# Shirley---Round 5---vs. MSU MM

## 1AC

### 1AC---Trade ADV

#### Advantage One is TRADE

#### Antitrust rules are rapidly proliferating globally, but are overlapping and disjointed---the lack of international harmonization increases their cost and complexity AND creates an opening for politicized use of rules as a mechanism to unfairly promote domestic industrial policy under the guise of competition

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I. Global developments suggest increased need for legal certainty in rulemaking and enforcement

Companies today operate in an increasingly globalised world, interconnected via digital platforms and ecosystems. The technological revolution is accelerating at an ever-increasing speed. It promises to fundamentally alter both the competitive landscape and the tools by which competition is regulated. Against this backdrop, the world is facing substantial environmental challenges with mounting pressure on businesses to change the way they operate, including an increasing need for firms to collaborate to achieve social goals and increased efficiency that no one firm could achieve independently.

While some progress has been made towards a unified view of competition law, companies are also facing rising geopolitical tensions that have led to protectionist measures and the pursuit of industrial policy objectives under the guise of competition law enforcement. Concepts including national security, full employment, and ‘fair’ or ‘level’ pricing frequently introduce domestic protection concerns into traditional economic tests. With the proliferation of competition regimes, now well over 100, the potential for regulatory drag on the global markets increases exponentially. Having spent the last two decades as competition counsel, I can say with certainty that the complexity of the legal landscape and uncertainty and unpredictability as to compliance with competition law regulations have increased dramatically in recent years both at a global and EU level. Companies are struggling to achieve legal competition law compliance despite consistent efforts including scaling up their compliance departments.

As our markets continue to evolve in the face of technology and sustainability and other social goals, it is now more important than ever for the European Commission (‘the Commission’) to ensure legal certainty, both in rulemaking and in enforcement. The costs associated with uncertainty should not be underestimated, particularly as the Commission considers new enforcement tools designed to address competition structures and practices that may fall outside of traditional economic analyses. Not only is transparency and predictability vital for the proper functioning of the European Economic Area, but it would also send a much-needed signal to the rest of the world. Conversely, if, in any new enforcement system transparency and predictability do not prevail, the Commission’s efforts would likely serve to indirectly legitimise non-transparent and unpredictable protectionis[m]t in other countries, not founded on the rule of law and due process.

Even if one of the key roles of the Commission is to enforce competition law, it is important to keep in mind that competition policy and enforcement are tools of economic policy. Implemented well, competition policy can stimulate economic growth and competitiveness but, if not, it can be a significant regulatory brake on investment, economic development, and sustainability advances.

II.Why should we worry about uncertainty costs?

When considering the potential costs of new regulation, decision-makers often emphasise the legal spend, i.e., the cost of in-house lawyers, external advisers, document preservation systems, etc. But what is often overlooked is the far more expensive costs related to uncertainty in the process of risk-weighting potential investments. A simple example:

Company A seeks to enter into a transaction with Company B to achieve carbon output reduction. Company A’s executive management team, in conjunction with financial advisors, calculates a value for the transaction, which is typically a range of acceptable prices to achieve the desired goal. Company A’s CEO then engages her legal department to assess the potential for regulatory risk flowing from the venture. Given the potential for fines, divestitures, restrictions, or outright prohibitions on the project from a myriad of governmental authorities, the application of competition regulation has the potential to result in billions of dollars in business losses. On receiving legal advice on the probability of such losses, Company A’s CEO applies risk weighting to the value of the transaction, adjusting the value downward to account for the regulatory risk.

In some ways, legal ‘weight’ on a transaction, collaboration, or other business initiative is (socially and economically) desirable—if for example, a company employee proposed to engage in a price-fixing cartel, the legal department’s assessment of extreme risk serves a valuable societal goal. But in far too many cases, it is the mere lack of transparency and certainty in global competition regimes that lead to a determinative ‘risk weighting’ outcome in a deal. Competition counsel must conservatively advise of the uncertainty surrounding deal execution, and responsible CEOs must protect shareholders against business losses flowing frompossible regulatory intervention including the reputational risk following compliance breaches. As in our example, regulatory uncertainty alone may prevent a pro-competitive, socially desirable transaction that has been devalued by the risk of regulatory intervention.

When designing business practices, engaging in collaboration with other companies, and in considering merger activities, legal certainty, transparency, and predictability routinely drive willingness to invest.

III. Legal uncertainty has increased significantly in recent years

The trend that we see is that the complexity of the legal landscape and uncertainty as to compliance with and enforcement of antitrust regulations have increased dramatically in recent years, both globally and in the EU. There are several reasons for this development.

Firstly, more and more jurisdictions have competition laws in place and an increasing number of countries are actively enforcing their rules. For global companies that can mean familiarisation with up to 100 different competition law regulations. This is not particular to competition law, but it highlights the need for clear and transparent rules as well as predictability.

Secondly, the substantive competition rules are becoming increasingly unclear due to the application of domestic protection concerns, non-economic factors, and novel competition theories, such as proposed new competition enforcement tool (‘New Competition Tool’) currently under review in Europe1. The conduct at issue in these kinds of cases is rarely ‘black or white’ or may simply be a consequence of the (changing) market dynamics (also where changes are unrelated to the conduct of the company) and will typically pursue legitimate purposes, making it extremely difficult for companies to draw the boundaries needed to avoid government intervention.

Thirdly, companies increasingly operate in a vast number of countries, and their business practices may implicate several jurisdiction’s rules at the same time. Companies are often faced with substantially different rules despite apparently similar concepts. Also, we see new confidence by emerging countries to apply the common antitrust concepts according to their own interpretation and possibly to serve their own political ends. Lack of international convergence on substantive rules including sector-specific regulations thus in practice differs immensely across jurisdictions despite ICN and OECD efforts to harmonise rules.

#### This will dry up cross-border commerce and investment---foreign companies won’t participate if there’s the prospect of discrimination

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After setting our theoretical priors, we empirically test our two hypotheses on sector-level data covering 53 U.S. industries over the 2002–2017 period. Our panel-data empirical results indicate that merger policy investigative activities disproportionately deter foreign acquirers in local M&A markets. Specifically, increases in merger policy risk and merger policy uncertainty lead to reduced foreign acquirer presence in the U.S. markets for corporate control. The empirical evidence then suggests that merger policy enforcement is protectionist in effect, as foreign investment activities are more adversely affected by the application of merger policy as compared to domestic investment activities. These results yield salient implications for the international business literature on hostcountry characteristics and foreign investment activities.

In order to comprehensively examine the relationship between merger policy enforcement and foreign acquirer presence in local M&A markets, we structure the remainder of this paper as follows. We present a theoretical framework that focuses on the salience of policy risk and policy uncertainty in generating two hypotheses regarding the relationship between the enforcement of merger policy and the participation of foreign acquirers in domestic M&A markets. After setting out our theoretical priors, we describe our sector-level data on U.S. merger control and acquisition activities, formulate our estimation strategy, present our empirical results, and discuss robustness testing. The last section concludes.

HYPOTHESES DEVELOPMENT

A considerable amount of IB literature has examined the impact of country-level political risk and uncertainty on inward FDI activities – see the literature reviews by Kobrin (1979), Fitzpatrick (1983) and Liesch, Welch, and Buckley (2011). The basis behind this literature is that political risks and uncertainties can ‘‘arise from the actions of national governments which interfere with or prevent business transactions’’ (Weston & Sorge, 1972: 60). Firms generally react to such political hurdles by reducing their willingness to make investments as the option value of delaying investment becomes higher under such risks and uncertainties (Bloom, 2014; Brouthers, Brouthers, & Werner, 2008). While political hurdles and hazards can negatively influence the investment activities of all firms, foreign firms are generally considered to be more sensitive to such shocks. For one, foreign firms might be more frequently targeted when burdensome laws, regulations and policies are implemented by national governments; e.g., Eden (1994) observes that national policies practiced in a parochial manner represent fundamental threats to multinationals. Furthermore, foreign firms often lack the local information, legitimacy and contacts which might help them properly assess and mitigate political constraints. As Werner, Brouthers, and Brouthers (1996: 572) underscore, ‘‘firms commonly find international business opportunities to be inherently more risky than domestic ones’’ due to the stark differences in political environments and the inherent legal uncertainties characteristic of foreign investment endeavors. It is no surprise then that a great deal of empirical literature (e.g., Delios & Henisz, 2000, 2003b; Henisz & Delios, 2001) indicates that uncertainty in the political environment substantially deters foreign investment activities. Indeed, Kobrin (1979) highlights how the response to political risk and uncertainty is frequently avoidance, as multinationals simply do not get involved in countries perceived as risky.

While macro-level studies regarding the relationship between political risk and FDI tend to dominate the literature (Vadlamannati, 2012), there have been efforts to follow the prescriptions of Kobrin (1979) to consider the industry-, firm-, and project-specific factors relating to political risk and uncertainty. For one, Miller (1993) breaks down the salient host-country environmental uncertainties into six different dimensions – where uncertainties with respect to specific government policies represent the first dimension. Werner et al. (1996) follow in this line of research by considering the national laws which affect foreign firms; and Grosse (1985) and Bonaime, Gulen, and Ion (2018), respectively, consider the impact of regulatory policies and uncertainties on FDI and M&A activities. The conduct of national merger policy represents a particular regulatory policy that involves a direct threat to the participation of foreign firms in local M&A markets. Specifically, the presence of a national merger policy can negatively impact foreign acquirers by slowing down the consummation of their cross-border acquisitions via antitrust investigations, curtailing the profitability of these cross-border acquisitions by requiring structural remedies, and by even outright prohibiting them. Thus, merger control is a specific and salient government barrier that foreign acquirers must successfully navigate in order to gain access to local M&A markets (Brouthers et al., 2008; Clougherty, 2005).

While the IB literature lacks empirical scholarship concerning this topic, many IB scholars (e.g., Brewer, 1993; Buckley & Casson, 1996; Hymer, 1970; Spar, 2001) have posited that the national enforcement of merger policy potentially restrains the level of inward FDI. It is with these concerns in mind that many policy advisors recommend that countries do not prioritize competition policy, as it could discourage inward FDI via the creation of additional regulatory barriers and uncertainties for foreign investors (Oliveira et al., 2001). Moreover, the conduct of national merger policy lends itself well to analyzing the deterrence effects with respect to acquisition activities in a manner that is consistent with the pre-existing literature on political risk and uncertainty. First, merger policy is conducted at the industry level and exhibits cross-sector variation in antitrust scrutiny (Clougherty & Seldeslachts, 2013); thus, it represents an industryspecific policy context worth analyzing for policy risk factors in line with Kobrin’s (1979) prescriptions. Second, merger policy involves both policy risk and policy uncertainty – both of which may disproportionately deter foreign acquirers as compared to domestic acquirers. We turn now to a discussion of these concepts and to the formulation of our theoretical priors.

Merger Policy Risk

The concept of risk goes back to Knight’s (1921) fundamental insights, where he considered risk to be a known probability distribution over a set of events; for example, flipping a coin involves risk, but with known odds. In moving from the concept of risk to its application in IB political risk, Kobrin (1979) observes that risk is at play when managers have knowledge regarding the possibility and probability of different political outcomes via either calculations or past experience statistics. While the relevant information is available with political risk, and observers generally agree with respect to the probabilities of different outcomes, foreign investors are often considered to be at a disadvantage as compared to domestic investors due in part to inherent information asymmetries (Gehrig, 1993; Gordon & Bovenberg, 1996; Liesch et al., 2011). As Gehrig (1993: 98) makes clear, ‘‘information may have to be interpreted in the light of the legal conventions and business culture of a particular community, which may be difficult for foreigners to assess’’. Thus, domestic investors are better informed and better able to interpret the relevant probabilities as compared to foreign investors, and, as a result, foreign managers tend to overestimate the risks and underestimate the benefits involved with host-country investment activities (Liesch et al., 2011). Simply put, the lack of information, knowledge, and experience with respect to the intricacies of host-country activities accentuates the perceptions of risk when considering foreign investments. A great deal of the political risk literature accordingly focuses on the probabilistic estimates of different policy outcomes and how increased risk leads to decreased foreign investment activities. With the above as a backdrop, we consider how the policy risk involved with merger control might disproportionately affect foreign investors considering participating in the local markets for corporate control.

#### Specifically---export cartels are legalized protectionism designed to bypass WTO subsidy controls---that creates increasing disputes that put trade on the brink, especially after Trump and Brexit

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Section 1: Introduction

Today, there is a growing fear of rising protectionism, from the United States (US) under the Trump administration’s imposition of tariffs and a trade war with China, to the United Kingdom’s Brexit, to the less known trade-restricting measures adopted by other countries all over the world.1

The neoclassical economic model suggests the desirability of free trade over protectionism because free trade lowers prices, allows a flow of goods with little restrictions and improves the quality of products, resulting in overall welfare gain.2 On the other hand, protectionism results in welfare losses, increased prices and a decline in innovation, thus harming consumers and economic efficiency.3

The natural inclination of states to engage in protectionism is as old as time and, until today, has never been diminished.4 The General Agreement on Trade & Tariff (GATT),5 superseded by World Trade Organisation (WTO) since 1995, rendered the classical forms of protectionism such as tariffs obsolete. However, it did not defeat protectionism; instead, protectionism has evolved through its protean capacity to adapt into new and often undetectable forms,6 now labelled as ‘murky’ protectionism.7

Competition law enforcement is suspected as one of the forms of this murky protectionism. There are two ways (among others) considered in this article in which States can utilise competition law to impair free trade and restrict access of foreign firms to domestic market. First is the exemption under national competition law such as export cartel exemptions; second is the strategic application of domestic competition law, e.g. alleged discriminatory and selective enforcement of merger regulation.8

It appears that States use their competition law as invincible trade barriers to further their protectionist bids such as national security and environmental protection.9 In recent years, States have been accused of using their competition law to pursue protectionism. For instance, the US has criticised the EU’s merger regulation as protecting competitors and not competition, particularly in the technology industry in mergers involving non-EU firms – even when those same acquisitions are approved by other competition authorities. A good example is the Commission’s 2001 decision to block the $42 billion acquisition of Honeywell by General Electric.10 Similarly, the US is being encouraged to change their stance on leniency towards export cartels due to its beggar-thy-neighbour effect.11 Investigating the controversy around the use of competition law for protectionist ends is particularly relevant today to protect and uphold free trade and liberalisation. There is a gap between competition and trade policies which national competition law fails to address and the WTO rules fail to regulate. Merger regulation and export cartel exemptions appear to be used as tools for protectionist ends to exploit the gap. This article, therefore, examines whether States use their competition law to pursue protectionist policy in the EU and the US. In this context, the article specifically focuses on analysing how merger regulation and treatment of export cartel further protectionism.12

In terms of method and approach, the article uses the international political economy (IPE) perspective underpinned by (legal/political) realism and interdisciplinary, theoretical-analytical perspectives within the framework of international competition law. It employs (comparative) qualitative empirical evidence from the EU and US for comparative analysis. The international political economic perspective is used to analyse how the presence of political elements and influences on decision-making reflect the enforcing jurisdiction’s national environment, culture, priorities and goals by presenting an opportunity for the use of competition law for protectionist bids. Meanwhile, the interdisciplinary and theoretical-analytical perspective is used to employ literature in the legal, economics, international relations and international politics areas.13 This is empirically analysed within the framework of (international) competition law. The (comparative) qualitative empirical evidence is employed by gathering relevant material from the European Union and the United States of America for an in-depth analysis.

The article adopts legal/political realism theory in the analysis section to demonstrate that the regulation of competition law by regulators/competition authorities in the EU (mainly, the EU Commission)14 and in the USA (the US Department of Justice and the Federal Trade Commission)15 is highly influenced by the public policy of the nation. In simple parlance, legal realism is a theory that all law derives from prevailing social interests and public policy. According to legal realist theory, judges consider not only abstract rules, but also social interest and public policy, when deciding a case.16 Legal realism is a diverse school of thought and any attempt to homogenise it will distort more than simplify,17 since its influence goes beyond being a mere theory of adjudication.18 Judges more often than not promote social ends; just as Cardozo admitted, a judge may be tempted to substitute their view for that of the community.19 From this perspective, the legal realist is attached to social reform and they want law to serve as an instrument for social action. To achieve this, realist thought, policy objectives and interrelationship between legal rules had to become more intimate.20

Political realism is a theory that attempts to explain, model, and prescribe political relations. It proposes that power is (or ought to be) the primary end of political action, whether in the domestic realm or international arena. In the domestic realm, the theory contends that politicians do, or should, strive to maximise their power, whilst in the international arena, nation States are the primary agents that maximise, or ought to maximise, their power. In the context of nation States, the proposition is that a nation can only advance its interests against the interests of other nations; this implies that the international environment is inherently unstable.21 Realism emphasizes power and the national interest and directs more attention to political security than to economic issues.22 Realism is equated to, if not related to, mercantilism, also known as protectionism.23 To obtain political security, realists enrich their power and wealth at the expense of their neighbouring States, often through an increase in exports and decrease in imports.24 IPE is concerned with the interaction of economics and politics in the international sphere.25 Politics is represented by the State as a sovereign political unit and economics is represented by the market as a system of production and consumption at a price determined by supply and demand.26

Based on the political and economic dimensions involved in the interplay of competition law and trade policy, particularly protectionism, it is the position of this article that realist theory, along with an IPE perspective, is relevant in understanding why nation States use competition law as a protectionist bid in their trade policy.

The article is structured into five broad sections; this section, Section 1 is the general introduction and set out the method, including the theoretical approach used in the article. Section 2 provides a brief conceptual understanding of the relevant concepts in the article which have divergent conceptual interpretations within academic literature. Section 3 discusses the relationship between competition law and other issues areas such as trade policy, protectionism and others. Section 4 analyses competition law and protectionism in the two case studies, EU and US, by using specific competition law instruments: (i) merger regulation and (ii) treatment of export cartels to investigate and analyse how they are used for protectionism, including a brief comparative analysis. Finally, Section 5 summarises and concludes the article.

Section 2: A Conceptual understanding of relevant concepts

Looking at academic literature, scholars have provided divergent conceptual views or interpretations of relevant competition law concepts that appear in the article.

(i) Competition

Competition, in its broad economic sense, is the process whereby firms struggle to win against each other. Competition law, also known as antitrust in the United States, refers to the legal rules and standards which aim to protect the process of competition by dealing with market imperfections and restoring desirable competitive conditions in the market.27 Competition policy, on the other hand, is broader than competition law and covers the full range of government measures that could promote competitive market structures and behaviour, including trade liberalisation measures.28 Views on the necessity of the enactment of competition law to implement competition policy remain divided.29 The neo-classical economics case for competition argues competition provides various benefits such as lower prices, efficiency, and innovation.30 There is no consensus on the goals of competition law. Some scholars suggest that competition law is akin to a sponge or that it is a fluid concept influenced by varying objectives, policies, culture; hence, the goals vary based on each enacting jurisdiction.31 On the other hand, one of the prominent scholars of the Chicago school of competition analysis suggests that the ultimate goal of competition law is economic efficiency, which is equated to consumer welfare maximisation.32 Nonetheless, the most commonly declared goal of competition law is to protect and encourage competition to achieve the optimal resource allocation and maximise consumer welfare.33

As a result of these diverging goals and enforcement policies of competition law, several scholars proposed for the internalisation, or at least harmonisation, of competition law.34 Some scholars such as Fox and Manne and Weinberger, recognising the restrictive effect on trade by anticompetitive practices, called for the alignment of competition law within the WTO Framework. However, this failed to materialise as a result of the diverging views of the member States.35

(ii) Merger

Under a business or firm perspective, mergers36 are motivated by efficiency goals as explained by efficiency theory, strategy to increase market power as explained by market power hypothesis, or simply the managers’ greed or overconfidence as explained by the hubris hypothesis.37 Efficiency theory suggests that firms will merge if there is a potential to generate sufficient realisable synergies beneficial to all the merging parties.38 Synergies comprise of collusive, operational and financial synergy.39 Operational synergies are manifested in resulting economies of scale and economies of scope as they mainly relate to production and/or administrative efficiencies; financial synergy refers to cost savings, and collusive synergy refers to expansion of market power as supported by the market power hypothesis.40 Alternatively, hubris hypothesis argues that decisions to merge are the result of managements’ overestimation of the resulting benefits to the business due to the managers’ overconfidence in decision-making.41 Nonetheless, each merger transaction is unique; hence, there is no single theory that encapsulates the motivations for pursuing these transactions.42

Under the legal perspective, however, a merger simply refers to a combination of two or more corporations into a single entity, regardless of business reason or mode of acquisition.43 For competition authorities, mergers pose a concern because of the merging firms’ potential to accumulate or expand market power, which can distort competition through monopoly or abuse of dominance.44

However, empirical analyses negate the protectionism hypothesis, at least with the perspective of the EU competition law. Initial studies found a positive correlation between the likelihood of opposition to mergers involving foreigners and the foreseen negative impact of the merger on domestic competitors.45 Yet, after the 2004 reforms introduced EU merger regulation, a re-examination of the protectionist hypothesis showed a shift in the protectionist tendencies of the enforcement authority.46 Recent research affirmed the results of this re-examination and found that the EU Commission committed no discrimination in its enforcement of merger regulation, whether in frequency or intensity, in mergers involving foreign firms.47 These empirical analyses, at least in the EU context, show that competition authorities did not use their merger control power to intervene on mergers involving non-EU or US acquirers. Nevertheless, they fail to conclusively prove that protectionism with merger regulation does not exist. Conversely, qualitative analyses examining merger decisions and the text of the merger regulations claim that merger regulation is used, or at least could potentially be used, for protectionist purposes such as promotion of national champions.48

(iii) Export cartels

A cartel is an association of rivals agreeing to fix prices above the competitive level, limit output below the competitive level or allocate markets between or amongst themselves in order to maximise their profits.49 Cartels, generally, have been labelled as the ‘supreme evil of antitrust’50 and the ‘primary evil of global trade’.51 On the other hand, export cartels are cartels that only operate in foreign markets and do not directly affect the markets in the jurisdiction where the cartel members are located.52 While there is a consensus among the world’s competition authorities to prohibit hard-core cartels,53 there is lack of clarity and transparency surrounding the treatment of export cartels. It is argued that export cartels receive considerable political support,54 not only because of its benefits to the exporting country, but also because it is argued that export cartels are not necessarily pure evil like hard-core cartels.55 Export cartels may have the same goals as hard-core cartels – to fix prices or allocate markets – but they may also have strictly efficiency-enhancing goals such as sharing marketing and transportation costs.56

According to economic theory, export cartels raise domestic producer welfare without diminishing domestic consumer welfare.57 Additional export revenues and increases in national welfare incentivises exporting States to tolerate, if not promote, export cartels.58 Furthermore, since the adverse effects of export cartels are externalised or felt exclusively by importing States, exporting States possessing the territorial jurisdiction over the cartel have very little interest in disciplining the conduct.59 On the other hand, importing States which have the motivation to prevent the conduct due to its anticompetitive effect and corresponding reduction in their consumer welfare do not have the territorial jurisdiction and must rather apply their competition laws extra-territorially to sanction the cartel.60 However, since exporting States are not motivated to sanction the cartel, or even induced to promote or tolerate the cartel because of its positive domestic effect, they may block any extraterritorial enforcement by the importing States through exemptions or non-cooperation.61 This conflicting interest presents a competition law enforcement dilemma on export cartels.

