and threats are mounting to the global spread of an open and truly "worldwide" web. The expansion of the open Internet must be allowed to continue: The mobile and social media revolutions are critical not only for democratic institutions’ ability to solve the collective problems of a shrinking world, but also to a dynamic and innovative global economy that depends on financial transparency and the free flow of information.

The threats to the open Internet were on stark display at last December’s World Conference on International Telecommunications in Dubai, where the United States fought attempts by a number of countries — including Russia, China, and Saudi Arabia — to give a U.N. organization, the International Telecommunication Union (ITU), new regulatory authority over the Internet. Ultimately, over the objection of the United States and many others, 89 countries voted to approve a treaty that could strengthen the power of governments to control online content and deter broadband deployment.

In Dubai, two deeply worrisome trends came to a head.

First, we see that the Arab Spring and similar events have awakened nondemocratic governments to the danger that the Internet poses to their regimes. In Dubai, they pushed for a treaty that would give the ITU’s imprimatur to governments’ blocking or favoring of online content under the guise of preventing spam and increasing network security. Authoritarian countries’ real goal is to legitimize content regulation, opening the door for governments to block any content they do not like, such as political speech.

Second, the basic commercial model underlying the open Internet is also under threat. In particular, some proposals, like the one made last year by major European network operators, would change the ground rules for payments for transferring Internet content. One species of these proposals is called "sender pays" or "sending party pays." Since the beginning of the Internet, content creators — individuals, news outlets, search engines, social media sites — have been able to make their content available to Internet users without paying a fee to Internet service providers. A sender-pays rule would change that, empowering governments to require Internet content creators to pay a fee to connect with an end user in that country.

Sender pays may look merely like a commercial issue, a different way to divide the pie. And proponents of sender pays and similar changes claim they would benefit Internet deployment and Internet users. But the opposite is true: If a country imposed a payment requirement, content creators would be less likely to serve that country. The loss of content would make the Internet less attractive and would lessen demand for the deployment of Internet infrastructure in that country.

Repeat the process in a few more countries, and the growth of global connectivity — as well as its attendant benefits for democracy — would slow dramatically. So too would the benefits accruing to the global economy. Without continuing improvements in transparency and information sharing, the innovation that springs from new commercial ideas and creative breakthroughs is sure to be severely inhibited.

To their credit, American Internet service providers have joined with the broader U.S. technology industry, civil society, and others in opposing these changes. Together, we were able to win the battle in Dubai over sender pays, but we have not yet won the war. Issues affecting global Internet openness, broadband deployment, and free speech will return in upcoming international forums, including an important meeting in Geneva in May, the World Telecommunication/ICT Policy Forum.

The massive investment in wired and wireless broadband infrastructure in the United States demonstrates that preserving an open Internet is completely compatible with broadband deployment. According to a recent UBS report, annual wireless capital investment in the United States increased 40 percent from 2009 to 2012, while investment in the rest of the world has barely inched upward. And according to the Information Technology and Innovation Foundation, more fiber-optic cable was laid in the United States in 2011 and 2012 than in any year since 2000, and 15 percent more than in Europe.

All Internet users lose something when some countries are cut off from the World Wide Web. Each person who is unable to connect to the Internet diminishes our own access to information. We become less able to understand the world and formulate policies to respond to our shrinking planet. Conversely, we gain a richer understanding of global events as more people connect around the world, and those societies nurturing nascent democracy movements become more familiar with America’s traditions of free speech and pluralism.

That’s why we believe that the Internet should remain free of gatekeepers and that no entity — public or private — should be able to pick and choose the information web users can receive. That is a principle the United States adopted in the Federal Communications Commission’s 2010 Open Internet Order. And it’s why we are deeply concerned about arguments by some in the United States that broadband providers should be able to block, edit, or favor Internet traffic that travels over their networks, or adopt economic models similar to international sender pays.

We must preserve the Internet as the most open and robust platform for the free exchange of information ever devised. Keeping the Internet open is perhaps the most important free speech issue of our time.

#### Internet connectivity prevents global war

Dr. Asma Iqbal & Muhammad Rafi Khan 21, Assistant Professor of Political Science, Government Graduate College for Women Samanabad; Lecturer/Research Officer at Minhaj University Lahore, “Power and Interdependence with Internet,” Pakistan Social Sciences Review, Vol. 5, No. 1, pgs. 1142-1153, 3/30/21, https://pssr.org.pk/issues/v5/1/power-and-interdependence-with-internet.pdf

Interdependence

Reflecting a softer image of power and extending its domains to global social structures, interdependence is a multidimensional term, that gained traction with the emergence of the concept of globalization. It refers to a state, or a condition, that compels two or more actors to seek cooperation. For such cooperation, the absence of enmity is not a requirement. There are many examples of interdependence between fierce enemies, like Pakistan and India, China and India, and Russia and the US. The goals of this interdependence are to fulfill domestic and international deficiencies for national interest, and sometimes, international interest. The presence of Russia and the US in the Security Council, where both take decisions together in international interest, and can also veto any move for their own or their ally’s national interest.

The world today has mostly been eradicating the threats of war and becoming increasingly interdependent. Their actions are mostly based on the cost- benefit ratio. For instance, if a state must choose between war and trade and applying the statistical models for a complete understanding of both before deciding, the trade will supersede in choice over the war in most cases. That is why even enemies are doing trade, while the war of words also gains traction. This is because the cost of war is higher, and the benefit of trade is higher. The democratic peace theory and the McDonald Peace theory exist in almost the same domains, where political relationship and economic connectivity, both are eradicating scenarios of a possible war.

As an effective tool of soft power, the interdependence has shattered the isolation of introverted peoples and merged them with vibrant, dynamic, and socially linked societies. It relies on multidimensional mediums to avoid conflicts, increase connectivity, and inculcates multilateralism. Among these, the Internet is the most obvious, effective and resourceful medium that “frees us from geographic fetters and brings us together in topic-based communities that are not tied down to any specific place. Ours is a networked, globalized society connected by new technologies” (Dentzel, 2014).

The internet, coinciding with matters related to power, is a world of unknown depth. It is the most effective tool of connectivity in this modern world. It can also be designated as a doorway between traditional unilaterality and a multilateral world. It boosted interdependence and opened new horizons of connectivity and cooperation. Therefore, the virtual age has cut the distances short and challenged the hardships of the physical world with a counterbalance, depicted in the figure below.

#### Internet privatization is increasing and displaces responsive and legitimate governance

Marietje Schaake 21, International policy director at Stanford University’s Cyber Policy Center, “Big Tech is trying to take governments’ policy role,” 1/27/21, https://www.ft.com/content/7f85a5ff-326f-490c-9873-013527c19b8f

Both events demonstrate an ever-growing trend: technology companies think they should be deciding public policy, not governments.

It is not just social media platforms, either. These days, all kinds of businesses set rules for how technology affects people’s lives. Encryption standards, for example, determine the extent of national security. Facial recognition systems deny the right to privacy.

Since all of society is touched by such digitisation, this puts companies in the position of policymakers — but without the governance mandate, independent oversight or checks and balances deemed vital in a democratic process.

In fact, tech groups’ governance powers are encroaching on the role of the state at ever greater speed. Minting digital currencies, verifying digital identities, even building cyberweapons — it is all under the direction of boardrooms, not parliaments.

One consequence of this private sector digitisation is that governments have, in effect, outsourced cyber security and personal data protection to companies — companies that do not always have duties of disclosure.

We witnessed as much in the hacking of SolarWinds’ networking software, to distribute malware. Had it not been for cyber security firm FireEye, we may never have learnt of the intrusions on companies and many US institutions. Software made by the likes of SolarWinds and Microsoft forms the backbone of digital operations globally, yet a decision to forgo proper security safeguards by SolarWinds was taken without anyone noticing. There are too few processes to ensure the public interest is systematically safeguarded.

That is why laws need to be updated fast. This is not about “regulating the internet” but rather about upholding existing principles, such as democracy — online or offline. And it is surely an erosion of democracy when the agency of an elected government is reduced proportionately to the pace with which private companies are empowered.

For technology groups wondering how they can avoid being accused of failing to protect democracy — as social media platforms have of late — there is a simple solution. Before the ink is dry on new rules granting regulatory oversight of digitised processes, such as search algorithms, companies can embrace the rule of law today.

Aligning with democratic and human rights principles can be done now.

The world over, the power of technology companies is becoming ever more apparent. That is why we must not limit our assessment of potential harms to democracy to just social media platforms or search firms. They may be the services that are most visible to internet users, but they are not the only ones in need of scrutiny. The privatisation of governance in the digital world is now a systems problem.

After the US Capitol riots of January 6, there is a growing awareness of the power of companies in providing a platform for the stagers of a coup. It should make us even more wary of that other coup: the privatisation of governance across the digital world.

#### Extinction---shoring up the US model of public governance is key

Joseph S. Nye 17, University Distinguished Service Professor at the Harvard Kennedy School of Government, January/February 2017, “Will the Liberal Order Survive?,” Foreign Affairs, https://www.foreignaffairs.com/system/files/pdf/anthologies/2017/b0033\_0.pdf

The order will inevitably look somewhat different as the twenty-first century progresses. China, India, and other economies will continue to grow, and the U.S. share of the world economy will drop. But no other country, including China, is poised to displace the United States from its dominant position. Even so, the order may still be threatened by a general diffusion of power away from governments toward nonstate actors. The information revolution is putting a number of transnational issues, such as financial stability, climate change, terrorism, pandemics, and cybersecurity, on the global agenda at the same time as it is weakening the ability of all governments to respond.¶

Complexity is growing, and world politics will soon not be the sole province of governments. Individuals and private organizations—from corporations and nongovernmental organizations to terrorists and social movements—are being empowered, and informal networks will undercut the monopoly on power of traditional bureaucracies. Governments will continue to possess power and resources, but the stage on which they play will become ever more crowded, and they will have less ability to direct the action.¶

Even if the United States remains the largest power, accordingly, it will not be able to achieve many of its international goals acting alone. For example, international financial stability is vital to the prosperity of Americans, but the United States needs the cooperation of others to ensure it. Global climate change and rising sea levels will affect the quality of life, but Americans cannot manage these problems by themselves. And in a world where borders are becoming more porous, letting in everything from drugs to infectious diseases to terrorism, nations must use soft power to develop networks and build institutions to address shared threats and challenges.¶ China is unlikely to surpass the United States in power anytime soon.¶

Washington can provide some important global public goods largely by itself. The U.S. Navy is crucial when it comes to policing the law of the seas and defending freedom of navigation, and the U.S. Federal Reserve undergirds international financial stability by serving as a lender of last resort. On the new transnational issues, however, success will require the cooperation of others—and thus empowering others can help the United States accomplish its own goals. In this sense, power becomes a positive-sum game: one needs to think of not just the United States’ power over others but also the power to solve problems that the United States can acquire by working with others. In such a world, the ability to connect with others becomes a major source of power, and here, too, the United States leads the pack. The United States comes first in the Lowy Institute’s ranking of nations by number of embassies, consulates, and missions. It has some 60 treaty allies, and The Economist estimates that nearly 100 of the 150 largest countries lean toward it, while only 21 lean against it.¶

Increasingly, however, the openness that enables the United States to build networks, maintain institutions, and sustain alliances is itself under siege. This is why the most important challenge to the provision of world order in the twenty-first century comes not from without but from within.

#### Privatization enables large-scale attacks on critical infrastructure

Marietje Schaake 20, International policy director at Stanford University’s Cyber Policy Center, “The Lawless Realm: Countering the Real Cyberthreat,” November/December 2020, https://www.foreignaffairs.com/articles/world/2020-10-13/lawless-realm

THE WEAKENED STATE

For centuries, states enjoyed a monopoly on the use of force. Thanks to the asymmetric power facilitated by digitization and the proliferation of cyberweapons, that monopoly has slipped out of their grasp. Yes, many democratic countries—including the United States—have developed powerful tools to deploy in cyberspace, setting up sophisticated surveillance systems and launching attacks on adversaries. At the same time, developed countries wrestle with a private sector that exercises disproportionate power in the technological sphere, gobbling up data and taking on some key functions of the state, such as the protection of critical infrastructure.

Private companies both build the architecture of the digital world and largely govern its flows of data. They are often the victims of cyberattacks. But they are complicit in these attacks when they fail to protect databases and lose the personal information of their customers and clients. Worse, some companies are even developing and selling new technologies to adversaries around the world. Authoritarian (and several democratic) governments hire the services of hackers and buy commercially sold systems of digital surveillance and control. For instance, a U.S. company called Sandvine is alleged to have supplied the government of Belarus with the technology it used this past summer to shut down its citizens’ access to much of the Internet during antigovernment protests. Nonstate actors, such as militias or criminal gangs, can wreak disproportionate havoc through cyberattacks, hurting much more powerful states, companies, and international organizations.

Authorities often have a tough time understanding cyberattacks and identifying their perpetrators. As a result, attackers frequently act with impunity, using clever tactics and benefiting from a legal vacuum: there are few mechanisms that guarantee international cooperation and coordination in discovering and bringing to justice cyberattackers. “False flag” operations—in which actors conceal their identities and try to pin the blame on others—are common in the digital world. An intrusion directed from the other side of the world can be executed in milliseconds, almost invisibly. The speed of digital innovation outstrips the ability of states to prevent cyberattacks, hold perpetrators to account, and pass the necessary laws on encryption standards, data protection, and product liability (to hold manufacturers or sellers responsible for the goods they make or trade).

States are also unable to control private companies whose actions may imperil public safety; indeed, in some cases, a state finds itself dependent on just such a company. Earlier this year, a breach of a database belonging to the facial recognition company Clearview AI revealed that the firm was selling its technology and databases not just to vetted law enforcement agencies but also to a host of private companies. The breach showed how a private company can secretly share information about citizens without their consent and without transparency, as well as how such a company can be susceptible to hostile actors. And yet law enforcement agencies are increasingly reliant on the work of technology firms such as Clearview AI.

Society’s growing reliance on digitally connected devices creates more general vulnerabilities. A canny and willing attacker can exploit a software-powered fridge in a home or a street lined with data-collecting sensors in a smart city, finding multiple entry points to bring down a broader system. It is enough of a challenge for defense departments and intelligence services to man the ramparts and keep a lookout for such sophisticated adversaries. But the frontlines are now ubiquitous thanks to the pervasiveness of digital technology, and so doctors in hospitals, professors in university labs, and human rights activists in repressive countries—all must now contend with cyberthreats.

Such civilian targets are not always well prepared for this fight. Public institutions often employ poorly protected digital systems even when they process sensitive information. A clinic, for example, cannot be blamed for hiring an additional surgeon instead of a cybersecurity expert. A public university might choose to invest in computers for students but not acquire the more expensive protections to ensure that those new computer systems are safe. And an election board might decide to modernize electoral processes by installing voting machines and dispensing with paper ballots, without knowing the proper safeguards or having the means to invest in the requisite protections. Such well-intentioned efforts are understandable on their face, but they conspire to make societies vulnerable.

AIDING AUTHORITARIANS

The imbalance between the public and the private sector in democratic countries is obvious in another dangerous arena: the sale of cyberweapons to authoritarian regimes. Few laws limit how companies can trade in digital surveillance, blocking, and intrusion systems. Syria is a troubling case in point. As it wages civil war, the government of Bashar al-Assad has used operations in cyberspace to hit both adversaries abroad and opponents within the country. Hackers belonging to the so-called Syrian Electronic Army (which claimed to be acting independently of the Syrian government) gained visibility around the world for defacing the websites of Western media companies, such as The New York Times and the BBC, and for hacking the website of the U.S. Marine Corps. These brief propaganda victories were far less significant than the government’s digitally enabled attacks on domestic opposition figures and human rights defenders during the peaceful protests of 2011. That year, the Syrian government used sophisticated digital technology to collect communications between dissidents, which it then exploited to incriminate and detain the activists.

That one of the most violent regimes in the world engaged in such repression is not surprising; what is shocking is that European companies helped. The Assad government depended on technology and expertise from AREA, an Italian company. AREA sold technology to Syrian authorities that allowed them to monitor communications across the country, collecting and scanning Facebook posts, Google searches, text messages, and phone calls for key words or connections between particular individuals. The ensuing roundup of dissenting civilians led to torture and deaths.

Syria is not alone in receiving technological support from abroad for the purpose of domestic repression. Over the past few decades, companies based in Western countries have designed, marketed, and sold similar technology to a number of other authoritarian governments, including those of Egypt, Iran, Saudi Arabia, and the United Arab Emirates. When democratic countries fail to curb the sale of aggressive hacking systems by companies within their own borders to illiberal governments, they are undermining the worthy ambitions of their foreign policies. But the problem doesn’t seem to be going away. Some estimates predict that annual global sales of these systems will rise to hundreds of billions of dollars by 2021. China is now aggressively entering this market, too; it already is the global driver in developing and exporting technologies that enable repression, including facial recognition technology and predictive policing systems.

These technologies in the hands of nonstate actors is also a concern: such actors can [devastate] ~~cripple~~ far more powerful states, organizations, and companies through cyberattacks. In 2015, a hack of JPMorgan Chase compromised 83 million accounts; four individuals were eventually arrested. In 2017, “Rasputin,” a hacker who appeared to be operating alone, broke into databases of U.S. universities and government institutions, apparently hoping to sell access to the information. Earlier this year, a 17-year-old from Florida and two other hackers managed to take over 130 prominent Twitter accounts, including those of former U.S. President Barack Obama and former U.S. Vice President Joe Biden, and posted messages that convinced people to send money to a particular Bitcoin account. The hackers could have used that account access for far more sinister goals, including attempting to escalate geopolitical conflict or crash stock markets.

Some individuals with such exceptional skills sell their talents to the highest bidder. Among the most notorious companies hiring hackers is DarkMatter. This cybersecurity company, based in the United Arab Emirates, has hired former intelligence officials from the U.S. National Security Agency and the Israel Defense Forces, creating what amounts to a private intelligence service and blurring the lines of agency between companies and states. Such companies with top-grade skills may attract unsavory clients, including authoritarian regimes and even terrorist groups.

Democratic states have struggled to regulate the digital world and the market for cyberweapons, but some technology companies are beginning to take action. WhatsApp, through its parent company, Facebook, filed a lawsuit last spring against the NSO Group, an Israeli mobile surveillance company. The suit alleges that NSO covertly exploited a vulnerability in WhatsApp to illegally extract information from the phones of users. Facebook argues that NSO’s actions were unlawful. NSO is also the target of a lawsuit filed in Israel in 2018 by a Saudi dissident who claims that Saudi authorities used the company’s technology to spy on his communications, including those with Jamal Khashoggi, the journalist who was murdered in Turkey by Saudi operatives that same year. Forty-five countries are thought to be using the same NSO product, including democracies such as Mexico and Spain.

MAKING THE RULES

It shouldn’t be left to private companies and courts to determine the legitimacy of products and services that have the potential to compete with state intelligence services. Democratic countries must extend norms and rules to ensure safety in the digital world. Just as nations agreed to international laws governing the conduct of war and nuclear weapons, so, too, must they establish agreements to fend off threats in cyberspace. Perpetrators of cyberattacks have remained unaccountable for too long. Democratic governments especially need to take a number of steps to rebalance the power between states and private companies, which play too large a role in the digital world.

#### That goes nuclear, even if it fails

Vladimir Orlov 20, Founder & Director of the PIR Center, President of the Trialogue Club International, Head of the Center for Global Trends and International Organizations at the Diplomatic Academy, Ministry of Foreign Affairs of the Russian Federation, Co-Founder and Academic Supervisor of the International Dual Degree MA Program in Nonproliferation and Global Security Studies, MGIMO University, Professor at MGIMO University, author (or coauthor) of more than a dozen books and monographs and more than three hundred research papers, articles, and essays, publishes his views in Russian and foreign periodicals, “‘No Holds Barred’ and the New Vulnerability: Are We in for a Re-Run of the Cuban Missile Crisis in Cyberspace?,” SSRN Scholarly Paper, ID 3538078, Social Science Research Network, 02/14/2020, papers.ssrn.com, doi:10.2139/ssrn.3538078

Not hundred per cent of the dialogue has been frozen, fortunately. Certain informal, mostly offthe-record, meetings of US and Russian experts on cyber agenda continue taking place, both through Track 2 and Track 1.5. One of the most intellectually stimulating meetings, with frank exchanges, took place in Vienna in December 2018. The report produced after the meeting stressed “the significant risk […] that cyber-attacks could conceivably lead to a military escalation that may further trigger a nuclear weapons exchange, a fact that became more explicit with the adoption of the current Nuclear Posture Review. This issue gets complicated given that third parties may have the capabilities to invoke a cyber conflict between Russia and the United States. Whether a country or a non-state actor, they could put the two countries on the verge of an armed conflict by attacking critical infrastructure of either of them and making it look as if the aggressor were the other one”[22]. However, one should have no illusion: such informal meetings may be fully fruitful only when their reports and policy recommendations are utilized by the governments. And for that, a warmer climate in bilateral relations is a must. So far, we see exactly the opposite: mercury falling to freezing levels.

Risk of cyber clashes growing into a chaotic global cyber war has been emphasized by the UN Secretary-General Antonio Guterres in his Agenda for Disarmament: “Malicious acts in cyberspace are contributing to diminishing trust among States… States should implement the recommendations elaborated under the auspices of the General Assembly, which aim at building international confidence and greater responsibility in the use of cyberspace.[23]” However, as the members of the US-Russian Track 1.5 working group on strategic stability recently concluded, “without a constructive dialogue on cyber issues between the United States and Russia, the world would most likely fail to agree on any norms of responsible behavior of states in cyber space”[24].

Do we really have to survive a cyber equivalent of the Cuban Missile Crisis to realize the importance of achieving some kind of agreement on cyber issues, and on the broader agenda of international information security?[25] Or is that kind of talk plain old alarmism?

I don’t want to sound a fatalist, but I am even less keen on sounding like an ostrich that’s buried its head in the sand. We cannot ignore the obvious: whether the world’s most powerful actors like it or not, the world is sliding to another major crisis like the one in 1962. The cyber war is already raging. There are no rules of engagement in that war. The uncertainty is high. The spiral of tension is getting out of control. The cyber arms race is gaining momentum. And there are no guarantees that the next crisis will be controllable, or that it will result in a catharsis as far as international information security regulation is concerned. There’s no telling what will happen once the cyber genie is out of the bottle.

### 1AC---Multistakeholder Governance ADV

#### Advantage Two Is Multistakeholder Governance---

#### Two internal links---

#### First---Norms---the plan uniquely fosters ICANN accountability by establishing its presence within international human rights norms

Monika Zalnieriute 19, Research Fellow and Lead of 'Technologies and Rule of Law' Research Stream at the Allens Hub for Technology, Law, & Innovation, Faculty of Law, UNSW Sydney, Australia, “From Human Rights Aspirations to Enforceable Obligations by Non-State Actors in the Digital Age: The Case of Internet Governance and ICANN,” 21 Yale J. L. & Tech. 278, 2019, lexis

While profitability might not necessarily be the only reason driving corporations and private bodies to adopt human rights policies, it is nonetheless widely accepted to be the most influential. When human rights and profitability conflict, the latter will often prevail. This is well illustrated by the infamous  [\*316] strategic alliance between IBM and Nazi Germany, as well as by the recent complicity of U.S. tech giants, such as Microsoft and Google, in restricting free speech in countries like China. In the case of the latter, even an enormous public outcry has not been enough to reverse agreements made by Google to return to China to expand its customer base. While Google's commitment to human rights were questioned by many people, even a special "China search database" does not seem to prevent Google from branding itself as a defender of "Internet freedom."

Similarly, market forces have not been favorable for human rights protection within ICANN so far, not least because ICANN is not a traditional corporation--it is a non-profit corporation, which has no direct customers in the traditional sense, nor does it really compete with any other organization for market share in the assigned names and numbers of the Internet. Therefore, it seems unlikely that ICANN will pay attention to calls by human rights advocates, such as the CCWP-HR, to embrace its CSR obligations and to respect human rights by adopting new or modifying existing policies to ensure that they comply with human rights standards. ICANN does not have to worry that domain name registrants will no longer purchase domain names, because it is essentially a non-profit global policymaking monopoly that does not have any customers or competitors. It is precisely this non-profit status which has thus far successfully insulated ICANN from societal and regulatory pressure.

Given the lack of a profit motivation on the part of ICANN, it is difficult to see why a non-profit body managing global Internet  [\*317] resources and operating solely in the public interest should be subjected to a lower standard for human rights protection than a public body would be. Indeed, the discussion in Section II supra demonstrates that ICANN has qualities that are much more similar to those of public organizations and transnational policymaking networks than those of transnational for-profit corporations. Increasing involvement in ICANN by states--which are bound by both national and international human rights law obligations--points to the increasingly public dimension of this unique international body. This increasingly public dimension, in turn, suggests that the human rights duties of such a quasi-governmental international body must go well beyond those required of business corporations. While for corporations, it may seem reasonable to accept that there is a narrower scope of human rights obligations when compared to states, the narrower scope of obligations appears not as relevant when considering non-profit corporations such as ICANN, which operate solely in the public interest. Indeed, this unique status and operation for the public interest render ICANN's duties to respect human rights much stronger, because its social mission is not complicated by motivations for profit. Therefore, ICANN's human rights duties should be stronger than those of a standard for-profit corporation.

C. Public Confidence and CSR

As a non-profit organization, ICANN might uphold "soft commitments" and CSR not because of competition in the market, but rather to increase public confidence in its operations and create a better public image. Other factors beyond profit considerations, such as public "naming and shaming" and pressure by regulatory bodies and civil society, might therefore be more effective.

Thus far however, public confidence and public image have not proven to be strong factors for ICANN in embracing its CSR to respect human rights. A potential reason for this is that ICANN  [\*318] is not a widely known organization, and many people are unaware of the human rights implications of its activities. Pressure by NGOs or by data privacy commissioners and authoritative intergovernmental organizations (such as the EU Commission or Council of Europe ), have been ineffective in preventing ICANN from adopting certain policies that seem to strongly contradict human rights law. For example, an outcry from human rights activists over the .gay top level domain name has not motivated ICANN to pay more attention to the rights of freedom of expression and freedom of assembly of the LGBTI community. Similarly, dozens of letters to ICANN from the EU data protection authorities and various NGOS over violations of data privacy rights in the WHOIS policy and in the Registrar Accreditation Agreement of 2013 have seemingly done little to bother ICANN, in terms of any decrease in public confidence or in trust from regulatory authorities. Moreover, ICANN's main accountability mechanism of independent  [\*319] arbitration, which can be used to challenge its decisions, has been employed only once since 2005.

Therefore, public accountability and the informal multistakeholder structure of ICANN have had a limited effect in actually holding the organization to human rights values. Public confidence might, however, become increasingly important, as ICANN is in the process of the IANA transition and is no longer supervised by the U.S. government, with ICANN declaring in its own words that it is "officially accountable to the global multistakeholder community."

D. Voluntary Commitments and CSR as "Social Branding"

A widespread practice by private actors of upholding CSR norms solely for the purpose of increasing public confidence has led some scholars to argue that CSR policies have been captured by business interests and commodified, as these policies are often used as marketing or social branding tools. In the case of ICANN, such CSR commodification does not relate to the promotion of its products (as it does not sell any), but rather to the strengthening of its institutional image in the global Internet governance regime as a relevant, transparent, and accountable institution that respects human rights. While ICANN is a non-profit, quasi-governmental corporation, its income is generated from numerous for-profit entities, such as registries and registrars that it contracts with. Thus ICANN perhaps could be indirectly compared to what some scholars describe as "market-oriented NGOs." These are sponsored by  [\*320] businesses but aim to be associated with civil society organizations; they "disseminate and actualize corporate-inspired versions of 'social responsibility.'" An example of a market-oriented NGO is the International Chamber of Commerce (ICC).

Some have convincingly argued that a powerful platform for "corporate-inspired versions of social responsibility" was created by the UN Guiding Principles. For example, the organization Rights and Accountability in Development (RAID) uses empirical evidence collected during the five years since the adoption of the UN Guiding Principles to argue that corporations endorse the UN Guiding Principles because they "offer companies a way to manage human rights risks, thereby protecting their business reputation, insuring against claims, and managing problems to avoid their escalation. Ultimately, like any other risk management process, it is an approach which protects profits by reducing costs."

E. CSR as a Risk and Information Management Tool

Empirical research by RAID further suggests how corporations might adopt company-based grievance mechanisms to overcome barriers to accessing judicial review, while at the same time introducing numerous controls to monopolize information, such as legal waivers and confidentiality clauses. This essentially channels victims through a review mechanism of the company's own making, which is centrally devised and controlled.

This is relevant for ICANN, as its institutional structure is based on contractual agreements and memoranda of understanding, and is filled with numerous legal waivers and confidentiality clauses. Lack of compliance with human rights laws is often  [\*321] well hidden behind the numerous legal actions and waivers between ICANN and various parties. For example, as mentioned in Section II supra, ICANN is seeking injunctions to ensure that accredited registrars keep collecting and revealing personal information in WHOIS, as required under its contracts, which contravenes the EU data protection framework under the GDPR. Similarly, the incompatibility of the Registrar Accreditation Agreement (RAA) agreement with the EU data protection law is managed via the so-called "data retention waiver" system, exempting several registrars from the specified data retention requirements, so that they can comply with EU data protection law.

It is not yet clear how such "legal management" systems will be impacted (if at all), once the human rights Bylaw comes into effect. The Impact Assessment Evaluation of the new Bylaw by the ICANN staff states, "The area where ICANN will be most impacted is in bringing in tools so that the policy development takes into account human rights considerations." Does this mean that ICANN will adopt ex ante human rights impact assessments for each policy it is developing, and will not simply try to manage incompatibility ex post? It would be naive to expect that when implementing the human rights Core Value, ICANN would act fundamentally differently from other transnational corporations, and without resort to legal management mechanisms, such as the waivers which it has readily employed in the past.

 [\*322]  F. Would Regulatory and Punitive Action Help?

Given the limited ability of multistakeholder accountability mechanisms to hold ICANN to its self-imposed human rights commitments, regulatory action against private actors in Internet governance might provide lessons for holding ICANN accountable for its human rights commitments. In this regard, a relationship between influential Internet platforms and EU regulators (such as the EU Commission and the Article 29 Working Party) could provide such lessons for ICANN, as well as for the business and human rights movement more generally. In particular, Google's market dominance saga and Facebook's Cambridge Analytica scandal suggest that private actors will rarely change their policies and procedures unless threatened with direct legal and punitive actions by influential institutions, such as the EU Commission or the U.S. Department of Commerce, for disregarding and violating fundamental rights norms.

#### ICANN accountability cements international support for multistakeholder internet governance

Megan Stifel 17, Founder and Chief Executive Officer of Silicon Harbor Consultants, “Maintaining U.S. Leadership on Internet Governance,” 2/21/17, Council on Foreign Relations, Digital and Cyberspace Policy Program, https://www.cfr.org/report/maintaining-us-leadership-internet-governance

Challenges for Multistakeholder Governance

The reformed multistakeholder internet governance approach faces significant challenges. The sophistication of cybercrime continues to increase, as does the use of computer attacks for espionage, disruption, and influence by states. In October 2016, unknown actors used thousands of unsecured devices to launch a massive attack that limited many users’ access to Twitter, Amazon, and other major websites. Left unchecked, these growing threats and other technical vulnerabilities could ~~cripple~~ [destroy] the internet. Developing economies are only now beginning to grapple with these challenges as increasing numbers of their citizens go online. If the multistakeholder model is seen as ineffective in addressing the vulnerabilities that enable cybercrime, or being completely peripheral to the issue, developing economies could question its legitimacy and seek answers in the multilateral system.

In addition, authoritarian governments, many of which are increasing their efforts to control internet activity within their own borders, continue to challenge multistakeholder models of governance. These countries cherry-pick multilateral and other standards organizations to find those most likely to promote a state-centric approach to governance. Recent efforts to create a technical standard to catalogue all devices connected to the internet failed, but it can be expected that China, Russia, and others will find new opportunities to promote other standards that could frustrate innovation.

There are also worries that ICANN, the operator of the IANA functions, will abuse its authority and ignore the interests of internet users. In the past, ICANN has been accused of ignoring the views of governments, prioritizing private sector interests, and mismanaging its finances. ICANN recently implemented enhancements to address these and similar concerns. Nevertheless, ensuring that ICANN remains accountable will be critical to demonstrating that the multistakeholder approach works. It will also act as a bulwark against Russian and Chinese efforts at greater intergovernmental control over the internet.

#### Externally---ICANN responsiveness spills over globally, securing a rights-based framework throughout digital governance

Andi Wilson Thompson 17, Senior policy analyst at New America’s Open Technology Institute, “Protect the Free and Open Internet,” 1/19/17, New America, https://www.newamerica.org/weekly/protect-free-and-open-internet/

ICANN: The Internet Corporation for Assigned Names and Numbers (ICANN) is a little-known non-profit organization that helps manage the “inner workings of the internet.” Put simply, ICANN maintains a complex system of naming and numbering that directs people to the right website. The U.S. has had a veto over ICANN decisions since its creation—a responsibility it has never exercised—but the Department of Commerce recently completed the long-awaited process of relinquishing that role. ICANN has matured and can now function as an independent organization. This transition led to strong statements by President-elect Trump, who accused the U.S. of “surrendering control of the internet to foreign powers.” In reality, as our paper points out, the change will make it easier to fight for internet freedom around the world by removing the common complaint that the U.S. is in charge. Given Trump’s critical statements, there is concern that he could take steps to derail the progress that the United States has made toward more global internet governance. We strongly recommend that the incoming administration strengthen mechanisms that ensure the independence, accountability, and transparency of ICANN’s decision-making processes, and work with the private sector and other governments to build independent and accountable financial support mechanisms for diverse global participation.

Rebecca MacKinnon, director of the Ranking Digital Rights project (incubated at New America), said it best during the launch event for these recommendations: Internet freedom starts at home. Domestic policy influences international policy, U.S. policy influences global policy, and threats to internet freedom in the United States embolden governments that are looking to limit the access of their citizens to a free, open, and secure internet. The Trump administration has a duty to assert its unique leadership on policy issues, including those above, and to continue the decades-long, bipartisan support that internet freedom policy has previously held. Further, it must take steps to protect, promote, and strengthen freedom online—at home and around the world—through policies that align with our long standing international commitments to uphold human rights and the rule of law while also strengthening our economy and protecting us from threats to national security.

#### Solidifying human rights as a foundation for internet norms stops nuclear war AND builds capacity to respond to future existential threats

Dennis Pamlin 15, Entrepreneur and Founder of 21st Century Frontiers, Senior Associate at Chinese Academy of Social Sciences, Visiting Research Fellow at the Research Center of Journalism and Social Development at Renmin University, Advisor to Centre for Sustainable Development at Confederation of Indian Industries, Stuart Armstrong, DPhil from Oxford University, James Martin Research Fellow at the Future of Humanity Institute at Oxford University, “Global Challenges, 12 Risks That Threaten Human Civilization: The Case for a New Risk Category”, Global Challenges Foundation, February, https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

2. Whether poor governance will result in a collapse of the world system.

3. How mass surveillance and other technological innovations will affect governance.

4. Whether there will be new systems of governance in the future.

5. Whether a world dictatorship may end up being constructed.

1. Global coordination between nations is essential for building a good global governance system – but also essential for building a bad one.

2. Global poverty is one of the important problems that are being only partially solved by current policies. In turn, it can contribute to global instability, worsening likely governance outcomes.

3. Smart sensors and mass surveillance can contribute to new systems of governance, but also to large-scale dictatorships.

4. The global system of governance consists of the UN and a wide variety of bilateral or multilateral agreements and norms, constructed mainly according to national self-interests. Thus significant improvements to global governance are currently possible.

5. General mitigation efforts against governance disasters are tricky – most mitigation efforts are the results of governance decisions! However, some efforts can be made – for instance, an increase in recognised human rights across the globe could militate against certain pernicious governance directions. These efforts are of a very different nature to mitigating other risks.

6. Some groups may deliberately seek to construct a world dictatorship, either through self-interest or because they believe it would be the best design for global governance.

7. Undesirable world systems (such as global dictatorships) could result from a worsening of global governance.

8. Many value systems do not distinguish between action and inaction, so a global system that didn’t positively encourage human flourishing would be almost as pernicious as one that blocked it.

9. Global pollution is a problem requiring solutions at the global governance level.

10. Climate change is a problem requiring solutions at the global governance level.

11. Various ethical systems have desirable goals that could be achieved in theory, but would not be achieved under suboptimal governance.

12. It would be a tragedy if absolute poverty were to endure over the generations to come, especially if this outcome were avoidable.

13. A collapse of the world system, for any reason (including revolution) is the most direct way a governance disaster could result in mass casualties.

14. Governance decisions taken at the global level have a high potential to cause disruptions to the world’s political and economic systems.

15. Bad governance at the global level may not be susceptible to improvements and could cause problems for a considerable amount of time.

16. Technological innovations could allow completely new models of government, but could also facilitate surveillance dictatorships.

17. Global instability could result in more pernicious systems of governance, as well as an increased failure to solve important problems.

18. New systems of governance could be developed, using modern communication technology for instance.

19. The political landscape after a disaster will be important in determining whether governance disasters could cause civilisation collapses or mass casualties.

20. How to compare enduring poverty, actual casualties, and repressive governance is a question of values and not just of direct comparison of lives lost.

– Research

In this paper Nick Bostrom, the director of the Future of Humanity Institute, lays out the case for making existential risk reduction a global priority. Existential risks (Xrisks) are the highest category of negative impact in this report, those that threaten the entire future of humanity. The policy implications of the paper are:

– Existential risk is a concept that can focus long-term global efforts and sustainability concerns.

– The biggest existential risks are anthropogenic and related to potential future technologies.

– A moral case can be made that existential risk reduction is strictly more important than any other global public good.

– Sustainability should be rethought in dynamic terms, as aiming for a sustainable trajectory rather than a sustainable state.

– Some small existential risks can be mitigated today directly (e.g. asteroids) or indirectly (by building resilience and reserves to increase survivability in a range of extreme scenarios) but it is more important to build capacity to improve humanity’s ability to deal with the larger existential risks that will arise later in this century. This will require collective wisdom, technology foresight, and the ability when necessary to mobilise a strong global coordinated response to expected existential risks.

– Perhaps the most cost-effective way to reduce existential risks today is to fund analysis of a wide range of existential risks and potential mitigation strategies, with a long-term perspective.

If this paper is right, a general lack of focus on existential risks by governments and other agents can be considered a governance disaster in itself.

19-Apr-13: Multidimensional poverty index diminishes in 18 out of 22 analysed countries 563 – Event

Of 22 countries for which the Oxford Poverty and Human Development Initiative analysed changes in MPI (Multidimensional Poverty Index) poverty over time, 18 reduced poverty significantly.

This confirms other studies, by the World Bank564 and others:565 poverty reduction is possible, and has been successfully implemented in many countries.

05-Jun-13: Guardian leaks NSA spying programme 566

– Initiative

A significant event was the revelation by Edward Snowden of the extent of the NSA’s surveillance programme. This included the mass recording and mining of data across the United States and the interception of foreign politicians’ data.

The revelations caused great controversy567 and raised questions about the NSA’s surveillance oversight.568 The episode established that discrete mass surveillance – an important component of potential totalitarianism – was already possible using current technology and political organisation.

– Policy

To reduce poverty in the future, it is important to maintain and extend past trends in poverty mitigation. The United Nations’ Poverty-Environment Initiative (PEI), launched in 2008, has had a number of success stories from Uruguay570 to Malawi.571 Due to increased demand from member states, the programme has been extended for another five years, 2013-2017, and may add countries such as Myanmar, Mongolia, Indonesia, Albania, Peru and Paraguay. Such programmes demonstrate that the bureaucratic/policy side of poverty reduction is supported by an international infrastructure with a strong emphasis on assessments. The effect of such approaches on overall poverty will depend on the interplay between these policies and the other side of poverty reduction: economic growth572 and trade.573

“We have some idea what might happen if, in the face of other pressing global challenges, we divert our focus from making systemic improvements in public health and veterinary services — and that prospect is frightening.” The World Bank 574

global risks

4. Relations between global risk and their potential impacts between global risks

4.1 General relations Two things make the understanding of the relation between the global risks particularly important.

1. Impacts: The global risks are interconnected in different ways. Often the situation can be described as a set of dominoes: if one falls, many others follow. Even small impacts can start a process where different challenges interact. Higher temperatures due to global warming can result in the spreading of pandemics which increase tensions between countries, and so on.

2. Specific measures to address a risk: Global risks often require significant changes in our current society, from how we build cities to how food is produced and provided. Such significant changes will result in situations where measures to reduce the risk in one area affect the probability and/or the impact in other areas. Depending on the measure chosen to reduce the risk, and other complementary measures, the effect can be positive or negative.

Relations between global risks is an area where surprisingly little work is being done. Most research focuses on individual or closely related groups of challenges. Organisations working on global challenges are almost always working on individual risks. The initial overview below is based on individual studies where different relations are analysed, but no work has been identified where the relations between all twelve challenges have been analysed.

A risk that is natural to start with is future bad global governance, as all other global challenges exacerbate governance disasters,575 and all other global challenges can potentially be exacerbated by governance disasters.

A well functioning global governance system is therefore a key factor to address global catastrophic risks. Conversely, avoiding governance disasters improves all risks, as better institutions are better able to mitigate risks. Governance disasters directly increase the problems of climate change (through a lack of coordination between countries), the risk of nuclear war (by stoking conflict between nuclear powers) and global system collapse (by weakening global responses to systemic risks). All risks exacerbate global system collapse, by putting extra stress on an interconnected system.576 Conversely, a resilient governance system is better able to cope with all risks, and a collapsed global system is more vulnerable to all risks.

#### Second---Foreign Capture---lack of domestic antitrust enforcement over ICANN incentivizes foreign actors to fill the gap---that causes litigation to discredit the body and prompts a shift to state-based multilateral governance

Szóka et al. 16, Berin Szóka is President of TechFreedom; Brett Schaefer is the is Jay Kingham Senior Research Fellow in International Regulatory Affairs at The Heritage Foundation; Paul Rosenzweig is a Visiting Fellow at The Heritage Foundation and formerly served as Deputy Assistant Secretary for Policy in the Department of Homeland Security, “ICANN Transition is Premature,” 9/8/16, http://docs.techfreedom.org/TF\_White\_Paper\_IANA\_Transition.pdf

To the extent that’s true, those who worry that ICANN may be subject to capture and used in anticompetitive ways actually should worry about the Transition, not necessarily because the Transition changes the legal analysis over whether ICANN can be sued, but because if U.S. antitrust law can’t provide an effective remedy (or deterrent), one could legitimately worry that the Transition means giving up the leverage the U.S. has now: the possibility of putting the IANA contract out for re-bid (to an organization other than ICANN) if ICANN misbehaves.

And what about foreign antitrust law? Foreign courts are, in general, not only more willing to allow suit against state actors but also to discount pro-competitive justifications and, frankly, to allow firms to bring suits against their rivals. So it’s entirely possible that, while U.S. antitrust law might under-enforce, ICANN could be vulnerable to antitrust suit in other jurisdictions.

One might think the two would balance out, and that foreign courts would allow valid suits that might fail in the U.S. for whatever legal reason. Maybe. But there are so many potential antitrust suits that could be brought. While they’d all, no doubt, be framed as protecting consumers, some may really have narrow corporate agendas or broader political agendas.

China and Russia have made no secret of their push to gain greater control over Internet governance. And there’s every reason to think they would use antitrust as a weapon to that end. It wouldn’t be hard for them to find (or create) plaintiffs to carry their water. Again, it’s hard to say exactly what the suits would look like, but it’s clear what their basic objective would be: to portray ICANN as a cartel dominated by, in particular, American companies. The fact that U.S. courts might have tossed out such suits would simply help with the political framing. The goal would be to say that the Transition isn’t enough, that Internet governance should be transferred to the ITU, where it would be “democratically accountable” (i.e., dictated by governments).

#### It’s likely---there’s a coming push to displace ICANN and dislodge its model

David Ignatius 21, Associate editor and columnist for The Washington Post, “Russia’s plot to control the Internet is no longer a secret,” 5/4/21, Washington Post, https://www.washingtonpost.com/opinions/2021/05/04/russias-plot-control-internet-is-no-longer-secret/

Russia’s campaign to control the Internet isn’t just a secret intelligence gambit any longer. It’s an explicit goal, proclaimed by Russian President Vladimir Putin as a key element of the Kremlin’s foreign policy.

Putin complained during his annual address to the Russian federal assembly on April 21 that the United States and other western countries are “stubbornly rejecting Russia’s numerous proposals to establish an international dialogue on information and cybersecurity. We have come up with these proposals many times. They avoid even discussing this matter.”

Asking for “international dialogue” takes some nerve, coming from the world’s biggest cyberbully — a country that notoriously meddled in the 2016, 2018 and 2020 U.S. elections, and has engaged in similar Internet mischief throughout the world. Controlling the “information space,” as the Russians sometimes call it, has long been an intelligence priority for Moscow.

Russia is waging its cyberdiplomacy offensive on two fronts: First, the United Nations has embraced Russia’s proposal to write a new treaty governing cybercrime, to replace the 2001 Budapest convention that Moscow rejected because it was too intrusive. And second, Russia is lobbying for its candidate to head the U.N.’s International Telecommunications Union (ITU) and use it to supplant the current private group, known as ICANN, that coordinates Internet addresses.

These international regulatory battles sound obscure, but they will help determine who writes the rules for Internet communications for the rest of the 21st century. The fundamental question is whether the governance process will benefit authoritarian states that want to control information or the advocates of openness and freedom.

Secretary of State Antony Blinken stressed on Tuesday the importance of this contest. “There are relatively few items that are ultimately going to have a greater impact on the lives of people around the world than the ITU post. It may seem dry and esoteric, but it’s anything but. And so we’re very, very actively engaged on this front,” Blinken said in an email message, elaborating on comments he made to me during an April 7 interview.

Russia outlined its ITU game plan in unusually forthright comments by Ernst Chernukhin, the foreign ministry’s special coordinator for political use of information and communications technology. He spoke on April 21, the same day Putin made his speech.

“The optimal option . . . would be transferring Internet management prerogatives specifically to the ITU, as it is a specialized U.N. body, which has the needed expertise on these issues,” Chernukhin said. “This strategic objective may be achieved by electing or promoting the Russian candidate to the position of the ITU Secretary-General in the 2022 elections . . . and by holding the 2025 anniversary U.N. Internet Governance Forum in Russia.”

Russia’s candidate for ITU secretary-general is Rashid Ismailov, a former deputy chief of the Russian communications ministry and a former executive at the Chinese telecommunications company Huawei. In announcing Ismailov’s candidacy on April 7, Maxim Parshin, the current deputy minister, underlined Moscow’s governance takeover plan: “We believe it is important to define an entity, within the U.N. framework, that would develop and implement legal norms and standards in the field of Internet governance. We think that the ITU could become such an entity.”

The Biden administration’s candidate for the ITU post is Doreen Bogdan-Martin, an American telecommunications expert who’s currently director of the ITU’s development bureau. The State Department, which has sometimes been lackadaisical in such international regulatory contests, is campaigning aggressively for Bogdan-Martin, and officials hope she’ll have sufficient support in Africa, Europe, Latin America and elsewhere to win the post. The election will take place at an ITU gathering late next year in Romania.

Internet technical governance today is managed by ICANN, which stands for Internet Corporation for Assigned Names and Numbers. This gathering of engineers and other experts was founded in 1998 to supervise domain names for the Defense Department’s ARPANET system, and it operated under a contract with the Commerce Department until 2016, when it went fully private.

The American roots of the Internet seem to both upset Putin and fuel conspiratorial talk. The Russian leader said during a 2014 interview translated by RT that the Internet “first appeared as a special CIA project . . . and the special services are still at the center of things.” Dmitry Medvedev, Russia’s former president, complained in a February interview: “The Internet emerged at a certain time, and undoubtedly the key rights to control are in the United States.”

Russia is ready to rumble over the rules that will shape the future of Internet communications. Fortunately, the Biden administration seems determined to fight back hard to maintain fair and open rules.

#### Multistakeholder governance is key to fend off authoritarian takeover but overzealous governmental intervention backfires

Joe Kane & Milton Mueller 18, Graduate research fellow at the Mercatus Center; Professor at the Georgia Institute of Technology School of Public Policy, “U.S. government should not reverse course on internet governance transition,” Brookings Institute, 2/7/18, https://www.brookings.edu/blog/techtank/2018/02/07/u-s-government-should-not-reverse-course-on-internet-governance-transition/

ICANN is an imperfect organization with politics and problems of its own. But the transition led to dramatic improvements in ICANN’s accountability and corporate governance. The relevant alternatives at this point are leaving IANA stewardship in the hands of ICANN or, if legally possible, transferring it back to the U.S. government. There are no perfect solutions here, only tradeoffs. Accepting stewardship by ICANN is still preferable to reverting to the NTIA, which would bring injurious consequences for global internet freedom. For those who value global internet freedom, the former is the only option.

The internet protocols are used globally, rendering internet governance a matter of global concern. A free and open internet run by the private sector and relatively free of geopolitics was the reason for delegating authority over IANA to ICANN in the first place.

As global commerce and civil society become increasingly reliant on the internet, committing to private governance, rather than government or intergovernmental control, is more critical than ever. If the U.S. wants to be a legitimate force in combating authoritarian regimes who seek greater control over the internet, it must hold fast to its principle of multi-stakeholder governance by non-state actors, and it must be able to keep moderate countries from abandoning the ICANN regime and embracing governmental control.Reversing the IANA transition would tell the world that we want governments to be in charge of the internet—and China and Russia would not hesitate to assert their respective claims.

The issue here is as much about rhetoric as it is about substance. The IANA functions themselves do not directly impinge on whether authoritarian governments gain more influence over the internet, but how the United States reacts to the transition will nudge diplomatic debates one way or another. If the U.S. government is seen to be grasping at more control over the internet, countries that would otherwise be on the fence might support a greater role for intergovernmental bodies in internet governance.

On the other hand, going through with the transition has improved the United States’ negotiating position. By committing to private governance of the internet, it has been and will be able to augment its credibility in arguing against more government control. Attempting to reverse the transition would undermine whatever influence the U.S. has gained since it took place.

This problem is now especially acute because of this November’s Plenipotentiary Conference of the UN’s International Telecommunication Union, a body that has notoriously sought to establish intergovernmental control over the internet in the past. Authoritarian governments want nothing more than to paint the U.S. as a hypocrite that touts internet freedom while secretly grabbing the controls. How far they seek to go at this year’s conference will partly depend on how far the U.S. goes in attempting to reverse the IANA transition and how many moderate-country votes they can swing to their side.

Of course, it might be that Redl’s promised “panel of experts” was a political ploy. It may never materialize or, if it does, it may return a verdict consistent with his original answer at the confirmation hearing, that “it’s very difficult to put the genie back in the bottle.” Either way, both Redl and Cruz should look ahead to address real internet governance threats from authoritarian governments, like an expanded role for the ITU and ICANN’s Government Advisory Committee, rather than trying to undo the privatization of the IANA functions.

We have been living in a post-transition world for over a year now, and nightmare scenarios of Russia and China somehow being empowered by this change have yet to materialize. Trying to undo the transition only makes these harmful outcomes more likely.