Fox similarly observed the insufficiency of national competition enforcement to regulate export cartels because it lacks legitimacy or capacity to reach competitive restraints on foreign soil; nonetheless, it mainly affects the domestic home market.62 Export cartels are often not covered by national competition laws when they do not affect the domestic market, neither directly or indirectly. Scholars argue that export cartels, to the extent that they are tolerated – if not encouraged – by the exporting States, are an effort of exporting States to boost domestic welfare at the expense of global welfare. More specifically, it is at the cost of the consumers’ welfare in the target market – a clear manifestation of a beggar-thy-neighbour conduct.63 On the contrary, there is a belief that the scarcity of empirical data on export cartels handicaps the attempts to analyse the issue on export cartels.64 The lack of data creates difficulties to determine the gravity of the anticompetitive harm that export cartels create; thus, the very assumptions on which the theory of the nexus of export cartel and anticompetitive conduct rely may be misguided.65

(iv) Trade policies

Like competition law, trade policy also contains both political and economic dimensions. It refers to the system of incentives put in place by a State with regard to production and consumption, including importation, exportation and trade of goods and services as aligned with the imposing state’s growth and development objectives.66 Trade policy involves various actions and tools such as the imposition of tariffs, quotas or restrictions, granting of subsidies to domestic industries and other measures often classified into two broad types: tariffs and non-tariff measures.67

The tariff is the classic instrument of trade policy.68 Tariffs are imposed to generate revenue but also, more importantly, to protect the domestic industry of the imposing country.69 However, with increasing trade liberalisation, most states covertly seek to protect domestic sectors through other instruments of trade policy such as non-tariff measures.70 Non-tariff measures include quotas, licences, technical barriers to trade, sanitary and phytosanitary measures, export restrictions, custom surcharges, financial measures and anti-dumping measures.71 Whilst non-tariff measures may intrinsically be protectionist, they seem useful in addressing failures in the market such as externalities and the asymmetry of information between producers and consumers.72

Trade policy is historically determined on the basis of the macro and micro view.73 The micro view provides that the State adopts its trade policy in accordance with the preferences of its industrial constituents.74 Hence, under the micro view, trade policy refers to the ‘aggregate outcome of industry battles over protection.’75 The macro view, on the other hand, suggests that the trade policy of the State cannot simply be traced back to the preferences of its industrial constituents.76 Under the macro view, the trade policy of the State reflects the collective interest of the State and the State acts as an independent agent furthering the national State objectives. Trade policy in all countries consists of varying dimensions or levels. For example, the EU trade policy, in addition to its ‘unilateral’ liberalization, i.e. voluntarily providing preferential market access or zero tariffs for specific types of countries, also adopts bilateral, plurilateral and multilateral agreements as well as commercial instruments such as anti-dumping laws and other safeguards.77 The objectives pursued at each level of trade policy constantly changes.78 Different States negotiate in order to determine their international trade policies.79 Hence, bilateral, plurilateral or multilateral trade agreements are born, usually involving preferential tariff rates, agreements on investments, technology-sharing or single market objectives.80 In the context of protectionism, the ability of States to resolve trade disputes amongst themselves significantly influences protectionist positions.81 However, it is argued that protectionist trade policy is more than just a means of adjudicating trade disputes; rather, protectionism is pursued by certain States in order to further their national economic and political policies.82

Part II

Protectionism

Protectionism is a kind of trade policy aimed at impeding foreign trade access to the domestic market and preserving, if not improving, the position of domestic producers in contrast to foreign producers.83 With the decline of classic protectionism, i.e. the imposition of tariffs and other visible barriers to trade, comes the rise of ‘murky’ protectionism, also known as new protectionism, which is characterised by seemingly innocuous and subtle measures designed to distort free trade without constituting as violations of the WTO rules or trade agreements.84 More aptly, murky protectionism has been defined as ‘abuses of legitimate discretion which are used to discriminate against foreign goods, companies, workers and investors’.85 Examples of murky protectionism are the imposition of regulatory and licensing requirements, tightening of product standards, limitation of ports of entry, introduction of bailout packages and initiation of disguised ‘green’ protectionism.86

Academic literature provides conflicting arguments regarding protectionism. Economic theory under the classic utility model establishes that any benefit that may result from protectionism is outweighed by its costs in terms of losses to consumer welfare and decline of economic growth.87 Another argument against protectionism is the moral argument which provides that protectionism is akin to stealing, i.e. producers and rent-seeking individuals induce the government to pursue their interests and benefit at the expense of consumers, in effect taking away what is due.88 On the other hand, the most notable arguments in favour of protectionism are national defence, infant industry and strategic trade theory.89

The national defence argument authorises the protection of industries with a vital role in national security such as weapon manufacturing to ensure the States’ readiness in times of war or adversity.90 It is suggested that agricultural protectionism is subsumed under the national defence argument because food security and food availability are part of the States’ legitimate national interests.91 It has been noted that the EU’s agricultural protectionism resulted in growth of production, achievement of self-sufficiency in food security and stability in the common market for agricultural products.92

The infant industry argument provides that a State, in order to grow, must first strengthen its newly established industries which do not enjoy the cost and production efficiencies yet compared to its competitors; this is at least until it establishes its comparative advantage and the playing field has been levelled.93 Proponents for the protection of the infant industry assert that protection must only be temporary and the benefits provided by the protected industry must exceed the costs of protection, also known as the Mill-Bastable Test.94

The strategic trade theory, introduced by James Brander and Barbara Spencer, has also been used to support protectionism.95 According to the strategic trade theory, firms are inclined to take ‘strategic’ moves exhibiting aggressive behaviour; the State’s support of such national firms will further give more credence to such behaviour, in effect deterring potential rivals such as foreign firms.96 Hence, strategic trade theory suggests the States can raise their national income at the expense of other States by supporting or promoting national firms in international competition.97

Section 3: The relationship between competition law and other issue areas

(i) Competition and Trade Policies

Competition and trade policies are both national policies used as tools for economic development, albeit with different objectives, principles, and scope. No consensus on the overall relationship between the two has yet been reached. It is suggested that the two policies could be mutually reinforcing, complementary, contradictory, or substitutes depending on how they are applied.98 Based on their basic objectives, efficiency and consumer welfare, competition and trade policies are perceived as mutually reinforcing.99 On the other hand, by dealing with private, anticompetitive conduct to ensure effective market access, competition policy is viewed as complementary with trade policy which is concerned with the removal of governmental actions. This facilitates the anti-competitive behaviour by private entities. Restrictive trade measures limit competition by curtailing the entry of foreign suppliers in the market as well as aiding anti-competitive practices by domestic firms; meanwhile, exclusions and exemptions from competition law, as well as lack of enforcement thereof, negatively impact trade.100

A contradictory relationship between competition and trade policy is also suggested as a result of their divergent aims and effects. Competition policy is concerned with consumer welfare, while trade policy is focused on the welfare of producers and is more easily influenced by special interest groups.101 Trade policy also has objectives which conflict with competition policy aims such as raising revenue, promoting self-sufficiency and supporting exports.102 Finally, competition policy and trade policy are also viewed as substitutes in some respects. For instance, the WTO found that competition law provisions relating to price discrimination serve as a substitute for anti-dumping measures in some circumstances.103

The impact of anti-competitive business practices on international trade is the most important concern in trade policy.104 Experts105 recognise that anti-competitive practices of firms, in addition to trade barriers, hamper international trade. Hence, the necessity to integrate or at least align competition and trade policies has been formally recognised as early as the proposal for the establishment of the International Trade Organisation (Havana Charter). The Havana Charter contained provisions which encourage member States to prohibit business practices that affect international trade which restrain competition, limit access to markets, or foster monopolistic control whenever such practices are harmful to trade.106 Nonetheless, the Havana Charter was not ratified and was instead succeeded by the GATT of 1947, which salvaged some of the provisions from the Havana Charter. Thus, the negotiating parties that created the GATT of 1947 had shown a public awareness that arrangements designed to foster trade could be undermined when commercial enterprises engaged in cartels or other restrictive business practices, and these negotiating parties had proposed treaty provisions to ensure that competition policy would reinforce government measures for international trade.107 Subsequently, the World Trade Organisation was established in 1995 to succeed the GATT of 1947. Efforts to include competition policy within the trade policy framework in the WTO have proved particularly challenging due to lack of agreement among member States on competition policy.108 Support for international discipline regarding competition law was originally stimulated by US perceptions that international cartels and the absence or lack of enforcement of national competition law obstructed the ability of US firms to contest markets.109 The US supported the inclusion of a chapter dealing with restrictive business practices, reflecting its views against German cartels and Japanese zaibatsu who are the main opposition to including competition law in the WTO.110 In recent times, the EU has been in the lead, arguing that all WTO members must adopt and enforce competition laws. Developing countries have not been at the center of the debate on trade and competition in the WTO.111 However, competition policy has an important role in developing countries, both in promoting a competitive environment and in building and sustaining public support for a pro-competitive policy stance. However, the issue is that many do not have competition laws; those that do often have limited implementation ability.112 The bottom line of the debate is that any agreement on international competition policy that goes beyond general procedural cooperation and introduction of transparency mechanisms likely must be plurilateral, at least initially.

The lack of consensus on the nexus of competition and trade policy creates a gap which is exploited in order to pursue various motives such as promoting industrial policy, protectionism or nationalism.

(ii) Competition law and protectionism

In the United States, some scholars claim that antitrust law is rooted in protectionist institutions.113 Evidence reveals that the political impetus for antitrust law originated from lobbying farmers of several agricultural states;114 however, the majority views of scholars differs on this.115 Inefficient businesses misused antitrust laws by suing their efficient competitors for lower prices, increase in output and product or process innovation116 Today, the use of antitrust law for protectionism is no longer limited to the protection of an industry from another within the domestic sphere; it extends to the international level and transcends international trade. Similarly, in the European Union, remnants of industrial policy abound in the EC competition law.117 The European Commission has been attacked on the ground of ‘disguised protectionism’, protecting EU-based competitors and furthering the single market objective rather than seeking to uphold competition in strict terms.118 This is clearly demonstrated in the proposed Siemens-Alstom merger. In prohibiting the proposed consolidation of Siemens and Alstom, the European Commission unleashed a turmoil of political discontent; arguably, this is more the manifestation of longstanding frustration with certain underlying asymmetries within merger regulation which impede the ascendancy of the European industry on the world stage than an issue with the Commission’s decision itself.119

Competition law, as a political creation, is inherently susceptible to ‘instrumentalisation’ for protectionist ends. Competition law is at risk of being misused to advance industrial policies, political agendas and protectionist policies in the guise of competition enforcement, thus bypassing the scrutiny of international trade agreements.120 The existing legislative framework of competition law enhances this risk, as it provides for greater discretion in decision making and political involvement in the enforcement of competition law.121 While open-ended discretionary standards are laudable because economic analysis cannot be put into rigid standards as each competition case is unique, it also creates opportunities for abuse. Discretion may be abused to allow regulators to pursue their own private interests, shirk unpleasant duties, augment their regulatory authority in hopes of increasing monopoly rents which they can trade to interest groups in return for personal benefits, and act in other ways that are contrary to the public good.122 In the context of merger law, for instance, discretion may incentivise regulators to pursue protectionism – in particular, new protectionism. Trade agreements and institutions such as the WTO have made traditional protectionism through open trade discrimination challenging. Yet, the underlying political dynamic driving protectionism has not gone away. Hence, while jurisdictions do not forbid certain mergers, they can still discriminate against them. For instance, regulators can require more onerous ‘fixes’ for mergers that threaten local producers such as requiring the merging parties to divest assets in a way that benefits the domestic competitor.123

Indeed, the argument that competition law may be a tool to pursue a protectionist end is commonly premised upon the possibility that competition law – especially through selective, discriminatory enforcement – might actually be abused as a trade barrier.124 National protectionism is often demanded by certain industries or interest groups.125 However, a competition regime that favours domestic firms such as local producers hurt not only the producers and consumers of other countries, but also the domestic consumers.

(iii) Merger regulation and protectionism

One area of competition law that has always been suspected as an instrument of protectionism is merger regulation; the failed merger of Siemens-Alstom is a good case in point. Merger regulation is one of the pillars of competition policy aimed at preserving market competition in the event of business combinations and takeovers.126 However, preservation of competition is not the only rationale for the enforcement of merger regulations; national security, businesses perceived to be of national strategic importance, technological capabilities, jobs and export also influence merger control enforcement.127 Thus, the protectionism hypothesis posits that merger regulation is used as a tool to protect domestic firms from competition.128 In addition to protection of domestic firms, which is often associated with the infant industry argument, States are also suspected of using merger regulations to promote its national champions on the premise of strategic trade theory. In the context of merger control, the notion of a national champion generally means that the government encourages or does not prevent a merger between two domestic firms to create a more powerful entity, or it opposes the acquisition of one of the domestic firms by a foreign company.129

A study has found that, while merger regulation has deterred anticompetitive mergers, it has also protected rival producers from increased competition due to efficient mergers.130 In the context of EU merger policy, an empirical analysis to prove the protectionist hypothesis concluded a direct correlation between the likelihood of opposition to the merger by the competition authority when the bidder is a foreign national and the expected adverse effect of the reviewed merger on domestic competitors.131 After reforms on the EU Merger Regulation were introduced in 2004, the hypothesis was re-examined and change in protectionist tendencies were discovered.132 The result was more consistent with a recent empirical study that showed the Commission has not intervened more frequently or extensively in transactions involving a non-EU- or US-based firm’s acquisition of a European target.133 Nonetheless, there has been no conclusive findings on the absence of protectionism. At most, empirical analyses have shifted the burden of proof to those advancing the view.

Despite these empirical results disproving the use of merger regulation for protectionist purposes, persistent allegations abound. The political model of antitrust established that merger decisions are influenced by political contributions of lobby groups representing special interests, political pressures and social welfare considerations.134 For instance, Bu argues that the decision of Chinese competition authority to block the merger between Coca Cola and Huiyuan illustrates the influence of non-competition considerations such as protectionism on merger regulation enforcement.135 The lack of sufficient analysis as well as broad conclusions reached on the decision left no other conclusion but that China was trying to protect its home-grown, local company from potential brand dilution once absorbed by Coca Cola.136 Another example is the opposition of the US to the potential merger between Broadcom, a Singapore-based company, and Qualcomm, an American telecommunication chip manufacturer, on the grounds of national security.137 In the EU, its opposition to the Boeing/McDonnell Douglas merger was suspected to arise from protectionist sentiment because of the merger’s adverse impact on the rival EU firm Airbus.138

(iv) Export cartels exemption and protectionism

Export cartel exemptions are instruments of competition policy for trade policy ends.139 By tolerating, if not supporting, anticompetitive conduct just because it does not affect the domestic market, exporting states in effect assist or condone the harm caused to the importing states.140 Hence, export cartel exemptions are perceived as tools for protectionism in this context of the beggar-thy-neighbour approach.

In the context of trade policy, export cartel exemptions produce the same economic effect as export subsidies or aids.141 While both harm competition at the expense of foreign markets and foreign competitors, only export subsidies are regulated under the WTO rules.142 However, State-run export cartel are challengeable under WTO rules with different outcomes depending on the State.143 Hence, the difficulty in prosecuting export cartels that have anti-competitive effects is considered a trade dilemma. In Argentina, based on Measures Affecting the Export of Bovine Hides and the Import of Finished Leather,144 the WTO Panel noted that the WTO rules do not obligate its members ‘to assume a full “due diligence” burden to investigate and prevent cartels from functioning as private export restrictions’.145

The United States, through the Webb-Pomerene Act of 1918,146 explicitly exempted export cartels and export association from the Sherman Act147 and from Section 7 of the Clayton Act,148 which has been reinforced by the Export Trading Company Act of 1982149 and the Foreign Trade Antitrust Improvements Act150 which regulated export cartels by granting them certificates. The EU, on the other hand, while it does not explicitly exempt export cartels, Articles 101 and 102 of the TFEU151 provide for the limited application of the EU competition law to conduct that produces anticompetitive effects (objective or subjective) within the internal market and to the trade between Member States. Hence, the EU competition law implicitly allows export cartels if they do not influence the EU internal market.

#### The perception of protectionism-by-antitrust sends shockwaves that end the last semblance of global trade---subtle vehicles like competition law are a unique threat because open protectionism is controlled by international agreements

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INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. [\*118] Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders' best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law. 3So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States ("U.S."), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally. 4To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes. 5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions [\*119] that could counteract that progress. 6Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization ("WTO"), "once formal trade barriers come down, other issues become more important." 7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### The result will be full-on trade wars

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Yet, even so, it would be unreasonable for every minor violation of a local ordinance overseas to give rise to an unfair competition action in America. Committing to such collateral enforcement of foreign law in such an unqualified manner would be problematic on several levels. Doing so would open the floodgates to transnational claims, clogging the dockets of U.S. courts and agencies. 142It could encourage harassment of foreign competitors, burdening them with the costs and distractions of defending unfair competition claims lodged in a distant U.S. court. And it could also encourage litigation tourism, inviting foreign plaintiffs to forum shop. Finally, use of unfair competition law could be abused for protectionist purposes. Such perceived unilateral aggression could trigger retaliation that risks sparking a larger trade war.

#### Trade wars cause shooting wars that trigger World War III and collapse containment of environmental, disease, and tech threats that cause extinction

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Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

#### Proxy conflicts will escalate globally---nuclear war

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But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended.

If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling.

Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing.

The Pessimists Strike Back

More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.”

Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before.

In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.”

But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will.

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.

#### Recent, robust studies prove our impact

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Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



#### Protectionist fragmentation causes catastrophic geoengineering

Dr. Suzanne Fry 21, Director of the Strategic Futures Group at the National Intelligence Council (NIC), Ph.D. in Politics from New York University, B.A. in Government and International Studies from the University of Notre Dame, Member of the Council on Foreign Relations, et al., “Global Trends 2040: A More Contested World”, A Publication of the National Intelligence Council, March 2021, https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

In 2040, the world is fragmented into several economic and security blocs of varying size and strength, centered on the United States, China, the European Union (EU), Russia, and a few regional powers, and focused on self-sufficiency, resiliency, and defense. Information flows within separate cyber-sovereign enclaves, supply chains are reoriented, and international trade is disrupted. Vulnerable developing countries are caught in the middle with some on the verge of becoming failed states. Global problems, notably climate change, are spottily addressed, if at all.

HOW WE GOT THERE

By the early 2030s, cascading global challenges from decades of job losses in some countries in part because of globalization, heated trade disputes, and health and terrorist threats crossing borders prompted states to raise barriers and impose trade restrictions to conserve resources, protect citizens, and preserve domestic industries. Many economists thought that economic decoupling or separation could not really happen because of the extensive interdependence of supply chains, economies, and technology, but security concerns and governance disputes helped drive countries to do the unthinkable, despite the extraordinary costs.

Countries with large domestic markets or sizeable neighbors successfully redirected their economies, but many developing economies with limited resources and market access were hit hard as both import and export markets dried up. Economic stagnation fostered widespread insecurity across Africa, the Middle East, and South Asia, fueling a retreat to subnational ethnic and religious identities, strained societies, fragmented states, and spreading instability. New waves of migrants headed to the developed world hoping to escape poverty, poor governance, and increasingly harsh environmental conditions. Their hopes were dashed when political pushback prompted destination countries to block most migration.

As physical barriers went up, dependence on digital commerce and communications soared, but a combination of information management challenges and repeated data security breaches led those states with strong cyber controls, like China and Iran, to reinforce their cyber barricades. Then states that once advocated for an open Internet set up new closed, protected networks to limit threats and screen out unwanted ideas. By 2040, only the United States and a few of its closest allies maintained the semblance of an open Internet while most of the world operated behind strong firewalls. With the trade and financial connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to develop nuclear weapons, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like the Arctic and space. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, conflicts became endemic, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address climate changes, little was done to slow greenhouse gas emissions, and some states experimented with geoengineering with disastrous consequences.

#### Extinction

Dr. Catherine E. Richards 21, Professor in the Department of Engineering at the University of Cambridge, Dr. Rick C. Lupton, Lecturer in Mechanical Engineering at the University of Bath, PhD from the University of Cambridge, and Dr. Julian M. Allwood, Professor of Engineering and the Environment at the University of Cambridge, “Re-Framing the Threat of Global Warming: An Empirical Causal Loop Diagram of Climate Change, Food Insecurity and Societal Collapse”, Climatic Change, Volume 149, Springer

Comprehensive surveys of X-risks reveal mechanisms that could cause the collapse of contemporary society. Bostrom and Ćirković (2008), Rees (2018) and Ord (2020) provide eminent scholarly treatment of the field, drawing from the academic literature. WEF (2020) and GCF (2020) produce global risk reports drawing from decision-makers and experts across intergovernmental and non-governmental organisations. These surveys establish that many historically observed mechanisms of societal collapse, including natural climate change, remain applicable as X-risks today. However, the state of existence of contemporary society has led to a different landscape in which these mechanisms apply, and to a number of unprecedented mechanisms, including anthropogenic climate change. Ehrlich and Ehrlich (2013) and Häggström (2016) note that although increased complexity, such as globalisation and technological advancement, can increase a society’s resilience and adaptability, it can also increase vulnerability. For example, globalisation increases resilience to local agricultural production shocks through access to global markets; however, it also increases vulnerability through exposure to sudden reversal in connectivity, such as trade restrictions (Rivington et al. 2015). Some geoengineering technologies, for example, may enable society to mitigate and adapt to climate change; however, they may also increase vulnerability to termination shocks, where failure of the technology exposes society to sudden temperature increases (Morton 2016). In this highly interconnected landscape, ‘synchronous’ (Homer-Dixon et al. 2015) and ‘cascading’ (Buldyrev et al. 2010) failures create the potential for mechanisms and outcomes of societal collapse, once contained to a single localised civilization, to rapidly spread across multiple nations and impact humanity on a global scale.

#### It also causes nuclear war

Dr. Duncan McLaren 21, Professor in Practice at the Lancaster Environment Centre, PhD from Lancaster University, MBA from the University of Cambridge, MSc in Rural Resources and Environmental Policy from the University of London, and Dr. Olaf Corry, Professor of Global Security Challenges at the University of Leeds, PhD in International Relations at the University of Copenhagen, MPhil in Politics and Sociology from the University of Cambridge, “Clash of Geofutures and the Remaking of Planetary Order: Faultlines Underlying Conflicts Over Geoengineering Governance”, Global Policy, Volume 12, Issue S1, April 2021, Wiley

Interestingly, most modellers’ expectations of *real-world deployment* of geoengineering echo the situated narrative more than idealised modelling. For one, the speed of SRM makes it likely to be considered as climate impacts intensify, but winning intergovernmental agreement would likely require ‘tying it up in ongoing diplomacy – trade, military cooperation etc.’ (MB:6). Others noted that ‘unilateral efforts would likely be suppressed, by trade sanctions or military threats’ (MC:2), or ‘would risk political crisis in a world of increasing nationalist division’ (MG:2), yet still expect ‘incremental, unilateral, ungoverned geoengineering’ driven by local impacts (ME:4) or even ‘as a tool of political diplomacy … countries might deploy SRM as a way to extract justice from the international community, even deliberately aiming to negatively affect perceived climate villains’ (MA:7).

Thus, in the situated geofuture ‘geoengineering’ is not simply a set of devices but an integrated part of a world-historical system, best understood, not just through climate modelling and economic theory but through disciplines of history, political economy and even religion. The notion of ‘governance’ envisaged by situated future practices is more comprehensive, going beyond state level agreements to depend effectively on a transformational process of reducing power imbalances and addressing justice beyond only impact attribution and cost distribution.

The pragmatist geofuture

If the idealised geofuture foregrounds truth-making and the situated prioritises world-making, the *pragmatist* focuses on action-making, moving issues of uncertainty and precaution centre-stage in a multi-level world of complexity and uncertainty, where truth is subject to interpretation and negotiation. Those exhibiting this position (including many negotiators) take a precautionary stance regarding both the material and political side-effects of geoengineering, and treat models as merely one means of inquiry about the future. They recognise the value of more situated assessment, not just the idealised view of the IPCC, and apply a pragmatic view of governance as potentially either constraining or enabling for technologies. Questions of fairness are part of their assessments, albeit most strongly in relation to procedural questions.

Where the other geofutures consider climate science somehow capable of precision (either in tailoring geoengineering or controlling it for vested interests) the pragmatist understands science as itself also a source of risk. Those countries supportive of a UNEA assessment of geoengineering highlighted uncertainties about side-effects, and the risks of geoengineering undermining mitigation. Geoengineering technology:

must be treated with precaution regarding potential negative impacts on the environment or other peoples. If it’s possible to use safely … and without undermining emissions reduction, then it would be OK. But it shouldn’t be used as a substitute. (NF:3)

For another state delegate SRM is ‘deeply concerning’ but the uncertainties about the stability of the climate system mean that … ‘[still] we are not ready to reject it entirely’ (NE:1).

A key pragmatist aim at UNEA was to build on (or not undermine) existing precautionary governance. One Southern delegate highlighted a choice between upholding precaution, and relaxing control, arguing in favour of ‘governance to strengthen the precautionary principle, to confirm the CBD decisions’ (ND:1). Another delegate carefully separated their own opinion from their official, more neutral, line: ‘Personally, I see geoengineering (especially SRM/Stratospheric Aerosol Injection (SAI) as “very scary” and it should be governed on a precautionary basis’ (NC:1).

This emphasis on uncertainty and risk emanating from the scientific knowledge-production means that action-making matters. Research might be usefully conducted, but is not inevitably separate from the risks of potential deployment. Supporters of the resolution called for ‘norms and regulations, not just voluntary projects … It’s like the human rights regime. The declaration [the Universal Declaration on Human Rights (UDHR)] isn’t enough, it needs regulation to implement it’ (NB:1). Governance is needed ‘because of the likelihood of transboundary impacts, and worries about geoengineering as a security issue’. This applies to CDR at scale as well as SRM: ‘It’s also of international significance if a country tries to substitute CDR for emissions reductions’ (NB:2).

In the pragmatist geofuture the multiplicity of the international is neither assumed away nor reduced to ‘Northern domination’. Rather, it demands inclusion of diverse actors in action-making: ‘With a magic wand, I’d … emphasise governance in a UNEA report. The process should also involve civil society. We share the same planet, and should work together for the benefits of the environment’ (NF:4). Discriminating governance of geoengineering (and research into it) is understood pragmatically as needed both: ‘to constrain geoengineering in the face of side effects or irreversible effects … [or to] constrain unilateral use by a large power, which could trigger wider conflicts between nuclear-armed states’ (NE:2), and ‘alternatively to enable it in the face of imminent climate crisis’ (NE:3) or to avoid the risk that, like essential drugs, without global governance ‘techniques like SRM will get into private hands, and thus be less accessible in case of need’ (NE:4). For other delegates, while CDR was seen to merit a precautionary approach, other geoengineering approaches might be ‘ruled out following assessment’ (NB:3).

### 1AC---Plan

#### Plan

#### The United States federal government should prohibit private sector export cartel practices that produce anticompetitive effects in the markets of countries that agree to a reciprocal framework regarding competition law.

### 1AC---Harmonization ADV

#### Advantage Two is HARMONIZATION

#### The plan multilateralizes antitrust---formalizing law under international frameworks for contingent cooperation creates an opt-in system of explicit reciprocity that creates agreement AND spills over to deep economic integration

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 40-48

B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### Starting by prohibiting cartels generates experience and feedback loops that spill over to broader harmonization

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a. *Criteria for goals*

The most obvious criteria for goals is that they must be sufficiently attractive to induce and maintain commitment from all necessary participants in the process. As we have seen, however, there is a broad range of goals in existing systems, which means that the goals of the project will have to be relatively general and flexible, becoming more specifically defined through experience along the pathway. A project which assumes that a single conception of competition law favored by one or two participants at a particular point in time will be accepted and implemented by all participants is unlikely to attract widespread commitment. Goals must also be ‘graspable’ or ‘interpretable.’ The language must identify the range of possible interpretations. If it does not, it cannot represent a common goal, and it cannot maintain support. In negotiating international agreements, it is common for parties intentionally to choose language that is too vague to guide actual decision making. That may be appropriate for other types of agreement, but it would be inconsistent with the long-term orientation of a commitment strategy.

The project’s goals must also be ‘shared’ or ‘shareable’. Where goals are shared, each participant has an interest in the effective pursuit of the goals by other participants. For example, the goal of increasing consumer welfare (as understood in neoclassical economics) is shareable, because any increase in consumer welfare on a global market benefits consumers across the market, regardless of state boundaries. In contrast, the goal of protecting a set of producers in one country would presumably not be shareable, as it relates only to those specific producers and those who benefit from their success.¹²

Finally, the agreed goals will have to be perceived as ‘fair’ by all types of participants. Goals that are likely to give significant advantages and gains to some participants (such as highly-industrialized countries) and to cause net harm to others (eg developing countries) cannot attract widespread support. At a minimum, therefore, fairness is likely to require that all participants have a reasonable prospect of benefit. Given the non-linear nature of economic development, however, it cannot require that all benefit equally.

b. Goal structure

Goals will have to be related to each other in ways that guide the development of national systems. As an example of such a structure, we use three goals which, if applied together, might form the basis of a global competition law strategy. Th ere may be others, but my purpose here is merely to illustrate how such a goal structure might look.

The basic concept is that participants would eventually all have approximately the same goals for competition law, at least insofar as it is applied to global markets. In order to achieve that result, national competition law goals would be expected to fi t within a range of goals that narrows over time. Given that national goals often vary considerably, this process will take time and affect some countries more than others. The basic goals would be set out at the time of agreement, but the pathway concept would allow variation over time on the basis of input from the participants.

The most basic goal of all competition laws is to deter anti-competitive conduct. Definitions of ‘anticompetitive’ vary, however, and the concept is notoriously difficult to operationalize in legal decision making. By itself, therefore, this goal is too broad. A second goal could give further guidance—protecting the process of competition from private restraints. The idea is contained in some form in all competition law systems, and thus it provides another shared basis for a pathway strategy. Although there can be uncertainty about the edges of the concept, it makes clear that the competitive process itself is the focus of the project, thus further limiting the set of acceptable national goals. Th e goal of providing durable benefits to consumers could further limit the acceptable range of goals. Again, virtually all competition law systems seek to protect the consumer, so it can also provide a basis for commitment. Together, a package of goals such as this might provide a viable basic goal framework.

c. Potential problem areas

The history of competition law development points to three potential problem areas in developing an acceptable goal structure. One is whether non-economic goals should be part of such a project. Competition laws have often pursued political and social goals in addition to their economic goals. In post-war Europe and in Japan, for example, competition law was often explicitly or implicitly intended to support democratic development. Experience with competition law has, however, revealed the difficulties of using competition law for non-economic goals, and the general trend has been to eliminate them. Given that a multinational project for competition law creates obligations for not one state, but many, such goals are likely to be incompatible with its objectives.

A second potentially difficult issue involves the goal of consumer welfare (in the sense of neoclassical economics). US officials and scholars (as well as many European competition officials) now generally assume that consumer welfare should provide the only goal of competition law, but many outside the US do not accept this view. Given that US support is likely to be necessary for the success of any global competition law project, this creates a potentially serious basis for conflict. Th ere may, however, be ways to minimize this conflict. For example, the consumer welfare standard is based on the application of price theory to a unified market. It does not take into account the existence of political borders. Th is at least calls into question whether it can be effective as the sole goal in a competition law strategy in which national boundaries play a central role. Moreover, the consumer welfare standard is most effectively used for short-run analysis, but a pathway project depends on maintaining political commitment over time. Those who favor consumer welfare as the sole goal of competition law may, therefore, be willing to broaden their range of acceptable goals, at least over the near term, in order to obtain the benefits of the project.

Another potential obstacle involves the goal of economic development. As we have seen, many countries have used competition law as a tool for development. Moreover, developing countries have often argued that economic development should be a goal of competition law, because economic development can be expected to create additional competitors as well as broader markets and thus enhance competition in the long run.¹³ Many kinds of policies may, however, be seen as supporting economic development, and thus identifying it as a goal for a pathway project gives little guidance. In addition, such a goal could easily be used to justify policies that are inconsistent with competition goals. In a pathway strategy, however, there may be no need for developing countries to insist on development as a goal, because the strategy provides flexibility in the timing of obligations and allows obligations regarding norms to be phased in over time. It is thus itself development-oriented. Most, perhaps all, of the arguments supporting development as a goal can be satisfied through the long-term orientation of the pathway concept.

In a pathway context, goals must guide the construction of the process and provide incentives to support it. Accordingly, in formulating goals that can perform this function effectively, the objective should be to articulate a set of goals that is specific enough to achieve commitment from states that prefer a narrow conception of goals, but broad enough to attract commitment from those who have a broader vision of goals. Each will have to accommodate the other. This can be justified if it supports a process that gives both groups most of what they want or is at least superior to its alternatives.

4. Commitment in norm-setting

Th e pathway concept requires that participants eventually restrict the norms that they apply to global markets. Th is narrowing of acceptable norms would have to be phased in over time, depending on factors in a country’s economy and political system as well as on the capacity and experience of its institutions. Some norms may be required early in the process, whereas others may be phased in as the project’s benefits are demonstrated and working relationships are created.

a. Potential obstacles

Two issues are likely to be prominent in reaching agreement on substantive norms. One is the role of economics. Recall that economics plays two basic roles in competition law: one is to interpret data, the other is to provide norms or standards of conduct. Our concern here is with its normative role. In the US, that role is central. There are few ‘rules’ that are based solely on the characteristics of the conduct itself. Legal decisions usually focus on economic analysis of the actual or probable effects of the conduct under the circumstances of a specific case. Economics here plays a normative role. It determines the lawfulness of the conduct. As we have seen, the European Commission has recently moved toward this view, at least in most areas of competition law.

Th is normative role for economics is, however, rare in other competition law systems. It creates a degree of legal uncertainty that few countries have accepted. In these systems, conduct is typically deemed unlawful where the conduct itself has specified characteristics or relatively specific effects, without requiring full analysis of its economic consequences in each specific case. A full effects-based economic analysis is expensive, and many countries do not have the resources to perform such an analysis. In the near term, therefore, it probably cannot be required as part of a global competition law strategy.

Divergence in views about the role of economics is thus likely to present challenges for any global competition law agreement, but one value of a pathway strategy is that it may be able to develop uses of economics that can bridge the gap. For example, officials and experts from participating countries could together develop common scenarios in which anti-competitive effects can be presumed or excluded.¹⁴ National competition officials and courts would be free to apply their laws according to their own procedures, but the scenarios would serve as guidelines for their decisions. Moreover, the group may eventually even include an obligation that national decision makers give reasons for reaching conclusions that are inconsistent with these scenarios. This may be a way of reducing concerns in the US and Europe about inadequate economic analysis and also meeting the demands of other systems for greater legal security.

The issue of whether norms should apply equally to all participants may also be an obstacle to agreement. It has created significant difficulties in previous discussions of global competition law, and it continues to be a major part of discussions in the area. Developing countries often argue that for historical and other reasons fi rms located in their countries have had limited opportunity to grow and to become competitive on global markets. As a result, if they are subjected to competition from larger foreign fi rms, they will have little chance of success, and global markets will forever be dominated by firms from a few countries. Th is, they claim, justifies what is often called ‘special and differential treatment’ for them. Other states have generally been unwilling to accept such treatment in the context of competition law.¹⁵

This issue is likely to be critical to competition law development, but the pathway concept may be uniquely positioned to accommodate it, because that strategy allows norms to be phased in over time, depending on factors such as the economic conditions in the participant state. A developing country’s obligations could thus automatically be tailored to its level of economic development, and differential treatment would gradually be eliminated over time.

b. Specific types of norms—cartels

A brief review of the main categories of norms illustrates some of these issues. The treatment of cartels could serve as a starting point and foundation for a pathway strategy. There is widespread agreement that cartels are generally harmful, and most, if not all, competition laws either prohibit them or contain norms intended to deter them. The economic harms from cartels are usually obvious, and even relatively low-cost deployment of economic analysis can identify them. This means that there may be little difficulty in requiring competition law systems to prohibit cartels. This would allow states to develop experience with the project and to develop trust, knowledge pathways, and feedback loops—all of which can provide momentum for further commitment. Above all, enforcement in the area can be expected to generate benefits that would further support the project.

#### Normative convergence through antitrust harmonization prevents extinction from resource depletion, human rights abuse, and war

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A. The international political environment

At the root of international political theory is the fundamental maxim that relations between sovereign nations in the absence of mitigating factors is characterized by intense competition, mutual distrust, the inability to make credible commitments, and war.20

[FOOTNOTE] 20 Political scientists characterize the international system as “anarchic.” In the absence of world government (or other mitigating force), competition between states is largely unregulated by external laws or enforcement. The world is characterized by mistrust, the inability to contract, and the ultimate reliance on a state’s own devices. See THOMAS HOBBES, LEVIATHAN 80 (Edwin Curley ed., 1994) (in the state of nature “the condition of man . . . is a condition of war of everyone against everyone”). In fuller terms:

There is no authoritative allocator of resources: we cannot talk about a ‘world society’ making decisions about economic outcomes. No consistent and enforceable set of comprehensive rules exists. If actors are to improve their welfare through coordinating their policies, they must do so through bargaining rather than by invoking central direction. In world politics, uncertainty is rife, making agreements is difficult, and no secure barriers prevent military and security questions from impinging on economic affairs.

ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 18 (1984). Efficiency-enhancing gains from trade are difficult to appropriate because trade itself (and any other form of exchange or agreement between nations) is characterized by the absence of credible commitments to future behavior. And underlying the problem is the ever-present threat of the use of force. See, e.g., Kenneth N. Waltz, Anarchic Orders and Balances of Power, in NEOREALISM AND ITS CRITICS 98, 98 (Robert O. Keohane ed. 1986) (“The state among states . . . conducts its affairs in the brooding shadow of violence . . . . Among states, the state of nature is a state of war.”). Although this dire characterization of the international environment is, of course, a stylized approximation of the real world—there are always overlying constraints on sovereign behavior in the form of norms, reputational effects, and customary international law, HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS (1977)—it is a useful and widely accepted heuristic for crafting a theory of international politics. [END FOOTNOTE]

As one commentator notes, “Nations dwell in perpetual anarchy, for no central authority imposes limits on the pursuit of sovereign interests.”21 And states are “unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination.”22 As a result, states operating on the international stage are unable to judge the sincerity of each others’ stated intentions when those intentions are contrary to this manifest interest. Because of self-help rules, states are forced in the main to assess their own security environment by assessing the capabilities of competitors, downplaying their motives. Given that the nature of the competition can implicate the fundamental survival of one (or more) of the actors, actions taken by one state to improve its own security must necessarily decrease the security of its competitor; in the absence of mitigation, security is a zero-sum game.23 In a world where cooperation is exceedingly difficult (because there is no authority to enforce agreements, nor any basis for assessing the reliability of another state’s commitments), international relations are characterized by a continuous race to the bottom, a mindless arms race rather than the opportunity to realize gains from cooperation.

It is obvious that not all relations between states are characterized by the security dilemma, however. Canada, for example, shares an unprotected border with the most powerful nation in the world without degenerating into a destructive and costly arms race. By some mechanism, then, Canada must be able reliably to judge U.S. intentions, even absent the apparent ability by the United States credibly to bind itself to a nonaggressive policy toward Canada. The key to mitigating the pressures of the security dilemma is the ability to distinguish a state with aggressive and expansionist tendencies from a benign one.24 States can be distinguished by their fundamental type. They can be classified as “revisionist,” that is, they seek to subvert the dominant order, or they can be classified as “status quo,” that is, they seek to support it.25 But, as noted, a state’s ability to judge another’s intentions (as opposed simply to counting its armaments) is extremely tenuous and comes at great cost. In fact, political science offers few well-understood mechanisms for judging a state’s propensity for aggression.

At the same time, hegemonic states have an abiding interest in spreading and maintaining their dominant worldview.26 Not only is it imperative that dominant states receive credible signals about other states’ intentions, but it is also important that dominant states attempt to inculcate their norms within other states that, over time, might mount credible challenges to the dominant states’ security.27 The spread of hegemony through internalization of norms occurs for three reasons. First, states with similar institutions and sympathetic domestic norms are simply better and more reliable trading partners, and it is in the hegemon’s economic interest to instill its norms.28 Second, states with defensive military postures and that adhere to the status quo present significantly less security risk to dominant states.29 And finally, the hegemon has a normative interest in the spread of its culture, its worldview, and its norms.30 This conception of the playing field upon which states interact leads to the conclusion that, entirely apart from the immediate and substantial economic benefits to a state from well-ordered interactions with other states, hegemonic states also have a national security and a normative interest in the information to be gleaned from the fact that these interactions are, in fact, well ordered.

In the absence of centralized enforcement, privately held and nonverifiable information as to a state’s fundamental type is the critical problem in assessing motives.31

[FOOTNOTE] 31 See KEOHANE, supra note 20, at 31 (“Order in world politics is typically created by a single dominant power [or hegemon].”). States are consequently classified as one of two types, “revisionist” or “status quo,” based on their acceptance and adherence to the political norms, institutions, and rules created by the hegemon. Status quo states are those that try to improve their condition from within the framework of the accepted world order. Revisionist states, by contrast, seek to gain position both by working outside that order and by working to subvert the hegemonic order itself. For instance, the existing world order is generally accepted to be that created by the United States after World War II. It comprises a liberal international economic order, the use of multilateral institutions (such as the United Nations and the WTO), negotiation for dispute resolution rather than the threat of violence, and the promotion of liberal democratic moral norms. See, e.g., Schweller, supra note 24, at 85; HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 32 (1948). Trade disputes between status quo states (like tariff disputes between the United States and Europe) are resolved through peaceful negotiation rather than the threat of war. Although status quo states do not entirely eschew the use of violence, they typically seek international authorization and legitimization before employing military force, as in the multilateral operations in Iraq, Kosovo, and Afghanistan. Revisionist states, on the other hand, such as North Korea, Iran, and China, will more readily use military force as a bargaining tool and are more reluctant fully to participate in transparent military, economic, and political negotiations. [END FOOTNOTE]

States wishing to escape the pressures of the security dilemma and engage in cooperative behavior need a means of conveying their preferences to others in a credible manner. There are, in general, two means by which such information can be transmitted: states can either bind themselves in such a way that they are unable to deviate from a stated behavior (known as “hands tying” in Schelling),32 or they can signal their intention to engage in a specified course of action by incurring costs sufficiently large that they discourage the misrepresentation of preference.33

International institutions can play a crucial role in facilitating the transmission of this information.34 In particular, international agreements over the terms of trade, even without binding supranational enforcement authority, provide a means for states to bind themselves to a desirable course of behavior in the short run and, more importantly, to signal their acquiescence to the ruling world order in the long run. Because compliance with treaty obligations often requires signatories to alter their domestic laws to reflect the terms of the treaty, the costs of compliance can be substantial. In the short run, to the extent that states enforce their domestic laws they can bind themselves to a certain course of behavior. In the long run, a state’s willingness to incur the substantial costs of changing its laws, both the transaction costs inherent in changing domestic laws and the even more substantial costs in domestic political capital, signals a willingness to engage other states on the terms set by the reigning international power. Moreover, there may be unintended effects, as changes in domestic laws result in a new set of domestic incentives to which actors respond, and new windows of opportunity may open up through which policy entrepreneurs can push for the internalization of new norms.35 Competition laws in particular are susceptible to this mode of analysis.