#### A transition fractures global ICT interoperability

* ICT: information and communications technology

Isabella Wilkinson 21, Research Associate at Chatham House’s International Security Programme, “Digital standards are key for protecting democracy,” 5/17/21, https://www.chathamhouse.org/2021/05/digital-standards-are-key-protecting-democracy

Geopolitical tensions in digital technical standards

And it could not have come at a better time. China has proposed a ‘new IP’ within key standards development organizations (SDOs) such as the International Telecommunications Union (ITU), dubbed by one expert as ‘the most important UN agency you have never heard of’.

Proposals for a decentralized internet infrastructure threaten global ICT interoperability and have serious consequences for human rights: China’s proposals may facilitate the implementation of its social credit scheme. And since the launch of its Belt and Road Initiative (BRI), and 2035 Standards Strategy, Chinese proposals to reshape standards have gained momentum, as well as some support from its trusted trade partners.

To complicate matters further, ITU secretary general Zhao Houlin is known to favour China-backed proposals and, with US candidate Doreen Bogdan-Martin likely pitted against Russia’s Rashid Ismailov in the ITU 2022 plenipotentiary, stakes have never been higher. Ismailov is a former Huawei executive and, for Russia, the ITU presidency offers a unique opportunity to champion its vision for closed, nationally-controlled internet; for example, by supplanting ICANN, the current group coordinating internet addresses.

But these threats run deeper than just Russia and China. Globally, there are a diversity of regimes with long-term, vested interests in shaping standards for their own benefit, willing to throw their weight behind China’s proposals. Like-minded democracies must urgently rethink their approach to standards – and a multi-stakeholder strategy could offer a solution.

What more stakeholders bring to the table

To assist G7 partners in their preparation for the Ministerial Declaration, experts at the Chatham House-DCMS workshop (held on 3 March 2021) recognized that multi-stakeholderism encourages coalition-building, nurtures local and cross-border innovation, and bolsters shared normative commitments to safeguarding the transparency, openness and interoperability of ICTs.

For years, industry has dominated efforts to shape digital technical standards, with everyday tech items and their standards, such as USB specifications, developed by coalitions of ICT companies. But new challenges demand new approaches. ICT giants offer technical expertise and digital leadership experience, but it is time to broaden the field.

Governments have always played a role in standards development, with the power to identify policy issues, facilitate partnerships, and provide financial incentives, but the G7 declaration signals a reimagining of government responsibilities vis-à-vis industry’s leadership. At a national level, governments can lead strategic coordination and invest in capacity-building for non-state actors, while internationally, governments can encourage coalitions between stakeholders.

The G7’s declarations on ICTs are steps in the right direction, as are national standards strategies such as Germany’s Standardisation Roadmap on AI, and the UK’s focus on standards in the Integrated Review. But non-state actors also have a legitimate, urgent role to play. In the past, knowledge gaps, financial barriers, and a lack of incentives have prevented sustained engagement from civil society and academia in SDOs.

These actors bring much to the table, such as technical expertise, existing networks, and under-represented voices, such as young adults and children. Plus, they already raise awareness about the importance of certain standards, and serve as barometers for their societal impact.

It may be easy to forget that the SDOs themselves are also stakeholders, setting the tone for inclusion, coordination, and engagement, so their leadership and norms matter. US Secretary of State Anthony Blinken noted there are ‘relatively few items that are ultimately going to have a greater impact on the lives of people around the world’ than the ITU leadership race.

Why multi-stakeholderism matters

From a technical standpoint, the more perspectives involved in determining technical interoperability, the better – especially with the onset of disruptive technologies such as quantum and AI which are likely to have a wide, societal impact. Building deeper knowledge-sharing networks between academia and SMEs can generate resilient standards that reflect policy principles.

But more importantly, multi-stakeholder approaches build cross-sector and cross-border coalitions rooted in normative commitments to open, democratic societies and enhancing shared prosperity. Meaningful engagement on standards with a variety of stakeholders at national and regional levels is even more urgent for technologies with far-reaching societal impacts – such as smart cities and autonomous vehicles – to avoid societal harms.

By championing open, transparent, consensus-based multi-stakeholderism in standards-setting, states bring home more than just majority votes on key proposals. Changing ICT culture by institutionalizing multi-stakeholderism and diverse representation would generate good practices which can be replicated in areas such as the UN cybercrime treaty deliberations proposed by Russia to supplant existing agreements, and negotiations on responsible state behaviour in cyberspace.

There is a long way to go, as states still need to develop effective outreach mechanisms and invest in coordination at all levels, and there are clear trade-offs between stakeholder inclusion and the efficiency of expert groups.

But faced with some states’ aspirations to shape the internet, telecoms, and emerging technologies, like-minded states interested in protecting open, democratic societies cannot afford to adopt a siloed approach to digital technical standards. Multi-stakeholderism is both urgent and necessary – before it is too late.

#### Global ICT interoperability prevents extinction from disease, food, and environmental collapse

N. Kishor Narang 20, Research Advisor at the Institute of Informatics and Communication at the University of Delhi, Member of the Academic Council at D Y Patil International University, Member of the Academic Committee at Electronics & ICT Academy at National Institute of Technology, ““Protecting the Planet with Standards” ... Mentor’s Musings on the World Standards Day 2020.”, LinkedIn, 10/14/2020, https://www.linkedin.com/pulse/protecting-planet-standards-mentors-musings-world-day-narang

It has been observed that the technologies developed by human beings in the last two to three centuries have had a major impact on the earth’s climate and our nature’s equilibrium. Some believe that we have reached a point of no return. This can have a huge impact on life on earth, especially on the human species.

However, while technology has been responsible for most of it, technology also seems to have a solution for it.

The COVID-19 pandemic, a humanitarian challenge, has caused widespread disruption in the global business community. The issues involved in the pandemic are both nuanced and complex. Global business dynamics are going to witness a sea change in the coming times.

The COVID-19 crisis has upended urban life, as we know it. Cities are on lockdown, and the once bustling streets of Paris, New York, London, Rome, Bombay and more now sit virtually empty. Technology and Standards have been critical to the way cities and society have coped with the crisis. Online delivery companies have been essential for getting food and supplies to residents, while their restaurant delivery counterparts have helped keep restaurants up and running during the lockdown. Urban informatics has helped track the virus and identify infection hot spots. As cities begin to reopen, digital technologies are being leveraged to better test and trace the virus as well as to ready urban infrastructure, like airports, public transportation, office buildings, and businesses, to open back up safely.

Safety in the interconnected world - As organizations across the world ramp up their operations and strive to serve their consumers, they are also faced with increased cyber security threat. Cybercriminals can exploit the weaknesses and vulnerabilities to exploit the connected devices and the network itself. This presents a challenge to the cybersecurity teams who must learn to evolve with the evolving threat perception.

As work from home increases, users who don’t have the same quality of security ecosystem as at their offices are finding themselves to be the targets of directed phishing, smishing, vishing and ransomware attacks. Home Wi-Fi systems usually suffer from a low degree of protection and are presenting opportunities for hackers. Since more and more people are working from home, there is a fear that the ever-increasing number of IoT devices in the household are easy targets for hackers, who can use them as gateways to undermine the security of the larger systems they connect to.

Managing disruption during a global pandemic - The current health crisis which has gripped the world can be seen as an inflection point between Digital Transformation and businesses. It has also impressed upon various stakeholders to invest more robustly in digital technologies. It is also a challenge to the security planners who have to guard against security threats and also ensure business continuity. Hospitals must have emergency backup systems which ensure seamless continuity of operations and databases. Rogue nations and intelligence agencies who attempt attacks on healthcare facilities must be warned of immediate consequences.

The question most people would ask is – What do STANDARDS have to do with all this?

Although most people do not realize it, standards and the methods used to assess conformity to standards are absolutely critical. They are essential components of any nation's technology infrastructure—vital to industry and commerce, crucial to the health and safety of citizens, and basic to any nation's economic performance. About 80 percent of global merchandise trade is affected by standards and by regulations that embody standards.

Standards enable us to pre-solve complex problems.

International standards enable and provide society with efficient ways to get work done while maintaining the safety of producers who create and provide goods and services, as well as the end-users receiving the benefits from these goods and services. International Standards are an important instrument for global trade and economic development. They provide a harmonized, stable and globally recognized framework for the dissemination and use of technologies. Standards provide people and organizations with a basis for mutual understanding, and are used as tools to facilitate communication, measurement, commerce and manufacturing. Standards are everywhere and play an important role in the economy by facilitating business interaction.

Standards: details of "Mega" importance - The topic of standards and the challenge of effective standards development can bewilder, by immersing the uninitiated in a blizzard of details. To some degree, this is unavoidable. After all, standards are details. They specify characteristics or performance levels of products, processes, services, or systems.

Standards are becoming increasingly important due to several intensifying trends:

· the pace of technological innovation is quickening;

· trade volumes are growing faster than national economies; and

· business operations are globally distributed.

There is extreme pressure for the standards community to reckon fully with the realities of the brutally competitive, extremely fast-paced global economy. This is because standards are necessary complements of modern products, processes, and services. Standards can:

· promote industrial and market efficiency;

· foster international trade;

· lower barriers to market entry;

· diffuse new technologies; and

· protect human health and the environment.

Hence, it is critical to achieve worldwide use of International Standards and Conformity Assessment Services that ensure the safety, efficiency, reliability and interoperability of electrical, electronic and information technologies, to enhance international trade, facilitate broad electricity access and enable a more sustainable world.

Standardized protocols and regulatory controls will allow seamless sharing of information and data between various devices. This will help in managing security breaches and dealing quickly with them. Adoption of universal standards will result in faster and more efficient response to any future disaster or pandemic.

Since Standardization is a collective churning, deliberation & collaboration process, we need to moderate, as well as, expand our individual thoughts on any subject to make it acceptable globally.

Innovation and technology development are accelerating. Strategic plans and roadmaps are needed to help ensure that the market is suitably served with best practices that is pertinent to the goals and context of this very large market.

Standards support our need to balance agility, openness and security in a fast-moving environment. Standards provide us with a reliable platform from which we are able to innovate, differentiate and scale up our technology development. They help us control essential security and integrate the right level of interoperability. Standards help ensure cyber security in ICT and IoT systems.

The world has never been as competitive as today, yet cooperation is a must to deliver solutions for increasingly complex systems. No technical committee and no standards organization are able to single handedly develop all the Standards that are needed. We all need to work together.

Given the scale, moving forward cannot be successfully, efficiently, and swiftly accomplished without standards. The role of standards to help steer and shape this journey is vital. Standards provide a foundation to support innovation. Standards capture tacit best practices and standards set regulatory compliance requirements.

Covid-19 has brought us face to face with systemic problems, we have long chosen to ignore collectively: Inequalities, environmental degradation, hunger, poverty, oppression, and the digital divide. In this age of technological progress, many of us are tempted by the promising thought of quick technological fixes to these deeply-ingrained issues. But technology alone will not save us. We must put the well-being of people, communities, and the planet back at the centre. We need to ask ourselves: What are the futures we want to create? What do we value? What kind of world do we want to live in?

The socioeconomic disruption caused by COVID-19 will be a lasting one and poses a challenge to planners and leaders globally; a number of fundamental changes in policy and mindset are necessary. As we have already witnessed, because of interconnected trade and business, any future pandemic may spread rapidly globally and infect millions. Some countries may be less geared to tackle the crisis than others. But with challenges come opportunities. Marrying Human Intelligence and labor with Disruptive Technologies to find solutions is the way to go. Necessity is the mother of inventions and hopefully, public-private partnerships can lead to many new innovations. Without a collaborative approach, any global approach to deal with any future pandemic will be compromised. And, Standards shall play a crucial role in providing INTEROPERABILITY, SAFETY, SECURITY, RELIABILITY and last but not the least a comprehensive TRUST in the minds of procurers, users and citizens.

This pandemic has catapulted two diametrically opposite paradigms to the focus of the mankind – ‘Sustainability’ and ‘Digitalization'.

Facing the global pandemic, multiple nations have seen lockdowns, changed social interactions and challenging isolations. But in these testing times, nature has been our constant friend. From our windows to the world, we have been comforted by nature’s presence all around us — we have been delighted by the birdsong we can now hear. We have finally seen the sheen on the wings of a delicately fluttering butterfly, the industriousness of ants as they march by, the green-gold of trees as they sway in a magical breeze, the pink glow of dawn, the night’s coverlet of stars.

However, alongside appreciating nature’s beauty, we must also understand the lesson it is offering us now. The Covid-19 pandemic has been brought about by humanity disturbing nature’s ecological cycle. Similarly, climate change is being driven by humanity’s exploitation of nature as a captive resource — our constant need to consume more and more is consuming the very planet we call our home. As global temperatures, driven by greenhouse gas emissions, rise, we see the science manifest before our eyes. There is no eliding the truth of melting glaciers now, or rising oceanic levels, increasing land desertification, droughts and unseasonal storms. If we persist in damaging the environment in this way, scientists state, the pandemic may look small compared to the impacts of climate change.

This pandemic is a way of the Earth saying she has had enough of years of exploitation and excesses and needs restoring. Then again, it can be seen through another moral lens. It is evident that the pandemic is a counterstrike to our collective human consciousness that has been corrupted by indifference and culpability in sufferings across the world.

We may not yet know how this story ends, but we already know for sure that this pandemic has brought the greatest reversal of our times, turning the world along with its wisdom on its head… This is our freak chance to unlearn and learn. Let’s not blow it. So, why not re-visit our history and re-learn. Maybe we shall get an opportunity to re-calibrate our approach for defining and developing our future ways of leading lives… And, we still have a chance. Indeed, nature has given us an epochal opportunity to transform ourselves. Such transformation is possible at multiple levels.

Be it a drop in pollution & GHG emission or self-healing of the Ozone layer; the last few months have amply demonstrated the resilience of Mother Nature by reversing the damage mankind has done to the planet’s climate in last many decades due to sheer arrogance and complacence. It is now evident that widespread adoption of nature-inspired solutions will catalyse a new era in design and business that benefits both people and the planet. Let’s make the act of asking nature’s advice a normal part of everyday inventing. We can create solutions inspired by nature that even address the United Nations ‘Sustainable Development Goals’ (SDGs).

We need to develop sustainable solutions for a balanced ecosystem by empowering people to learn and apply nature-inspired strategies in design. We need to develop repositories of resources and launch design challenges where people learn by practicing, provide comprehensive support for bringing solutions to market, and create a conducive environment & platform for a global network of innovators. In short, together, we need to learn about, teach, and practice a radically different way to build our world.

We need to change how we think about technology and innovation. Rather than allowing technological advancement to steer our narratives, innovation and technology should help us build bridges between the worlds we inhabit now and the ones we imagine for tomorrow.

#### Splintering ICT interoperability causes de-globalization, hostile economic blocs and hot and proxy wars that go global

Dr. Nouriel Roubini 19, PhD in Economics from Harvard University, BA from Bocconi University, Former Professor of Economics at New York University's Stern School of Business, Chairman of Roubini Macro Associates, “The Global Consequences of a Sino-American Cold War”, Project Syndicate, 5/20/2019, https://www.project-syndicate.org/commentary/united-states-china-cold-war-deglobalization-by-nouriel-roubini-2019-05

Regardless of which side has the stronger argument, the escalation of economic, trade, technological, and geopolitical tensions may have been inevitable. What started as a trade war now threatens to escalate into a permanent state of mutual animosity. This is reflected in the Trump administration’s National Security Strategy, which deems China a strategic “competitor” that should be contained on all fronts.

Accordingly, the US is sharply restricting Chinese foreign direct investment in sensitive sectors, and pursuing other actions to ensure Western dominance in strategic industries such as artificial intelligence and 5G. It is pressuring partners and allies not to participate in the Belt and Road Initiative, China’s massive program to build infrastructure projects across the Eurasian landmass. And it is increasing US Navy patrols in the East and South China Seas, where China has grown more aggressive in asserting its dubious territorial claims.

The global consequences of a Sino-American cold war would be even more severe than those of the Cold War between the US and the Soviet Union. Whereas the Soviet Union was a declining power with a failing economic model, China will soon become the world’s largest economy, and will continue to grow from there. Moreover, the US and the Soviet Union traded very little with each other, whereas China is fully integrated in the global trading and investment system, and deeply intertwined with the US, in particular.1

A full-scale cold war thus could trigger a new stage of de-globalization, or at least a division of the global economy into two incompatible economic blocs. In either scenario, trade in goods, services, capital, labor, technology, and data would be severely restricted, and the digital realm would become a “splinternet,” wherein Western and Chinese nodes would not connect to one another. Now that the US has imposed sanctions on ZTE and Huawei, China will be scrambling to ensure that its tech giants can source essential inputs domestically, or at least from friendly trade partners that are not dependent on the US.

In this balkanized world, China and the US will both expect all other countries to pick a side, while most governments will try to thread the needle of maintaining good economic ties with both. After all, many US allies now do more business (in terms of trade and investment) with China than they do with America. Yet in a future economy where China and the US separately control access to crucial technologies such as AI and 5G, the middle ground will most likely become uninhabitable. Everyone will have to choose, and the world may well enter a long process of de-globalization.

Whatever happens, the Sino-American relationship will be the key geopolitical issue of this century. Some degree of rivalry is inevitable. But, ideally, both sides would manage it constructively, allowing for cooperation on some issues and healthy competition on others. In effect, China and the US would create a new international order, based on the recognition that the (inevitably) rising new power should be granted a role in shaping global rules and institutions.

If the relationship is mismanaged – with the US trying to derail China’s development and contain its rise, and China aggressively projecting its power in Asia and around the world – a full-scale cold war will ensue, and a hot one (or a series of proxy wars) cannot be ruled out. In the twenty-first century, the Thucydides Trap would swallow not just the US and China, but the entire world**.**

#### Proxy wars spill over, draw-in outside powers, and escalate to World War III

David Kampf 20, Senior PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University, BA in Political Science from Bates College, “How COVID-19 Could Increase the Risk of War”, World Politics Review, 6/16/2020, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

#### The plan is goldilocks---antitrust enforcement over the gTLDs regulates ICANN without undermining its authority

Nelson Drake 18, J.D. from American University’s Washington College of Law and a B.A. in Political Science from Georgia College and State University, “Going Rogue: The National Telecommunications And Information Administration's Transfer Of IANA Naming Functions To ICANN,” 3 Admin. L. Rev. Accord 83, 2018, lexis

CONCLUSION

Since it was created and commercialized, the Internet, and more specifically the domain name space, has been a place for free thought and open competition. This environment was successfully maintained through quasi-governmental regulation by ICANN in conjunction with the NTIA. This model was problematic as the United States became increasingly pressured to relinquish its oversight role. 139 This pressure led to the NTIA relinquishing its control over the IANA functions and transferring them to ICANN, which was already administering them on a day-to-day basis. 140 Following this transfer, **ICANN became uniquely positioned to control the DNS** through one of these functions, specifically the power to delegate gTLDs to  [\*106]  DNS registries in the authoritative root zone. 141 These functions **made ICANN both the judge and jury regarding the delegation of gTLDs.**

This transition also marks the beginning of an era in which **ICANN behaves like a regulatory agency** and creates the potential for abuse by ICANN and its Board. Potential abuses would be difficult to prevent because **ICANN has removed itself from U.S. courts** by requiring disputes to be handled through arbitration. 142 In addition, with respect to trademark owners, trademark law would be an ineffective deterrent because of the USPTO's position that gTLDs are generic and inherently incapable of denoting source. 143

Antitrust law, under **Section 1 of the Sherman Act** or the essential facilities doctrine, could effectively regulate ICANN's power **without undermining ICANN's authority to regulate the DNS.** First, ICANN is not immune from antitrust liability because its actions play an important role in Internet commerce. 144 ICANN is also not immune from liability because of its agreement with the NTIA. Instead, a reviewing court must determine whether the actions at issue were necessary to meet the needs of that agreement. 145 Second, a review of relevant case law shows that a court could find that agreements involving the delegation of gTLDs could constitute an illegal restraint of trade under Section 1 of the Sherman Act. 146 Finally, although it has not been attempted, this paper theorized that ICANN could also be found liable under the essential facilities doctrine provided that a plaintiff could prove the factors laid out in MCI v. AT&T. 147

In addition, though a court can stop the delegation of a gTLD, it cannot force ICANN to award the gTLD to the complaining party. This means that **an antitrust claim would only prevent stakeholders from abusing ICANN's authority, not usurping it.** Thus, ensuring that a U.S. court does not simply replace the NTIA in its oversight capacity. Furthermore, it would not open ICANN to unnecessary lawsuits from corporate stakeholders seeking to unnecessarily challenge ICANN's authority at every turn.

Overall, the Internet is entering a new era of DNS regulation. This era  [\*107]  was entered suddenly and haphazardly, but that does not mean that it will yield negative results. There are upsides to having DNS management out of the hands of the United States government, although they are not discussed here. It would be foolish to allow this transfer to occur without examining possible regulatory alternatives in the absence of a body capable of overseeing ICANN's use of its authority. Thus, this paper concludes that one form of **regulation** would be **through antitrust law** to **ensure that the DNS continues to be a place of open communication, commercialization, and innovation into the future.**

## 2AC

### T Subsets [Antitrust]---2AC

#### ‘Antitrust’ is broad and includes any instrument designed to make markets more competitive

D. L. Rubinfeld 15, Professor of Law at New York University, International Encyclopedia of the Social & Behavioral Sciences, Second Edition, p. 553

Antitrust Policy

The term antitrust, which grew out of the US trustbusting policies of the late nineteenth century, developed over the twentieth century to connote a broad array of policies that affect competition. Whether applied through US, European, or other national competition laws, antitrust has come to represent an important competition policy instrument that underlies many countries' public policies toward business. As a set of instruments whose goal is to make markets operate more competitively, antitrust often comes into direct conflict with regulatory policies, including forms of price and output controls, antidumping laws, access limitations, and protectionist industrial policies.

#### There’s no distinction between ‘antitrust’ and ‘regulation’

Marco Ricolfi 6, Professor of Intellectual Property Law, Torino Law School, LLM from Yale Law School, “The First Ten Years of the TRIPS Agreement: Is There an Antitrust Antidote Against IP Overprotection Within TRIPS?”, Marquette Intellectual Property Law Review, 10 Marq. Intell. Prop. L. Rev. 305, Lexis

What can one make out of this discussion? The careful reader who has been following may have been misled into believing that, by referring to the admissibility of a local working requirement, I intended to reach the promised land of ex ante generalized rules and to contrast their operation to ex post and ad hoc intervention through measures targeting restrictions in international transfer of technology discussed in the previous paragraph. The difficulty with this is that the distinction between ex ante rules and ex post measures is in some way germane to the distinction between regulation and antitrust intervention. It has been said that "unlike antitrust policies, which tell businesses what not [\*348] to do, regulation tells businesses what to do and how to price products." However, the distinction between affirmative and negative, between order and prohibition, is not always that clear-cut, as shown in the case of prohibition of refusals to deal on dominant or monopolistic firms, which may indeed be construed also as an affirmative duty to negotiate. Looking carefully at local working requirements, one will find a similar ambiguity. The requirement has an affirmative side to it: it mandates patentees to manufacture locally. But what happens in the event the patentee fails to do so? The remedy, compulsory licensing, is conceptualized as a consequence of failure to locally work so that we do not know exactly whether we are dealing here with an ex ante rule or an ex post measure. To link with the analysis proposed earlier, we should probably focus on a separate feature by asking whether the legal consequence envisaged by the applicable law is generalized or ad hoc. Here, the operational question is more straightforward. Are we talking about a self-enforcing feature that is automatic in its legal consequences and does not require for its actual implementation a specific intervention by a court or another decision-making body? Or are we talking about a rule that becomes effective only after a decision by the competent authority? In the former case, we are talking about a generalized rule; the latter is ad hoc intervention.

### Delegation CP [Emory]---2AC

#### Expert agencies are worse than antitrust courts---every metric goes aff

Joshua D. Wright 13, Professor at George Mason University School of Law and Department of Economics; Angela M. Diveley, Associate at Freshfields Bruckhaus Deringer in Washington, DC, “Do expert agencies outperform generalist judges? Some preliminary evidence from the Federal Trade Commission”, 4/1/13, Lexis

Conclusions

Expertise has long been the touchstone of administrative agency performance. In the context of antitrust agencies, like others, the expert inputs are translated into outputs including adjudicatory decisions, rulemaking, consents, advocacy, and amicus briefs. An often overlooked aspect of understanding agency performance and its relationship to expertise is institutional design. The so-called expertise hypothesis posits that the institution with more expert inputs will consistently produce higher quality outputs. That assumption suffers from the Nirvana Fallacy as it lacks a basis without an analysis of the institutions and processes translating those inputs to outputs. Inability of an agency to translate its expertise into high-quality decision-making renders it at best ineffective and at worst costly to society, and institutional design has the potential to hinder the flow of information from an agency’s staff to its decision-makers.

In the context of US antitrust law, many commentators have recently called for an expansion of the FTC’s adjudicatory decision-making authority pursuant to Section 5 of the FTC Act, increased Commission rulemaking, and carving out exceptions for the agency from increased burdens of production facing private plaintiffs. These claims are often expressly grounded in the expertise hypothesis. The relevant question is whether the expert inputs available to generalist federal district court judges through expert evidence, amicus briefs, and economic training, among other sources of such expertise, translate to higher quality outputs and better performance than produced by the Commission in its role as an adjudicatory decision-maker.

Many appear to assume that agencies have courts beat on this margin. To our knowledge, while oft-cited as a reason to increase the discretion of agencies and the deference afforded them by reviewing courts, no one has provided empirical support for this claim. We seek to fill that gap, and contrary to the expertise hypothesis, we find the evidence suggests the Commission does not perform as well as generalist judges in its adjudicatory antitrust decision-making role. Furthermore, while the available evidence is more limited, there is no clear evidence the Commission adds significant incremental value to the ALJ decisions it reviews. In light of these findings, there is little empirical basis for the various proposals to expand agency authority and deference to agency decisions. More generally, our results highlight the need for research on the relationship between institutional design and agency expertise in the antitrust context.