Most nations have adopted competition laws as a way to actualize (as well as to symbolize) a degree of commitment to the competitive process and to the prevention of abusive business practices . . . . The introduction of competition laws and policies has also gone hand in hand with economic deregulation, regulatory reform, and the end of command and control economies.36

The surest way to remove the threat of war, increase wealth, conserve resources, and protect human rights is through fundamental agreement between all states (or at least effective agreement between verifiably status quo states) under a normative umbrella that promotes all of those values. This normative convergence can be effected through the stepwise internalization of the sorts of economic and democratic values inherent in international economic liberalization, perhaps most notably through the adoption of principled international antitrust standards.37

#### Resource depletion causes extinction

Dr. Timothy Gorringe 20, Professor in the Department of Religion and Theology at the University of Exeter, “Confession and Hope: Ekklesia’s Task in the Global Emergency”, Religions, Volume 11, Number 2, https://www.mdpi.com/2077-1444/11/2/97/htm

1. The Four Horsemen

Doubtless every generation has its own version of the four horsemen of Revelation 6, and they have been grim enough over the centuries, but never as genuinely apocalyptic, in the popular sense, as today. Today’s four horsemen—overpopulation, resource depletion, loss of biodiversity and climate change—could each separately mean civilisational collapse and put together they could mean the end of human life on earth.1

The first issue is population, which has more than doubled since 1961 to getting on for 8 billion. The UN predicts it will plateau at 11 billion at the end of the century but this cannot be guaranteed. The assumption is that women’s education, and the availability of contraception, will stabilize numbers but, as Stephen Emmot points out, both of these have been available in Niger for years, and the average birth rate is still seven children per woman. In China and Hungary larger families are officially promoted. If the current rate of global reproduction continues, there will not be eleven billion, but twenty eight billion human beings by the end of the century (Emmott 2013). While one sixth of the present world population still live in absolute poverty it remains the case that, as the Baltimore economist Herman Daly has been arguing for half a century, huge numbers mean huge impacts. Emmott argues that the pressures this size of population will generate can only end in complete collapse, in which the earth will become uninhabitable.

Population impacts are intensified by the dominant economic model, neo-liberalism, which looks for more and more growth, ignoring the warnings of the ‘Limits to Growth’ report of fifty years ago. The mission of the World Bank is to put an end to poverty, which is admirable, but the subtext is that the whole world should live like the United States—which would require five planets, and indeed more if absolute numbers keep growing. One of the results of this version of ‘economy’ (actually, an anti-economy as Wendell Berry in particular has argued) is a soaring gap between rich and poor all over the world. Today inequality is driven not primarily by inherited wealth but by salary differentials.2 Some CEOs earn more than a thousand times what their lowest paid employees earn. The French economist Thomas Piketty suggests that if it got to a stage where the top decile appropriated 90% of each year’s output, revolution would likely occur unless some peculiarly effective repressive apparatus exists to keep it from happening.3 Even in terms of the system as it is, an inegalitarian spiral cannot continue indefinitely: Ultimately there will be no place to invest the savings, and the global return on capital will fall, until an equilibrium distribution emerges.4

The second of our four horsemen is resource depletion, which includes uranium, copper, phosphorus, rare earths which are vital for renewable energy, top soil, but above all water. Sixty per cent of fresh water is found in just nine countries.5 It is estimated that within twenty years almost half the world’s population will experience water scarcity. Global consumption of water is doubling every twenty years, more than twice the rate of human population growth. Agriculture accounts for sixty five per cent (one ton of wheat requires one thousand tons of water), domestic use ten percent, and industry accounts for the rest. Even now ‘the water table in major grain producing areas in China is falling at the rate of five feet per year. Of China’s 617 cities 300 already face water shortages. 80% of their rivers no longer support fish life.’ (Kunstler 2006).

Some analysts have been predicting peak oil for many years and if this were really the case it would have huge implications for farming and therefore for the capacity to feed seven or eleven billion. However, as Emmott notes, new reserves of oil and gas are constantly being found, and shale oil and gas is coming on stream. The problem, as he puts it, is not that there are not enough fossil fuels, but, to the contrary, that we will seek to use every last drop.6

#### Human rights failure causes nuclear war

Gregory Treverton 17, Chair of the National Intelligence Council, Office of the Director of National Intelligence, National Intelligence Council Unclassified Strategic Assessment Of Global Trends, Authored by ODNI Personnel Including the Chairman of the NIC, “The Near Future: Tensions Are Rising”, 2017, <https://www.dni.gov/index.php/global-trends/near-future>

These global trends, challenging governance and changing the nature of power, will drive major consequences over the next five years. They will raise tensions across all regions and types of governments, both within and between countries. These near-term conditions will contribute to the expanding threat from terrorism and leave the future of international order in the balance.

Within countries, tensions are rising because citizens are raising basic questions about what they can expect from their governments in a constantly changing world. Publics are pushing governments to provide peace and prosperity more broadly and reliably at home when what happens abroad is increasingly shaping those conditions.

In turn, these dynamics are increasing tensions between countries—heightening the risk of interstate conflict during the next five years. A hobbled Europe, uncertainty about America’s role in the world, and weakened norms for conflict-prevention and human rights create openings for China and Russia. The combination will also embolden regional and nonstate aggressors—breathing new life into regional rivalries, such as between Riyadh and Tehran, Islamabad and New Delhi, and on the Korean Peninsula. Governance shortfalls also will drive threat perceptions and insecurity in countries such as Pakistan and North Korea.

* Economic interdependence among major powers remains a check on aggressive behavior but might be insufficient in itself to prevent a future conflict. Major and middle powers alike will search for ways to reduce the types of interdependence that leaves them vulnerable to economic coercion and financial sanctions, potentially providing them more freedom of action to aggressively pursue their interests.

Meanwhile, the threat from terrorism is likely to expand as the ability of states, groups, and individuals to impose harm diversifies. The net effect of rising tensions within and between countries—and the growing threat from terrorism—will be greater global disorder and considerable questions about the rules, institutions, and distribution of power in the international system.

Europe. Europe’s sharpening tensions and doubts about its future cohesion stem from institutions mismatched to its economic and security challenges. EU institutions set monetary policy for Eurozone states, but state capitals retain fiscal and security responsibilities—leaving poorer members saddled with debt and diminished growth prospects and each state determining its own approach to security. Public frustration with immigration, slow growth, and unemployment will fuel nativism and a preference for national solutions to continental problems.

* Outlook: Europe is likely to face additional shocks—banks remain unevenly capitalized and regulated, migration within and into Europe will continue, and Brexit will encourage regional and separatist movements in other European countries. Europe’s aging population will undermine economic output, shift consumption toward services—like health care—and away from goods and investment. A shortage of younger workers will reduce tax revenues, fueling debates over immigration to bolster the workforce. The EU’s future will hinge on its ability to reform its institutions, create jobs and growth, restore trust in elites, and address public concerns that immigration will radically alter national cultures.

United States. The next five years will test US resilience. As in Europe, tough economic times have brought out societal and class divisions. Stagnant wages and rising income inequality are fueling doubts about global economic integration and the “American Dream” of upward mobility. The share of American men age 25- 54 not seeking work is at the highest level since the Great Depression. Median incomes rose by 5 percent in 2015, however, and there are signs of renewal in some communities where real estate is affordable, returns on foreign and domestic investment are high, leveraging of immigrant talent is the norm, and expectations of federal assistance are low, according to contemporary observers.

* Outlook: Despite signs of economic improvement, challenges will be significant, with public trust in leaders and institutions sagging, politics highly polarized, and government revenue constrained by modest growth and rising entitlement outlays. Moreover, advances in robotics and artificial intelligence are likely to further disrupt labor markets. Meanwhile, uncertainty is high around the world regarding Washington’s global leadership role. The United States has rebounded from troubled times before, however, such as when the period of angst in the 1970s was followed by a stronger economic recovery and global role in the world. Innovation at the state and local level, flexible financial markets, tolerance for risk-taking, and a demographic profile more balanced than most large countries offer upside potential. Finally, America is distinct because it was founded on an inclusive ideal—the pursuit of life, liberty, and happiness for all, however imperfectly realized—rather than a race or ethnicity. This legacy remains a critical advantage for managing divisions.

Central and South America. Although state weakness and drug trafficking have and will continue to beset Central America, South America has been more stable than most regions of the world and has had many democratic advances—including recovery from populist waves from the right and the left. However, government efforts to provide greater economic and social stability are running up against budget and debt constraints. Weakened international demand for commodities has slowed growth. The expectations associated with new entrants to the middle class will strain public coffers, fuel political discontent, and possibly jeopardize the region’s significant progress against poverty and inequality Activist civil society organizations are likely to fuel social tensions by increasing awareness of elite corruption, inadequate infrastructure, and mismanagement. Some incumbents facing possible rejection by their publics are seeking to protect their power, which could lead to a period of intense political competition and democratic backsliding in some countries. Violence is particularly rampant in northern Central America, as gangs and organized criminal groups have undermined basic governance by regimes that lack capacity to provide many basic public goods and services.

* Outlook: Central and South America are likely to see more frequent changes in governments that are mismanaging the economy and beleaguered by widespread corruption. Leftist administrations already have lost power in places like Argentina, Guatemala, and Peru and are on the defensive in Venezuela, although new leaders will not have much time to show they can improve conditions. The success or failure of Mexico’s high-profile reforms might affect the willingness of other countries in the region to take similar political risks. The OECD accession process may be an opportunity—and incentive— for some countries to improve economic policies in a region with fairly balanced age demographics, significant energy resources, and well-established economic links to Asia, Europe, and the United States.

An Inward West? Among the industrial democracies of North America, Europe, Japan, South Korea, and Australia, leaders will search for ways to restore a sense of middle class wellbeing while some attempt to temper populist and nativist impulses. The result could be a more inwardly focused West than we have experienced in decades, which will seek to avoid costly foreign adventures while experimenting with domestic schemes to address fiscal limits, demographic problems, and wealth concentrations. This inward view will be far more pronounced in the European Union, which is absorbed by questions of EU governance and domestic challenges, than elsewhere.

* The European Union’s internal divisions, demographic woes, and moribund economic performance threaten its own status as a global player. For the coming five years at least, the need to restructure European relations in light of the UK’s decision to leave the EU will undermine the region’s international clout and could weaken transatlantic cooperation, while anti-immigration sentiments among the region’s populations will undermine domestic political support for Europe’s political leaders.
* Questions about the United States’ role in the world center on what the country can afford and what its public will support in backing allies, managing conflict, and overcoming its own divisions. Foreign publics and governments will be watching Washington for signs of compromise and cooperation, focusing especially on global trade, tax reform, workforce preparedness for advanced technologies, race relations, and its openness to experimentation at the state and local levels. Lack of domestic progress would signal a shift toward retrenchment, a weaker middle class, and potentially further global drift into disorder and regional spheres of influence. Yet, America’s capital, both human and security, is immense. Much of the world’s best talent seeks to live and work in the United States, and domestic and global hope for a competent and constructive foreign policy remain high.

China. China faces a daunting test—with its political stability in the balance. After three decades of historic economic growth and social change, Beijing, amid slower growth and the aftereffects of a debt binge, is transitioning from an investment-driven, export-based economy to one fueled by domestic consumption. Satisfying the demands of its new middle classes for clean air, affordable houses, improved services, and continued opportunities will be essential for the government to maintain legitimacy and political order. President Xi’s consolidation of power could threaten an established system of stable succession, while Chinese nationalism—a force Beijing occasionally encourages for support when facing foreign friction—may prove hard to control.

* Outlook: Beijing probably has ample resources to prop up growth while efforts to spur private consumption take hold. Nonetheless, the more it “doubles down” on state owned enterprises (SOEs) in the economy, the more it will be at greater risk of financial shocks that cast doubt on its ability to manage the economy. Automation and competition from lowcost producers elsewhere in Asia and even Africa will put pressure on wages for unskilled workers. The country’s rapidly shrinking working-age population will act as a strong headwind to growth.

Russia. Russia’s aspires to restore its great power status through nationalism, military modernization, nuclear saber rattling, and foreign engagements abroad. Yet, at home, it faces increasing constraints as its stagnant economy heads into a third consecutive year of recession. Moscow prizes stability and order, offering Russians security at the expense of personal freedoms and pluralism. Moscow’s ability to retain a role on the global stage—even through disruption—has also become a source of regime power and popularity at home. Russian nationalism features strongly in this story, with A Chinese man rides a bike among luxurious cars. China’s dramatic economic growth has highlighted greater gaps between rich and poor.

President Putin praising Russian culture as the last bulwark of conservative Christian values against the decadence of Europe and the tide of multiculturalism. Putin is personally popular, but approval ratings of 35 percent for the ruling party reflect public impatience with deteriorating quality of life conditions and abuse of power.

* Outlook: If the Kremlin’s tactics falter, Russia will become vulnerable to domestic instability driven by dissatisfied elites— even as a decline in status suggests more aggressive international action. Russia’s demographic picture has improved somewhat since the 1990s but remains bleak. Life expectancy among males is the lowest of the industrial world, and its population will continue to decline. The longer Moscow delays diversifying its economy, the more the government will stoke nationalism and sacrifice personal freedoms and pluralism to maintain control.

An Increasingly Assertive China and Russia. Beijing and Moscow will seek to lock in temporary competitive advantages and to right what they charge are historical wrongs before economic and demographic headwinds further slow their material progress and the West regains its footing. Both China and Russia maintain worldviews in which they are rightfully dominant in their regions and able to shape regional politics and economics to suit their security and material interests. Both have moved aggressively in recent years to exert greater influence in their regions, to contest the US geopolitically, and to force Washington to accept exclusionary regional spheres of influence—a situation that the United States has historically opposed. For example, China views the continuing presence of the US Navy in the Western Pacific, the centrality of US alliances in the region, and US protection of Taiwan as outdated and representative of the continuation of China’s “100 years of humiliation.”

* Recent Sino-Russian cooperation has been tactical, however, and is likely to return to competition if Beijing jeopardizes Russian interests in Central Asia and as Beijing enjoys more options for cheap energy supply beyond Russia. Moreover, it is not clear whether there is a mutually acceptable border between what China and Russia consider their natural spheres of influence. Meanwhile, India’s growing economic power and profile in the region will further complicate these calculations, as New Delhi navigates relations with Beijing, Moscow, and Washington to protect its own expanding interests. A Chinese development firm—with links to the Chinese Government and People’s Liberation Army— today announced that it recently purchased the uninhabited Cobia Island from the Government of Fiji for $850 million. Western security analysts assess that China plans to use the island to build a permanent military base in the South Pacific, 3,150 miles southwest of Hawaii.

Russian assertiveness will harden anti-Russian views in the Baltics and other parts of Europe, escalating the risk of conflict. Russia will seek, and sometimes feign, international cooperation, while openly challenging norms and rules it perceives as counter to its interests and providing support for leaders of fellow “managed democracies” that encourage resistance to American policies and preferences. Moscow has little stake in the rules of the global economy and can be counted on to take actions that weaken US and European institutional advantages. Moscow will test NATO and European resolve, seeking to undermine Western credibility; it will try to exploit splits between Europe’s north and south and east and west, and to drive a wedge between the United States and the EU.

* Similarly, Moscow will become more active in the Middle East and those parts of the world in which it believes it can check US influence. Finally, Russia will remain committed to nuclear weapons as a deterrent and as a counter to stronger conventional military forces, as well as its ticket to superpower status. Russian military doctrine purportedly includes the limited use of nuclear weapons in a situation where Russia’s vital interests are at stake to “deescalate” a conflict by demonstrating that continued conventional conflict risks escalating the crisis to a large scale nuclear exchange.

In Northeast Asia, growing tensions around the Korean Peninsula are likely, with the possibility of serious confrontation in the coming years. Kim Jong Un is consolidating his grip on power through a combination of patronage and terror and is doubling down on his nuclear and missile programs, developing long-range missiles that may soon threaten the continental United States. Beijing, Seoul, Tokyo, and Washington have a common incentive to manage security risks in Northeast Asia, but a history of warfare and occupation along with current mutual distrust makes cooperation difficult. Continued North Korean provocations, including additional nuclear and missile tests, might worsen stability in the region and prompt neighboring countries to take actions, sometimes unilaterally, to protect their security interests.

Competing Views on Instability

China and Russia portray global disorder as resulting from a Western plot to push what they see as self-serving American concepts and values of freedom to every corner of the planet. Western governments see instability as an underlying condition worsened by the end of the Cold War and incomplete political and economic development. Concerns over weak and fragile states rose more than a generation ago because of beliefs about the externalities they produce— whether disease, refugees, or terrorists in some instances. The growing interconnectedness of the planet, however, makes isolation from the global periphery an illusion, and the rise of human rights norms makes state violence against a governed population an unacceptable option.

#### Economic fragmentation alone causes nuclear war

Espen Barth Eide 16, Higher Degree in Political Science, University of Oslo, Former Senior Researcher and Research Director, Norwegian Institute of International Affairs, Head of Geopolitical Affairs at the World Economic Forum, “Are We Sleepwalking Into Geopolitical Turmoil?”, World Economic Forum, 1/14/2016, https://www.weforum.org/agenda/2016/01/how-can-we-prevent-the-world-sleepwalking-into-geopolitical-turmoil/

Without a concerted effort to properly address current trends, the world is at risk of [heading] ~~sleepwalking~~ into a future of widening chaos with growing danger of interstate conflict. This is the conclusion of a year-long review of global risks, The Global Risks Report 2016, being presented today in London. Geopolitical risk is among the top concerns, but it is the convergence of drivers at different levels – national, regional and global – that threatens to overwhelm existing institutions, and should push us to engage a wider range of stakeholders.

Economic and technological change is happening at a pace that leaves most political and regulatory systems unable to cope. This spurs dissatisfaction with leaders and increasing polarization in society, already weakened by a steep fall in social cohesion and trust. Trust is a fundamental element of social capital, and when it wanes, it negatively affects all aspects of society. Loss of trust results in part from a steady increase in inequality, undermining the feeling essential to the fabric of society of citizens being “in the same boat”.

Downbeat perception of future economic opportunity aggravates grievances, now also in many of the economies that only recently were labelled as “emerging”. Polarization and growing populism forces leaders to take rather ill-advised, short term measures that may give the appearance of “doing something” without really tackling protracted crises at their roots.

Individuals increasingly feel disengaged from traditional structures of power, but strongly engaged through new forms of participation and voice, but in ways that do not necessarily foster shared understanding in society.

The conflicts in Syria and Iraq show how today’s wars are not confined to the battlefront itself. They are “glocal” in the sense that while most of the fighting takes place in a specific region, accompanying terrorist attacks can happen anywhere. Sophisticated recruitment campaigns and social media based information warfare has become genuinely global, with fighters from over 100 countries involved in Syria and Iraq. The allure of joining the battle, for ideological or personal reasons, is just a click away from a teenager’s computer somewhere in a European city. Intelligence services around the world are struggling to cope with a new reality, challenged by everything from well-organized, stealthy groups to self-radicalized “lone wolves”. Three years after the Snowden revelations, the debate on privacy vs. security has been slow to move on from recriminations to the search for practical solutions that command broad-based support.

Cohesion and trust between countries and societies are also under threat. In its most extreme form, this trend may lead to successful calls for withdrawal from an integrated and interlinked world, creating the 21st Century equivalent of medieval “walled cities” that offer the few a sense of security and order, protecting them from the “sea of disorder” on the outside. For instance, the disjointed political debacle over how to manage the reality of people on the move, while not primarily a European phenomenon, has led to strong demands to undo some of Europe’s primary successes of integration, like the Schengen open borders agreement. A gradual dis-integration of Europe would not only be a regional drama, it would, if it happened, have severe implications for global norms and joint aspirations.

This lack of trust and cohesion is also a factor in the development of “hybrid” war. Adversaries – be they states or non-state actors – exploit popular mistrust of government in the design of information operations deployed through conventional media channels as well as more sophisticated campaigns to influence individuals directly via social media. Asymmetric, ambiguous, grey zone, non-linear – these have become the default mode of conflict between major powers seeking to keep their rivalry below the threshold of what is legally defined as "war".

With nuclear powers upgrading their delivery systems, confirming their continued emphasis on the ultimate tool of deterrence, such deniable or indirect ways to influence events, including the use of proxy forces, are gradually becoming the norm. The face of warfare itself is changing. Aversion to outright conflict is also a factor in the rise of geo-economics, or the use of economic relations, sanctions, trade regimes and potentially even means of payment for the purpose of geopolitical rivalry.

The implications for the infrastructure of the global economy are highlighted by the fact that every conflict today is also a cyber-conflict. Cyberspace has become a domain of warfare, on pair with land, sea, air and space. In cyberspace, however, the attacker gets an advantage that he would not have in the physical world, as distance and early warning becomes largely irrelevant. Possibly, globalization has contributed to new modes of conflict that, if left unchecked, could bear the seeds of its destruction.

For some time, the World Economic Forum has warned against globalization going into reverse. The sense of the first post-Cold War decades was that economy finally was becoming open and global, free of the geopolitical lid imposed by great powers. This assumption is again challenged. We see new institutions emerge, driven by new actors, at times complementing, at times challenging the established order. Only time will tell if this is a good or a bad development.

We could see it as a trend towards a net of interlinked regional systems coalescing around regional hegemons, displacing a unified, global economic order, but still sustained by some form of overall agreement. But it could also be read as an early indication that we are transiting into a future global system not so much built on a shared set of values, but rather on tacit understanding of each other’s interests and consensus on the lowest common denominators.

Last year's edition of the Global Risk Report featured the increase of fragility and disintegration on the one hand, and the return of strategic competition between strong and well-organized states on the other. Both trends strengthened in 2015, at times merging into a perfect storm like the one we are now observing in the Middle East: the conflicts in Syria, Iraq and Yemen, to name a few, have local, regional and global dimensions. Regional players, like Iran and Saudi Arabia, compete over the future order of the region. Major global players are simultaneously competing and cooperating, at times engaged on opposing sides in the battle but also at times seeking to forge diplomatic compromises.

#### Antitrust convergence strengthens governance globally---competition law’s the vital foundation

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In addition, conforming antitrust laws to the United States’ standards, for example, involves adopting principles of transparency, indiscriminate application of the law, the incorporation of economic principles into the legal code, the creation of fair and independent judiciaries, the creation of highly technical and independent enforcement agencies, and the emergence of an epistemic professional community of lawyers to interpret the changes. The adoption of all of these steps is the mechanism by which the lock-in phenomenon mentioned earlier can occur. These principles spill over into other areas of law and society and ultimately alter actors’ incentives and behaviors in ways that can result in the long-term internalization of these liberal norms. In particular, more than perhaps any other area of commercial law, antitrust principles contain within them the logic of significant constraints, not only on private, but also on government, conduct in every other facet of regulation and governance.

#### Robust governance prevents extinction

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Governance for Sustainability in light of (post) COVID-19 recovery

The ongoing COVID-19 crisis is generating massive adverse health and socio-economic impacts for societies around the globe, which require further attention for managing the pandemic as well as generating green, just and lasting recovery efforts. The crisis also brings many issues of relevance for ongoing sustainability transformations into the spotlight. One such issue is the role of governance, which we here broadly define as “the totality of actors, rules, conventions, processes and mechanisms concerned with how relevant…information is collected, analysed and communicated, and how management decisions are taken.” (IRGC 2005; see also Ostrom 2009).

The approaches taken to address COVID-19 bring to the fore relevant lessons – some (still to be) learnt - regarding global, national and subnational governance and potential changes needed to inform a shift towards sustainable development pathways. They also offer insights into opportunities and challenges for catalysing transformational change through decisive actions, e.g. as done with social distancing measures strongly informed by scientific advice, albeit not necessarily always based on robust evidence. Yet, COVID-19 also highlights significant gaps in the science-policy-society interface – including with regard to access to reliable, verifiable data to better inform decision making, in the prevalence of institutional mechanisms to deal with systemic and compound crises, and in the preparedness of global and national science communities and governance systems, among others.

It is widely recognised that the existential challenges that humanity is facing, such as climate change, biodiversity loss, increased prevalence of infectious diseases and others, require ‘robust’ governance structures that foster cooperation and collaboration as never before (WBGU 2014).

COVID-19 provides encouraging as well as challenging lessons for enhancing governance for sustainability. In several ‘early-mover’ countries, bold and decisive national government action coupled with clear communication initially led to containing the spread of (the first wave of) COVID-19 (e.g. South Korea, Singapore). Globally and regionally, the fact that COVID-19 has resulted in amplifying geo-political divides, such as between China and the US, and the challenges to the unity of the European Union, have been widely discussed in the media, illustrating the need for effective global governance structures that foster needed cooperation and at the same time respect local knowledge and democratic process.

What is more, COVID-19 is but one example in a string of health and other disasters and crises that the world has faced with increasing frequency in the recent past. As global warming continues, it will certainly not be the last. It is thus key to address the new set of risks and uncertainties in order to reduce risks and be prepared for other extreme events that may follow. Not all disasters are about health. Climate scientists are warning us about global tipping points (Lenton et al. 2019) and local adaptation limits (Mechler et al. 2020) as well as about ‘unknown unknowns,’ which demand capacity to take robust, nimble, yet evidence-based responses that find acceptance by affected societies.

This draft note for the IIASA-ISC COVID-19 recovery pathways initiative lays out our approach and initial thinking on the theme of “Governance for Sustainability” in terms of identifying relevant questions to learn from COVID-19 and draw lessons towards governance for sustainability pathways. We suggest four guiding questions (plus additional supporting questions), which we will further refine and seek answers to as part of the online consultations and further interactions with experts and the advisory panel. The ambition of the consultation process is to proceed towards co-generating some relevant policy recommendations for enhanced governance that is more agile, responsive, empowering, coherent, transparent, and adaptable in an ever more uncertain future, threatened by climate change and other stressors.

#### Building antitrust multilaterally stops litigants from flocking to U.S. courts---that’d derail the global development of antitrust

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Moreover, bringing claims to the United States strips valuable opportunities for young foreign antitrust regimes to develop their own jurisprudence, depressing the effectiveness of global antitrust enforcement and stalling the emergence of private redress. 16

[FOOTNOTE] 16 See Fox, Remedies, supra note 14, at 580 (recognizing that effective enforcement by every antitrust jurisdiction would be better than the United States unilaterally strengthening its own enforcement efforts for global benefit). But see generally Dodge, supra note 2 (arguing that, due to the complexity of multilateral conflict-of-law approaches weighing foreign interests, US courts should only employ Alcoa's US-centric effects doctrine to encourage growth of international antitrust law so long as all courts similarly apply such unilateral approaches); Harry First, The Vitamins Case: Cartel Prosecutions and the Coming of International Competition Law, 68 ANTITRUST L.J. 711 (2001) (drawing on the US prosecution of the Vitamins Case cartel to show that aggressive US extraterritoriality can lead to comprehensive international antitrust enforcement).

Others have proposed ideas for multilateral international antitrust enforcement, including a proposal from a group of antitrust scholars (the Munich Group) that involves the creation of an international agency tasked with enforcing a globally adopted antitrust code. See Int'l Antitrust Code Working Grp., Draft International Antitrust Code as a GATTMTO-Plurilateral Trade Agreement, 5 WORLD TRADE MATERIALS 126 (1993) [hereinafter DIAC] (proposing the establishment of an international antitrust agency sharing the responsibility of enforcement of an international antitrust code with national governments); Wolfgang Fikentscher, On the Proposed International Antitrust Code, in ANTITRUST: A NEW INTERNATIONAL TRADE REMEDY? 345-47 (John O. Haley & Hiroshi Iyori eds., 1995) (describing the code by one of its drafters). The DIAC addresses private redress in a similar fashion to EU law: mandating that national governments provide for certain remedies, though ultimately allowing each signatory to determine the appropriate parties to seek remedial action. See DIAC, supra note 16, at 180-81 (addressing "Remedies" under Article 15 to include redressing private harm but stopping short of creating a private right of action); see also infra § II.B (summarizing the EC Directive). However, because such an international code is not yet a practical reality, this Note will focus on how US jurisprudence should operate in absence of international law to create a suitable environment for the growth of international private redress. For more information on the DIAC or other supranational antitrust law, see Steven L. Snell, Controlling Restrictive Business Practices in Global Markets: Reflections on the Concepts of Sovereignty, Fairness, and Comity, 33 STAN. J. INT'L L. 215, 221-235 (1997) (discussing the search for international consensus on antitrust law, including the DIAC); Ulrich Immenga, Export Cartels and Voluntary Export Restraints Between Trade and Competition Policy, 4 PAC. RIM L.&POL'Y J. 93, 150-51 (1995) (introducing the recommendation for the DIAC); see generally Wood, supra note 1 (examining efforts and difficulties in establishing an international antitrust code); Mark R. Joelson & Joseph P. Griffin, International Regulation of Restrictive Business Practices Engaged in by Transnational Enterprises: A Prognosis, 11 INT'L LAW. 5 (1977) (advocating for an international convention as the most effective means of curtailing restrictive business practices engaged in by transnational enterprises while detailing challenges and past attempts). [END FOOTNOTE]

#### That crushes economic stability in BRICs---antitrust is key

D. Daniel Sokol 9, Assistant Professor at the University of Florida Levin College of Law, Senior Advisor at White & Case LLP, LLM from the University of Wisconsin Law School, JD from the University of Chicago Law School, MSt in History from Oxford University, AB from Amherst College, “The Future of International Antitrust and Improving Antitrust Agency Capacity”, Northwestern University Review Collquy, 103 Nw. U. L. Rev. Colloquy 242, Spring 2009, Lexis

One of the key issues in international antitrust has been how to make antitrust more effective around the world. Most antitrust laws have been adopted or significantly modified since 1990. 1 A number of key jurisdictions are either fairly new to antitrust altogether or to an antitrust regime that effectively employs the latest in economic thinking and the legal tools necessary to promote competition. 2 Jurisdictions that have made antitrust a new and important cornerstone to economic policy include Brazil, Russia, India, and China. Because of the stakes involved in the ability of antitrust to foster economic development and to prevent misguided antitrust policy from operating as a regulatory tax, it is critical that the future of antitrust focus on improving agency capacity around the world. 3 By capacity, I mean the ability of a given antitrust agency to undertake well-reasoned and effective decisionmaking in the implementation of antitrust policy. There are two concerns for countries in various stages of antitrust development: harmonization of domestic antitrust with international antitrust "best practices" and implementation of an effective antitrust regime. 4 In an effort to solve these issues, policymakers in antitrust emphasize two dynamics to shape the development of increased capacity of younger antitrust regimes. [\*1082] The first is international antitrust institutions, such as the International Competition Network, that develop antitrust norms. 5 The other is technical assistance, either from these international antitrust institutions or directly from more developed antitrust agencies or other aid providers. By technical assistance, I mean the process through which agencies improve their capacity to undertake competition policy.

#### Nuclear war

Cynthia Roberts 19, Professor of Political Science at Hunter College, City University of New York and Research Scholar at the Saltzman Institute of War and Peace Studies at Columbia University, PhD, MPhil, and MA from Columbia University, “The BRICS in the Era of Renewed Great Power Competition”, Strategic Analysis, Volume 43, Issue 6, Taylor & Francis

The BRICS are at a turbulent crossroads as renewed great power competition intersects with countervailing tendencies in the emerging multipolar arena. Their success depends avoiding the external costs and domestic pathologies generated by great power friction. Emerging multipolarity provides opportunities for manoeuvre, but only if outsized China accommodates the other BRICS as it competes against the United States. The BRICS’ strongest common aversion concerns American hegemony and its weaponization of finance. BRICS states are defensively motivated to develop mechanisms to limit infringements on their sovereignty and autonomy. However, in China and Russia financial nationalism is also rising, bolstering Renminbi internationalization.

The multilateral group known as the BRICs (Brazil, Russia, India, China\*) first emerged during the era of post-Cold War American hegemony when the international economic order was open and offered tangible benefits, but shaped by unrivalled American power while US alliances dominated the international security landscape. Washington expected no great power challengers to emerge after the collapse of the Soviet Union, a point on which many international relations scholars concurred, discounting China’s potential power.1 At the same time, China’s economic heft—which amounted to less than 20 per cent of US GDP [in purchasing power parity (PPP) terms] in 1990 and still only about 36 per cent in 2000—had not yet dwarfed the other BRICs members (see Figure 1). Seeking to maintain its pre-eminent position by actively deterring peer competitors and co-opting potential opponents, the United States facilitated conditions for these emerging powers to behave as joiners in multilateral economic institutions, such as Bretton Woods and in international markets, but not in ways that displace America’s hegemonic positions and privileges and they were not welcome in US alliances.2

Sensitive to the costs of provoking a backlash by the incumbent powers and the need to keep their diverse coalition of democratic and authoritarian regimes intact, the BRICs adhered to a moderate revisionist strategy of the Bretton Woods order as their economies grew, and China soared. China surpassed the United States as the world’s largest economy (measured in purchasing power parity) in 2014 (see Figure 1), as the largest trading nation in 2013, and from 2000 to 2014 grew more than four times the global rate in market exchange-rate (MER) terms, although it is still about a decade away from catching up to the US in output measured in MER (see Figure 2). When the Global Financial Crisis revealed that the United States was neither omnipotent nor a guaranteed reliable steward of the international economic order, the BRICS questioned whether the Bretton Woods order was ‘losing legitimacy and effectiveness.’3 The crisis emboldened the BRICS states not only to seek seats at the top tables as creditors but also some redistribution of power to new institutions, such as from the Group of 7 (G7) to the G20 to speed their rankings among the prominent global rule-makers. As Figure 3 shows, the five BRICS’ share of global output (owing mostly to China), even measured in MER, strikingly surpassed the European Union (EU) in 2015, and the combined GDP of the BRICS even passed the G7 in PPP terms in 2016 (see Figure 1). This was despite the tapering of growth in all of the BRICS, with the exception of India, and lopsided falloff of Russia, South Africa and Brazil (see Figure 4).

Perceiving American weakness and a general decline of the West, the BRICS as a whole, and China, in particular, also began to experiment with parallel international financial institutions, such as the BRICS Development Bank and the Chinese-sponsored Asian Infrastructure Investment Bank (AIIB) both created in 2015.4 The latter especially rankled the United States and former Treasury Secretary Lawrence Summers declared its creation and ‘the failure of the US to persuade dozens of its traditional allies … to stay out of it’ marked ‘the moment the United States lost its role as the underwriter of the global economic system’ (see Figure 5 for the distribution of shareholders). Summers blamed Washington, not China, for failing to take concrete steps—including International Monetary Fund (IMF) governance reforms pushed by BRICS—to substantially adjust the global economic architecture so that it better reflects the economic size of China and India and other emerging economies that now account for at least half of global economic output, and address their frustrations finding financing for needed infrastructure funds given pervasive restrictions set by US-backed development banks. Summers was primarily concerned with a loss of American leadership, assessing that China and other emerging economies were not radical revisionists seeking to topple the international economic order from which they greatly benefited.5

President Donald Trump turned the diagnosis of disengaged US leadership over a sound liberal international order on its head, blaming China for breaking the rules through forced technology transfers in exchange for US access to the growing Chinese market, predatory licencing practices, theft of intellectual property and the state-sponsored acquisition of American companies. Notwithstanding the validity of such claims, Trump is pursuing nationalist and protection remedies that could spiral into reciprocal moves that ultimately undermine the existing structures and destabilize international relations.

With broad bipartisan support, the Trump administration also aims to counter Russia’s assertive moves to expand its reach, including through influence campaigns, cyber tools, and limited military interventions. This was as Putin and Xi were deepening their partnership. In 2019, the Director of National Intelligence assessed that China and Russia are ‘more aligned than at any point since the mid-1950s.’6 Outside the BRICS format, both Russia and China are converting economic gains to military modernization programmes and leveraging national capacity to expand their geopolitical influence in their surrounding regions and overseas, while attempting to deny control to the US and its allies. Responding to these challenges, the Trump administration declared engagement a failure and in December 2017 the National Security Strategy issued by the White House announced that the United States was re-entering an era of great power competition, in which China and Russia ‘want to shape a world antithetical to US values and interests.’7

This article examines the intersection of renewed great power competition with countervailing tendencies in the emerging multipolar arena as others hedge and resist being drawn into great powers standoffs, while navigating President Trump’s disruptive policy swings. What do these antithetical tendencies imply for the BRICS countries? Can the BRICS states successfully navigate between the Scylla of a dangerous great power competition involving two BRICS heavyweights against the current hegemon and the Charybdis of losing the BRICS cement, breaking apart, and having to go it alone, whether or not the existing order fragments? Given that China is the dominant economic power propelling the BRICS, larger than the other members combined, its strategies and preferences in the new era of great power competition are likely to have an outsized impact on the future existence of BRICS.

The evidence suggests that China was the first in this competition to embrace an ambitious great power strategy for Chinese supremacy well before the election of Donald Trump. One may recall that Deng Xiaoping, appreciating that rising powers need to avoid provoking a backlash from the incumbent powers while still on the way up, developed a 14-character strategic guideline ‘tao guang yang hui’ [keep a low profile and bide our time] at the end of the Cold War when the United States became China’s chief threat. Deng admonished Chinese leaders to ‘observe calmly, secure our position, cope with affairs calmly, hide our capacities and bide our time, maintain a low profile, and never claim leadership.’ Although Deng did not advise when to abandon the non-assertiveness posture, a more confident President Xi Jinping jettisoned tao guang yang hui in favour of a strategy premised initially on co-equal great powers. Then, Xi launched a host of still more ambitious initiatives—including through its ‘Made in China 2025’programme—to dominate key growth industries in high technology, such as advanced chip design, artificial intelligence (AI) and robotics and to realize military modernization by 2035 and become a first-tier force by 2049. Thus, by the 100th anniversary of the Chinese revolution, Beijing’s strategy is to realize a modern and powerful China by ensuring that China’s comprehensive national power and international influence will be at the forefront of world politics and civilization. In so doing, Xi’s strategy is programmed to lead to the fulfilment of the ‘Chinese dream,’ a vision he articulated for the nation’s future in November 2012 to build a moderately prosperous society and realize national rejuvenation.

Whether such lofty national aspirations are helpful modernization milestones or self-defeating, tone-deaf nationalist programmes that engender a new cycle of protectionist backlashes by Washington to avoid further loss of comparative advantage in the US, or worse, is not yet clear. However, it is notable that some American elites and officials are so alarmed by China’s rapid rise as a military technological powerhouse that they see it as a major—even existential—threat to US dominance.8 They doubt the possibility of any bargain to end the trade war, which is seen as a central front in the competition for global supremacy. Moreover, in contrast to Cold War competition with the Soviet Union, many US strategists fear China is a more formidable competitor and ‘beating the Americans at their own Game.’9

The first section below considers the likely consequences of two competing tendencies propelled by great power competition and the diffusion of power and emerging multipolar arena. Next, it turns to the tools that major powers employ in economic and financial competition beyond the blunt tariffs currently wielded by the Trump administration that often prove self-defeating. US currency and financial power is one of the hegemon’s most potent weapons, and in greater use than ever before in American history.10 All of the BRICS countries at one point have suffered wounds from the US sanctions sword and it is one of their foremost common aversions. Both collectively and individually, they are defensively motivated to find mechanisms to limit infringements on their monetary sovereignty and national autonomy. In both Russia and China, in particular, financial nationalism is also rising in parallel with a desire for international status and influence.11 Beyond the weaponization of finance,12 the analysis here leaves aside the military dimensions of great power competition given their lesser relevance to the institutionalized evolution of the BRICS.

Tendencies generated by great power competitive politics

Within five years of Xi’s change of strategy, abandoning the non-assertiveness posture embodied in China’s ‘peaceful rise,’ it is notable that the United States refocused its strategic priorities for the first time since the collapse of the Soviet Union, first with the National Security Strategy in 2017 and then the National Defense Strategy in 2018. According to the National Defense Strategy, ‘The central challenge to US prosperity and security … is the reemergence of long-term, strategic competition by … revisionist powers.’13 Russia and China are identified as the major powers seeking to dominate their regions, shift the balances of power in Europe and Asia against the United States, and project power globally. The Trump administration and many analysts trace China’s rise to the failed attempt to integrate communist and post-communist states into the liberal rules-based order.14 Although bolstered by widespread, bipartisan support for a new strategy to counter the threats posed by these great power rivals, its precise parameters and scope are being contested as the Trump administration struggles to formulate effective policies to counter rival powers’ influence on multiple fronts. Despite the world’s largest defence budget in absolute terms (not as a percentage of GDP), the US has been one of the most efficient great powers in history. Now it faces competitors, particularly China, which are ramping up their efforts asymmetrically and technologically, but competing at lower cost to their economies, unlike the Soviet Union during the Cold War.

Competitive great power politics are occasionally cooperative and plus sum—sometimes zero sum—with the risk of war, and mostly in the domain of relative gains and losses, which involves positional struggles, relational power, and shifts in the balance of power. Nuclear great powers, in particular, have a stake in avoiding negative sum outcomes, where everyone loses, not only in global financial crises and economic depressions but also in crises and conflicts that may escalate to all-out war. As great power competition becomes the driving force of national policy it is likely to shape foreign policy in four important ways:

First, it sharpens distinctions between friends and foes, and pushes others to choose sides, both domestically and internationally, in political, security and economic domains. The trade war could be the tip of an iceberg in drawing lines. Demands for protection from Chinese goods and unfair trade practices have been growing over time.15 After Beijing joined the World Trade Organization (WTO), a ‘China shock’ followed, greatly disrupting the international division of labour, US comparative advantage, and especially US industry.16 China’s use of economic statecraft leveraging large investment flows through the Belt and Road Initiative (BRI) and development of anti-access/area denial (A2/AD) capabilities in the South and East China Seas fosters geo-economic influence backed by coercive power. Russia’s asymmetric political warfare campaigns against open democratic societies in the West and A2/AD capabilities in Eastern Europe add fuel to the bipartisan wellspring of support to shift US strategy beyond the initial course correction initiated by President Barack Obama. That containment strategy included bolstering defences and trip wires in Europe and negotiating the Trans-Pacific Partnership trade treaty, which all the major presidential candidates running in 2016 opposed.

Second, great power competition tends to strengthen nationalist and protectionist coalitions and policies. When this Innenpolitik drives intensified economic and geopolitical competition, it can create negative feedback loops as in security dilemmas, increasing the possibility of conflict.17 For example, China is a growing target of a nascent coalition, including Washington political and economic hawks, military industrialists and industries affected by globalization, such as coal and steel. However, an offset of this tendency is that producers that have supported protectionism in the past, such as the automotive sector, now often depend on China not for cheap labour but as one of the world’s largest consumer markets. Thus, General Motors (GM) sold more vehicles in 2018 to Chinese buyers than to Americans, including Cadillacs which posted the highest sales in the luxury brand’s 116-year history, primarily on the strength of GM’s performance in China. Before the start of the trade war, US multinational corporations were creating jobs in China at roughly four times the rate of increase than in the United States and prefer to build their products where their sales are highest.

In China, the coalition of party nationalists, government bureaucrats, and the state-owned enterprise sector has a significant built-in advantage in the authoritarian state capitalist system and is currently edging out the loose coalition of liberal economic reformers and private sector advocates since Xi’s turn away from the market-oriented reform that generated astonishing economic growth for more than three decades. Private sector firms accounted for 70 per cent of China’s output and the most successful Chinese technology companies, such as Alibaba, Baidu and Tencent. However, in 2012, Xi shifted to a more statist approach and greater economic and political control, despite poor economic results for the SOEs.18

In Russia, the security of the regime and protecting the privileges of the elite become more intertwined with and justified by great power threats, despite popular support for improved relations with the West and the fact that Russia needs capital for development. It is the only BRICS economy that has invested more abroad than it has received in foreign investment.19

Third, great power competition elevates the saliency of national security issues over wealth enhancing agendas and blurs security and trade concerns. This tendency further bolsters protectionism and restrictions given the perceived spillover costs of open trade to national security. China systematically blocks imports of most US manufactures (with few exceptions, e.g. semiconductors and Boeing aircraft). Washington is now putting pressure on US firms to reduce perceived vulnerabilities from China’s large role in supply chains and the national security dangers of doing with business with Chinese technology giants, such as ZTE and Huawei. China’s whole of government policies that contribute to market dominance in key sectors and inability to credibly commit in any trade deal that the party-state would never interfere in the private sector for security purposes go to the core of US concerns about Chinese high technology.20

However, great power competition runs the risk of financial ruin if ambitions exceed resources and strategists fail to establish priorities that help bend the cost curve. Feelings of Schadenfreude over Russia’s economic stagnation and general decline, despite Moscow’s ability to mobilize its national capacity in support of its extensive military modernization programme, will sting if US fiscal imbalances over the next decade require a significant reduction in the share of GDP that the United States can devote to military spending. Successful competitors adopt durable cost-efficient strategies that impose disproportionate costs and competitive disadvantages on their opponents while keeping their own in check.