#### Negotiations fail---overemphasis on tractability, an inevitable exclusivity, the broad imprecision, the lowest common denominator effect, and false expectations

Cary Coglianese 17, Edward B. Shils Professor of Law, University of Pennsylvania Law School. Professor, Political Science, University of Pennsylvania Law School. Director of the Penn Program on Regulation, "Does Consensus Work? A Pragmatic Approach to Public Participation in the Regulatory Process," Renascent Pragmatism: Studies in Law and Social Science, Chapter 8, pg. 186-189, 07/05/2017, OCR by ShareX. edited for OCR errors.

The Pitfalls of Consensus Building

Not only does the evidence suggest that consensus building has failed to live up to the claims of its advocates, consensus building also presents significant pitfalls that have tended to be overlooked. Although these problems with consensus have generally been neglected, a realistic appraisal of consensus building requires taking into account both its benefits as well as its drawbacks.

First, consensus building increases the likelihood that policy makers will focus more attention on tractable issues to the neglect of the issues that are most important. For example, less than one-tenth Of one percent of all regulations have been esta blished using formal consensus- based rocedures (Coglianese, 1997), a select sample that clearly excludes there ations having the largest impact on the public. After more than a decade of experience with regulatory negotiation, agencies have negotiated only five rules that were classified as "major" or "significant" (according to conventional criteria set forth under executive order) (Coglianese, 1997). Many practitioners advise only using consensus-building when it is reasonably likely that an agreement can be reached, a bias that inevitably tends to emphasize tractability over importance.

Once negotiations are under way, an emphasis on consensus can also lead to a focus on the most tractable issues rather than the most important ones. In 1996, former EPA Administrator William Ruckelshaus convened the Enterprise for the Environment initiative that brought together industry, government, and environmental leaders to forge a consensus on regulatory reform. Although the project initially sought to diagnose problems associated with the current regulatory system, it soon became apparent that the process would never result in an agreement on such a diagnosis, so the participants shifted their efforts to finding agreement on a broad vision of an ideal environmental protection system. What was really needed, of course, was first to identify and understand the existing problems, even though this was a daunting challenge. A similar experience occurred with the EPA's Common Sense Initiative, which the agency initially launched as a major effort to achieve fundamental change in the regulations affecting six industrial sectors, but after becoming bogged down in consensus-building, evolved into a vehicle for developing only modest, incremental projects (Coglianese and Allen, 2001). A emphasis on consensus pushes participants away from squarely confronting the most pressing problems and instead shifts their effort to less important problems where agreement is more likely.

A second pitfall of consensus building is its comparative exclusivity. Consensus in the regulatory process never really reflects agreement of all those affected by regulatory policy. Negotiations take place representatives of different organizations, not between all the consumers, taxpayers, and citizens who will be affected by a policy decision (Rose-Ackerman, 1994). Furthermore, even among those relevant organizations, policy-making by consensus can lead to the relative exclusion of affected organizations from policy decision-making (Rossi, 1997; Harrison, 1998). This is simply because it tends to be easier to achieve consensus among smaller rather than larger groups. Most practitioners of negotiated rulemaking, for example, recommend that negotiating committees consist of no more than a bout 25 members. As a result, it is not surprising that members of negotiated rulemaking committees acknowledge that agencies exclude parties from the negotiations who should be at the bargaining table (Langbein and Kerwin, 2000). Moreover, there have been concerns that even among those groups represented in a negotiation, consensus building disadvantages smaller or less well-endowed organizations, such as citizen groups and small businesses. The disproportionate burdens that consensus-building places on different participants is a subtler, but still a notable form of exclusivity worth considering.

A third pitfall of consensus-based processes is imprecision (Mansbridge, 1980: 167). The Enterprise for the Environment initiative noted earlier is a dramatic example of the imprecision that can result from a search for consensus. The outcome of this initiative was a set of recommendations with which no one could seriously disagree, but which spoke mainly in platitudes, such as that "the environmental protection system of the next century must become as efficient and low cost as possible without compromising environmental progress" (Enterprise for the Environment, 1998: 36). It is a well-known phenomenon, reflected in the ambiguities commonly found in statutes, that negotiators can more readily reach agreement by employing imprecise language. Imprecision is almost always less controversial in than precision (Diver, 1983). Hence, one risk of consensus building is that agreements that are achieved will be forged on the basis of broad, ambiguous principles that paper over underlying conflicts.

A fourth pitfall of consensus building is the lowest common denominator-effect (Rescher, 1993). In the context of international policy making, which is grounded ultimately on consensus, it is common for treaties to require no more than what is acceptable to the country with the most objections. The problem with the lowest common denominator, of course, is that such a minimally acceptable outcome will not be enough when a more dramatic decision is needed. In a recent study of negotiated rulemaking, Caldart and Ashford (1999: 201) found that because industry will not likely agree to regulations that would compel firms to make dramatic changes, "negotiated rulemaking's focus on consensus can effectively remove the potential to spur innovation".

Finally, by making consensus the goal of participatory policy members contribute to a fifth pitfall: the creation of unrealistic and counterproductive expectations. Even if a broad consensus can be forged, holding fast to that agreement, without allowing even minor changes to be made in the resulting regulatory policy, can prove to be extremely difficult. Actors not party to the agreement, such as legislators, other interest groups, and executive branch officials, will undoubtedly try to affect the policy decision (Kagan, 1997). When this happens and the resulting outcome diverges from the agreement even modestly, participants in the consensus proceeding will naturally have certain expectations disappointed, expectations that would have been much less likely to have developed had the process simply sought public input rather than an agreement. In a recent study of consensus building at the National Marine Fisheries Service, it was reported that 60 percent of the participants were dissatisfied with the results of the consensus-based process (Resolve, 1999). The study's authors concluded that much of the dissatisfaction arose because participants expected to dictate the results more than the agency could legally allow. To the extent that government officials enact policies that depart even modestly from what those involved in policy negotiations thought they had agreed to or hoped to achieve, consensus-based processes can foster expectations that will eventually be unfulfilled.

#### AND industries dismantle negotiations

Sidney Shapiro & Richard Murphy 13, University Chair, Law, Wake Forest University; AT&T Professor of Law, Texas Tech University, "Public Participation without a Public: The Challenge for Administrative Policymaking," Missouri Law Review, Vol. 78, Issue 2, Spring 2013, pg. 490-492.

But what if the only members of the “public” who show up are readers of the Wall Street Journal? This concern is far from hypothetical: corporate interests dominate participation in the legislative rulemaking process in the United States.8 As such, we might expect Woody Allen’s observation (our second opening quote) to come into play. If eighty percent of success is indeed just a matter of showing up, then public participation schemes designed to promote accountability or to “democratize” rulemaking have the potential to distort rulemaking into favoring private, special interests. Determining the extent of such distortion presents a terrifically difficult problem— in part because there is no consensus baseline with which to measure departures from the public interest. Still, it seems safe to presume that profit-oriented, corporate interests perceive that they get something worthwhile from their large investments in regulatory proceedings—and we are inclined to trust this perception.9

As Isaac Newton taught us long ago, for every action there is an equal and opposite reaction. To the degree that unelected, unaccountable mandarins rule, the people do not. Regulatory agencies, headed by unelected administrators, can thus create a “democracy deficit” and, at least for those who believe government derives its legitimacy from democracy,, a legitimacy deficit, too. Various polities have addressed this democracy deficit by embedding public administration in “accountability network[s] of rules and procedures[.]”10 A requirement of public participation is one such procedure common to many countries and many situations. Whether public participation serves the public, however, depends on many factors, including the particulars of the public participation scheme, the agency’s regulatory tasks, the agency’s resources and competence to fulfill those tasks, and the resources and leverage of all those persons who may be affected by the agency’s actions.

Bearing the preceding points in mind, this brief Article raises three broad concerns relating to public participation in rulemaking. First, to assess whether public participation serves the public, it is important to understand why such participation is desirable in the first place. In recent decades, two answers in particular have dominated discourse. Following pluralistic conceptions of democracy, one might say that democracy is the way that multifarious private interests that constitute the “public” cut a deal among themselves. Insofar as agency policymaking amounts to coordination of such dealmaking, it is legitimized by its democratic nature.11 A deliberative democracy conception, by contrast, sees public participation as an integral part of a process that requires agencies to consider all relevant interests before acting and to publicly justify their actions with reasoned explanations.12 The debate over which of these conceptions is better remains unresolved, and the word “democracy” is certainly fuzzy enough to allow for both. But, as this Article will develop, these conceptions can lead to very different understandings of what public administration ought to be about, and, given a choice, we will take deliberation over deals.

Second, under either conception, there is an elephant in the room in the United States: corporate clout. Empirical work demonstrates that public interest groups only participate in some rulemakings, and when they do participate, their efforts are overwhelmed by the participation of corporate interests.13 While less certain as an empirical matter, the evidence also suggests that this domination biases the rulemaking process under either conception of public participation. 14

### Regulation CP---2AC

#### Regs fail---there’s no authority to control ICANN

Nelson Drake 18, J.D. from American University Washington College of Law and a B.A. in Political Science from Georgia College and State University, “Going Rogue: The National Telecommunications And Information Administration's Transfer Of IANA Naming Functions To ICANN,” 2018, lexis

B. **ICANN as an Agency in Form but Not in Name**

Traditionally, through its role in Internet governance and administration, ICANN acts like an administrative agency. ICANN derived its power from an agreement from the MOU with the NTIA, which in effect allowed ICANN to act with the power of the NTIA with regard to the administration of the DNS root servers. 42 However, this power was limited by the NTIA's oversight as the MOU required ICANN to check with the NTIA before making any changes to the root servers. One key feature of this role is that ICANN uses its authority to create the policies and procedures that governed its regulation of the IANA functions.

For example, ICANN created the Uniform Domain-Name Dispute Resolution Policy (UDRP) to outline the rules regarding the transfer of domain names from cybersquatters 43 in disputes involving the rights of trademark owners. 44 Specifically, the UDRP procedures permit ICANN to unilaterally transfer ownership of domain names when a preapproved arbitration panel 45 determines that the original domain name owner is violating the trademark owner's rights. 46 Thus, through these arbitration panels, ICANN determines whether a party has trademark rights in a domain name and can subsequently transfer that domain name from an infringing party.

However, one might argue that is **not a meaningful regulatory role** because parties who are displeased with a panel decision may appeal the ruling  [\*91]  in federal court. 47 The **courts** largely **defer to the UDRP panel's decisions**, and the United States Patent and Trademark Office's (USPTO's) own policy regarding trademarkability of domain names effectively mirrors the UDRP. 48 In addition, ICANN's regulatory authority is codified by its registration agreements that domain name registrants are required to sign. 49 Thus, through the UDRP, and approved arbitration panels, ICANN regulates the ownership rights of domain name registrants and determines the existence of trademark rights with respect to domain names, a function that is typically served by the USPTO in assigning trademark rights. 50

More recently, ICANN began exercising more direct, regulatory control over the Internet through the IANA functions when the Obama administration began drafting a plan by which the remaining control over the IANA functions could be transferred from the NTIA to ICANN. 51 The **transition** was finalized on January 6, 2017, pursuant to the Memorandum signed by Lawrence Strickling, which consequently **made ICANN the sole arbiter of the DNS root zone.** 52 This transfer amounted to the **complete privatization of the administration of the Internet**'s authoritative root zone functions. As a result, ICANN changed from a government contractor acting as an arm of the NTIA into an Internet regulator possessing the power to manage the authoritative root zone as it saw fit.

One primary effect of this transition is that ICANN now resembles an independent administrative agency and no longer a contractor for an executive agency. Independent agencies are unique because they are delegated power **and free to act** largely **without direct interference from the legislative or executive branches.** 53 That independence allows the agency to make decisions  [\*92]  about topics falling within the scope of their expertise that are, in theory, apolitical. 54 Therefore, the basic effect of the IANA transfer in 2017 is that ICANN is now free to regulate the root zone as it sees fit and create the rules that govern its administration.

#### Internet regs destroy clarity and get circumvented

Steven Semeraro 2, Associate Dean & Associate Professor of Law at the Thomas Jefferson School of Law, “Regulating Information Platforms: The Convergence to Antitrust”, Telecommunications & High Technology Law, Volume 1, p. 178-180

IV. INDUSTRY-SPECIFIC REGULATION

Industry-specific regulation is believed to be needed where cooperation among competitors is necessary in order to maximize consumer welfare and where the public interest demands consideration of goals other than short-run consumer welfare. Antitrust is generally thought to be incapable of achieving these results because it rarely imposes duties to cooperate.121 As explained in Section I, however, antitrust has proven quite adept at requiring cooperation when it is really essential.122 And Sections II and III explained how antitrust may incorporate long-run consumer welfare and free speech values. There is thus no inherent need for specifically tailored legislative pronouncements when the general body of antitrust law is seen as flexible enough to reach all threats to consumer welfare.

Nevertheless, industry-specific consumer-welfare regulation arguably could provide substantial benefits by clearly identifying ex ante the rights and obligations of the competitors in a way that the general antitrust laws cannot. But that theoretical benefit is unlikely to be realized. Congress has demonstrated a singular inability, or at least an unwillingness, to draft regulatory legislation that is clear enough to obtain this benefit. As Justice Scalia wrote in his opinion for the Court in Iowa Utilities:

It would be a gross understatement to say that the 1996 [Telecommunications] Act is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self contradiction. That is most unfortunate for a piece of legislation that profoundly affects a crucial segment of the economy worth tens of billions of dollars.123

In the absence of industry-specific regulation, litigation would often be necessary to resolve particular disputes. Given the inherent uncertainties in the antitrust laws, the notion that private parties could often settle differences in the shadow of those laws is unlikely.124 But industry specific regulation may be no better. The 1996 Telecommunications Act produced an explosion of litigation that remains unresolved five years later.125

Even when industry-specific regulation is interpreted in a way that provides clear rules to govern competitive behavior in information platform markets, the antitrust laws may remain a substantively better regulatory device. By their nature, industry- specific rules intended to enhance consumer welfare would necessarily require both (a) costly conduct to conform to the rules that in some situations would have no measurable consumer welfare benefit, and (b) permit some conduct that reduced consumer welfare but did not violate an ex ante rule.126 The problem would likely worsen over time as firms learned to walk the line along the rule, figuring out ways to comply with the letter of the law without providing the intended consumer welfare benefits. 127 For example, firms may learn the maximum permissible delays in the implementation of a rule-required behavior. All this is not to say that clear rules are never useful. But the resistance to using clear rules in antitrust doctrine generally should lead us to think twice before assuming that industry-specific legislation is a superior alternative to antitrust as a regulator of competition among information platforms.

#### AND won’t be enforced

Stacey L. Dogan 8, Assistant Professor of Law at Northeastern University; and Mark A. Lemley, William H. Neukom Professor of Law at Stanford Law School, “Antitrust Law and Regulatory Gaming”, Stanford Law School, 2008, No. 367 John M. Olin Program in Law and Economics, Working Paper No. 367, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship

II. The Relative Efficiency of Antitrust and Regulation

The growing antitrust deference to regulation is cause for concern. Both antitrust and regulation are economic responses to market failures.46 Implemented correctly, both are designed to serve the ends of economic efficiency. 47 It is therefore reasonable to judge the relative efficacy of antitrust and regulation by economic criteria. And judged by those criteria, virtually all economists would agree that antitrust-overseen market competition is superior to industry regulation. In particular, none of the arguments the Court has offered as a reason to prefer regulation to antitrust withstand scrutiny.

Relative expertise. It is true, as the Court emphasized in Trinko and CreditSuisse, that antitrust courts are generalist courts, while regulatory agencies tend to specialize in a particular industry and its problems. That specialization should, all other things being equal, mean that expert regulators will do a better job than judges or juries of reaching the right result. But other things are far from being equal. Antitrust courts have two significant advantages over regulatory agencies when it comes to promoting competition.

First, antitrust courts are trying to promote economic efficiency, while regulators often aren’t. For decades, efficiency has served as the sole criterion on which to judge antitrust rules. And courts have had over a century in which to hone those rules to achieve that end. Without question, courts have made mistakes in the past. But there is a strong consensus among antitrust scholars that the wave of cases in the last 30 years has largely moved antitrust in the right direction, eliminating any significant risk that antitrust enforcement will do more harm than good.48 Scholars may fight over whether a Chicago School or a post-Chicago School approach will achieve the right result in specific cases, 49 but for the most part they are tinkering at the margins: the law and the scholarship have converged with respect to both the proper goals of antitrust and the general rules that will achieve those goals.

Regulation, by contrast, is frequently not even intended to achieve economic efficiency through competition. Occasionally that is because of a legislative judgment that competition is impossible, though the number of industries thought to be natural monopolies for which markets won’t work has shrunk dramatically in the past four decades.50 Industry regulation that excludes entry in order to promote a natural monopoly, as telephone regulation did before 1984, is not likely to achieve a competitive outcome.

More often, the goals of the legislators who establish regulatory agencies, or the goals of the regulators who run those agencies, are to achieve something other than competition. Indeed, many regulations are aimed precisely at eliminating competition, as was the government sponsored raisin cartel in Parker v. Brown 51 or any of its modern descendent crop-support programs administered by the Department of Agriculture. It should be obvious that regulations intended to reduce competition will not promote it. But even if the regulation is not directly inimical to competition, competition is frequently irrelevant to, or at best a minor consideration in, a regulator’s agenda. Regulators may care about the safety and efficacy of a drug, for example, and only incidentally about whether there is competition in the sale of that drug. They may seek to reduce traffic deaths or air pollution by mandating technology, regardless of the effect that mandate has on the price manufacturers can charge or the number of products they sell. These are laudable goals, to be sure, but they are not competition-related goals. An agency tasked with achieving these goals is likely to ignore threats to competition from the industry it regulates so long as those threats do not compromise its core mission.

Thus, the state and local governments that enacted the privately-drafted National Fire Protection Code at issue in Allied Tube into law were interested in stopping fires; doubtless they thought little if at all about the competitive effects of the code, even though it turned out that the code was drafted by interested private parties with the purpose of impeding competition rather than promoting fire safety.52

Even those agencies whose mission expressly involves consideration of competition issues will not necessarily make it their first among potentially conflicting priorities. The SEC, for example, which as Justice Breyer pointed out is dedicated to improving market information and expressly considers competition among other issues in setting regulation,53 is first and foremost an investor-protection and information-disclosure agency, not an agency that investigates and weeds out cartels or other anticompetitive practices. It is unlikely to devote much in the way of time or resources to such issues, because even if it is tasked to consider such issues they do not reflect the agency’s primary purpose. Similarly, even an agency like the Federal Communications Commission that is directly focused on competitive conditions in a particular market may naturally pay attention primarily to that market, and give less if any attention to the effect its rules might have on competition in adjacent markets or competition from unanticipated new businesses. This arguably explains the FCC’s willingness to largely ignore the effects of its decisions on the Internet, for example: it is telecommunications, not the Internet, that the FCC is tasked to regulate.

Agencies that view competition as secondary, or view it through the lens of a particular industry’s characteristics and interests, are less likely to create and enforce rules that optimally encourage competition. 54 At a bare minimum, therefore, the industry-specific expertise of an agency must be balanced against the competition-specific expertise of the specialist antitrust agencies: the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division.

#### It causes agency capture AND links to the net benefit

D. Daniel Sokol 10, Assistant Professor at the University of Florida Levin College of Law, “Antitrust, Institutions, And Merger Control”, 2010, 17 Geo. Mason L. Rev. 1055, Lexis

Public choice helps to explain how sector regulators are likely to be captured by special interests. 241 The interests that affect sector regulators are more concentrated than those in antitrust 242 and therefore more successful in their efforts to capture regulators. In this sense, the sector regulators are more likely to be captured and will behave more politically than antitrust agencies.

Interest groups have an advantage in crafting policy for two reasons. First, there are informational costs to political participation. 243 Individuals need to determine their interests. To do so, they must expend resources. Such expenditure for information can be significant, especially when the benefit is small for an individual consumer. 244 Because information itself is a public good, markets are suboptimal at generating information. 245 Information costs limit the ability of parties to participate effectively in the legislative process.

The second participation cost is the cost of political mobilization. 246 Once interests are properly identified, political forces must be mobilized to fight for legislation. This creates free-rider problems for public goods such [\*1092] as laws of general societal benefit, like antitrust. 247 Each individual has an incentive to shirk on his organizational responsibility because someone else can do his work for him. 248 This makes majority groups unlikely to be as effective as smaller groups with lower organizational costs. 249

These informational and organizational costs make it possible for a well-organized interest group to push for legislation that will benefit the group instead of society at large. 250 Because of lower informational and organizational participation costs, these groups tend to be effective in their rent seeking. Rent seeking in the antitrust setting creates immunities from antitrust or shifts regulatory intervention to sector regulators more prone to capture than antitrust enforcers. Firms may have strong political clout to restrict competition. 251 These firms have an incentive to shape government policy to be receptive to their needs through policies that facilitate anticompetitive restraints rather than the needs of consumers as a whole. 252 In both regulated and unregulated sectors, firms may try to curry favor with government to raise barriers to prevent new entry or to raise rivals' costs. 253 In a recent article, Professors Dogan and Lemley conclude that antitrust and the use of generalized courts are more efficient than regulatory agencies because generalized courts are less likely to pursue regulatory gaming strategies. 254 Sector regulation and antitrust enforcement overlap in many respects. Such overlap creates the potential for inconsistency between these two institutions, as well as increased fear of regulatory capture. [\*1093]

### States CP---2AC

#### State policy fails and isn’t perceived internationally

Daniel Abebe 12, Assistant Professor of Law at The University of Chicago Law School, “One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs”, 2012, 2013 Sup. Ct. Rev. 233, Lexis

B. ONE VOICE AND CENTRALIZATION

The Supreme Court's emphasis on centralized decision making in foreign affairs is perhaps best exemplified in its foreign affairs federalism jurisprudence. The Constitution specifically limits the participation of states in foreign affairs 22 and, in the event of conflict between a federal statute and state law, the Supremacy Clause ensures that the state law is preempted. But the Supreme Court has also developed several preemption doctrines to ensure the primacy of the national government over the states on a range of foreign affairs questions, including field preemption, 23 obstacle preemption, 24 note dormant foreign affairs preemption, 25 and executive preemption. 26 In each of these areas, the Supreme Court's emphasis on speaking with one voice has resulted in the centralization of foreign affairs decision-making authority in the national government over the states.

What is the logic of this centralization? Much of it rests on general understandings of the merits of centralization in institutional design. The common functionalist account justifying centralization [\*243] of decision making in the national government focuses on collective action problems and the provision of public goods. National governments are best placed to coordinate public policy, determine national interests, and engage in the necessary trade-offs to promote national public welfare. Perhaps most central to the responsibilities of the national government is the provision of national security, the maintenance of a domestic market for trade, and the generation of economic wealth. For example, in the security context, the national government can act as a single, integrated institutional actor to determine the national interest; develop US foreign policy; coordinate the military, diplomatic, and intelligence resources of the nation; swiftly pursue national objectives; and prosecute wars. If the several states were tasked with such responsibilities, it does not take much to imagine the difficulties in coordinating among a large number of heterogeneous subnational governments, each with its own interests and desire to pass on the cost of national defense, when possible, to its co-sovereigns.

The same logic applies to the development and maintenance of a common economic market and the promotion of policies to encourage economic prosperity. The national government can aggregate information and coordinate policy to ensure that the US can benefit from international trade, encourage the production of goods for which it has a competitive advantage, protect the national market from foreign anticompetitive behavior, and redistribute wealth, if necessary, to ameliorate the unequal distribution of wealth across particular regions, states, or demographic groups. The states, by contrast, will tend to be focused narrowly on their own economic prosperity, and will produce economic policies that allow them to reap the benefits and externalize the costs. We can imagine Alaska, Texas, and Louisiana, for example, adopting policies with respect to resource extraction that might impose environmental costs on the US as a whole, just as we can imagine Massachusetts, California, and New York adopting regulatory policies that might limit the ability of the US as a whole to benefit from its resource endowment. In these contexts--national security, trade, and economic prosperity--the benefits of centralization over vast decentralization among dozens of subnational entities are clear.

Beyond this traditional account, there are less obvious but similarly [\*244] important justifications for centralization in foreign affairs. One is the clarity of the ensuing foreign policy. Even if there is substantive disagreement over policy, clarity ensures at least in theory that there is a clear communication of the US national interest to friend and foe alike. Another is the designation of a clear decision-making authority in foreign affairs. Among other things, it reduces the likelihood of constitutional impasses over key issues, provides an accountable governmental entity for the domestic voting public, and encourages specialization over time. Finally, to the extent the national government is working with other countries on an issue of global concern, centralization designates the US representative for international policy coordination.

#### Can’t solve either advantage---patchwork implementation muddies the plan’s signal, causes capture, and leads to duplication

Jacob P. Grosso 21, J.D. Candidate at the University of Richmond School of Law and B.A. from George Mason University, “The Preemption of Collective State Antitrust Enforcement in Telecommunications”, University of Richmond Law Review, 55 U. Rich. L. Rev. 615, Winter 2021, Lexis

A. Benefits of Preempting Collective State Action

Preemption would result in cognizable benefits to the regulatory and business spheres. These benefits would include clear guidance, increased enforcement efficiencies, and the ability to pursue nonenforcement agendas and broader policy goals.236 Businesses would receive clear guidance on the legality of their business choices. State antitrust enforcers would redeploy costs to state-specific issues. Federal enforcers would be able to effectively pursue broader policy goals.

Consolidated enforcement and regulatory schemes would provide clarity to businesses through more uniform regulations and decreased litigation concerns. This consolidation, in turn, would reduce costs for the government and the competitors while encouraging competition and unnecessary compliance costs.237 Clear regulations serving a common goal, without the inherent biases of individual state interests, can provide clarity to businesses and preserve the balancing of consumer welfare with the aggregate social welfare. Individual states make decisions based on their individual needs, as seen in the T-Mobile-Sprint merger.238 When federal law conflicts with state law, federal law controls.239 Despite this standard, multistate task forces continue to come forward as the interpreters of federal law.240 This approach poses problems because of the inherent state biases that underlie the enforcement actions. Preemption could decrease the effects of individual state biases on the guidance given to competitors.

Antitrust analysis considers geographic differences in determining the concentration of a market, meaning a one-size-fits-all approach does not work for aggregating individual state markets.241 This restructuring would reduce the effects of an individual state’s interests on collective action.242 While any individual state may be best served by one plan, the economy as a whole might suffer for that decision.243 “Divergent approaches to the exercise of enforcement discretion are not just possible, they are likely.”244 States likely face pressure from several groups that can influence their enforcement decisions, as well as the selfish motivation to protect their consumers regardless of the cost to national welfare.245 Uniform, clear guidance at the federal level, without state interference, will reduce opportunities for the individual motivations of states to negatively impact a clear enforcement scheme. Adding states as parties to a telecommunications antitrust lawsuit complicates the suit by increasing the number of parties that must agree to a settlement.246 The effects of the preemption and resulting enforcement system will create efficiencies for federal and state enforcers, as well as for businesses. For telecommunications antitrust enforcement actions, this will limit costs to the federal agencies, prevent the duplication of effort (in reviewing transactions), and eliminate the costs of coordination that NAAG multistate enforcement teams face.247 Extending even beyond telecommunications, this results in a net positive for the antitrust sections of state attorneys general offices to redeploy resources to monitor and combat anticompetitive behavior in the state-specific areas that these sections were designed to handle.248

The reduced litigation could represent a net positive for both state governments and competitors. Even responding to discovery requests from one state can cost two to nine million dollars.249 Dealing with multiple suits, as in the T-Mobile-Sprint merger, causes a compounding of these costs resulting from duplication of effort. For T-Mobile, the firm has now faced multiple reviews concerning the same issues that it believed it had resolved. The FCC review alone took 317 days.250 In total, from the initial merger review submission on April 28, 2018, until April 1, 2020, it took two years to close the transaction.251 The T-Mobile-Sprint merger exemplifies how further delays can slow the competitor’s ability to continue with business, as it must divert attention to compliance and litigation efforts. 252

#### Gets struck down via the DCC

Daniel A. Lyons 19, Professor at Boston College Law School and a Member of the Free State Foundation's Board of Academic Advisors, “State Net Neutrality”, Summer 2019, 80 U. Pitt. L. Rev. 905, Lexis

D. Dormant Commerce Clause

Independent of the Communications Act, state regulation of the Internet may also run afoul of the Dormant Commerce Clause. The Dormant Commerce Clause doctrine prevents states from imposing undue burdens on interstate commerce. It is a judge-made doctrine, derived from the negative implication of the Constitution's grant to Congress of the power to regulate commerce between the states. 245 Its "central rationale . . . is to prohibit state or municipal laws whose object is local economic protectionism." 246 Thus, state laws that explicitly discriminate against [\*941] interstate commerce face "a virtually per se rule of invalidity." 247 But even a facially nondiscriminatory state law may nonetheless run afoul of the doctrine if it unduly burdens interstate commerce. Courts evaluate such claims under the test announced in Pike v. Bruce Church: "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." 248

The Pike balancing test played an important role in shaping early Internet regulation, because of concern about spillover effects when states regulate online conduct. In the prominent case of American Library Association v. Pataki, a district court struck down a New York law that prohibited the intentional use of the Internet to send pornographic messages that would be "harmful to minors." 249 The court conceded that shielding New York minors from pornography constituted a legitimate state interest. 250 But it found this interest was outweighed by the significant chilling effect the law would have on wholly out-of-state conduct. 251 Because information posted to the Internet is available everywhere simultaneously, those who disseminate information online could face liability for posting content that arguably ran afoul of New York's law, even if they had no intention of communicating with New York residents. 252 this, in turn, would chill communication to recipients in states where the content was legal, thus imposing an undue burden on interstate commerce far in excess of what little local benefits were likely to result from enforcement. 253

Like many balancing tests, the doctrine is somewhat unpredictable, turning on the facts of individual cases. Many state regulations create spillover effects; the Dormant Commerce Clause only invalidates those that, in the court's judgment, impose a greater burden on interstate commerce than they reap in local benefit--which can differ from case to case. For example, in National Federation of the Blind [\*942] v. Target Corp., 254 Target argued that California's disability law burdened interstate commerce by requiring it to modify a nationwide website to meet California requirements--which effectively imposed California law on the company's transactions with all customers, even those outside California. 255 The court found this argument was premature at the motion to dismiss stage, explaining that Target could develop a California-specific website, and even if it chose not to do so, its decision to develop one product for a nationwide market does not necessarily implicate the Commerce Clause. 256 At a minimum, factual development was necessary to determine the "practical effect" of the law on interstate commerce before the court could decide the Dormant Commerce Clause issue. 257

National Federation of the Blind's focus on practical effects reflects the insights of Professors Jack Goldsmith and Alan Sykes, whose seminal Yale Law Journal article, The Internet and the Dormant Commerce Clause, brought some clarity to this somewhat confusing corner of the law. 258 Goldsmith and Sykes highlight that the primary justification for the Dormant Commerce Clause is to "ensure[] free trade among the states and thereby secure[] the associated economic benefits." 259 They thus support the consideration of economic efficiency as the lodestar for such claims: "[T]he appropriate statement of the extraterritoriality concern is that states may not impose burdens on out-of-state actors that outweigh the in-state benefits." 260

A full application to broadband regulation is beyond the scope of this article. But it is worth noting that like early state attempts to regulate online conduct, state-level network traffic management regulations are susceptible to a Dormant Commerce Clause challenge. The Internet is a national (indeed, global) network, meaning that attempts to regulate the flow of traffic on that network are likely to have extraterritorial effects. If state net neutrality rules survive a preemption analysis, states should be ready for the claim that such regulations unreasonably burden [\*943] interstate commerce and, therefore, contravene the Dormant Commerce Clause doctrine.

### Cap K---2AC

#### Growth is sustainable AND transition fails.

Kelsey Piper 21, Staff Writer, Vox. BS, Symbolic Systems, "Can we save the planet by shrinking the economy?" Vox, 08/02/2021, https://www.vox.com/future-perfect/22408556/save-planet-shrink-economy-degrowth/

Most of the world is very poor. Billions of people go hungry, can’t afford a doctor when they get sick, don’t have adequate shelter and sanitation, and struggle to exercise the freedoms essential to a good life because of material deprivation.

But for all the immiseration around us, one thing is undeniable: For the past several centuries — and especially for the past 70 years, since the end of World War II — the world has been getting much richer.

That economic boom means a lot of things. It means cancer treatments and neonatal intensive care units and smallpox vaccines and insulin.

It means, in many parts of the world, houses have indoor plumbing and gas heating and electricity.

It means that infant mortality is down and life expectancies are longer.

But an increasingly wealthy world also means we eat more meat, mostly from factory-farmed animals. It means we emit lots more greenhouse gases. It means that consumers in developed countries buy a lot and throw away a lot.

In other words, it means a lot of good things and certainly some bad things as well.

Mainstream climate and environmental policy has developed over the years with a certain assumption — that we can get rid of the bad things while still preserving the good things. That is, it’s sought to figure out how to reduce carbon emissions, preserve ecosystems, and save endangered species while continuing to improve material living conditions for everyone in the world.

But to a vocal slice of climate activists, that approach seems increasingly doomed. The degrowth movement, as it’s called, argues that humanity can’t keep growing without driving humanity into climate catastrophe. The only solution, the argument goes, is an extreme transformation of our way of life — a transition away from treating economic growth as a policy priority to an acceptance of shrinking GDP as a prerequisite to saving the planet.

At the core of degrowth is the climate crisis. Degrowth’s proponents argue that to save Earth, humans need to shrink global economic activity, because at our current levels of consumption, the world won’t hit the IPCC target of stabilizing global temperatures at no more than 1.5 degrees of warming. The degrowth movement argues that climate change should prompt a radical rethinking of economic growth, and policymakers serious about climate change should try to build a livable world without economic growth fueling it.

It’s a bold, even romantic vision. But there are two problems with it: It doesn’t add up — and it would be nearly impossible to implement.

Addressing climate change will take genuinely radical changes to how our society works. Stirring as it might be to some, though, degrowth’s radicalism won’t fix the climate. Degrowth is most compelling as a personal ethos, a lens on your consumption habits, a way of life. What it’s not is a serious policy program to solve climate change, especially in a world where billions still live in poverty.

The basics of degrowth

Pinning down what degrowth means can be tricky because degrowthers often differ on details. But there are some common threads to their thought.

In general, degrowthers believe that in the modern world, economic growth has become unmoored from improvements in the human condition.

Jason Hickel, an anthropologist at the London School of Economics and the author of Less Is More: How Degrowth Will Save the World, has emerged as one of the leading spokespeople for the movement. To Hickel, the case for degrowth goes like this: The world is producing too much greenhouse gases. It is also overfishing, is overpolluting, is unsustainable in a dozen ways, from deforestation to plastic accumulating in the oceans.

Scientists have made impressive progress on technologies that, he argues, should have been sufficient to address the climate crisis — think solar panels, meat alternatives, eco-friendly houses. But because wealthy societies are so focused on growing the economy, those gains have been immediately plowed back into the economy, producing more stuff for the same ecological footprint, yes, but not actually shrinking the ecological footprint.

Hickel argues that this problem is unsolvable within our current framework. “In a growth-oriented economy,” he writes in Less Is More, “efficiency improvements that could help us reduce our impact are harnessed instead to advance the objectives of growth — to pull ever-larger swaths of nature into circuits of extraction and production. It’s not our technology that’s the problem. It’s growth.”

His solution? To abandon the lodestar of economic policy in nearly every country, which is to aim for economic growth over time, increasing wealth per person and expanding the ability of their citizens to purchase the things they want and need. Instead, Hickel argues, rich countries should focus on getting emissions to zero — even if the result is a much-contracted economy.

If that sounds unappealing, he devoted much of the book — and much of our interview — to arguing that it wouldn’t be. He points out that some countries, like the United States, are rich but get very little for their spending, in terms of national well-being; poorer countries like Spain have better health care systems. He argues that current levels of well-being could be maintained at a tenth of Finland’s current GDP — assuming that society also adopted wide-scale redistribution and socialist labor policies.

At the heart of Hickel’s argument is an idea that divides degrowthers and their critics: the concept of “decoupling” growth from environmental impact. Hickel and his fellow degrowthers are skeptical that economic growth as we know it can ever truly be achieved without accompanying growth in emissions.

But critics argue that not only is it possible — it’s already been happening. For the past decade, as many countries have transitioned to green energy, they have successfully seen their emissions shrink while their GDP has grown.

“There have been really big changes since 2005,” when people were debating whether decoupling was even possible, Zeke Hausfather, a climate scientist at the Breakthrough Institute, told me. “Green energy has gotten cheap. Solar power is the cheapest energy at the margins in every country today. Global coal use has peaked.” His research finds evidence of “absolute decoupling” — emissions shrinking while GDP grows — in 32 countries, including the United States, the United Kingdom, and Germany.

Degrowthers I spoke to don’t dispute that decoupling is possible. But they argue it won’t be enough to shrink emissions as rapidly as they need to. And there’s a compelling bit of evidence for that view: Even as some countries have decoupled, others have increased emissions, and overall atmospheric carbon is at its highest level ever recorded.

Where an optimist might see, in the decoupling of the past few decades, signs that growth and climate solutions can coexist, a pessimist might find the degrowth diagnosis more persuasive: that our growth-focused society clearly isn’t up to the task of solving climate change.

The pessimists have picked up momentum of late. It’s true, in one sense, that degrowth is a somewhat fringe idea: No politician has endorsed it, and no serious policy proposals based on it have been put forth. But degrowth has nonetheless drawn sympathy in some quarters — including among prominent climate thinkers.

Steven Chu, who served as secretary of energy under President Obama, has endorsed it, arguing, “You have to design an economy based on no growth or even shrinking growth.”

More than 11,000 scientists signed William Ripple’s 2019 letter “World Scientists’ Warning of a Climate Emergency,” which argues “our goals need to shift from GDP growth and the pursuit of affluence toward sustaining ecosystems and improving human well-being by prioritizing basic needs and reducing inequality.”

And a recent paper in Nature explored how a “degrowth” of 0.5 percent of GDP per year might interact with climate and emissions targets, arguing that while “substantial challenges remain regarding political feasibility,” such approaches should be “thoroughly considered.”

The tension at the heart of degrowth: Can we fix global poverty without economic growth?

One big problem with degrowth is this simple fact: In the coming decades, most carbon emissions won’t be coming from rich countries like the US — they’ll be happening in newly middle-income countries, like India, China, or Indonesia. Already, developing nations account for 63 percent of emissions, and they’re expected to account for even more as they develop further and as the rich world decarbonizes.

Even if emissions in rich countries go to zero very soon, climate change is set to worsen as poorer countries increase their own emissions.

That will, of course, have deeply negative climate impacts. But the alternative is a nonstarter — should the world really prioritize curbing emissions and economic growth if it meant suppressing the growth of those countries?

Degrowthers see no dilemma here. What Hickel envisions is global movement in two directions: Poor countries could develop up to a certain level of prosperity and then stop; rich countries could develop down to that level and then stop. Thus, climate catastrophe could be averted, all while making the world’s poor more prosperous.

“Rich countries urgently need to reduce their excess energy and resource use to sustainable levels so our sisters and brothers in the global South can live well too,” Hickel put it. “We live on an abundant planet and we can all flourish on it together, but to do so we have to share it more fairly, and build economies that are designed around meeting human needs rather than around perpetual growth.”

From a climate change perspective, though, there’s a problem. First, it means that degrowth would do nothing about the bulk of emissions, which are occurring in developing countries.

Second, the global economy is more interconnected than Hickel implies. When Covid-19 hit, poor countries were devastated not just by the virus but by the aftershocks of virus-induced slowdowns in consumption in rich countries.

There’s some genuine appeal to the idea of an end to “consumerism,” but the pandemic offered a taste of how a sudden drop in rich-world consumption would actually affect the developing world. Covid-19 dramatically curtailed Western imports and tourism for a time. The consequences in poor countries were devastating. Hunger rose, and child mortality followed.

Covid-19, of course, wreaked direct economic havoc at the same time, with lockdowns having an especially negative impact on some poor countries; the effects of the pandemic and international demand shock were combined, and in some cases they’re hard to separate. But the United Nations, the World Bank, and expert analyses point to the decline in global consumption as a significant part of the picture.

Degrowthers reject this concern on two fronts: First, they argue that a sustained, deliberate reduction in consumption wouldn’t be anything like a recession. Recessions, they agree, are really bad, but that’s because consumption falls in affected sectors, instead of being targeted at things that don’t improve well-being. Degrowth, they say, would be different.

Second, they contend that there is some path to economic growth in poor countries that doesn’t rely on trade with rich ones — certainly some countries managed economic growth when the whole world was poor, after all.

Hickel’s perspective is that most trade between rich and poor countries is extractive, not mutually beneficial — and that maybe when that dynamic ceases, poor countries will have the chance for the catch-up growth they merit. That’s one take. But it means that degrowth’s case for not crushing the poor world is predicated on a speculative take on how those countries can grow — one that democratically elected leaders in those countries largely don’t share.

What GDP doesn’t capture — and what it can tell us

In a way, the debate over degrowth is a debate over the meaning of one economic indicator: gross domestic product (GDP).

GDP measures the transactions within an economy — all the occasions when money changes hands in exchange for goods and services. It’s not wealth, but it’s one of the primary ways we measure wealth.

It certainly doesn’t capture everything of value. When parents spend a quiet weekend at home teaching their children to read, for example, nothing GDP-generating has happened — but value has certainly been created.

Degrowth articles burst with such examples. GDP, they love to point out, includes the production of things like nerve gas, even though that has no social value. And it doesn’t include storytelling, singing, gardening, and other simple human pleasures.

“If our washing machines, fridges, and phones lasted twice as long, we would consume half as many (thus the output of those industries would decline), but with zero reduction in our access to those goods,” Hickel told me. If everyone worked half the hours they currently do, and made half the income, they might mostly be better off — at least, assuming that their basic needs were still met.

“We propose policies like a living wage, a maximum income ratio, wealth taxes, etc. to accomplish this,” Hickel told me. “Given all of this, the language of poverty really gets it wrong: longer-lasting products, living wages, shorter working weeks, better access to public services and affordable housing — we are calling for the opposite of poverty. Yes, industries like SUVs and fast fashion would decline, but that doesn’t mean poverty. We can replace them with public transportation and longer-lasting fashion, thus meeting everyone’s needs.”

There’s a lot of speculation here, and a lot of what degrowth’s critics would call hand-waving. Degrowth is fundamentally premised on the claim that we can cease to focus on growth while getting better than ever at addressing human needs. If that’s true, then that would certainly be great news.

But in many ways, it’s a vision more wildly optimistic — disconnected from actual policy results — than any of the more standard “sustainable development” models degrowthers criticize for being out of touch.

First, in the world today, there’s an extremely strong association between growth and welfare outcomes of every kind. GDP, while imperfect, is a better predictor of a country’s welfare state, outcomes for poor citizens in that country, and well-being measures like leisure time and life expectancy than any other measure.

“GDP does leave out non-commercialized activities that are welfare-enhancing,” economist Branko Milanovic writes in a rebuttal of degrowth:

It is, like every other measure, imperfect and one-dimensional. But ... it is imperfect at the edges while fairly accurate overall. Richer countries are countries that are generally better-off in almost all metrics, from education, life expectancy, child mortality to women’s employment etc. Not only that: richer people are also on average healthier, better educated, and happier. Income indeed buys you health and happiness. (It does not guarantee that you are a better person; but that’s a different topic.) The metric of income or GDP is strongly associated with positive outcomes, whether we compare countries to each other, or people (within a country) to each other.

The things degrowthers care about — leisure time, health care, life expectancy — are strongly correlated with societal wealth. The generosity of a welfare state and the availability of transfers to a state’s poorest people are also strongly correlated with societal wealth. Innovation, discovery, invention, and medical technology improvements are also strongly correlated with societal wealth.

The strong correlation between child mortality and GDP per capita is apparent on the above graph. There are some outliers — some countries outperform or underperform their GDP somewhat, in terms of preventing child deaths — but in general, wealth strongly predicts child survival. No single, simple medical intervention causes the difference. Wealthier societies on average get better health outcomes across the board.

This graph looks at child mortality not just by comparing rich countries to poor ones but also by comparing countries over time, as they get richer: Getting richer improves outcomes for children.

Leisure time, too, has increased — and hours worked have declined — as the world has gotten wealthier.

It might be possible in principle to do better — to decouple, if you will, health and well-being from access to material resources, so that everyone is well-off with many fewer resources.

But the examples degrowthers point to remain speculative ones; if we ought to be skeptical, as degrowthers argue we should be, about the decoupling of wealth from ecological impact, we ought to be at least as skeptical about the prospects of decoupling wealth from living standards.

“In the end, economic growth is about the production of stuff that people need and then the consumption of those things by the people who need it,” Max Roser at Our World in Data, a research institute focused on finding, visualizing, and communicating historical economic and health data, told me. He added:

The money aspect, and the abstract concept of GDP, distract us and make it less obvious what it’s actually about. People want to have enough food, they need to go to the doctor, they need childcare, they want a good education. People need lots of stuff, and one thing that people care about are goods and services, and they need to be produced, and economic growth is about an increase in the quality and quantity of the goods and services that people need.

There’s also the knotty problem of who gets to decide which goods and services people choose to spend their money on. Many of the climate scientists I spoke to shared Hickel’s impatience for many specific carbon-intensive modern industries. “I’m not going to defend bitcoin,” the Breakthrough Institute’s Hausfather told me. (The cryptocurrency has attracted intense criticism for being astoundingly carbon-intensive.)

But there is a lot in between bitcoin and basic subsistence needs. And “enough for everyone who needs it” inherently requires value judgments about what people really need, and what things they value that are frivolous luxuries. That’s why so many anti-poverty programs have moved away from giving people “what they need” toward just giving them cash — that is, giving them wealth, which they can choose to spend however they please.

“Even poor people have so many needs for goods and services that you can’t possibly put them on a list and say, ‘Now we’re done here,’” Roser told me. “That’s the beauty of money, that you can just go out there and get what you need rather than what some researcher determines are your needs.”

Degrowth is unrealistic — and gaining traction

As a policy program, degrowth suffers from being both too radical and not radical enough.

There’s a lot of broad-brush policy prescriptions in the degrowth lit, but those details never really add up.

While it’s not a short book, Less Is More feels surprisingly sparse when it comes to envisioning how the changes it recommends could be brought about. The chapter on solutions recommends cutting the workweek and changing tax policy — two solid proposals — but then rounds that out by recommending ending technological obsolescence, advertising, food waste, and student debt.

I’m not particularly opposed to those policies. But they seem laughably inadequate for the magnitude of the task at hand: confronting the climate crisis. Degrowth successfully persuades that guiding humanity and our planet through the 21st century will be really, really hard — but not in a way degrowth particularly solves.

Where degrowth literature is relentlessly pessimistic about the prospect of our problems being solved under our current economic system, it turns oddly optimistic about the prospect that they’ll be solved once we embrace a different way of viewing wealth and progress. If cutting carbon emissions fast enough to matter requires shrinking the global economy by 0.5 percent a year indefinitely, starting right now, as the Nature paper estimates, that’ll take policy measures much larger and more ambitious than any proposed in Less Is More.

“If we are to avert catastrophic warming, we have to lower carbon emissions by a factor of two within the next 10 years. I find it highly implausible that capitalism/market economics will be abandoned by the world on that time frame,” Pennsylvania State University climatologist Michael Mann told me. “That means we have to act on the climate crisis within the framework of the current system.”

In that sense, there’s actually something anti-radical about any climate plan so radical that it can’t be concretely brought about in the next decade.

And yet, implausible as it is, degrowth is gaining a foothold in intellectual and policy circles. What accounts for its seemingly growing popularity? This was a question that puzzled me until I heard the same answer from one degrowth advocate and one opponent: that it’s not, really, exactly about climate.

“It started in the 1990s in France, picking up on radical European politics in the 1970s,” Giorgos Kallis, a researcher studying degrowth at the Universitat Autònoma de Barcelona, told me. “There was an in-between political space there — radical greens, putting much more emphasis on localized production, emphasis on conviviality and autonomy. This is a discourse that comes from them. It wasn’t just about avoiding a particular environmental problem. It was a holistic proposal.”

That was also the diagnosis of Zion Lights, a former spokesperson for Extinction Rebellion, who has become one of the climate movement’s internal critics, arguing that the movement focuses too much on environmentalist-friendly proposals that have nothing to do with climate.

“It has become difficult to talk about making energy policies for combating climate change, for example, without being told that such thinking is actually irrelevant because it doesn’t involve system change,” she recently argued. “We need cheap, clean energy at scale and we need it now.”

In that sense, a good analogy for degrowth might actually be locavorism — the movement that focuses on eating food grown locally. It’s popular with environmentalists, both those whose convictions are about climate change and those who long for a return to the land. Its actual climate impacts are limited or even negative — for some products, it’s better for them to be grown in their optimal environment even with carbon-intensive shipping — and it definitely does less for the climate than, for example, going vegan. But it retains its allure.

How to fight climate change while building good human societies

Degrowth’s radicalism isn’t where I part ways with it: The future will almost certainly require us to eat much less meat, dramatically change land use, and potentially invest a significant chunk of society’s resources in mitigation indefinitely.

But I don’t tend to see such efforts as fundamentally futile. Degrowthers do — even when there have been significant successes.

Climate scientists have spent a long time warning the world about climate change, but they nonetheless tend to sound a more optimistic note than degrowthers like Hickel. “It’s undoubtedly a monumental challenge,” Mann told me. “We have the technology to solve the problem — renewable energy, smart grid technology, and existing energy storage. We just need the political will to act.”

Take solar panels. Two decades ago, cheap solar panels were just a dream. Now they’re everywhere and have become a crucial tool in the fight against climate change.

Not only that, solar panels have democratized electricity. Just one small-scale instance: In rural Kenya, you can see donkeys saddled with solar panels so that farmers can charge their phones. And there are many such examples that count as a win for both human progress and our fight against climate change.

It should go without saying that since rich governments got us into this climate mess, they should be at the forefront of getting us out of it. We need massive investments in carbon capture, green energy, plant-based meat, mitigation, and straight-up cash transfers to poor countries disproportionately affected by the climate crisis.

Many of the researchers I spoke to were open to the idea that in the long run, humanity would need to rethink many of our cherished assumptions about how economies work, in order to build a civilization that can flourish for thousands or millions of years. They didn’t reject degrowth as a philosophical contribution to the question of what future human civilizations should care about.

But such articulations of different philosophies of human flourishing should not be mistaken for public policy.

We don’t have very long, and we need to decarbonize quickly. We have technologies that have made a big difference already, and they must be made available on an unprecedented scale. We have more speculative solutions, technological and societal, and we should be prepared to try those, too. The scale of the problem is such that we need to act now — and we need to be clear-eyed about which ideas truly move the needle.