Fourth, great power competition widens the lens through which psychological biases may operate to distort information processing and rational decision-making. Under such conditions, Jervis shows that ‘people are slow to alter incorrect beliefs in the face of discrepant information; historical analogies are applied promiscuously; subtle—and not so subtle—signals rarely are interpreted as the sender intends; and a person who has become committed to a particular course of action may underestimate its risks.’21

A worst-case outcome is when economic competition intensifies military competition and escalates to military conflict,22 perhaps spurred by erroneous beliefs, such as over-optimism about the balance of forces and resolve. Another bad outcome could emerge from faulty attempts to pursue competitive great power politics, strengthening nationalist, protectionist and security coalitions in opposing great powers while leaving the initial side with a weaker capacity to respond.

#### A tailored opt-in framework for export cartels secures global agreement

Dr. Marek Martyniszyn 12, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Export Cartels: Is it Legal to Target Your Neighbour?”, Journal of International Economic Law, March 2012

In recent years competition laws were introduced in many jurisdictions and considerable effort was invested by the international community in competition advocacy and voluntary cooperation between competition authorities (best exemplified by the creation of the International Competition Network which now has more than 100 members), leading to more dialogue and understanding in this area of law. This led, for example, to international consensus on international private hard core cartels (but not export cartels) as harmful and actual cooperation in their pursuit across jurisdictions. Taking this into consideration, the time is perhaps ripe to come back to the discussion on export cartels and to revisit narrow-focused proposals in this regard which could be introduced within the WTO framework. The one suggested by Sweeney seems particularly appealing: an agreement taking into account in antitrust investigations not only domestic, but also foreign harm caused by such cartels; reinforced by a positive comity (a commitment to investigate a particular case at the request of a foreign jurisdiction). 233 Such a regime could be adopted as a plurilateral agreement, preferably on the side and not within a major negotiation round, open to all interested jurisdictions and subject to the WTO dispute settlement mechanism. Taking into consideration that China, as the discussed cases present, is caught between a rock of antidumping and a hard place of antitrust actions, it may be interested in such a solution. The US, on the other hand, facing now Chinese export cartels with considerable state involvement may find it worthwhile to sit down and negotiate as well so as to avoid similar but greater problems in the future. The European Union, which already within the framework of the WTO Woking Group took the view that the issue of export cartels should be addressed, would surely join the talks. While developing countries were quite sceptical about competition issues on the trade agenda, the Indian experience with the US soda ash export cartel, discussed above, shows that they may now find it in their best interests to work towards an international solution to export cartels, especially if approached outside the major round of trade negotiations. 234 In fact if the tipping point has not been reached yet, the recent developments allow hoping that it is not too far away and more thought should be now invested into consideration of possible scenarios addressing export cartels, both private and public, reflecting the current challenges.235

#### Reciprocal prohibitions on export cartels are feasible and easily administered

Dr. Brendan Sweeney 11, PhD in Economics from Monash University, Deputy Head of the Department of Business Law and Taxation at Monash University, “Export Cartels” in The Internationalisation of Competition Rules: The Approach of European States, ISBN 9780415685443, Routledge, 7/29/2011, p. 397-398

3. Agreement in which exporting state considers foreign harm

A more realistic arrangement is one in which the exporting state, when determining the legality of an export cartel, agrees to take into account the consumer effects suffered in the importing state. Necessarily this will require states to agree to an export cartel rule based on anti-competitive effects. 100

Proceedings in the export state could be initiated by a request from the importing state. Given that the exporting state has incentives to tolerate export cartels, the exporting state should be required to respond to another state′s request by investigating the matter and issuing a written determination. The exporting state should also provide to aggrieved importers non-discriminatory access to their local competition law and policy processes (both administrative and judicial), to provide adequate procedural rules (for example, discovery rules), and to ensure adequate transparency. 101 A private right of action would be a desirable addition to this type of positive comity agreement. 102 Hoekman and Mavroidis have even suggested that a WTO special prosecutor might be given authority (and the resources) to bring an action on behalf of the least developed states. 103

The attractions of this solution are threefold. First, there is no need to apply law extraterritorially. Secondly, it is in the interest of the importing state to provide the necessary evidence of anti-competitive effects. Thus, the problems of evidence-gathering are likely to be minimized. Thirdly, although the exporting state will have to consider foreign effects, this is less disruptive than other alternatives, for example, handing primary authority to an international institution.

#### Other major powers will say ‘yes’

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

#### Status-seeking drives agreement AND overwhelms economic costs

Geoffrey A. Manne 13, Lecturer in Law at Lewis & Clark Law School, Executive Director of the International Center for Law & Economics, JD from the University of Chicago Law School, Former Olin Fellow at the University of Virginia School of Law, and Dr. Seth Weinberger, PhD and MA in Political Science from Duke University, MA in National Security Studies from Georgetown University, AB from the University of Chicago, Associate Professor in the Department of Politics and Government at the University of Puget Sound, “International Signals: The Political Dimension of International Competition Law”, The Antitrust Bulletin, Volume 57, Number 3, Last Revised 7/18/2013, p. 490-492

The United States has an interest in obtaining credible long-term commitments from other states—particularly developing states—to the dominant norms of global economic and political liberalization preferred by the United States. To the extent that adherence to the tenets of economic liberalization preferred by the United States is costly, adherence to those standards conveys a measure of long-term commitment. Similarly, to the extent that states can be made to adapt their domestic infrastructure and institutions to conform with the United States’ preferred institutions of economic liberalization (an undoubtedly costly proposition8), the United States can credibly hope to initiate a process of internalization, whereby the adaptations made create a “lock-in” effect which helps to further the processes of market liberalization and democratization that the United States believes are essential for the maintenance of its preferred international order.9 In short, the more difficult and costly it is for a state to adhere to an international agreement, the more its continued, costly adherence signals the state’s long-term commitment to the underlying tenets with which the agreement is imbued.

Moreover and not least, the process of harmonization through successive, bilateral (or narrow, regional) agreements, particularly in the economic sphere, permits the measured, evolutionary adoption of international standards. The crass realpolitik of multilateral international institutions, even though imbued with desirable normative constraints, suggests that the product of their deliberations will be less economic than political. Many have suggested, however, that regulatory competition in an arena like antitrust (where laws are invariably applied extraterritorially and where states have no ability to lure incorporations with attractive antitrust laws) makes an evolutionary, competitive approach infeasible.10

The recognition of political costs, however, and a consideration of the broader political environment in which international economic laws are negotiated, suggest that an evolutionary, competitive approach is in fact possible. As described in more detail below,11 nations compete for favorable trade and other status. To the extent that their position in the normative order is affected favorably by incurring the costs of compliance with the dominant economic norms as embodied in particular agreements (because of the internalization effect), some measure of competition is possible. By this we mean that, rather than a race for the top (or bottom) engendered by the competition for incorporation fees, for example, states will compete in a race for political status. Because political status is conferred by entering into agreements with dominant economic powers, developing countries (and other states that have not yet solidified their political or economic positions) will enter into agreements without direct transfer payments in order to receive the benefits of credibility, normative change, and international acceptance. The net effect should be the effective export of consistent American (or, more recently, European) antitrust policy. Notably, because harmonization can be achieved over time, through limited agreements, the substance of the dominant international law can also be honed over time as experience proves it necessary.12

#### Even if some hold-out, the framework is flexible enough to create coalitions of the willing that expand later

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 52-53

Conclusion

I have argued that strong, universalistic prescriptions regarding the internationalization of competition policy are unlikely to be very convincing or very interesting. Polities and societies have sharply differing accounts of what “free” and “fair” competition might mean, and when and how the state should shape it, interfere with it, or exclude it altogether. Liberalization and competition offer tremendous benefits to jurisdictions that embrace them; but no jurisdiction does so entirely, and each polity must find its own optimal balance between competition and the values that—so to speak—compete with it. This makes international action a very complex affair in which internationalization is likely to happen slowly when it happens at all. Sometimes it will be simply unavailable: “state preferences may be configured in such a way as to make cooperation unprofitable for all, in which case it will not occur, no matter what international mechanisms are in place.”204

As “[d]isagreement on matters of principle is . . . not the exception but the rule in politics,”205 I have suggested that there is considerable value in the provision of a wide range of tools and forms to facilitate international action. The bigger and more diverse the toolkit, the greater the likelihood of finding a solution that will serve the turn. To that end, I have emphasized the value of three forms of flexibility in this area: regionalism as a complement to bilateralism and multilateralism; frameworks as a complement to treaties and networks; and a willingness to explore cooperation on competition policy both alongside and separately from the liberalization of trade.

All the hard questions remain. But, as policymakers and scholars survey the wreckage of megaregionalism, I think there are plenty of reasons for optimism. I have emphasized that when grand megaregional bargains wrought in binding international law fail, other paths may remain open. Other combinations, other configurations, can offer the prospect of “progress”—in the right sense—to coalitions of the willing. At the time of writing, there is some evidence that many of the TPP’s parties continue to see value in deep cooperation in matters of trade and competition policy, even without the participation of the United States.206 With some creativity and imagination, and in partnership with like-minded jurisdictions, there is every reason to expect that they will achieve it.

## 2AC

## Trade ADV

### Trade ADV---2AC

#### 4. Courts will enforce the plan faithfully

Charles S. Dameron 16, Yale Law School, J.D. 2015. "Present at Antitrust’s Creation: Consumer Welfare in the Sherman Act’s State Statutory Forerunners." https://www.yalelawjournal.org/note/present-at-antitrusts-creation-consumer-welfare-in-the-sherman-acts-state-statutory-forerunners

Notwithstanding occasional invocations of the judiciary’s “common law” authority over the Sherman Act, federal courts have, since the Act’s earliest days, expended great energy attempting to divine the legislative purpose behind it.5If the Sherman Act were truly a blanket grant of common law-making authority to federal courts, they would hardly need to undertake such searching inquiries. The Supreme Court’s and lower courts’ close attention to the Sherman Act’s language and legislative history indicates that they have sought to abide by their constitutional role as interpreters of federal statutes.6

It is therefore more precise to say that the judiciary enjoys an especially wide authority to fill statutory gaps when interpreting the Sherman Act due to the Act’s ambiguous language, its constancy over time, and the fact—peculiar in light of many modern regulatory regimes—that Congress did not assign rulemaking authority to an administrative agency. These traits do not imply that federal courts may pursue whatever antitrust policy they find most desirable or wise; courts are obliged to follow the statute’s contours to the extent that they can perceive those contours.7

#### Export cartels aren’t phasing out

Frédéric Jenny 12, ESSEC Business School, “Export Cartels in Primary Products: The Potash Case in Perspective”, in TRADE, COMPETITION, AND THE PRICING OF COMMODITIES, Ed. Evenett and Jenny, February 2012, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2064686

2.4 Are export cartels disappearing?

The lack of interest by competition authorities with respect to export cartels organised by firms in their own countries is also sometimes justified by the fact that there are fewer and fewer export cartels and that therefore they are not worth the bother. There is, however, no empirical evidence that this is the case. What seems to be the case is that that there are fewer and fewer Webb-Pomerene associations registered in the United States. But, besides the fact that this does not tell us much about what is happening elsewhere the world, the reduction in the number of Webb-Pomerene associations in the US may be, as we shall see below, a misleading indicator of the of the number of export cartels originating in this country.

## Harmonization ADV

## Off Case

### T---Conditional---2AC

#### ‘Substantial’ means considerable

Judge Prost 4, United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6/18/2004, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  It does not imply a specific number or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

#### ‘Increases’ are by expanding the scope. That defines the medium of action.

Merriam-Webster’s 21 Online Dictionary, ‘by’, https://www.merriam-webster.com/dictionary/by

: through or through the medium (see MEDIUM entry 1 sense 2) of : VIA

enter by the door

#### ‘Scope’ is authority, not actions

Kenneth H. Kato 99, Judge on the Washington Appeals Court, Division Three, JD and BA from the University of Washington, “Spokane v. Civil Serv. Comm'n”, Court of Appeals of Washington, Division Three, Panel Four, 98 Wn. App. 574, 576, 989 P.2d 1245, 1246, 1999 Wash. App. LEXIS 2158, 12/21/1999, Lexis

For purposes of RCW 41.56.100, which provides that a public employer is not required to collectively bargain with its employees when the subject matter involved has been "delegated to any civil service commission or personnel board similar in scope, structure and authority" to the state personnel board, "scope" refers to the body's jurisdiction or authority to take various actions.

### T Antitrust Statutes---2AC

#### ‘Prohibit’ means to create a standard that forbids incompatible conduct

John G. Koeltl 7, United States District Judge on the Southern District of New York, “United States Baseball v. City of New York”, United States District Court for the Southern District of New York, 509 F. Supp. 2d 285, 297, 2007 U.S. Dist. LEXIS 63234, 8/27/2007, Lexis

The City responds that its home rule and police powers are broader pursuant to Article IX, Section 2(c) of the New York State Constitution, New York Home Rule Law § 10(1)(a)(12), and New York General City Law § 20(13) than the plaintiffs suggest. These provisions give the City the power to enact laws for the "safety, health, well-being, and welfare" of its residents. The City asserts [\*\*29] that the Bat Ordinance does not constitute a "prohibition" because it does not condemn all use of non-wood bats. It bars their use in competitive high school baseball games, but not for example in high school practices, junior high school games, "pick up" games, or youth league games that are not school-sponsored. Moreover, the City persuasively argues that the suggested distinction between "prohibitions" and other "regulations" is artificial and untenable, because all regulations prohibit some conduct that is incompatible with the regulatory standards and all "prohibitions" leave some conduct untouched. For example, a New York court upheld as a valid exercise of the police power a New York City law banning the possession in a public place of a knife with a blade of at least four inches in length in People v. Ortiz, 125 Misc. 2d 318, 479 N.Y.S.2d 613, 620 (Crim. Ct. 1984). The plaintiffs suggest the law at issue in Ortiz was a not a "prohibition," but it appears to be at least as complete a prohibition as the Bat Ordinance, which prohibits only certain uses of bats with certain defined characteristics.

#### ‘Scope’ means authority

William R. Johnson 89, Judge on the New Hampshire Supreme Court, Appeal of Rehabilitation Assocs., 131 N.H. 560, 565-566, 556 A.2d 1183, 1187, 1989 N.H. LEXIS 22, \*11-13 (N.H. April 7, 1989), 4/7/1989, Lexis

The board, however, refused to approve the change in site from Allenstown to Concord without first having an opportunity to review the final plan, because of its belief that such a change could constitute a change in scope. The board was particularly concerned that the change in site might affect various financial variables. Although the administrative interpretation of a statute is entitled to deference, it is not ordinarily controlling. N.H. Dept. of Rev. Administration v. Public Emp. Lab. Rel. Bd., 117 N.H. 976, 977, 380 A.2d 1085, 1086 (1977). With regard to CONS, the board was given the authority by statute to determine what information must be included in an initial application; the statute, however, expressly [\*\*\*12] designated when an applicant who has submitted a completed application or a holder of a CON had to go back to the board for approval. The interpretation of the word "scope" to some extent defines the board's authority. The board's interpretation of the "scope" of the project to include a change in the site without a [\*566] change in the service area, or a change in a financial variable without a substantial change in the total expected capital expenditure, does not comport with the ordinary meaning of that term, and serves to expand the board's authority beyond its statutory limits. See Social Security Board v. Nierotko, 327 U.S. 358, 369 (1946); see also Hamby v. Adams, 117 N.H. 606, 609, 376 A.2d 519, 521 (1977) (even longstanding administrative interpretation of statute not controlling if contrary to express statutory language). We hold that a change in the site of a facility without a change in a factor affecting the "scope" of the project, as defined here, does not require prior board approval. Our decision is not intended to prevent the board from requiring the filing of a "change of scope" in accordance with RSA 151-C:12, [\*\*\*13] IV-a (Supp. 1988), effective June 1988, if any documents or materials submitted to it indicate that the change in site has changed the "location", "nature" or "scope" of the project as those terms must be understood.

#### ‘Expansion’ is an addition to an existing law

Sarah H. Warren 20, Judge on the Georgia Supreme Court, Premier Health Care Invs., LLC v. UHS of Anchor, L.P., 310 Ga. 32, 32, 849 S.E.2d 441, 443, 2020 Ga. LEXIS 736, \*1 (Ga. October 5, 2020), 10/5/2020, Lexis

HN6 Certificates of Need, Hospitals

The Psychiatric Rule provides that a Certificate of Need (CON) shall be required prior to the establishment of a new or the expansion of an existing acute care adult psychiatric and/or substance abuse inpatient program, and defines "Expansion or Expanded" as the addition of beds to an existing CON-authorized or grandfathered psychiatric and/or substance abuse inpatient program. Ga. Comp. R. & Regs. 111-2-2-.26(1)(a), (2)(c). More like this Headnote

#### We meet “antitrust statutes”---the plan expands Sherman AND Clayton---it’s explicitly lawful now

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, http://doi.org/10.5334/ujiel.513

The United States, through the Webb-Pomerene Act of 1918,146 explicitly exempted export cartels and export association from the Sherman Act147 and from Section 7 of the Clayton Act,148 which has been reinforced by the Export Trading Company Act of 1982149 and the Foreign Trade Antitrust Improvements Act150 which regulated export cartels by granting them certificates. The EU, on the other hand, while it does not explicitly exempt export cartels, Articles 101 and 102 of the TFEU151 provide for the limited application of the EU competition law to conduct that produces anticompetitive effects (objective or subjective) within the internal market and to the trade between Member States. Hence, the EU competition law implicitly allows export cartels if they do not influence the EU internal market.

Strategic trade theory is often used to explain the States’ support for export cartels.152 Exporting States, by supporting their domestic firms engaged in export cartels, increase their national income through export revenues and promote producers’ (exporters’) welfare at the expense of the importing States. Under the strategic trade theory, exporting States will oppose any of the extraterritorial enforcement of competition law by the importing State, which curtails the export cartels.153 Just as blocking statuses show the applicability of domestic competition laws to anticompetitive acts and measures of State and State-owned firms internally. This is evidenced by the (Blocking) Order which hinders foreign investigations and enforcement of foreign decisions and judgments against Russian strategic enterprises.154 In addition, non-cooperation with the importing State’s investigation may also be due to the lack of incentive for an exporting State to immediately discipline the export cartel since it does not have any adverse effect on the domestic economy.155 Not only current trade laws but also national competition laws are insufficient to address the problem of anticompetitive conduct in foreign States which is prejudicial to the target State; this results from the fundamental differences between competition policy and trade policy.156

#### The ‘core’ antitrust laws are Sherman, Clayton, and FTC

Michael A. Rataj 21, PC, Law Degree from the Detroit College of Law, “Consequences for Breaking Antitrust Laws”, 5/12/2021, https://www.michaelrataj.com/blog/2021/05/consequences-for-breaking-antitrust-laws/

The core antitrust laws are…

The three core antitrust laws are the Sherman Act, the Federal Trade Commission Act and the Clayton Act. The Sherman Act primarily prohibits unreasonable restraint of trade and monopolization. Those who are in violation of the Sherman Act may face hefty fines, up to $100 million, and up to 10 years behind bars.

The FTC Act prohibits unfair practices or acts and unfair approaches to harming competition. Only the FTC can file cases under this act. The Clayton Act is a catch-all that covers every practice not covered by the Sherman and FTC Acts. Then consequences for violations of both of these acts are usually civil in nature.

#### ‘Increases’ are by expanding the scope. That defines the medium of action.

Merriam-Webster’s 21 Online Dictionary, ‘by’, https://www.merriam-webster.com/dictionary/by

: through or through the medium (see MEDIUM entry 1 sense 2) of : VIA

enter by the door

### Section 5---2AC

#### Export cartel policy is set by Sherman and Clayton and requires legislative change

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, http://doi.org/10.5334/ujiel.513

The United States, through the Webb-Pomerene Act of 1918,146 explicitly exempted export cartels and export association from the Sherman Act147 and from Section 7 of the Clayton Act,148 which has been reinforced by the Export Trading Company Act of 1982149 and the Foreign Trade Antitrust Improvements Act150 which regulated export cartels by granting them certificates. The EU, on the other hand, while it does not explicitly exempt export cartels, Articles 101 and 102 of the TFEU151 provide for the limited application of the EU competition law to conduct that produces anticompetitive effects (objective or subjective) within the internal market and to the trade between Member States. Hence, the EU competition law implicitly allows export cartels if they do not influence the EU internal market.

Strategic trade theory is often used to explain the States’ support for export cartels.152 Exporting States, by supporting their domestic firms engaged in export cartels, increase their national income through export revenues and promote producers’ (exporters’) welfare at the expense of the importing States. Under the strategic trade theory, exporting States will oppose any of the extraterritorial enforcement of competition law by the importing State, which curtails the export cartels.153 Just as blocking statuses show the applicability of domestic competition laws to anticompetitive acts and measures of State and State-owned firms internally. This is evidenced by the (Blocking) Order which hinders foreign investigations and enforcement of foreign decisions and judgments against Russian strategic enterprises.154 In addition, non-cooperation with the importing State’s investigation may also be due to the lack of incentive for an exporting State to immediately discipline the export cartel since it does not have any adverse effect on the domestic economy.155 Not only current trade laws but also national competition laws are insufficient to address the problem of anticompetitive conduct in foreign States which is prejudicial to the target State; this results from the fundamental differences between competition policy and trade policy.156

#### Courts strike it down. There will be no deference.

John O. McGinnis 21, George C. Dix Professor in Constitutional Law at Northwestern University and Contributing Editor at Law & Liberty, “Abandoning the Consumer Welfare Standard”, Law & Liberty, 8/26/2021, https://lawliberty.org/abandoning-the-consumer-welfare-standard/

The Prospects

The Executive Order, however ill-conceived the specifics are, will do the most damage if it changes antitrust law fundamentally. And here the Biden administration happily faces problems. We have had forty years of bipartisan competition policy focused generally on consumer welfare. The President does not have a political eraser to wipe that away.