#### The alt fails and causes transition wars

Smith 19 [Noah; 4/5/19; Bloomberg Opinion columnist, former assistant professor of finance at Stony Brook University; "Dumping Capitalism Won’t Save the Planet," https://www.bloomberg.com/opinion/articles/2019-04-05/capitalism-is-more-likely-to-limit-climate-change-than-socialism]

It has become fashionable on social media and in certain publications to argue that capitalism is killing the planet. Even renowned investor Jeremy Grantham, hardly a radical, made that assertion last year. The basic idea is that the profit motive drives the private sector to spew carbon into the air with reckless abandon. Though many economists and some climate activists believe that the problem is best addressed by modifying market incentives with a carbon tax, many activists believe that the problem can’t be addressed without rebuilding the economy along centrally planned lines.

The climate threat is certainly dire, and carbon taxes are unlikely to be enough to solve the problem. But eco-socialism is probably not going to be an effective method of addressing that threat. Dismantling an entire economic system is never easy, and probably would touch off armed conflict and major asdasd upheaval. In the scramble to win those battles, even the socialists would almost certainly abandon their limitation on fossil-fuel use — either to support military efforts, or to keep the population from turning against them. The precedent here is the Soviet Union, whose multidecade effort to reshape its economy by force amid confrontation with the West led to profound environmental degradation. The world's climate does not have several decades to spare.

Even without international conflict, there’s little guarantee that moving away from capitalism would mitigate our impact on the environment. Since socialist leader Evo Morales took power in Bolivia, living standards have improved substantially for the average Bolivian, which is great. But this has come at the cost of higher emissions. Meanwhile, the capitalist U.S managed to decrease its per capita emissions a bit during this same period (though since the U.S. is a rich country, its absolute level of emissions is much higher).

In other words, in terms of economic growth and carbon emissions, Bolivia looks similar to more capitalist developing countries. That suggests that faced with a choice of enriching their people or helping to save the climate, even socialist leaders will often choose the former. And that same political calculus will probably hold in China and the U.S., the world’s top carbon emitters — leaders who demand draconian cuts in living standards in pursuit of environmental goals will have trouble staying in power.

The best hope for the climate therefore lies in reducing the tradeoff between material prosperity and carbon emissions. That requires technology — solar, wind and nuclear power, energy storage, electric cars and other vehicles, carbon-free cement production and so on. The best climate policy plans all involve technological improvement as a key feature.

### FTC Tradeoff DA---2AC

#### No resources AND thumpers

Michael Kades 21, Director of Markets and Competition Policy, former attorney at the Federal Trade Commission; Equitable Growth Foundation, “Competitive Edge: Congress Needs to Restore the Federal Trade Commission’s Authority to Seek Monetary Remedies When Companies Break The Law,” 7/28/2021, <https://equitablegrowth.org/competitive-edge-congress-needs-to-restore-the-federal-trade-commissions-authority-to-seek-monetary-remedies-when-companies-break-the-law/>

As the report explains, “Rather than deter anticompetitive behavior, current legal standards do the opposite: They encourage it because such conduct is likely to escape condemnation, and the benefits of violating the law far exceed the potential penalties.” In the face of such warnings, it is a particularly bad time for the Supreme Court to unanimously reject 40 years of lower court rulings and conclude that the Federal Trade Commission can neither force companies to give up the profits they earned by violating the law nor compensate the victims of those violations. (The first remedy is called disgorgement, and the second remedy is called restitution.)

Whether the Supreme Court in April correctly interpreted the statute at issue in the case, AMG Capital Management LLC v. Federal Trade Commission, is less important than its implications. Professor [Andy Gavil discusses a potential silver lining](https://equitablegrowth.org/competitive-edge-the-silver-lining-for-antitrust-enforcement-in-the-supreme-courts-embrace-of-textualism/) in the Supreme Court’s decision—the glass-half-full approach. He argues that if the Supreme Court faithfully applies its approach to statutory interpretation, then it could open the door to broader application of the antitrust laws.

I look at the direct impact of the decision—the glass-half-empty approach. I argue that the decision deprives the antitrust agency of a critical, albeit imperfect, weapon that has deterred anticompetitive conduct particularly in the pharmaceutical industry. Although it has used disgorgement in competition cases sparingly, those awards have deterred the entire industry from engaging in the challenged conduct.

Before the recent Supreme Court decision, the disgorgement awards in competition cases went far beyond the impact in a single case. The savings include benefits from the conduct that did not occur. If the commission cannot seek monetary remedies, then companies will keep the rewards of their illegal conduct. Perversely, the companies causing the greatest harm will benefit the most from April’s decision.

The impact reaches even further. Without the threat of a disgorgement award, companies are more likely to drag out litigation and tax the FTC’s limited resources. Because the commission will spend more resources on egregious cases to reach weaker results, it will have fewer resources to challenge anticompetitive conduct in other areas and, for example, could affect enforcement in merger cases or in the high-tech industry.

#### Energy antitrust is coming and thumps

Evan Miller 9/7, Associate in the Complex Commercial Litigation Practice Group at Vinson & Elkins LLP, JD from the Boston University School of Law, BA from The George Washington University, “FTC Letter Signals Increased Scrutiny of Oil & Gas M&A Activity”, JD Supra, 9/7/2021, https://www.jdsupra.com/legalnews/ftc-letter-signals-increased-scrutiny-2957307/

In a recent exchange of letters with the White House, the chair of the Federal Trade Commission (“FTC”) signaled her intent to ramp up antitrust enforcement in the oil and gas industry. The move comes as part of a broader shift in priorities at the FTC in evaluating mergers and is in line with the Biden administration’s recent efforts to increase antitrust enforcement across industries (about which V&E has previously written). While calls for FTC action to combat high gas prices are fairly common from new administrations and Congress, the agency’s recent response includes specific action items that suggest deviations from past policy. These changes could have significant effects on the regulatory environment for energy companies, especially for the retail fuels sector. Indeed, practitioners who regularly represent oil and gas companies before the FTC have noted that they are already receiving inquiries in line with the chair’s letter.

Background

On August 11, 2021, White House National Economic Council Director Brian Deese, who is also head of the new White House Competition Council, issued a letter to the FTC raising concerns about “divergences between oil prices and the cost of gasoline at the pump” during this past summer season. The letter did not provide any support for this assertion but urged the FTC to use “all of its available tools to monitor the U.S. gasoline market and address any illegal conduct that might be contributing to price increases for consumers at the pump.”

On August 25, 2021, the FTC’s new chair, Lina Khan, responded in a two-page letter that echoed the White House’s concerns and also expressed concern that the FTC’s “approach to merger review in recent years has enabled significant consolidation.” The letter claims that the FTC’s prior approach to retail fuel outlet mergers may have created “conditions ripe for price coordination and other collusive practices.”

New FTC Oil & Gas Initiatives

To address these concerns, the chair’s letter outlines several specific actions the agency plans to take.

First, the FTC will seek to “identify additional legal theories to challenge retail fuel station mergers where dominant players are buying up family-run businesses.” The letter does not provide any additional detail on this potentially significant shift in enforcement policy, the basis for this concern, or how this concern relates to protecting competition.

Second, the FTC will re-examine its approach to merger divestitures, to ensure that they do not encourage further consolidation or enable dominant firms or groups of firms to exercise market power. Khan states that she is “especially interested in ways that large national chains may ‘restore’ higher prices through collusive practices.” This reference to the industry-specific term of price “restorations” suggests that the agency’s leadership is more engaged than previously on the details of retail fuel station transactions.

Third, the FTC will “tak[e] steps to deter unlawful mergers in the oil and gas industry,” including by imposing “prior approval” requirements to deter companies from proposing “illegal mergers” in the first place. The FTC recently voted 3-2 to rescind its 1995 policy against the use of “prior approval” requirements in merger consent decrees.

Fourth, the FTC will ask staff to “investigate abuses in the franchise market,” with a specific focus on determining “whether the power imbalance favoring large national chains allows them to force their franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” As with the first action item, how these concerns fit within the antitrust laws, and the basis for these concerns, are unclear at this point.

Expect Increased Scrutiny of M&A Activity

While the FTC regularly monitors oil and gasoline prices to identify unusual price activity that may signal potentially anticompetitive conduct in the industry and has brought numerous merger and non-merger enforcement actions over the years, oil and gas has not recently been a focus for the agency in public statements (unlike, for example, pharmaceuticals or technology companies). The letter suggests that the FTC leadership may be more focused on enforcement in the energy industry and that they may be particularly skeptical of transactions involving the acquisition of smaller local fuel retailers by larger national chains.

Based on our own recent experiences with oil and gas mergers before the FTC, and those of others in the antitrust bar, FTC staff has already begun requesting information from merging parties related to the issues in Chair Khan’s August 25 letter, as well as issues, such as unionization and ESG policies, of merging parties. Though Chair Khan’s letter focused on the retail gasoline level, we have seen similar expansive concerns at other levels of gasoline refining and production as well. These investigations are also taking longer than ever before. Unless the recent changes are a temporary blip on the radar — which the letter suggests is unlikely — large oil and gas companies and their counsel may need to adjust expectations on transaction timing and the range of issues investigated for matters that go before the FTC.

#### No spillover between parts of the FTC

Spencer Weber Waller 5, Professor of Law and Director of the Institute for Consumer Antitrust Studies at the Loyola University Chicago School of Law, “In Search of Economic Justice: Considering Competition and Consumer Protection Law”, Loyola University Chicago Law Journal, 36 Loy. U. Chi. L.J. 631, Winter 2005, Lexis

Despite this more comprehensive mission, the FTC is organized in a way that tends to emphasize the separation of these fields, rather than the common elements of the agency's mission. The FTC has a Bureau of Competition and a separate Bureau of Consumer Protection, with a Bureau of Economics to support the work of both endeavors. The Bureau of Competition ("BC") primarily engages in the investigation and enforcement of mergers and complex civil antitrust cases with a recent emphasis on intellectual property and health care issues. The Bureau of Consumer Protection ("BCP") primarily investigates and challenges outright fraudulent conduct. 9 The FTC website details recent BCP activity involving Internet sales, telemarketing, false health and fitness claims, identity theft and similar issues. 10 These are all very different issues from the day-to-day focus of the competition staff. This basic split is further mirrored in the Bureau of Economics ("BE"), where the staff tends to specialize in either competition or consumer protection. Any crossover of staff and cooperation occurs primarily in competition advocacy before legislatures or regulatory agencies, and not in case selection and investigation.

#### Other entities fill-in

Alison Jones 20, Professor at King’s College London, & William E. Kovacic, Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, Volume 65, Number 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

C. Improving Capability: Agency Cooperation and Project Selection

The U.S. antitrust system is famous for its decentralization of the power to prosecute, giving many entities – public agencies (at both the federal and state levels), consumers, and businesses – competence to enforce the federal antitrust laws. The federal enforcement regime also coexists with state antitrust laws and with sectoral regulation, at the national and state levels, that include competition policy mandates.

The extraordinary decentralization and multiplicity of enforcement mechanisms supply valuable possibilities for experimentation and provide safeguards in case any single enforcement agent is ~~disabled~~ [hamstringed](e.g., due to capture, resource austerity, or corruption).75 Among public agencies, there is also the possibility that federal and state government institutions, while preserving the benefits of experimentation and redundancy, could improve performance through cooperation that allows them to perform tasks collectively that each could accomplish with great difficulty, or not at all, if they act in isolation. In the discussion below, we suggest approaches that preserve the multiplicity of actors in the existing U.S. regime but also promise to improve the performance of the entire system through better inter-agency cooperation – to integrate operations more fully “by contract” rather than a formal consolidation of functions in a smaller number of institutions.

#### Regulation is impossible

Dr. John Danaher 18, PhD from University College Cork (Ireland) and Senior Lecturer in the School of Law at National University of Ireland, Galway, LLM from Trinity College Dublin, “Is Effective Regulation of AI Possible? Eight Potential Regulatory Problems”, Institute for Ethics and Emerging Technologies, 9-27, https://ieet.org/index.php/IEET2/more/Danaher20180927

In this post, I want to consider Scherer’s case for thinking that AI is (and will be) exceptionally difficult to regulate. That case consists of three main arguments: (i) the definitional argument; (ii) the ex post argument and (iii) the ex ante argument. These arguments give rise to eight specific regulatory problems (illustrated below). Let’s address in each in turn.

(Note: I won’t be considering whether the risks from AI are worth taking seriously in this post, nor will I be considering the general philosophical-political question of whether regulation is a good thing or a bad thing; I’ll be assuming that it has some value, however minimal that may be).

1. The Definitional Argument

Scherer’s first argument focuses on the difficulty of defining AI. Scherer argues that an effective regulatory system needs to have some clear definition of what is being regulated. The problem is that the term ‘artificial intelligence’ admits of no easy definition. Consequently, and although Scherer does not express it in this manner, it seems like the following argument is compelling:

(1) If we cannot adequately define what it is that we are regulating, then the construction of an effective regulatory system will be difficult.

(2) We cannot adequately define ‘artificial intelligence’.

(3) Therefore, the construction of an effective regulatory system for AI will be difficult.

Scherer spends most of his time looking at premise (2). He argues that there is no widely-accepted definition of an artificially intelligent system, and that the definitions that have been offered would be unhelpful in practice. To illustrate the point, he appeals to the definitions offered in Russell and Norvig’s leading textbook on artificial intelligence. These authors note that definitions of AI tend to fit into one of four major categories: (i) thinking like a human, i.e. AI systems are ones that adopt similar thought processes to human beings; (ii) acting like a human, i.e. AI systems are ones that are behaviourally equivalent to human beings; (iii) thinking rationally, i.e. AI systems are ones that have goals and reason their way toward achieving those goals; (iv) acting rationally, i.e. AI systems are ones that act in a manner that can be described as goal-directed and goal-achieving. There are further distinctions then depending on whether the AI system is narrow/weak (i.e. focused on one task) or broad/strong (i.e. focused on many). Scherer argues that none of these definitions is satisfactory from a regulatory standpoint.

Thinking and acting like a human was a popular way of defining AI in the early days. Indeed, the pioneering paper in the field — Alan Turing’s ‘Computing Machinery and Intelligence’ — adopts an ‘acting like a human’ definition of AI. But that popularity has now waned. This is for several reasons, chief among them being the fact that designing systems that try to mimic human cognitive processes, or that are behaviourally indistinguishable from humans, is not very productive when it comes to building actual systems. The classic example of this being the development of chess-playing computers. These systems do not play chess, or think about chess, in a human-like way; but they are now better at chess than any human being. If we adopted a thinking/acting like a human definition for regulatory purposes, we would miss many of these AI systems. Since these systems are the ones that could pose the largest public risk, this wouldn’t be very useful.

Thinking and acting rationally is a more popular approach to AI definition nowadays. These definitions focus on whether the system can achieve a goal in narrow or broad domains (i.e. is the system capable of optimising a value function). But they too have their problems. Scherer argues that thinking rationally definitions are problematic because thinking in a goal-directed manner often assumes, colloquially, that the system doing the thinking has mental states like desires and intentions. It is very difficult to say whether an AI system has such mental states. At the very least, this seems like a philosophical question that legal regulators would be ill-equipped to address (not that philosophers are much better equipped). Acting rationally definitions might seem more promising, but they tend to be both under and over-inclusive. They tend to be over-inclusive insofar as virtually any machine can be said to act in a goal directed manner (Scherer gives the example of a simple stamping machine). They tend to be under-inclusive insofar as systems that act irrationally may pose an even greater risk to the public and hence warrant much closer regulatory scrutiny.

I think Scherer is right to highlight these definitional problems, but I wonder how serious they are. Regulatory architectures are made possible by law, and law is expressed in the vague and imprecise medium of language, but problems of vagueness and imprecision are everywhere in law and that doesn’t prove an insuperable bar to regulation. We regulate ‘energy’ and ‘medicine’ and ‘transport’, even though all these things are, to greater or lesser extent, vague.

This brings us back to premise (1). Everything hinges on what we deem to be an ‘adequate’ definition. If we are looking for a definition that gives us necessary and sufficient conditions for category membership, then we are probably looking for the wrong thing. If we are looking for something that covers most phenomena of interest and can be used to address the public risks associated with the technology, then there may be reason for more optimism. I tend to think we should offer vague and over-inclusive definitions in the legislation that establishes the regulatory system, and then leave it to the regulators to figure out what exactly deserves their scrutiny.

In fairness to him, Scherer admits that this argument is not a complete bar to regulation, and goes so far as to offer his own, admittedly circular, definition of an AI as any system that performs a task that, if it were performed by a human, would be said to require intelligence. I think that might be under-inclusive, but it is a start.

2. The Ex Post Argument: Liability Gaps and Control Problems

The terms ‘ex post’ and ‘ex ante’ are used frequently in legal scholarship. Their meanings will be apparent to anyone who has studied Latin or is familiar with the meanings of ‘p.m.’ and ‘a.m.’. They mean, roughly and respectively, ‘after the fact’ and ‘before the fact’. In this case, the ‘fact’ in question relates to the construction and implementation of an AI system. Scherer argues that regulatory problems arise both at the research and development of the AI (the ex ante phase) and once the AI is ‘unleashed’ into the world (the ex post phase). This might seem banal, but it is worth dividing up the regulatory challenges into these distinct phases just so as to get a clearer sense of the problems that might be out there.

We can start by looking at problems that arise once the AI is ‘unleashed’ into the world. It is, of course, very difficult to predict what these problems will be before the fact, but there are two general problems that putative regulators would need to be aware of.

The first is something we can call the ‘foreseeability problem’. It highlights the problem that AI could pose for traditional standards for legal liability. Those traditional standards hold that if some harm is done to another person somebody else may be held liable for that harm provided that the harm in question was reasonably foreseeable (there’s more to the legal standard than that, but that’s all we need to know for now). For most industrial products, this legal standard is more than adequate: the manufacturer can be held responsible for all injuries that are reasonably foreseeable from use of the product. With AI things might be trickier. AI systems are often designed to be autonomous and to act in creative ways (i.e. ways that are not always reasonably foreseeable by the original designers and engineers).

Scherer gives the example of C-Path, a cancer pathology machine learning algorithm. C-Path found that certain characteristics of stroma (supportive tissue) around cancerous cells were better prognostic indicators of disease progression than actually cancerous cells. This surprised many cancer researchers. If autonomous creativity of this sort becomes common, then what the AI does may not be reasonably foreseeable and people may not have ready access to legal compensation if an AI program causes some injury or harm.

While it is worth thinking about this problem, I suspect that it is not particularly serious. The main reason for this is that ‘reasonable foreseeability’ standards of liability are not the only game in town. The law already provides from strict liability standards (i.e. liability in the absence of fault) and for vicarious liability (i.e. liability for actions performed by another agent). These forms of liability could be expanded to cover the ‘liability gaps’ that might arise from autonomous and creative AI.

The second ex post problem is the ‘control problem’. This is the one that worries the likes of Elon Musk, Bill Gates and Nick Bostrom. It arises when an AI program acts in such a way that it is no longer capable of being controlled by its human makers. This can happen for a number of reasons. The most extreme reason would be that the AI is smarter and faster than the humans; less extreme reasons could include flawed programming and design. The loss of control can be particularly problematic when the interests of the AI and the programmers no longer align with one another. Scherer argues that there are two distinct control problems:

Local Control Problem: Arises when a particular AI system can no longer be controlled by the humans who have been assigned legal responsibility for controlling that system.

Global Control Problem: Arises when an AI can no longer be controlled by any humans.

Both of these control problems would present regulatory difficulties, but the latter would obviously be much more worrying than the former (assuming the AI is capable of doing serious harm).

I don’t have too much to say about this since I agree that this is a problem. I also like this particular framing of the control problem insofar as it doesn’t place too heavy an emphasis on the intelligence of an AI. The current furore about artificial superintelligence is philosophically interesting, but it can serve to obscure the fact that AI systems with much lower levels of ability could pose serious problems if they act outside the control of human beings (be that locally or globally).

3. The Ex Ante Argument: Discreetness, Diffuseness, Discreteness and Opacity

So much for the regulatory problems that arise after the creation and implementation of an AI system. What about the problems that arise during the research and development phase? Scherer argues that there are four such problems, each associated with the way in which AI research and development could leverage the infrastructure that has been created during the information technology age. In this sense, the regulatory problems posed by AI are not intrinsically different from the regulatory problems created by other systems of software development, but the stakes might be much higher.

The four problems are:

The Discreetness Problem: AI research and development could take place using infrastructures that are not readily visible to the regulators. The idea here is that an AI program could be assembled online, using equipment that is readily available to most people, and using small teams of programmers and developers that are located in different areas. Many regulatory institutions are designed to deal with largescale industrial manufacturers and energy producers. These entities required huge capital investments and were often highly visible; creating institutions than can deal with less visible operators could prove tricky.

The Diffuseness Problem: This is related to the preceding problem. It is the problem that arises when AI systems are developed using teams of researchers that are organisationally, geographically, and perhaps more importantly, jurisdictionally separate. Thus, for example, I could compile an AI program using researchers located in America, Europe, Asia and Africa. We need not form any coherent, legally recognisable organisation, and we could take advantage of our jurisdictional diffusion to evade regulation.

The Discreteness Problem: AI projects could leverage many discrete, pre-existing hardware and software components, some of which will be proprietary (so-called ‘off the shelf’ components). The effects of bringing all these components together may not be fully appreciated until after the fact. (Not to be confused with the discreetness problem).

The Opacity Problem: The way in which AI systems work may be much more opaque than previous technologies. This could be for a number of reasons. It could be because the systems are compiled from different components that are themselves subject to proprietary protection. Or it could be because the systems themselves are creative and autonomous, thus rendering them more difficult to reverse engineer. Again, this poses problems for regulators as there is a lack of clarity concerning the problems that may be posed by such systems and how those problems can be addressed.

Each of these problems looks to be serious and any regulatory system would need to deal with them. To my mind, the diffuseness and opacity problems are likely to be the most serious. The diffuseness problem suggests that there is a need for global coordination in relation to AI regulation, but past efforts at global coordination do not inspire confidence (e.g. climate change; nuclear proliferation). The opacity problem is also serious and likely to be compounded by the growing use of (and need for) AI in regulatory decision-making. I have written about this before.

### Japan DA---2AC

#### includes crack downs on Japanese companies

Seth D. Rothman 21 & Paul Marston, Litigation Partner at Hughes Hubbard & Reed LLP, Who Focuses His Practice On Complex Commercial Litigation, Arbitration, Products Liability And Mass Torts. "What the Biden Administration Will Mean for Japanese Companies". 1/27/2021. <https://www.hugheshubbard.com/news/what-the-biden-administration-will-mean-for-japanese-companies>

Antitrust & Competition

Antitrust enforcement actions are expected to increase under Biden, as they generally do under Democratic presidents. During the four years of Trump’s term, there were half the number of antitrust cases as there were during the four years of Obama’s second term. Japanese companies selling goods in the U.S. are subject to U.S. antitrust laws and should expect to face greater scrutiny. Big Tech, the health care industry, and the pharmaceutical industry are expected to be particular areas of focus.

M&A Approval

Under Biden, the Department of Justice (“DOJ”) and the Federal Trade Commission are expected to scrutinize proposed mergers and acquisitions for possible anticompetitive effect more rigorously than they did under Trump. While M&A activity is expected to be strong, there may be instances where companies walk away from deals that fail to obtain initial approval. There may also be more litigation involving whether a proposed transaction may proceed.

#### No relations collapse---it’s locked in

Tong-hyung Kim 20; 2020; Seoul-based reporter for the Associated Press; The Diplomat, “Leaders of America’s Asian Allies Call President-Elect Biden,” https://thediplomat.com/2020/11/leaders-of-americas-asian-allies-call-president-elect-biden/

Japanese Prime Minister Suga Yoshihide said he and Biden during their call reaffirmed the importance of their countries’ alliances and agreed to further deepen it in face of China’s growing influence and North Korea’s nuclear threat.

“We had a very meaningful telephone conversation as I will work with President-elect Biden to push forward measures to strengthen the Japan-U.S. alliance,” Suga told reporters after speaking to Biden on the phone for about 15 minutes.

Biden’s office said the leaders “spoke about their shared commitment to tackle climate change, strengthen democracy around the world, and reinforce the U.S.-Japan alliance as the cornerstone of a prosperous and secure Indo-Pacific region.”

Suga said he told Biden that Japan wants to pursue the “Free and Open Indo-Pacific,” a vision that it has been promoting with the United S

tates to include “like-minded” countries in the region, including Australia, India, and Southeast Asian countries that share concerns about China.

China has built and militarized man-made islands in the South China Sea and is pressing its claim to virtually all of the sea’s key fisheries and waterways. Japan is concerned about China’s claim to the Japanese-controlled Senkaku Islands, called Diaoyu in China, in the East China Sea.

China has denied it is expansionist and said it is only defending its territorial rights.

Suga said Biden gave him reassurance that Washington is committed to protecting Japan’s territorial rights to the Senkakus under the bilateral security pact in case of military clash.

## 1AR

### Delegation CP---1AR

#### Expertise doesn’t matter due to institutional structure AND empirics disprove effectiveness

Joshua D. Wright 13, Professor at George Mason University School of Law and Department of Economics; Angela M. Diveley, Associate at Freshfields Bruckhaus Deringer in Washington, DC, “Do expert agencies outperform generalist judges? Some preliminary evidence from the Federal Trade Commission”, 4/1/13, Lexis

The institutional design literature has identified a number of potential factors influencing decision-making, including whether the agency should be led by a single director or a collegiate body, 11 the experience held by agency heads, 12 the structure of enforcement, 13 and methods of ensuring transparency in agency decision-making. 14 There is no debate that theoretical potential for superior agency performance lies in its ability to harness its expertise. In practice, however, there is also little doubt that the observed design and structure of competition agencies in the USA bears little resemblance to the theoretical optimum. Holding aside the obvious and oft-discussed inefficiencies of multiple overlapping competition agencies, there appear to be other fundamental structural impediments to optimal agency performance.

To take but one example, former FTC Chairman William Kovacic has written at length about the disappointing overall quality of appointments of FTC commissioners. 15 While Congress envisioned a Commission comprising lawyers, business managers, and economists with superior achievements and substantial, diverse experience, 16 what it got was-in no small part due to political interference 17 -a history and pattern of appointments evidencing a systematic failure to meet those expectations. 18 Obviously, this is not to say that those appointed to lead the FTC are not talented professionals; it simply means the historic composition of the Commission has failed to encompass the qualities necessary to make it the leading authority in US antitrust law. 19

Predicate to the question of precisely how to design competition agencies to improve their performance is the issue of precisely what locus of authority should be allocated to the expert agency. The answer to that question lies at the heart of many antitrust debates. Dissatisfied with recent changes in Sherman Act jurisprudence, some commentators have called for a shift in responsibility for shaping antitrust law from the courts to the agencies, reasserting the original vision of the FTC as an expert agency. 20

A recurring and related issue in the debate over an expanded role for enforcement agencies-especially the FTC-in antitrust decision-making is whether Article III courts are sufficiently equipped to handle complex antitrust cases. 21 Evidence indicates that complex antitrust cases involve economic analysis that is sometimes too complicated for courts to consistently decide properly. 22 This is due in large part to the fact that courts are unable (some suggest unwilling 23) to incorporate expert economic analysis into their antitrust decisions. Some commentators have argued, based upon courts imperfect decision-making abilities, that the FTC should have greater decision-making authority to offset courts shortcomings in understanding the complex economic analysis required to accurately assess modern antitrust issues. 24

Which institution is better equipped to analyse complex modern antitrust cases? The debate is occasionally framed in unfair terms. There is no doubt the agency comprises antitrust and economic experts well equipped to analyse all modes of business dealings; in this sense, agencies certainly have greater economic expertise than the Article III judges as a general rule. But neither the expert economists in the Bureau of Economics nor the Bureau of Competitions lawyers make decisions for the agency. Both ultimately provide inputs to the five-person Commission in a complex decision-making process. Economic and legal expertise are not the only inputs. Commissioners are political appointees that may or may not begin their terms with substantial antitrust experience. 25 As the ultimate decision-makers in administrative litigation, the Commission is the body to which relevant analytical information must be transmitted. Comparing the expert Commission staff to combined expertise of the Article III judge and his law clerks is not the appropriate comparison; it also misses the point. 26 The issue remains whether the expert inputs available to the Commissions decision-makers manifest themselves in the context of administrative decision-making compared to generalist judges.

#### AND industries dismantle negotiations

Sidney Shapiro & Richard Murphy 13, University Chair, Law, Wake Forest University; AT&T Professor of Law, Texas Tech University, "Public Participation without a Public: The Challenge for Administrative Policymaking," Missouri Law Review, Vol. 78, Issue 2, Spring 2013, pg. 490-492.

But what if the only members of the “public” who show up are readers of the Wall Street Journal? This concern is far from hypothetical: corporate interests dominate participation in the legislative rulemaking process in the United States.8 As such, we might expect Woody Allen’s observation (our second opening quote) to come into play. If eighty percent of success is indeed just a matter of showing up, then public participation schemes designed to promote accountability or to “democratize” rulemaking have the potential to distort rulemaking into favoring private, special interests. Determining the extent of such distortion presents a terrifically difficult problem— in part because there is no consensus baseline with which to measure departures from the public interest. Still, it seems safe to presume that profit-oriented, corporate interests perceive that they get something worthwhile from their large investments in regulatory proceedings—and we are inclined to trust this perception.9

As Isaac Newton taught us long ago, for every action there is an equal and opposite reaction.

To the degree that unelected, unaccountable mandarins rule, the people do not. Regulatory agencies, headed by unelected administrators, can thus create a “democracy deficit” and, at least for those who believe government derives its legitimacy from democracy,, a legitimacy deficit, too. Various polities have addressed this democracy deficit by embedding public administration in “accountability network[s] of rules and procedures[.]”10 A requirement of public participation is one such procedure common to many countries and many situations. Whether public participation serves the public, however, depends on many factors, including the particulars of the public participation scheme, the agency’s regulatory tasks, the agency’s resources and competence to fulfill those tasks, and the resources and leverage of all those persons who may be affected by the agency’s actions.

Bearing the preceding points in mind, this brief Article raises three broad concerns relating to public participation in rulemaking. First, to assess whether public participation serves the public, it is important to understand why such participation is desirable in the first place. In recent decades, two answers in particular have dominated discourse. Following pluralistic conceptions of democracy, one might say that democracy is the way that multifarious private interests that constitute the “public” cut a deal among themselves. Insofar as agency policymaking amounts to coordination of such dealmaking, it is legitimized by its democratic nature.11 A deliberative democracy conception, by contrast, sees public participation as an integral part of a process that requires agencies to consider all relevant interests before acting and to publicly justify their actions with reasoned explanations.12 The debate over which of these conceptions is better remains unresolved, and the word “democracy” is certainly fuzzy enough to allow for both. But, as this Article will develop, these conceptions can lead to very different understandings of what public administration ought to be about, and, given a choice, we will take deliberation over deals.

Second, under either conception, there is an elephant in the room in the United States: corporate clout. Empirical work demonstrates that public interest groups only participate in some rulemakings, and when they do participate, their efforts are overwhelmed by the participation of corporate interests.13 While less certain as an empirical matter, the evidence also suggests that this domination biases the rulemaking process under either conception of public participation. 14

### Cap K---1AR

#### Best study confirms it.

Hideo Noda & Shigeru Kano 21, Tokyo University of Science; The Shoko Chukin Bank, "Environmental Economic Modeling of Sustainable Growth and Consumption in a Zero-Emission Society," Journal of Cleaner Production, Vol. 299, 05/25/2021, pg. 1-2.

Manufacturing activities that pollute the soil, atmosphere, and water have adversely affected the environment. The abatement of pollution is therefore essential to maintaining environmental standards in the future. The purpose of this paper is to examine what kind of economic conditions should be satisfied if an economy adopts a rule stating that pollution must be cleaned up when it is produced, and whether the zero net emission of pollution flow (in the sense of a zero residual amount of pollution created minus pollution abated) is compatible with the continued growth of gross domestic product (GDP) and consumption when the economy experiences cyclical fluctuations.

A detailed understanding of the economic implications of cyclical fluctuations is crucial because actual economies inevitably undergo cycles of expansion and recession. In this respect, on the basis of the laboratory equipment model of Rivera-Batiz and Romer (1991), Matsuyama (1999) constructed a useful model that generates endogenous fluctuations. Notably, under specific conditions, an economy can perpetually oscillate between a capital-accumulation-based (no-innovation) growth phase and innovation-led growth phase. The former phase is called the Solow regime, after the work of Solow (1956), while the latter phase is called the Romer regime, after the work of Romer (1990) and Rivera-Batiz and Romer (1991).

However, Matsuyama (1999) did not pay attention to environmental aspects in a society. We therefore extend the model of Matsuyama (1999) by considering pollution abatement from the perspective of the kindergarten rule model of Brock and Taylor (2005). We thereby expect to obtain meaningful findings by analyzing endogenous fluctuations with pollution abatement, which has not been tackled in earlier studies. The term “kindergarten rule” originates from the title of a book written by Fulghum (1990) and implies that messes be cleaned up as they are created. Brock and Taylor (2005) referred to the proportion of pollution abatement expenditure in GDP for achieving zero net emissions of pollution (i.e., completely eliminating the amount of pollution created minus pollution abated) as the kindergarten rule level of abatement (or just the kindergarten rule).

Ono (2003) extended Matsuyama’s (1999) model to analyze endogenous fluctuations by accounting for environmental variables. Specifically, Ono (2003) incorporated the production structure of Matsuyama (1999) into the framework of the overlapping generations model on the basis of the work of John and Pecchenino (1994) and examined environmental taxation that maximizes the environmental quality and economic growth rate. It is found that there is a critical level of tax, and the economy achieves higher growth rates of GDP and environmental quality by raising (or reducing) tax if the initial tax is below (or above) the critical level. That is to say, the purpose of the present study differs from that of the study of Ono (2003). We analyze the feasibility of the positive growth of GDP with zero net emission that reflects the kindergarten rule of pollution abatement, while Ono (2003) focused on taxation for improving environmental quality and promoting economic growth. Recent efforts toward a zero-emission society, which are an important topic of the Paris Agreement that came into force on November 4, 2016, have received worldwide attention (see, for example, Pauli, 1997; Baumgartner and Zielowski, 2007; Tokimatsu et al., 2014). The present study is therefore of social importance and relevant. Additionally, we consider that the notion of environmental quality is vague and hence difficult to capture empirically. In contrast, the zero net emission of pollution has clear meaning.

Related studies of environment-growth models with endogenous fluctuations include those conducted by Zhang (1999), Chen and Li (2011), and Palivos and Varvarigos (2017). Zhang (1999), for example, examined the possibility of nonlinear dynamics in the model of John and Pecchenino (1994) and showed that cyclically or chaotically fluctuating equilibria are more likely to exist when people’s concerns are more towards greener preferences and the maintenance efficiency relative to degradation is not sufficiently high. Chen and Li (2011) introduced the habit formation of environmental quality and consumption tax to the model of John and Pecchenino (1994). The habit formation of environmental quality in the model of Chen and Li (2011) means that people get used to the environment while they grow up and will compare environmental quality in their old age with that when they were young. As a result, Chen and Li (2011) showed that cyclical fluctuations and entropic chaos may exist if households have a preference towards environmental quality and the maintenance efficiency is sufficiently low relative to degradation and the tax rate. The economy moves from complex to simple dynamics as the tax rate increases. Using an overlapping generations model where life expectancy is positively affected by the provision of public health services and by the environmental quality, Palivos and Varvarigos (2017) showed that, despite the presence of an aggregate learning-by-doing externality, the economy cannot sustain a positive growth rate in the long run if resources are not devoted to environmental preservation. Moreover, an active policy of environmental preservation is not only an important complementary engine of long-run growth but also a powerful tool of stabilization.

Zhang (1999), Chen and Li (2011), and Palivos and Varvarigos (2017), however, did not consider the role of innovation in economic growth. When we consider issues related to recent economic growth, it is noteworthy that the economic activities of industries in developed countries and some developing countries have increasingly become knowledge intensive. The economies of these countries are often termed knowledge-based economies. An important feature of such an economy is that it emphasizes innovation, including the creation of new products and production processes through industrial research and development (R&D), and the innovation is accompanied by accumulated knowledge that drives sustained growth. Accordingly, any study on the actual economic problems of a knowledge-based economy needs to construct a model that endogenously incorporates R&D and innovation. From such a perspective, the above-mentioned earlier studies are inadequate in terms of understanding the relationship between contemporary economic growth and environmental problems.

Our model leads to the theoretical possibility that the zero net emission of pollution flow is compatible with sustainable growth and consumption. In this regard, however, the economy requires GDP above a certain level. Moreover, to simultaneously achieve a zero net emission of pollution and sustained economic growth, the economy requires variability of the kindergarten rule level of abatement. In other words, the kindergarten rule level of abatement must not be fixed at a specific value. The present study makes two main contributions. First, we shed light on the relationship between the zero net emission of pollution and economic growth, which is not well understood, and address theoretically an important subject interesting environmental scientists, economists, and policy makers: whether both a zero net emission of pollution and sustained growth of GDP (consumption) are achievable when economies implement a zero net emission policy. In terms of the association with Sustainable Development Goals (SDGs), which were adopted by the United Nations General Assembly in September 2015 and have received international attention, our considerations are conducive to providing a theoretical basis for a part of SDG 8 (“Decent Work and Economic Growth”). Second, we present a dynamic macro-environmental modeling approach based on an extension to Matsuyama’s (1999) model with the idea of the kindergarten rule of Brock and Taylor (2005). To the best of our knowledge, there have been few studies on the environmental economic modeling of endogenous growth with cyclical fluctuations in a zero-emission society. That is to say, our dynamic macroenvironmental modeling approach can be interpreted as a methodological contribution in the research field of economic growth and the environment.

#### Turns their impact.

Rasmus Karlsson 17, Associate Professor in political science at Umeå University, “The Environmental Risks of Incomplete Globalisation” DOI: 10.1080/14747731.2016.1216820

Clearly, as much as energy saving and other forms of demand-side management in the rich countries may make sense within their respective domestic contexts, such measures have the unfortunate effect of reducing the political interest in financing the kind of supply-side revolution that is needed globally. Third and finally, as it is becoming increasingly clear that the politically agreed target of keeping global warming below two degrees Celsius will not be met by conventional mitigation alone, there will most likely be a significant need for energy for carbon dioxide removal (CDR) but also for adaptation in terms of for instance mass desalination for agricultural purposes, further underscoring the inadequacies of the current soft energy approach. An alternative and very different approach to climate nationalism would be to ask, what kind of technologies would be required to achieve climate stability in a world of 10+ billion people living prosperous lives? Starting from that question and working backwards such an alternative approach would shift the focus from the immediate deployment of non-scalable technologies to the innovation of massively scalable high-energy technologies capable of providing an abundant and cheap supply of clean baseload electricity (Galiana & Green, 2010). The underlying premise would be that by making clean energy significantly cheaper than today it would be possible to rapidly displace fossil fuels and effectively overcome political and cultural inertia. No longer economically competitive, existing fossil infrastructure would then be abandoned as stranded assets, even in those countries that for political reasons may doubt the seriousness of climate change or those where fossil industries may hold a strong political influence. Most importantly, such an approach would give developing countries the reliable 7 energy they need to move away from fossil fuels at the same time as they can universalise access to modern energy services. Currently, indoor air pollution from the burning of wood and charcoal causes millions of premature deaths annually while simultaneously driving deforestation. Given its inherent merits, not the least its potential to once and for all resolve long running North-South tensions in international environmental debates (Williams, 2005), it may perhaps seem strange that such an advanced technological path to climate stability has not been widely considered in the literature (Dorr, 2016; Green, 2015; Symons & Karlsson, 2015). There are of course many reasons for this, in particular the fact that since the most obvious such “high-energy” technology would be nuclear power, it would mean moving into a minefield of political risk. Despite more than sixty years of civilian nuclear power with extremely few fatalities compared to fossil energy (it is for instance worth noting that no one has yet died from radiation after the Fukushima accident in 2011), public perception of the risk of nuclear energy has been unforgiving. Given that there seems to be no hope for a rational discussion on the risks of nuclear compared to those of uncontrollable climate change, it may matter surprisingly little to know that if all of the world were to build nuclear power at the same per capita rate that Sweden and France did during the 1970’s and 1980’s, then coal- and gas-fired electricity could be replaced worldwide within a few decades or less (Qvist & Brook, 2015). However, in addition to other concerns such as proliferation (Socolow & Glaser, 2009), existing nuclear designs are highly brittle in the sense that one single major accident could potentially mean an end to expansion plans everywhere. Given the limited remaining carbon budget if catastrophic climate change is to be avoided, such fragility is obviously a strong argument against making a global mitigation strategy dependent on existing nuclear designs. Accepting that puts the focus back on fundamental energy R&D. While nuclear technologies broadly conceived are likely to play an important part in any high-energy future, finding an energy source which is proliferation-resistant, passive safe, and which has an abundant supply of fuel that would allow it to generate baseload electricity at a cost far below fossil sources will require nothing short of an energy miracle. When Darrel Moellendorf writes that hoping for such a technological breakthrough “hardly amounts to a basis for responsible policy” (Moellendorf, 2014:183) he gives voice to a commonsensical view which is widely shared in the climate policy community. Obviously, 8 committing vast social resources to fundamentally uncertain research makes little sense if there is a meaningful alternative. Yet, after more than two decades marked by an ever more polarised climate debate (Keller, 2015:223), it should be obvious that current mitigation efforts are failing (Jamieson, 2014). Even if the progressive offshoring of carbon-intensive industries may have helped in improving the carbon inventories of certain rich countries, overall emissions (in particular when including aviation and shipping) have steadily gone up since the inception of the Kyoto Protocol. The prospect of brute force mitigation through directly reduced consumption rates, as envisioned by many Greens and theorists alike (Harris, 2010),seem as remote as ever. Contrary to the hopes of Greenpeace and other environmental NGOs, Germany, which has taken on itself to lead the world into a future of renewable energy, has seen rising carbon emissions for several years following the phase-out of nuclear energy. At a global level, the share of coal power in the world’s energy mix has not been higher since the 1970’s and the overall share of carbon fuels in the total energy consumption has remained more or less stable around 86-87% since 2000 (BP, 2015). Over time however it is likely that the very richest countries, which have sufficient numbers of affluent consumers who can afford to pay higher energy prices, will be able to complete the shift to small-scale renewable energy sources, especially if much of their overall physical infrastructure is produced elsewhere and the intermittency problem can be solved through energy storage (and not as today by fossil backup capacity). Yet, simple back-of-the-envelope calculations show that providing the several thousand exajoules of clean energy annually that would be needed for a global economic convergence is more or less impossible using such technologies (Trainer, 2013). That is one of the reasons why almost all climate scenarios that succeed in stabilising the climate over the course of the 21st century do so by inserting austere assumptions with regard to energy access and, thus, overall energy demand (Pielke, Wigley, & Green, 2008). In less technical language, such restrictions essentially mean that that the poor stay poor deep into the future. Considering this, the connection between climate nationalist thinking and the current state of incomplete globalisation becomes readily visible. According to the standard Malthusian narrative, technology can never “keep up with growth in population, affluence, and consumption” (Mitchell, 2012:25). As a consequence, the only hope of achieving climate stability hinges on constraining population growth and overall human welfare. Despite its dubious ethical implications, such an argument would perhaps 9 make sense if fairly marginal reductions in growth rates would be sufficient to achieve longterm sustainability. Yet, given how deeply unsustainable the very metabolism of modern industrial society is, this is obviously not the case. In a world of 7.3 billion people, the reductions in economic activity would have to be of an almost apocalyptic magnitude to bring down per capita emissions levels so that they would be lower than what is absorbed by natural sequestration processes. Given the political impossibility of achieving such dramatic reductions in the rich countries, it is not surprising that the political attention has shifted to the task of keeping poor people away from fossil forms of development, something which in fact has already become the explicit goal of many environmental NGOs but also a kind of “carbon conditionality” imposed by for instance the U.S. Agency for International Development’s “Power Africa” initiative. While much can be said about the morality of imposing such double standards at home and abroad respectively, the most apparent implication of this is that the poor will in effect stay poor. Even if distributed solar panels may be sufficient for charging a cell phone or powering a reading lamp at night, the energy provided is of a completely different scale compared to what was needed for the sweeping modernisation processes that made broadly shared prosperity possible in Europe, North America and, most recently, North-East Asia. Psychologically unrealistic as it may be to expect the poor to remain content with being locked out from modernity in this way, the current state of incomplete globalisation is likely to frustrate or at least delay their rise. While this may ostensibly win some time in terms of lower carbon emissions, it will also have many countervailing effects such as delaying the demographic transition that would follow from more comprehensive forms of modernisation or prolong the use of informal fuels. Failure to fully integrate the world will also have another important effect for the transition to sustainability, namely to slow overall global growth rates. While it is fashionable in more critical literature to suggest that the marginal utility of further economic growth has become negative in the advanced economies (Jackson, 2011), this is to grossly misunderstand contemporary economic and political dynamics. Not only is further economic growth indispensable to ensure the financial stability of retirement schemes and to pay the health costs associated with an ageing population, it is in fact the very life elixir of society as it lessens distributional conflicts and encourages public risk-taking (Friedman, 2006). Only in a situation of strong economic growth are politicians likely to make the bold 10 investments in energy R&D needed to bring about the kind of “high-energy miracle” discussed above. As a consequence, it is possible to see an indirect link between failure to integrate the world and the prospects of financing breakthrough innovation. Yet, beyond this indirect link, there is a much more direct link in terms of the costs of violent conflict caused by global inequality, the policing of borders, and the risks of pandemics (as most recently seen in the case of Ebola in West Africa), all diverting resources away from more urgent social needs, including energy R&D. To build a world unafraid of itself Even if analytic political philosophy may not have shown much recent enthusiasm for nationalism or other forms of metaethical particularism (Caney, 2005), the world of today is still one in which life opportunities remain largely determined by a completely randomly assigned variable (place of birth) rather than individual ambition and character. Not only does this “citizenship premium” (Milanovic, 2013) create migratory pressure and fuel resentment, it also means that billions of people never get a chance to develop their full intellectual potential and, with it, their economic productivity. Despite that many of the great hopes of the Enlightenment have been fulfilled over the last centuries, it has now become common to distrust the very possibility of social progress and to doubt that humanity can ultimately build a world unafraid of itself (Bronner, 2004). Without subscribing to teleology (Wendt, 2003) there are many reasons to think that, despite the recent rhetoric of Donald Trump or other signs of backsliding, much greater optimism is in fact warranted. Not only has there been no new wave of protectionism in the wake of the financial crisis (as was the case after the crash in 1929) but the World Value Survey and other similar studies have consistently shown a movement away from traditional values and hierarchical forms of authority towards secular-rational values, greater individual freedom, and autonomy (Welzel, 2013:143). Every year, more and more people travel by airplane and are able to experience other countries and cultures first-hand. As the world gets smaller, it is becoming increasingly difficult to deny our common humanity and insist on the artificial segregation of people based on mere geographical luck. Yet, in terms of politics or ideology, there has been surprisingly little interest in even imagining a world with universal freedom of movement and shared prosperity. It is reasonable to think that this disinterest in part derives from deeply entrenched Malthusian beliefs and fears of a coming climate crisis. 11 Malthusian discourse often portrays global climate change as ultimate evidence of irresponsibility, greed or even the “cancer stage of capitalism” (Barry, 2012:138). Such descriptions show little tolerance for learning or humility with regard to the difficulties of the task. There has never been a blueprint for how to build a prosperous planetary civilisation or for how to achieve technological maturity in a way that does not destroy the biosphere. Yet, in a world of seven billion actually existing people, the question is where to go from here? As discussed above, to try to reverse the great structural processes of modernity through intentional localisation does not only seem wholly politically unrealistic, it is also most unlikely to actually deliver greater resilience or environmental sustainability. Yet, the problem of lacking realism is just as acute for those advocating breakthrough innovation or seeking to more fully integrate the world (Karlsson, 2013). In a time of public austerity, rising xenophobia, and an almost complete absence of realistic yet transformative visions at the global level, it is not surprising that climate nationalist responses have emerged as the default policy orientation. While these responses may at best slow the rate of warming, they offer little hope for the 3.5 billion people who currently lack access to modern energy and, as such, they are likely to contribute to the creation of new patterns of climate injustice. They are also problematic in the sense that for every year that a more meaningful response is delayed, the need for CDR grows. Already now, such negative emissions technology has become more or less a necessity for achieving the two degree target according to the scenarios represented in the Intergovernmental Panel on Climate Change (IPCC) database (Anderson, 2015). Whereas breakthrough energy innovation could potentially offer a source of sustained global growth as energy would become significantly cheaper, CDR is always going to come at a net cost. If CDR eventually becomes unaffordable due to prolonged political procrastination and generally inefficient mitigation policies, it is likely that the political momentum will shift towards solar radiation management (SRM) and other more risky forms of climate engineering. Instead of fearfully backing into a warming future, there is an obvious need for bold and proactive political action (Garibaldi, 2014; Karlsson, 2016). Yet, as long as mitigation is perceived as a cost and something that runs counter to broader socio-economic goals, such action is unlikely. While accelerating the transition to a high-energy planet would undoubtedly put strong upward pressure on global emissions in the short run, it would also open up a political opportunity space for effective climate action that does not exist today. In a more 12 equal and integrated world, there would be greater financial and human resources to combat climate change. Most of all, by providing a progressive account of globalisation, there would be a meaningful counter-narrative to both nationalist and neoliberal thinking. F

#### It’s try-or-die.

Fred Krupp et al. 19. Nathaniel [Keohane](https://search-proquest-com.libproxy2.usc.edu/indexinglinkhandler/sng/au/Keohane,+Nathaniel/$N?accountid=14749), and Eric Pooley. \*President of Environmental Defense Fund, a United States-based nonprofit environmental advocacy group. \*\*Vice president for international climate at the Environmental Defense Fund. He used to be in academia at Yale University and served in the White House as special assistant to President Barack Obama. \*\*\*Senior Vice President, Strategy & Communications at the Environmental Defense Fund. 4-1-2019. "Less Than Zero: Can Carbon-Removal Technologies Curb Climate Change?" Foreign Affairs. https://search-proquest-com.libproxy2.usc.edu/docview/2186099162/594BA6C689D844ABPQ/13?accountid=14749/.