One possibility is for the Biden administration to persuade Congress to enact major changes in antitrust law. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not impossible, to get any substantial changes in antitrust law through the evenly divided Senate.

Thus, the administration has pinned its strategy on transformation through administrative fiat. To that end, it appointed Lina Khan, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single most radical appointment in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon.

Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare.

But it is not at all clear Khan can succeed. On such a central question as the definition of competition, courts may not give her agency much deference now that the Roberts Court appears to have stopped applying Chevron—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

Beyond that technical obstacle, Khan may be a poor choice for overhauling antitrust law because of her lack of practical experience in litigation or administration. She has already alienated her agency staff by refusing to let them speak at professional panels, as they have for years. That is a rookie mistake. Moreover, she has been so strident in her attacks as an activist against companies like Google and Amazon that the courts are likely to look at her enforcement actions with suspicion, even if the companies do not get her recused for her past opinions.

Even if the Biden administration is unlikely to succeed in the near term in transforming antitrust, it has put on the table a new vision, however amorphous, that may well influence the approach of Democratic administrations and legislators for years to come. We are moving from an era of bipartisan consensus around a constrained and economically focused antitrust law to an era of fundamental partisan disagreement. In that sense, antitrust law will become—like many other areas of our law—a reflection of polarization and a source of instability. But here the folly and instability will make us poorer.

#### Congress blows up the FTC in response

Sandeep Vaheesan 17, Regulations Counsel at the Consumer Financial Protections Bureau, “Resurrecting "A Comprehensive Charter of Economic Liberty": The Latent Power of the Federal Trade Commission”, University of Pennsylvania Journal of Business Law, 19 U. Pa. J. Bus. L. 645, Spring 2017, Lexis

C. Recognizing the Threat of Adverse Congressional Action Does Not Compel Continued Adherence to the Antitrust Status Quo

Among those sympathetic to an expansive Section 5, some are likely to express reservations about its political feasibility. History certainly lends support to this concern. Congress has been hostile to an activist FTC in the past and could be expected to move to rein in any activism. In the 1970s, the FTC zealously pursued its antitrust and consumer protection missions. 251 This period of aggressive enforcement and rulemaking triggered a powerful backlash from corporate America. 252 The Washington Post condemned the Commission as the "National Nanny" in a stinging editorial. 253 This period of zeal ended poorly for the FTC. Congress [\*694] asserted new power over the agency and imposed additional procedural conditions on the use of its consumer protection authority. 254

This fear of a political backlash from business and Congress may be the strongest line of criticism of an expansive Section 5. Corporations pour money into Congressional campaigns to ensure that their interests are represented and advanced. Although the FTC has been averse to policy activism or innovation for decades, the House has tried to limit the FTC's authority to challenge mergers under Section 5, in the name of creating harmony between the FTC and the DOJ. 255

The recent experience of another federal agency is instructive. Congressional Republicans, with the support of some Democrats, have been trying to hobble the Consumer Financial Protection Bureau ("CFPB"). 256 The CFPB is seen as aggressively pursuing its statutory mission, bringing a wide range of enforcement actions and writing a number of rules to regulate consumer finance markets. 257 In light of its vigor, the opposition from Congress does not come as a surprise. Even under more favorable political circumstances, an FTC that seeks to breathe life into Section 5 is certain to invite comparable Congressional opposition.

The probable reaction from many ideologically or financially captured members of Congress should not be underestimated, let alone ignored. Corporate interests and their Congressional allies would seek to curtail any Section 5 expansions. The FTC is a creation of Congress and so must answer to Congress. Congress can undertake a range of actions to limit the FTC's day-to-day ability to function and its statutory power. At an extreme, Congress could repeal the FTC Act and shut down the FTC entirely. The risks to the FTC's future would include various existential threats and should not be brushed aside. Undertaking a reinterpretation of Section 5 without an awareness of political dynamics on Capitol Hill would [\*695] be a grave mistake.

#### It causes uncertainty AND delay

Alexander Paul Okuliar 21, Morrison & Foerster LLP, "FTC Lays Groundwork For Rulemakings: Are New Substantive Competition Rules Coming?", Mondaq, 3/25/2021, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1067906/ftc-lays-groundwork-for-rulemakings-are-new-substantive-competition-rules-coming

The FTC's foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC's authority, the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled. Substantive FTC competition rules could also create potential divergence in enforcement policy or activity between the DOJ and FTC brought about by the new rules.

#### No enforcement OR deterrence

John B. Kirkwood 21, Professor of Law at the Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 43-46, 01/15/2021, SSRN.

A. Section 5 of the FTC Act

Passed in 1914, the FTC Act not only created a second federal agency to enforce the Sherman Act, it gave the agency a broader mandate. Section 5 prohibits “unfair methods of competition,”228 whether or not they emerge from collusion or result in monopoly power. In principle, therefore, Section 5 plugs the hole in the Sherman Act just described. In practice, however, it rarely does so. As explained below, the ability of Section 5 to deter anticompetitive conduct is modest. It cannot be enforced by private parties and violations of Section 5 do not result in treble damages and attorneys’ fees. In addition, the Department of Justice cannot enforce it, reducing its deterrent effect still further. Perhaps most important, courts have been quite reluctant to apply Section 5 outside the bounds of the Sherman Act. In consequence, the FTC has rarely brought such suits; in the last forty years, the FTC has not pursued a single pure Section 5 challenge to unilateral exclusion.

1. No Private Treble Damage Actions

The FTC Act contains no private right of action. As a result, respondents do not face the possibility of treble damages and attorneys’ fees. Nor can the FTC seek civil penalties for an initial violation.229 [FOOTNOTE] In response to an initial violation, the FTC can only issue a cease-and-desist order. If the respondent violates that order, the Commission can impose civil penalties, but that requires the respondent to repeat the violation. [FOOTNOTE ENDS] To be sure, the Commission may be able to obtain restitution from a district court, but that authority is in doubt,230 and the FTC has never tried to exercise it in an exclusion case without alleging a section 2 violation. 231 In a pure Section 5 case, in short, tech giant exclusion is highly unlikely to result in treble damages, civil penalties, restitution, or other monetary sanctions. If a tech giant concludes that it would be profitable to exclude a third party from its platform, the prospect of a Section 5 action would not materially change the calculus.

Khan implicitly relies on this point when she asserts that “[u]nlike structural remedies, behavioral remedies seek to change the firms’ conduct, while leaving the underlying incentives untouched.”232 But behavioral remedies leave a firm’s incentives unchanged only when they are entirely equitable, as they typically are under Section 5. When illegal conduct reliably results in serious financial sanctions, a firm’s incentives change.

2. No Department of Justice Enforcement

The U.S. Department of Justice cannot enforce Section 5. This reduces by half the number of federal agencies that can prosecute pure Section 5 violations. If the FTC lacks the relevant industry expertise or is distracted by other matters, there will be no federal enforcement whatsoever.

### Recommend---2AC

#### Perm do the CP: ---‘should’ isn’t binding

George Dvorsky 15, Gizmodo, “A Single Typo Nearly Killed the Paris Climate Accord”, 12/14/2015, gizmodo.com/a-single-typo-nearly-killed-the-paris-climate-accord-1747908970

Hours before the historic Paris climate accord was to be ratified in a final vote, someone noticed that a word had been changed in the final draft of the text—a single word that threatened to derail the entire deal. As reported in the Washington Post, someone changed the word “should” to “shall.” Now, it seems like a little thing, but given that the words were in reference to sweeping new legal and financial obligations, it mattered. A lot. When it comes to legally binding terminology, there’s a big difference between “should” and “shall.” Whereas “should” is a kind of wishy-washy call to action, the word “shall” implies an obligation, and this is why Secretary of State John Kerry could not abide the unexpected change. The New York Times reports: Throughout the process, the longer and less binding “should” was a deliberate part of the international agreement, put there to establish that the richest countries, including the United States, felt obligated to pony up money to help poor countries adapt to climate change and make the transition to sustainable energy systems. “Shall” meant something altogether different, American officials said. When “shall” was spotted in the document on Saturday, Secretary of State John Kerry called his French counterpart and made it clear that unless a switch was made, France could not count on American support for the agreement. “I said: ‘We cannot do this and we will not do this. And either it changes, or President Obama and the United States will not be able to support this agreement,’ ” Mr. Kerry told reporters after delegates had accepted the deal by consensus Saturday night, amid cheering and the celebratory stamping of feet. Thankfully, cooler heads prevailed, and within hours the wording within the 31-page text was reverted back to the original “should.” A subsequent vote affirmed the Paris Accord, and all was saved.

#### They’ll say no---harmonization’s impossible unless fiated

Anu Bradford 7, LL.M. from the University of Helsinki, S.J.D. from Harvard Law School, Henry L. Moses Professor of Law and International Organization at Columbia Law School, Former Professor at the University of Chicago Law School, “International Antitrust Negotiations and the False Hope of the WTO”, Harvard International Law Journal, 48 Harv. Int'l L.J. 383, Summer 2007, Lexis

Finally, negotiating an international agreement always entails costs. Contracting costs are particularly high when numerous states with divergent preferences are seeking to agree on binding norms. 95 An antitrust agreement within the WTO framework, for instance, would require reaching a consensus among 149 heterogeneous states, as well as seeking domestic ratification by their respective legislatures. The Uruguay Round of WTO negotiations required eight years to complete. The current Doha Round, launched in 2001, has already dragged on for over five years with no end in sight. 96 Pursuing a binding international antitrust agreement within the trade regime would thus inevitably be a slow and costly process.

Consequently, the prospect of coordinating international antitrust laws, while generating some benefits, may simply not have been a priority for the United States and the EU due to certain costs, limited gains, and lack of significant opportunity costs. Alternatively, it could be that either party might have wanted to launch the negotiations, but the other party, perceiving the costs exceeded the benefits of coordination, obstructed negotiations. The possibility of asymmetrical payoffs between the United States and the EU is examined below.

#### The U.S. won’t comply

Brahma Chellaney 13, Professor of Strategic Studies at the Centre for Policy Research, “International Law Only for Weaker States?”, The Hindu, 12/20/2013, http://www.thehindu.com/opinion/lead/international-law-only-for-weaker-states/article5479314.ece

A just, rules-based international order has long been touted by powerful states as essential for international peace and security. But there is a long history of major powers using international law against other states but not complying with it themselves, and even reinterpreting or making new multilateral rules to further their geopolitical and economic interests. The League of Nations failed because it could not punish or deter some powers from flouting international law. Today, the United States and China serve as prime examples of a unilateralist approach to international relations, even as they aver support for strengthening international rules and institutions. Disregarding global treaties Take the U.S. Its refusal to join a host of critical international treaties — from the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the 1997 U.N. Convention on the Law of the Non-Navigational Uses of International Watercourses, to the 1998 International Criminal Court Statute — has set a bad precedent. Add to this its international “invasions” in various forms, including cyber warfare and mass surveillance, drone attacks and regime change. Unilateralism has remained the leitmotif of U.S. foreign policy, regardless of whether a Democrat or a Republican is in the White House. Forget international law, President Barack Obama bypassed even Congress when the U.S. militarily intervened in Libya and effected a regime change in 2011 — an action that has boomeranged, sowing chaos and turning that country into a breeding ground for al-Qaeda-linked, transnational militants, some of whom assassinated the American ambassador there. Carrying out foreign military interventions by cobbling coalitions together under the watchword “you’re either with us or against us” has exacted — as Iraq and Afghanistan show — a staggering cost in blood and treasure without advancing U.S. interests in a tangible or sustainable manner. Meanwhile, China’s growing geopolitical heft has emboldened its muscle-flexing and territorial nibbling in Asia in disregard of international norms. China rejects some of the very treaties that the U.S. has declined to join, including the International Criminal Court Statute and the Convention on the Law of the Non-Navigational Uses of International Watercourses — the first ever law that lays down rules on the shared resources of transnational rivers, lakes and aquifers. America’s appeal to China to act as a “responsible stakeholder” in the global system undergirds the need for the two to address their geopolitical dissonance and the issues arising from it. Yet, the world’s most powerful democracy and autocracy have much in common on how they approach international law. Might remains right For example, the precedent the U.S. set in an International Court of Justice (ICJ) case filed by Nicaragua in the 1980s still resonates, underscoring that might remains right in international relations, instead of the rule of law. The ICJ held that Washington violated international law both by supporting the contras in their insurrection against the Nicaraguan government and by mining Nicaragua’s harbours. The U.S. — which refused to participate in the proceedings after the court rejected its argument that it lacked jurisdiction to hear the case — blocked the judgment’s enforcement by the U.N. Security Council, preventing Nicaragua from obtaining any compensation. The only major country that has still not ratified UNCLOS is the U.S., preferring to reserve the right to act unilaterally. Nonetheless, it seeks to draw benefits from this convention, including freedom of navigation of the seas. For its part, China still appears to hew to Mao Zedong’s belief that “power grows out of the barrel of a gun.” So, it will not consider international adjudication to resolve its territorial claims in, say, the South China Sea, more than 80 per cent of which it now claims arbitrarily. Indeed, it ratified UNCLOS only to reinterpret its provisions and unveil a nine-dashed claim line in the South China Sea and draw enclosing baselines around the Japanese-controlled Senkaku Islands in the East China Sea. Worse still, China has refused to accept the UNCLOS dispute-settlement mechanism so as to remain unfettered in altering facts on the ground. The Philippines, which has since 2012 lost effective control to a creeping China, of first the Scarborough Shoal and then the Second Thomas Shoal, has filed a complaint against Beijing with the International Tribunal for the Law of the Sea (ITLOS). Beijing, however, has simply refused to participate in the proceedings, as if it were above international law. Whatever the tribunal’s decision, Beijing will shrug it off. Only the Security Council can enforce any international tribunal’s judgment on a non-compliant state. But China wields a veto there and will block enforcement of an adverse ruling, just as the U.S. did in the Nicaraguan case. Even so, Beijing has mounted punitive pressure on Manila to withdraw its case, which seeks to invalidate China’s nine-dashed line. Beijing’s precondition that the Philippines abandon its case forced President Benigno Aquino to cancel his visit to the China-ASEAN Expo in Nanning three months ago. Beijing’s new air defence zone, while aimed at solidifying its claims to territories held by Japan and South Korea, is provocative because it extends to areas China does not control, setting a dangerous precedent in international relations. China and Japan, and China and South Korea, now have “duelling” ADIZs, increasing the risks of armed conflict, especially between Japan and China, in an atmosphere of nationalist grandstanding over conflicting claims. Japan has asked its airlines to ignore China’s demand for advance notification of flights even if they are merely transiting the new zone and not heading towards Chinese territorial airspace. By contrast, the Obama administration has advised U.S. carriers to obey the prior-notification demand. There is a reason why Washington has taken a different stance on this issue than its ally Japan. Although the prior-notification rule in American policy applies only to aircraft headed for U.S. national airspace, the U.S., in actual practice, demands advance notification of all civilian and military flights through its ADIZ, irrespective of their intended destination. If other countries emulated the example set by China and the U.S. to establish unilateral claims to international airspace, a dangerous situation would emerge. Before every country asserts the right to establish an ADIZ with its own standards, binding multilateral rules must be created to ensure the safety of commercial air traffic. But who will take the lead — the two countries that have pursued a unilateralist approach on this issue, the U.S. and China? Convention and interpretations Now consider the case of the Indian diplomat, whose treatment India’s National Security Adviser Shivshankar Menon called “despicable and barbaric.” She was arrested as she dropped off her daughter at a Manhattan school, then strip-searched and cavity-searched and kept in a cell with drug addicts and prostitutes for several hours before posting $250,000 bail. True, this consulate-based diplomat enjoyed only limited diplomatic immunity under the 1963 Vienna Convention on Consular Relations. But this convention guarantees freedom from detention until trial and conviction, except for “grave offences.” Can a wage dispute between a diplomat and her domestic help qualify as a “grave offence” warranting arrest and humiliation? Would the U.S. tolerate similar treatment of one of its consular officers? The harsh truth is that the U.S. interprets the convention restrictively at home but liberally overseas so as to shield even the spies and contractors it sends. A classic case is the one that involved the CIA contractor, Raymond Davis, who fatally shot two men in 2011 in Lahore. Claiming Davis to be a bona fide diplomat with its Lahore consulate who enjoyed immunity from prosecution, Washington accused Pakistan of “illegally detaining” him, with Mr. Obama defending him as “our diplomat.” The U.S. ultimately secured his release by paying “blood money” of about $2.4 million to the relatives of the men. Despite a widely held belief that the present international system is pivoted on rules, the fact is that major powers — as in history — are rule makers and rule imposers, not rule takers. They have a propensity to violate or manipulate international law when it is in their interest to do so. Universal conformity to a rules-based international order still seems distant.

#### The CP’s external pressure crushes FTC independence---implodes the deal

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CONCLUSION

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago, 152 and scholarship touching upon the furtherance of nationalist goals by [\*245] various antitrust agencies dates back decades. 153 However, a creeping loss of public confidence in open markets--coupled with the obstacles to coherent global antitrust enforcement that bear the FTC Act's influence, as illustrated in this Article--risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of protectionist silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic "end of history" 154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even perennial norms and conventions of the U.S. competition regime which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that carried over abroad to empower strong executives are likewise playing a paper tiger role domestically of late. 155

Protectionist policies designed to compromise market competition--for all its documented excesses and inadequacies--would sap its creative vitality [\*246] and the concurrent liberal peace 156 often taken for granted. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country's companies, 157 to an international competition regime binding on member states in at least some areas of antitrust. 158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for "our country, right or wrong" protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act's formative influence is not above scrutiny or reproach. Still-elusive realization of the liberal economic international order's intended form will require an expanded constellation of independent competition regulators empowered to enforce antitrust laws consistently.

#### They’ll dig in---triggering a turf war that externally crashes harmonization

William E. Kovacic 13\* and David A. Hyman\*\*, Global Competition Professor of Law and Policy, George Washington University Law School and Non-Executive Director, United Kingdom Competition and Markets Authority, and \*\* H. Ross and Helen Workman Chair in Law and Professor of Medicine, University of Illinois, “Competition Agencies with Complex Policy Portfolios: Divide or Conquer?”, GW Law Faculty Publications & Other Works. 631.

https://scholarship.law.gwu.edu/faculty\_publications/631

4. Resilience: Is the Assignment of Functions Adaptable and Sustainable?

Statutes routinely allocate jurisdiction according to the technology used to supply a product or the status of the organization that provides the service. What happens when the character of the industry is altered by technological change or the emergence of new categories of suppliers of the sector’s goods or services? As suggested earlier, regulatory jurisdictional boundaries can shift over time in much the way that the movement of a river will sometimes alter rights in real property.64 When such changes take place, multiple agencies may seek to exercise authority by arguing that the reconfigured industry falls within their purview. A sustainable assignment of functions will be able to adapt to such changes; a non-sustainable assignment will not – making bureaucratic warfare between the rival agencies a very real possibility.65

One obvious example is the almost decade-long dispute between the SEC and the Commodity Futures Trading Commission (“CFTC”) over products that arose at the interface of regulatory authority of these two agencies. The SEC regulates securities; the CFTC regulates futures contracts. But what happens when a futures contract is for the delivery of securities? The SEC took the logical (and self-interested) position that a futures contract involving a security was subject to its jurisdiction. The CFTC took the logical (and self-interested) position that it had exclusive jurisdiction over all futures contracts. Both agencies pointed to their enabling legislation. When the CFTC approved the Chicago Board of Trade’s trading of futures contracts on GNMA certifications and the Chicago Mercantile Exchange’s trading of futures contracts on T-bills, the SEC took the position that it might view such trading as illegal, notwithstanding the CFTC’s approval. The Chicago Board of Trade brought a lawsuit against the SEC, challenging its assertion of jurisdiction.66

The SEC also brought several lawsuits challenging the CFTC’s assertion of exclusive jurisdiction.67 The dispute was finally settled with a negotiated agreement between the two agencies, which was ultimately enacted into formal law.

The regulation of financial services routinely raises this problem, because regulatory authority is generally tied to the type of entity being regulated, rather than the type of product being offered. Consider the comments of a Federal Deposition Insurance Corporation (“FDIC”) associate director, noting the complexities of determining whether a particular depository institution was indeed a bank:

First, you have to figure out, what in the hell is a bank? And what is the intent of deposit insurance? It’s a far cry from when they set it up. A typical commercial bank was one that made agricultural loans, commercial loans, and held demand deposits. . . Congress had in mind what a bank was. . . Now you may have a furniture company and they may say “we will sell a lot of couches on credit, and we borrow money to do that. We could [finance the credit] with commercial paper, but by and large we use a commercial bank for our needs. . . Why don’t I establish a bank and get insurance. . . I could go out and sell CDs. . . Then I’ve got back up and my financing rates go way down. . . Now I am a lender for couches; instead of selling the loans to the bank or borrowing, I just put the loans on my books.” Well that isn’t what anyone was thinking of or imagined at first. . . They get deposit insurance and they play on the federal guarantee to reduce interest costs and financing.68

Such border disputes can easily trigger a turf war between agencies. These dynamics are also affected by the demand side, as firms maneuver to “choose” their regulator.

An adaptive regulatory framework would have clearly allocated regulatory authority over a particular area to a specific regulatory agency -- instead of forcing personnel at multiple agencies to spend considerable time and effort disputing the allocation of responsibility. Various strategies are available to proactively address adaptability, but to a considerable degree, Congress only examines such matters in response to train wrecks and crises, in which perceived and/or real failures in the regulatory process give rise to reassessment. Dodd-Frank presents an obvious example of the end game of this dynamic – albeit one that did not provide a resilient solution to the broader problem it sought to address, with the exception of creating the CFPB.

Resilience is obviously not as important as some of the other factors, because problems will emerge, if at all, over time. But, the absence of properly defined jurisdictional boundaries will eventually lead to border wars between agencies/departments, and turf wars among congressional committees. Creating an adaptable and sustainable grant of regulatory authority helps reduce the amount of time spent on such activities.

5. Internal Organizational Cohesion

When discrete functions are combined in a single agency or department, the result is usually the creation of separate operating units for each function. As individual operating units become more specialized and autonomous, they quickly develop norms, goals, and priorities that predictably differ from other units in the same agency or department. Over time, this process results in units being staffed by personnel whose interests, training, and abilities focus narrowly on the work of their unit and have little understanding of the backgrounds and activities of other units underneath the same institutional roof. Predictably enough, each individual operating unit starts to see the other units as rivals for prestige, headcount, and budgetary resources.