When it comes to generating support for climate policy, a warranted sense of alarm is only half the battle. And the other half-a shared belief that the problem is solvable-is lagging far behind. The newfound sense of urgency is at risk of being swamped by collective despair. A scant six percent of Americans, according to the Yale study, believe that the world "can and will" effectively address climate change. With carbon dioxide emissions from fossil fuels having risen by an estimated 2.7 percent in 2018 and atmospheric concentrations of carbon dioxide, which will determine the ultimate extent of warming, at their highest level in some three million years, such pessimism may seem justified-especially with a climate change denier in the White House. But it is not too late to solve the global climate crisis. A decade of extraordinary innovation has made the greening of the global economy not only feasible but also likely. The market now favors clean energy: in many U.S. states, it is cheaper to build new renewable energy plants than to run existing coal-fired power plants. By combining solar power with new, efficient batteries, Arizona and other sunny states will soon be able to provide electricity at a lower cost per megawatthour than new, efficient natural gas plants. Local, regional, and federal governments, as well as corporations, are making measurable progress on reducing carbon pollution. Since 2000, 21 countries have reduced their annual greenhouse gas emissions while growing their economies; China is expected to see emissions peak by 2025, five years earlier than it promised as part of the negotiations for the Paris climate agreement in 2015. At the UN climate talks held late last year in Poland, countries agreed on rules for how to report progress on meeting emission-reduction commitments, an important step in implementing the Paris accord. What's more, an entirely new arsenal is emerging in the fight against climate change: negative emission technologies, or nets. Nets are different from conventional approaches to climate mitigation in that they seek not to reduce the amount of greenhouse gases emitted into the atmosphere but to remove carbon dioxide that's already there. These technologies range from the old-fashioned practice of reforestation to high-tech machines that suck carbon out of the sky and store it underground. The window of opportunity to combat climate change has not closed-and with a push from policymakers, nets can keep it propped open for longer. THE HEAT IS ON How much time is left to avoid climate catastrophe? The truth is that it is impossible to answer the question with precision. Scientists know that human activity is warming the planet but still don't fully understand the sensitivity of the climate system to greenhouse gases. Nor do they fully comprehend the link between average global warming and local repercussions. So far, however, most effects of climate change have been faster and more severe than the climate models predicted. The downside risks are enormous; the most recent predictions, ever more dire. The Paris agreement aims to limit the increase in global average temperatures above preindustrial levels to well below two degrees Celsius, and ideally to no more than 1.5 degrees Celsius. Going above those levels of warming would mean more disastrous impacts. Global average temperatures have already risen by about one degree Celsius since 1880, with two-thirds of that increase occurring after 1975. An October 2018 special report by the un's Intergovernmental Panel on Climate Change, a body of leading scientists and policymakers from around the world, found that unless the world implements "rapid and far-reaching" changes to its energy and industrial systems, the earth is likely to reach temperatures of 1.5 degrees Celsius above preindustrial levels sometime between 2030 and 2052. Limiting warming to that level, the ipcc found, would require immediate and dramatic cuts in carbon dioxide: roughly a 45 percent reduction in the next dozen years. Even meeting the less ambitious target of two degrees would require deep cuts in emissions by 2030 and sustained aggressive action far beyond then. The ipcc report also warns that seemingly small global temperature increases can have enormous consequences. For example, the half-degree difference between 1.5 degrees Celsius and two degrees Celsius of total warming could consign twice as many people to water scarcity, put ten million more at risk from rising sea levels, and plunge several hundred million more people into poverty as lower yields of key crops drive hunger across much of the developing world. At two degrees of warming, nearly all of the planet's coral reefs are expected to be lost; at 1.5 degrees, ten to 30 percent could survive. The deeper message of the IPCC report is that there is no risk-free level of climate change. Targets such as 1.5 degrees Celsius or two degrees Celsius are important political markers, but they shouldn't fool anyone into thinking that nature works so precisely. Just as the risks are lower at 1.5 degrees Celsius than at two degrees Celsius, so are they lower at two degrees Celsius than at 2.5 degrees Celsius. Indeed, the latter difference would be far more destructive, since the damages mount exponentially as temperatures rise. To manage the enormous risks of climate change, global emissions of greenhouse gases need to be cut sharply, and as soon as possible. That will require transforming energy, land, transport, and industrial systems so they emit less carbon dioxide. It will also require reducing short-lived climate pollutants such as methane, which stay in the atmosphere for only a fraction of the time that carbon dioxide does but have a disproportionate effect on near-term warming. Yet even that will not be enough. To stabilize the total atmospheric concentration of carbon dioxide and other greenhouse gases [GHGs], the world will have to reach net negative emissions-that is, taking more greenhouse gases out of the atmosphere than are being pumped into it. Achieving that through emission reductions alone will be extremely difficult, since some emissions, such as of methane and nitrous oxide from agriculture, are nearly impossible to eliminate. Countering the emissions that are hardest to abate, and bring concentrations down to safer levels, requires technologies that actually remove carbon dioxide from the atmosphere. That's where nets come in-not as a substitute for aggressive efforts to reduce greenhouse gas emissions but as a complement. By deploying technology that removes existing carbon dioxide from the atmosphere, while accelerating cuts in emissions, the world can boost its chances of keeping warming below two degrees and reduce the risk of catastrophe. Scientists and activists have tended to regard these technologies as a fallback option, to be held in reserve in case other efforts fail. Many fear that jumping ahead to carbon dioxide removal will distract from the critical need to cut pollution. But the world no longer has the luxury of waiting for emission-reduction strategies to do the job alone. Far from being a Plan B, nets must be a critical part of Plan A. What's more, embracing nets sooner rather than later makes economic sense. Because the marginal costs of emission reductions rise as more emissions are cut, it will be cheaper to deploy nets at the same time as emission-reduction technologies rather than waiting to exhaust those options first. The wider the solution set, the lower the costs. And the lower the costs, the easier it is to raise ambitions and garner the necessary political support. THE FUTURE IS NOW Even though removing carbon dioxide from the atmosphere may sound like the stuff of science fiction, there are already nets that could be deployed at scale today, according to a seminal report released by the National Academies of Sciences, Engineering, and Medicine in October 2018. One category involves taking advantage of carbon sinks-the earth's forests and agricultural soils, which have soaked up more carbon dioxide since the Industrial Revolution than has been released from burning petroleum. To date, the growth of carbon sinks has been inadvertent: in the United States, for example, as agriculture shifted from the rocky soils of the Northeast to the fertile Midwest, forests reclaimed abandoned farmland, breathing in carbon dioxide in the process. But this natural process can be improved through better forest management-letting trees grow longer before they are harvested and helping degraded forests grow back more quickly. The large-scale planting of trees in suitable locations around the world could increase carbon sinks further, a process that must go hand in hand with efforts to curb tropical deforestation and thereby continue to contain the vast amounts of carbon already stored in the earth's rainforests. Farmland provides additional potential for negative emissions. Around the world, conventional agricultural practices have reduced the amount of carbon in soils, decreasing their fertility in the process. Smarter approaches can reverse the process. Small and large landholders alike could add agricultural waste to soil, maximize the time that the soil is covered by living plants or mulch, and reduce tilling, which releases carbon dioxide. All these steps would decrease the amount of carbon that is lost from soil and increase the amount of carbon that is stored in it. The most technologically sophisticated net available in the near term is known as "bioenergy with carbon capture and storage," or BECCS. It is also the riskiest. Broadly defined, beccs involves burning or fermenting biomass, such as trees or crops, to generate electricity or make liquid fuel; capturing the carbon dioxide produced in the process; and sequestering it underground. It is considered a negative emission technology, and not a zero emission technology, because growing the biomass used in the process removes carbon from the atmosphere. What makes BECCS so exciting is its potential to remove significantly more carbon from the atmosphere than other approaches do. But it also brings challenges. For one, it is expensive: electricity generated from beccs could cost twice as much as that generated with natural gas, because biomass is an inefficient fuel source and capturing and sequestering carbon dioxide is costly. The technology would also require careful monitoring to ensure that the carbon dioxide pumped underground stays there and clear rules for legal liability in the event of leaks. But the fact that private companies have been successfully injecting carbon dioxide into depleted oil and gas reservoirs for decades offers good evidence that permanent storage is possible on a large scale. More worrying are the additional climate risks that BECCS poses. If BECCS drives demand for biomass and more of the carbon that is stored in the forest ecosystem is released as a result, it could end up raising the level of carbon in the atmosphere rather than reducing it. Another concern is competition for land: converting farms or forests to grow energy crops, something that the large-scale use of BEccs might require, could drive up the cost of food, reduce agricultural production, and threaten scarce habitats. These problems could be mitigated by using only biomass waste, such as residues from logging and agriculture, but that would reduce the potential scale. Although BEccs deserves consideration as part of the arsenal, these risks mean that its contribution will likely end up being smaller than some proponents claim. Taking all these land-based nets together, and factoring in the considerable economic, practical, and behavioral hurdles to bringing them to scale, the National Academies report concludes that by midcentury, nets could remove as much as five billion tons of carbon dioxide from the atmosphere annually. Given the significant risks involved, that estimate is probably too bullish. Even if it were not, that's still only half of the ten billion tons of carbon dioxide that will likely need to be removed each year to zero out the remaining greenhouse gas emissions, even with aggressive cuts. CLOSING THE GAP Removing from the atmosphere the balance of the carbon dioxide necessary will require perfecting technologies currently in development. Two deserve particular mention; both are full of promise, although neither is ready for widespread use. The first is called "direct air capture"- essentially, sucking carbon from the sky. The technology is already being tested in Canada, Iceland, Italy, and Switzerland at pilot plants where massive arrays of fans direct a stream of air toward a special substance that binds with the passing carbon dioxide. The substance is then either heated or forced into a vacuum to release the carbon dioxide, which is compressed and either stored or used as feedstocks for chemicals, fuels, or cement. These technologies are real-albeit prohibitively expensive in their current form. As a recent study led by David Sandalow of Columbia University's Center on Global Energy Policy concludes, taking them to scale means solving a variety of technological challenges to bring down the costs. Above all, these processes are highly energy intensive, so scaling them would require enormous amounts of low-carbon electricity. (A direct-air-capture facility powered by coal-fired electricity, for example, would generate more new carbon dioxide than it would capture.) These obstacles are serious, but the surprising progress of the past decade suggests that they can be overcome in the next one. The second technology, enhanced carbon mineralization, is even further from being realized, but it is full of even more possibility. Geologists have long known that when rock from the earth's mantle (the layer of the earth between its crust and its core) is exposed to the air, it binds with carbon dioxide to form carbon-containing minerals. The massive tectonic collisions that formed the Appalachian Mountains around 460 million years ago, for example, exposed subsurface rock to weathering that resulted in the absorption of substantial amounts of carbon dioxide from the atmosphere. That took tens of millions of years; enhanced carbon mineralization seeks to fast-forward the process. Scientists are exploring two ways to do this. In one approach, rocks would be brought to the surface to bind with carbon from the air. Such natural weathering already occurs in mine tailings, the waste left over from certain mining operations. But mimicking this process on a large scale-by grinding up large quantities of rock containing reactive minerals and bringing it to the earth's surface-would be highly energy intensive and thus costly, roughly on par with direct air capture. Another potential approach is pumping the carbon dioxide underground to meet the rock. As the National Academies report explains, carbon-dioxide-rich fluids injected into basalt or peridotite formations (two kinds of igneous rock that make up much of the earth's mantle) react with the rock, converting the dissolved carbon dioxide into solid carbon-containing minerals. Pilot projects in Iceland and the United States have demonstrated that this is possible. There is also evidence for how this could work in the natural world. Peridotite usually lies deep inside the earth, but some rock formations around the globe contain pockets of it on the surface. For example, scientists are studying how the surface-level peridotite in Oman's rock formations reacts with the air and absorbs large amounts of carbon. In theory, this approach offers nearly unlimited scale, because suitable rock formations are widespread and readily accessible. It would also be cheap, because it takes advantage of chemical potential energy in the rock instead of costly energy sources. And since the carbon dioxide is converted to solid rock, the effect is permanent, and it carries few of the side effects that other nets could bring. GETTING TO LESS These technologies do not come cheap. The National Academy of Sciences recommends as much as $1 billion annually in U.S. government funding for research on nets. And indeed, such funding should be an urgent priority. But to make these technologies economically viable and scale them rapidly, policymakers will also have to tap into a much more powerful force: the profit motive. Putting a price on carbon emissions creates an economic incentive for entrepreneurs to find cheaper, faster ways to cut pollution. Valuing negative emissions-for example, through an emission-trading system that awards credits for carbon removal or a carbon tax that provides rebates for them-would create an incentive for them to join the hunt for nets. Forty-five countries, along with ten U.S. states, have put in place some mechanism to price carbon. But only a handful of them offer rewards for converting land into forest, managing existing forests better, or increasing the amount of carbon stored in agricultural soils, and none offers incentives for other nets. What's needed is a carbon pricing system that not only charges those who emit carbon but also pays those who remove it. Such a system would provide new revenue streams for landowners who restored forest cover to their land and for farmers and ranchers who increased the amount of carbon stored in their soils. It would also reward the inventors and entrepreneurs who developed new, better technologies to capture carbon from the air and the investors and businesses that took them to scale. Without these incentives, those players will stay on the sidelines. By spurring innovation in lower-cost nets, incentives would also ease the way politically for an ambitious pollution limit-which, ultimately, is necessary for ensuring that the world meets it climate goals. Simply put, humanity's best hope is to promise that the next crop of billionaires will be those who figure out low-cost ways to remove carbon from the sky. The biggest hurdle for such incentives is the lack of a global market for carbon credits. Hope on that front, however, is emerging from an unlikely place: aviation. Currently responsible for roughly two percent of global greenhouse gases, aviation's emissions are expected to triple or quadruple by midcentury in the absence of effective policies to limit them. But in 2016, faced with the prospect that the eu would start capping the emissions of flights landing in and taking off from member states, the un body that governs worldwide air travel, the International Civil Aviation Organization, agreed to cap emissions from international flights at 2020 levels. The airline industry supported the agreement, hoping to avoid the messy regulatory patchwork that might result if the eu went ahead and states beyond the eu followed suit with their own approaches. The resulting program, called the Carbon Offsetting and Reduction Scheme for International Aviation (corsia), requires all airlines to start reporting emissions this year, and it will begin enforcing a cap in 2021. Once in full swing, at least 100 countries are expected to participate, covering at least three-quarters of the forecast increase in international aviation emissions. Airlines flying between participating countries will have two ways to comply: they can lower their emissions (for example, by burning less fuel or switching to alternative fuels), or they can buy emission-reduction credits from companies. Because the technologies for reducing airline emissions at scale are still a long way off, the industry will mostly choose the second option, relying on carbon credits from reductions in other sectors. It is estimated that over the first 15 years of corsia, demand for these credits will reach between 2.5 billion and 3.0 billion tons-roughly equal to the annual greenhouse gas emissions from the U.S. power and manufacturing sectors. With this new option to sell emission-reduction credits to airlines, there is a good possibility that a pot of gold will await companies that cut or offset their carbon emissions. In short, corsia could catalyze a global carbon market that drives investment in low-carbon fuels and technologies-including nets. To realize its promise, corsia must be implemented properly, and there are powerful forces working to see that it is not. Some countries, including ones negotiating on behalf of their state-owned companies, are trying to rig the system by allowing credits from projects that do not produce legitimate carbon reductions, such as Brazil's effort to allow the sale of credits from huge hydroelectric dams in the Amazon that have already been built and paid for (and thus do not represent new reductions). Allowing such credits into the system could crowd out potential rewards for genuine reductions. But there are also powerful, sometimes unexpected allies who stand to gain from a global carbon market that works. For example, some airlines are motivated to act out of a fear that millennials, concerned about their carbon footprint, may eventually begin to shun air travel. The new regulations, by creating demand for emission reductions and spurring investment in nets to produce jet fuel, could be the industry's best hope of protecting its reputation-and a critical step toward a broader global carbon market that moves nets from promising pilot projects to a gamechanging reality. Skeptics say that nets are too speculative and a possibility only, perhaps, in the distant future. It is true that these innovations are not fully understood and that not all of them will pan out. But no group of scholars and practitioners, no matter how expert, can determine exactly which technologies should be deployed and when. It is impossible to predict what future innovations will look like, but that shouldn't stop the world from pursuing them, especially when the threat is so grave. The fact remains that many nets are ready to be deployed at scale today, and they might make the difference between limiting warming to two degrees and failing to do so. Ultimately, climate change will be stopped by creating economic incentives that unleash the innovation of the private sector-not by waiting for the perfect technology to arrive ready-made, maybe when it's already too late. No one is saying that achieving all of this will be easy, but the road to climate stability has never been that. Hard does not mean impossible, however, and the transformative power of human ingenuity offers an endless source of hope.

#### Yes decoupling---best and most recent studies AND leakage is wrong.

Zeke Hausfather 21, Director, Climate and Energy at The Breakthrough Institute, "Absolute Decoupling of Economic Growth and Emissions in 32 Countries," Breakthrough Institute, 04/06/2021, https://thebreakthrough.org/issues/energy/absolute-decoupling-of-economic-growth-and-emissions-in-32-countries.

The past 30 years have seen immense progress in improving the quality of life for much of humanity. Extreme poverty — the number of people living on less than $1.90 per day — has fallen by nearly two-thirds, from 1.9 billion to around 650 million. Life expectancy has risen in most of the world, along with literacy and access to education, while infant mortality has fallen. Despite perceptions to the contrary, the average person born today is likely to have access to more opportunities and have a better quality of life than at any other point in human history. Much of this increase in human wellbeing has been propelled by rapid economic growth driven largely by state-led industrial policy, particularly in poor-to-middle income countries.

However, this growth has come at a cost: between 1990 and 2019, global emissions of CO2 increased by 56%. Historically, economic growth has been closely linked to increased energy consumption — and increased CO2 emissions in particular — leading some to argue that a more prosperous world is one that necessarily has more impacts on our natural environment and climate. There is a lively academic debate about our ability to “absolutely decouple” emissions and growth — that is, the extent to which the adoption of clean energy technology can allow emissions to decline while economic growth continues.

Over the past 15 years, however, something has begun to change. Rather than a 21st century dominated by coal that energy modelers foresaw, global coal use peaked in 2013 and is now in structural decline. We have succeeded in making clean energy cheap, with solar power and battery storage costs falling 10-fold since 2009. The world produced more electricity from clean energy — solar, wind, hydro, and nuclear — than from coal over the past two years. And, according to some major oil companies, peak oil is upon us — not because we have run out of cheap oil to produce, but because demand is falling and companies expect further decline as consumers increasingly shift to electric vehicles.

The world has long been experiencing a relative decoupling between economic growth and CO2 emissions, with the emissions per unit of GDP falling for the past 60 years. This is the case even in countries like India and China that have been undergoing rapid economic growth. But relative decoupling alone is inadequate in a world where global CO2 emissions need to peak and decline in the next decade to give us any chance at limiting warming to well below 2℃, in line with Paris Agreement targets.

Thankfully, there is increasing evidence that the world is on track to absolutely decouple CO2 emissions and economic growth — with global CO2 emissions potentially having peaked in 2019 and unlikely to increase substantially in the coming decade. While an emissions peak is just the first and easiest step towards eventually reaching the net-zero emissions required to stop the world from continuing to warm, it demonstrates that linkages between emissions and economic activity are not an immutable law, but rather simply a result of our current means of energy production.

In recent years we have seen more and more examples of absolute decoupling — economic growth accompanied by falling CO2 emissions. Since 2005, 32 countries with a population of at least one million people have absolutely decoupled emissions from economic growth, both for terrestrial emissions (those within national borders) and consumption emissions (emissions embodied in the goods consumed in a country). This includes the United States, Japan, Mexico, Germany, United Kingdom, France, Spain, Poland, Romania, Netherlands, Belgium, Portugal, Sweden, Hungary, Belarus, Austria, Bulgaria, El Salvador, Singapore, Denmark, Finland, Slovakia, Norway, Ireland, New Zealand, Croatia, Jamaica, Lithuania, Slovenia, Latvia, Estonia, and Cyprus. Figure 1, below, shows the declines in territorial emissions (blue) and increases in GDP (red).

Chart, bar chart

Description automatically generated

To qualify as having experienced absolute decoupling, we require countries included in this analysis to pass four separate filters: a population of at least one million (to focus the analysis on more representative cases), declining territorial emissions over the 2005-2019 period (based on a linear regression), declining consumption emissions, and increasing real GDP (on a purchasing power parity basis, using constant 2017 international $USD). We chose not to include 2020 in this analysis because it is not particularly representative of longer-term trends, and consumption and territorial emissions estimates are not yet available for many countries.

There is a wide range of rates of economic growth between 2005-2019 among countries experiencing absolute decoupling. Somewhat counterintuitively, there is no significant relationship between the rate of economic growth and the magnitude of emissions reductions within the group. While it is unlikely that there is not at least some linkage between the two factors, there are plenty of examples of countries (e.g., Singapore, Romania, and Ireland) experiencing both extremely rapid economic growth and large reductions in CO2 emissions.

One of the primary criticisms of some prior analyses of absolute decoupling is that they ignore leakage. Specifically, the offshoring of manufacturing from high-income countries over the past three decades to countries like China has led to “illusory” drops in emissions, where the emissions associated with high-income country consumption are simply shipped overseas and no longer show up in territorial emissions accounting. There is some truth in this critique, as there was a large increase in emissions embodied in imports from developing countries between 1990 and 2005. After 2005, however, structural changes in China and a growing domestic market led to a reversal of these trends; the amount of emissions “exported” from developed countries to developing countries has actually declined over the past 15 years.

This means that, for many countries, both territorial emissions and consumption emissions (which include any emissions “exported” to other countries) have jointly declined. In fact, on average, consumption emissions have been declining slightly faster than territorial emissions since 2005 in the 32 countries we identify as experiencing absolute decoupling. Figure 2, below, shows the change in consumption emissions (teal) and GDP (red) between 2005 and 2019.

Chart, bar chart

Description automatically generated

There is a pretty wide variation in the extent to which these countries have reduced their territorial and consumption emissions since 2005. Some countries — such as the UK, Denmark, Finland, and Singapore – have seen territorial emissions fall faster than consumption emissions, while the US, Japan, Germany, and Spain (among others) have seen consumption emissions fall faster. Figure 3 shows reductions in consumption and territorial emissions for each country, with the size of the dot representing the size of the population in 2019.

[Chart omitted]

Absolute decoupling is possible. There is no physical law requiring economic growth — and broader increases in human wellbeing — to necessarily be linked to CO2 emissions. All of the services that we rely on today that emit fossil fuels — electricity, transportation, heating, food — can in principle be replaced by near-zero carbon alternatives, though these are more mature in some sectors (electricity, transportation, buildings) than in others (industrial processes, agriculture).

#### System is resilient.

Hung Tran & Jaime Caruana 19, Nonresident senior fellow with the Atlantic Council and a former executive managing director of the Institute of International Finance; Former general manager at Bank for International Settlements, member of the board of directors at BBVA, “Diversity builds financial resilience,” Atlantic Council, 04/09/2019, <https://www.atlanticcouncil.org/blogs/new-atlanticist/diversity-builds-financial-resilience/>

The diversity of financial institutions, with their differences in business models, liability structures, time horizons, and investment motivations could contribute greatly to financial resilience. Since the 2008 crisis, financial institutional diversity has helped sustain market liquidity while banks have curtailed their market-making activity [a readiness to buy and sell securities to accommodate their clients] due to regulatory changes and business strategies. Improving resiliency and liquidity in financial markets is critical to better finance the real economy, allocate risks properly, and support financial stability.

Many financial institutions and practices, together with regulatory and accounting requirements, however, tend to exacerbate cyclical fluctuations in the economy by buying assets or extending credit in good times and cutting back in bad times. It is important, therefore, to promote financial diversity and foster counter-cyclical behaviors among institutions capable of doing so. This helps reduce the risk of market imbalances leading to liquidity crises and offset self-reinforcing dynamics in times of financial stress. This risk has become important to guard against as the International Monetary Fund’s just-released World Economic Outlook finds the global economy entering a synchronized slowing phase.

The idea is to exploit the natural differences in the balance sheet structures of financial institutions like banks and investment funds on the one hand, and insurance companies and pension funds on the other, and develop regulatory and accounting regimes that encourage diversity of behaviors.

Banks and investment funds have a positive duration gap in their balance sheets—meaning the average duration of their assets tends to be longer than that of their liabilities. Consequently, banks and investment funds tend to act in a pro-cyclical manner. When asset quality deteriorates, prices fall, and interest rates rise, the value of banks’ assets declines by more than that of their liabilities. Regulatory capital and liquidity requirements increase under those circumstances, pressuring banks to liquidate falling assets.

Investment funds can sell into falling markets to meet redemption demand, according to research by the Bank for International Settlements. Funds can also buy and sell at the same time if they use similar investment strategies, sharing economic and market views.

The pro-cyclical practices described above can be ameliorated to some extent by regulations requiring higher capital and liquidity ratios for banks as well as heightened liquidity risk management. Better capitalized banks with sufficient liquidity can arguably contribute less, but more reliable, market liquidity—compared with the very liquid pre-crisis market conditions driven by high leverage, which turned out to be illusionary. Funds can also maintain adequate cash positions to meet possible redemption demand. In any event, pro-cyclicality remains a natural tendency for those institutions and needs to be managed.

By contrast, insurance companies and pension funds have a negative duration gap in their balance sheets and, under some circumstances, could play a stabilizing role in mitigating selling pressure. As their average asset duration is much shorter than that of their liabilities, when rates rise, the value of their assets fall by less than that of their liabilities. This strengthens their solvency, allowing them to acquire assets having fallen in prices. They thus can act in a counter-cyclical manner. However, some research indicates that this counter-cyclical behavior may need to be further supported. The International Monetary Fund’s Global Financial Stability Report observed that life insurance companies—but not property and casualty insurers—and pension funds act counter-cyclically in liquidity crises, but pro-cyclically in solvency crises.

More recent empirical research, using recently available granular data on security-by-security holdings by EU institutional investors, shows that their behavior is more nuanced. Overall, insurers and pension funds behaved in a counter-cyclical manner, but the intensity of such effect has weakened since the pre-crisis period. Other preliminary research notes that the counter-cyclical behavior of insurers and pension funds can be observed for safe assets whose value can be discounted by the same risk-free rate used for liabilities. However, these institutions tend to pro-cyclically reduce holding of risk assets, including equities and corporate bonds, as their values tend to fall by more than liabilities in a market correction.

Regulators should encourage insurers and pension funds to make more use of the counter-cyclical measures provided in the EU insurance regulatory regime Solvency II—as highlighted by the European Insurance and Occupational Pension Authority. While interventions by government authorities are necessary to stabilize severe financial turmoil, more counter-cyclical behaviors by insurers and pension funds, many of which likely stay resilient in a crisis, can help reduce the frequency and severity of financial crises. Remember: during the Great Depression in the United States and its aftermath, some 7,000 banks failed but most of the insurers remained financially healthy.