This rivalry can be beneficial if it results in synergies that serve the larger aims of the agency. Conversely, the rivalry will be destructive if it manifests itself in credit-claiming or other measures designed to enhance the visibility of the operating unit as an end in itself. The third possibility is there will be neither beneficial nor destructive rivalry; individual units will simply not acknowledge the existence of the other units. Issues of culture and history loom large in determining which of these three outcomes will result.

To be sure, such difficulties are likely to arise whether we are dealing with a single agency or multiple agencies that are expected to coordinate their efforts. And, such difficulties can exist within a single department: consider the intra-service rivalries in the U.S. Air Force (bomber v. fighter pilots) and the U.S. Navy (surface navy v. aviators v. submarines).69 But, matters are often much worse across divisions within a single agency or department, such as the legendary conflicts between the rival military services contained within a single Department of Defense:

#### The CP’s single-issue delegation undermines the ICJ

Ogbodo 12 (Law Prof-University of Benin, “An Overview of the Challenges Facing the International Court of Justice in the 21st Century, 18 Ann. Surv. Int'l & Comp. L. 93, Spring, Lexis)

B.The Acceptance of the Compulsory Jurisdiction of the Court The statute of the ICJ should be amended with a view toward making the jurisdiction of the court mandatory and compulsory to all parties. The present situation whereby the member states are entitled to cherry-pick the jurisdiction of the court has contributed in no small measure to the watering-down of the prestige of the Court's jurisdiction. As discussed above, jurisdiction should be mandatory if the ICJ is to adjudicate pressing international issues. Of particular concern is the current situation whereby four of the five permanent members of the Security Council have rejected the compulsory jurisdiction of the court. n85 Such a practice, no doubt, sends a very strong and wrong precedence to other member states. As the global apex court, the ICJ deserves to command compulsory jurisdiction in order to be better able to tackle an ever-evolving myriad of legal issues. As it stands, the court is not well-equipped to meet increasing global expectations in the 21st century.

#### Other fora solve AND no impact

Francesco Mancini 13, Senior Director of Research of the International Peace Institute (IPI) and Adjunct Associate Professor at Columbia University’s School of International and Public Affairs, “Uncertain Borders: Territorial Disputes in Asia”, Analysis No. 180, June 2013, http://www.ispionline.it/sites/default/files/pubblicazioni/analysis\_180\_2013\_0.pdf

Why Do Territorial Disputes Happen?

Territorial disputes are traditionally regarded as the most common sources of conflict and a vast number of scholars have analyzed the connection between disputed territory and the outbreak of war7. Indeed, the scholar John Vasquez concluded that “if you want to avoid war, learn how to settle territorial disputes non-violently”8. Yet, it is important to emphasize that not all territorial disputes lead to war. Since 1953, ninety-seven territorial disputes have been solved through bilateral negotiations, third-party mediation, arbitration, or adjudication at the International Court of Justice9. Many other disputes remain dormant. What follows describes how inappropriate actions in boundary demarcation have usually led to disputes and what factors can lead to the breaking out of violence.

### Foucalt K---2AC

#### Undoing squo power relations requires analyzing and attacking power structures through pragmatic struggle---normative appeals alone are ineffective.

Naomi **Zack 17**. Professor of philosophy at the University of Oregon. 02/2017. “Ideal, Nonideal, and Empirical Theories of Social Justice: The Need for Applicative Justice in Addressing Injustice.” The Oxford Handbook of Philosophy and Race, Oxford University Press.

Ideals of justice may do little toward the correction of injustice in real life. The influence of John Rawls’s A Theory of Justice has led some philosophers of race to focus on “nonideal theory” as a way to bring conditions in unjust societies closer to conditions of justice described by ideal theory. However, a more direct approach to injustice may be needed to address unfair public policy and existing conditions for minorities in racist societies. Applicative justice describes the applications of principles of justice that are now “good enough” for whites to nonwhites (based on prior comparisons of how whites and nonwhites are treated). Social information just dribbles in, bit by bit, and we simply get used to it. A single story about a person really hits home at once, but the grinding injustices of daily life are endured. It is easy to ignore them and we do. Judith Shklar, The Faces of Injustice (Shklar 1990, 110) IDEAL theory about justice extends from Plato’s Republic to John Rawls’s A Theory of Justice, including many careers devoted to analyses and criticism about such texts in political philosophy. Rawls offers a picture of the basic institutional structures of a just society, on the premise that in order to correct injustice, we must first know what justice is. According to Rawls, while “partial compliance theory” studies the principles that govern how we are to deal with injustice, full compliance theory, or ideal theory, studies the institutional principles of justice in a stable society where citizens obey the law. Rawls began A Theory of Justice with the claim: “The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems” (Rawls 1971, 8). Rawls’s ideal theory is too abstract to correct injustice or provide justice for victims of injustice in reality, because it is based on a thought experiment and the assumption of a “well-ordered” society in which there already is compliance with law (Zack 2016, 1–64). What people care about in reality concerning justice is not what ideal justice is or would be, but how immediate injustice can be corrected. Injustice is always specific in concrete events that are recognizable as certain types, for example, theft, murder, or police racial profiling. Injustice can be corrected by punishing those responsible for it in specific cases and instituting social changes that prevent or reduce future occurrences of the same type. Rawlsian nonideal theories of justice, constructed for societies where people do not comply with just laws, rely on ideal theory as a standard for just institutional structures. The main question driving nonideal theory is how to construct a model or picture of justice that will result in the future correction or avoidance of present injustices. John Simmons quotes John Rawls from Law of Peoples, on this matter. Nonideal theory asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for courses of action that are morally permissible and politically possible as well as likely to be effective [LOP p. 89]. (Simmons 2010, 7) However, injured or indignant parties may not care about the long-term goal of justice that could lead to balance or compensation for their situations. Not only are what P. F. Strawson (1962) called “reactive attitudes,” such as moral indignation, blame, and a desire for deserved punishment, strong in their focus on injustice, but the best theory of justice in the world does not tell us what to do about the injustices we are faced with in the here and now, especially “the more pressing problems” of race-related injustices. Such questions cannot be answered with reference to ideal theory or some application of ideal or nonideal theory to their concrete situations, because the a priori nature of both of these does not provide a fit with specific contingencies—ideal and nonideal theories do not generate practical bridge principles. As theories, they posit ideal entities, but without the apparatus of scientific theories which provides connections to observable entities or events. (Moulines 1985). The correction of injustice or injustice theory requires a philosophical foundation for itself. Models of justice have often been naïvely utopian throughout the history of philosophy, because they are based on an assumption of automatic total compliance, as though the right words or pictures by themselves have the power to transform reality, or as though agreement with those right words or pictures will automatically result in action that will automatically make the world instantiate those words or pictures. When they are not fantastically and ineffectively utopian in this way, such models have been used to justify the already-existing dominance of some groups over others. (A prime example is John Locke’s Second Treatise of Government, written decades before 1688 Glorious Revolution, to express the interests of the new rising class of landed gentry, which were eventually fulfilled by a Protestant king on the throne and a strong representative parliament after that revolution [Laslett 1988].) Models of justice have legitimately served to inspire law in modern societies with government constitutions and national and local law. But, sometimes, as in US founding documents, although universal and absolute justice is proclaimed, subsequent events make it clear that this language was intended to legitimize just treatment for members of selected groups only, that is, white male property owners, at first. As a result of just law and its selective application, over time, there comes to be justice for an expanding group, but still not everyone in society. However, what is written, together with descriptions of real justice for some, can be a powerful lever for obtaining justice for at least some of the excluded. To understand how that works, it is necessary to develop an approach to justice that begins with injustice, in real situations where there is already some degree of justice in a larger whole. The extension of existing practices of justice to members of new groups is applicative justice, a concept with substantial historical and intellectual precedent, although not by that name. In what follows, more will be said about the idea of applicative justice and then its history will be considered. Voting rights and housing rights are examples of candidates for applicative justice in our time. Finally, content in the form of narrative may be motivational for social change. The Idea of Applicative Justice Applicative justice is an approach to justice with the goal of making the unjust treatment of some comparable to those who already receive just treatment. Applicative justice takes a comparative approach, for example, comparing how young black males are treated by police officers in contemporary US society, to how young white males are treated (Jones 2013; Zack 2013, 2015). Applicative justice rests on a pragmatic approach to social ills, which includes the premise, based on Arthur Bentley’s 1908 insights in The Process of Government, that government is much more than the apparatus of state and written laws and court decisions. Government is an extended, dynamic process, an ongoing contention among interest groups in society. This full-bodied, empirical and pragmatic view of government process entails, for example, that we consider as parts of the same political mix/phenomenon/raw material all of the foregoing: the Fourth and Fourteenth Amendments, the 1960s Civil Rights Legislation, doctrines of probable cause, the disproportionate incarceration of African Americans, racial profiling, and police homicide with impunity. Thus, Rawls’s insistence that “the rights secured by justice are not subject to political bargaining or to the calculus of social interests” (Rawls 1971, 4), should be understood as “the rights secured by justice should not be subject to political bargaining or to the calculus of social interests.” In reality, “the rights secured by justice” are constantly subject to political bargaining and the living calculus of social interests. One consequence of this empirical perspective is that moral outrage, critiques of white supremacy, or analyses of white privilege, along with other forms of blame, cannot be assumed to have the power to change anything, by themselves. By contrast, changing relationships between police officers and their local communities, or changing the rules of engagement when police stop or attempt to stop suspects, might on this view have some causal power (Ayres and Markovits 2014). It is important to realize that such changes in practice would not be specific applications of a theory of justice, but ways of changing social reality into a different political mix. However, a better theory of justice, even a more racially egalitarian one and even a theory of applicative justice that was widely accepted, would still be no more than a change in what Bentley calls “political content.” Any theory of justice or any set of just laws is compatible with widespread racially unequal and unjust practice. And the converse also holds. Unjust laws or laws with gaps for unjust practice are compatible with just practice. Thus, applicative justice is pragmatic in taking the whole political mix/ phenomenon/raw material as its subject for a specific injustice. Unlike ideal or nonideal justice theory, the applicative justice approach brooks little faith that reality can be changed by a special conceptual space or mode of critical moral discourse that is undertaken apart from reality. Reality cannot be changed by normative pronouncements, by or on behalf of the oppressed, but only by shifts in existing interests of groups of real people. To base hopes for change on normative content alone may ~~paralyze~~ [eliminate] the means for taking action that could result in change, because such content proceeds as though matters of justice were only matters of argument. Those who have opposed social racial justice have understood this well enough, because instead of mainly arguing against new just law over the twentieth century, they have taken action to block progress. Race and Justice Consideration of race and injustice together, within political philosophy, focuses on the need for specific groups to not be treated unjustly. For a group to be treated justly, a large number of its members need to be treated justly. But for a group to be treated unjustly, it is sufficient if a smaller number or lower proportion than required to meet the standard of just treatment be treated unjustly. One reason for this asymmetry is that just treatment is easily normalized within communities, whereas unjust treatment of only a few is disruptive and considered abnormal among other members of the group to which victims belong (although not necessarily by members of groups who are generally treated justly). The unjust treatment of a small number ripples from their friends and relations to other members of the same group, who realize that they are subject to similar unjust treatment from their membership in that group alone. More broadly, if the group treated justly and the group treated unjustly belong to the same larger collective, such as whites and blacks in the United States, then the unjust treatment of even a very small number of that total collective of residents or citizens should be disruptive to the whole collective, given promulgated principles of “justice for all.” But that does not always happen, at least not in ways that result in real change. Apathy and self-absorption of those not treated unjustly is part of the reason, although another significant part is that the group treated justly already knows that the national collective rhetoric of justice is intended to apply primarily to them. It is that kind of disparate treatment, which does not disrupt everyone, even though it should, which calls for a theory of applicative justice, on the abstract level where people call for justice. But applicative justice is not only an abstract theory. Applicative justice requires comparisons of group treatment. If minorities are treated unjustly, a description of that injustice does not require an ideal or nonideal theory or model of justice, but simply a comparison with how the majority is treated. (The term “minorities” refers to those disadvantaged or oppressed, because sometimes minorities are greater in number than “majorities,” e.g., blacks under apartheid in South Africa, American slaves in some Southern states, or black Americans in some twenty-first-century cities.) The principles and mechanics of justice that work well enough for most white Americans need to be applied to nonwhite Americans. For rhetorical purposes, it might be evocative to talk about black lives or black rights, but strictly speaking the subject is a racial framework that is color-blind in an important part of law—constitutional amendments and federal legislation—but not in reality. This gap between written law and social reality can be viewed as hypocrisy, racial bias, or white supremacy, only if one assumes that written law is an accurate description of, or blueprint for, social reality. But a perspective that takes in the whole process of government reveals that the gap and what is permissible within it, are parts of the same whole process. The contrast between blueprints and maps is important to consider. Political philosophers often proceed as though their writings about justice are blueprints, when they should instead begin by constructing maps. Present politics or a political party in power may present obstacles and challenges to applicative justice in any specific case. Those who aim for applicative justice must struggle against such obstacles and challenges, as well as the ignorance, prejudice, and ill will of large parts of voting publics under democratic government, and in addition, media misrepresentations, business interests in a status quo, and lack of understanding of oppression by those who are treated unjustly. For example, the injustice in the disproportionately large number of African Americans in the US criminal justice system has been supported by law-and-order politics, the War on Drugs, belief in racial gender myths (e.g., the larger-than-life black rapist), explicit racism, media sensationalism of crime committed by black men, profits made by for-profit prison corporations, and embrace of self-destructive subcultures by some black men who become incarcerated. At the same time, as an efficient cause or precipitating factor, ongoing racial profiling by police helps feed the system with new suspects, about 90 percent of whom plead guilty in preference to the risks and costs of a trial (Kerby 2013; Rakoff et al. 2014). Intergenerational poverty, unemployment, and undereducation contain people within this system, and the high rates of nonwhites in the prison population are used as official justification for racial profiling (Zack 2015, chap 2). Thus, the complexity of causes and background factors associated with the disproportionate number of African American male prison inmates can be understood through a number of approaches. The normative approach of applicative justice would be to address those causes or factors, distinctly and individually, through specific changes in concrete practice, as well as changes in law, as relevant.

### FTC Independence DA (MSU)---2AC

#### The FTC is hosed

Henry Burke 21, and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>

Even if the will to stop it exists, the FTC doesn’t have the funding to stop this boom. In fact, it hasn’t had the funding to keep up with a steady uptick in mergers in years. Aside from the recent spike, the total number of premerger filings [increased](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino/p110014hsrannualreportfy2019_0.pdf) by 80 percent over the last 10 years. In 2010, corporations filed 1166 premerger notifications. By 2019, yearly filings almost doubled to 2089.

While the number of transactions the FTC is charged with regulating has increased steadily, the number of enforcement actions — challenges to anticompetitive mergers or conduct — has stagnated.  A 2020 paper from Equitable Growth showed that while the number of [enforcement actions](https://equitablegrowth.org/wp-content/uploads/2020/11/111920-antitrust-report.pdf) from both the FTC and DOJ hovered at about 40 challenges per year from 2010 to 2019, even as the number of corporations seeking merger approval grew. The FTC’s enforcement actions over the past ten years show the agency hasn’t kept up with increased HSR filings: while FY 2010 saw 22 enforcement actions for 1166 reported mergers, a ratio of approximately one enforcement action for every 53 mergers, FY 2019 saw a mere 21 enforcement actions for 2089 mergers, meaning there was only one FTC enforcement action for every 99 mergers.

Overall funding and staffing levels at the FTC have similarly stagnated. Then-FTC commissioner Rebecca Slaughter said in 2020 that it is an “[indisputable](https://www.ftc.gov/system/files/documents/public_statements/1583714/slaughter_remarks_at_gcr_interactive_women_in_antitrust.pdf)” fact that FTC funding has not kept up with market demands; according to Slaughter, the FTC budget has only increased by 13% since 2010 and the employee headcount decreased. This budget increase has not come from increased discretionary appropriations from Congress however, but from a massive increase in merger filings and their accompanying fees. Startlingly, Slaughter notes that “the FTC had roughly 50% more full-time employees at the beginning of the Reagan Administration than it does today.” The situation has become so dire that increased budgets for the enforcement agencies has become a rare [bipartisan](https://www.law360.com/articles/1368496/klobuchar-says-congress-has-rare-shot-at-antitrust-overhaul) issue in the Senate.

### Politics---2AC

#### Manchin will punt it to next year AND thumpers.

Hans Nichols 11/10, Political Reporter for Axios, former Pentagon Correspondent for NBC News, Former International and White House Correspondent for Bloomberg News, “Manchin may delay Biden social spending plan over inflation,” Axios, 11/10/21, https://www.axios.com/manchin-chill-bbb-6b58cd70-6c07-40f9-af4e-c944a7b3a39d.html

Red-hot inflation data validates the instinct of Sen. Joe Manchin (D-W.Va.) to punt President Biden’s Build Back Better agenda until next year — potentially killing a quick deal on the $1.75 trillion package, people familiar with the matter tell Axios.

Why it matters: The data released Wednesday set the president and White House staff scrambling. Slowing down work on the massive tax-and-spending plan is against the fervent desire of the administration and House progressives.

With a limited number of legislative days left in the year, Manchin is content to focus on the issues that need to be addressed, Axios is told.

They include funding the government, raising the debt ceiling and passing the National Defense Authorization Act.

Manchin, like a group of House moderates, also wants to see a Congressional Budget Office analysis of the true cost of each of Biden’s proposed programs, as well as the tax proposals to fund them.

The big picture: Progressives have long worried that after centrists got their $1.2 trillion bipartisan infrastructure bill, they'd find excuses not to move on the budget reconciliation package.

It includes billions to expand the social safety net and fight climate change, among other Democratic priorities.

Business groups also are stepping up their attacks on the package, warning congressional Democrats about its overall costs, potential effects on inflation and $800 billion in corporate tax increases.

Manchin still hasn't agreed to the specifics of Biden's plan to spend $555 billion to combat climate change.

Senate Majority Leader Chuck Schumer convened a call today with senators who participated in COP26, where they discussed how climate provisions in both bills were well received in Glasgow.

During the call, the senators also strategized about how to get Manchin to agree to Biden's climate provisions — a recognition they have more work to do.

Driving the news: Prices rose 0.9% from last month for an annual inflation rate of 6.2%, according to the Bureau of Labor Statistics.

The president labeled it "worrisome, even though wages are going up."

He told a crowd in Baltimore: "[O]n the good side, we're seeing the highest growth rate in decades, the fastest decrease in unemployment ... since 1950."

White House chief of staff Ron Klain tried to couch Biden's spending plan as a long-term strategy to lower inflation.

"What it does is it makes sure that our federal spending meets the things that families really need: bringing down the cost of child care, bringing down the cost of drugs, bringing down the cost of elder care, bringing down the cost of preschool, cutting taxes for middle-class families," he told CNN's Jake Tapper:

Between the lines: Manchin has been warning about inflation since the summer.

He's argued Congress should take a “strategic pause” on the bigger package until Congress had more time to assess the effects of the nearly $5 trillion COVID stimulus spending in 2020 and earlier this year.

His statements on Wednesday amounted to an I-told-you-so.

“By all accounts, the threat posed by record inflation to the American people is not ‘transitory’ and is instead getting worse,” Manchin said. “From the grocery store to the gas pump, Americans know the inflation tax is real and D.C. can no longer ignore the economic pain Americans feel every day.”

#### Tons of thumpers.

Freddy Gray 11/6, Deputy Editor of The Spectator, “Superbad: Joe Biden’s plummeting presidency,” The Spectator, 11/6/21, https://www.spectator.co.uk/article/superbad-joe-bidens-plummeting-presidency

Poor Joe. He has a lot on his addled mind. He’s been in office for less than a year and his presidency is already a catalogue of crises. On Tuesday, as the President stood on the COP stage in Glasgow, impotently lecturing China and Russia about their absence, another disaster was happening back home. His Democratic party lost the governorship of Virginia, an election widely seen as the first big test of the political temperature in the Biden era. Virginia is increasingly thought of as Democratic territory. This time last year, Biden beat Donald Trump by ten points in the state — so the result looks damning.

Last month, as the polls tightened, Biden decided to invest his own political capital in the race. He joined the Democratic candidate Terry McAuliffe on the campaign trail and tried to brand the Republican challenger, Glenn Youngkin, as a Trumpkin wolf in sheep’s clothing — ‘extremism… can come in a smile and a fleece vest,’ he said.

Biden’s intervention only made a bad situation for the Democrats worse. The fleece-wearing Youngkin was clearly not an extremist. He successfully disassociated himself from red-raw Trumpism. He also picked a culture-war fight and won. He turned education, and the Democrats’ apparent eagerness to brainwash children with critical race theory in schools, into a rallying cause. His opponent moronically said that teachers, not parents, should decide what children learn. Showing even less nous, the National School Boards Association then demanded that protesting parents should be investigated for ‘domestic terrorism’. The Virginia election thus became a ‘nationalised’ battle between American families and Biden’s hyper-progressivist elite. The families won.

It’s silly to read too much into the Virginia result, even if the Democrats also underperformed in other races. Looking ahead to the 2022 midterm elections and beyond, however, the picture for Biden and the Democrats is extremely grim.

America is a lot bigger than Virginia. Yet Biden’s polling has been tanking nationwide. His job approval rating has fallen fairly steadily since he took office, from 55 per cent in January to 43 per cent today. He isn’t quite as unpopular as his predecessor at the same stage in his presidency, but Trump’s popularity bounced off a low base throughout. Biden’s seems so far only to go down. And no postwar president has fallen faster.

The number of Americans who think their country is on the ‘wrong track’ is 71 per cent. The young are giving up on Biden: 43 per cent of 18- to 24-year-olds approve of his job performance, a drop of 20 points since June. Perhaps most alarmingly of all for Democrats, the latest NBC poll found that Republicans now hold an 18-point advantage over their rivals when it comes to ‘dealing with the economy’. That is the highest recorded gap since 1991, when the survey started asking the question.

Americans think a lot about money and are understandably worried about what Biden is doing to the financial universe. He came into power promising to ‘restore the soul’ of their nation through preposterous amounts of government spending. What could go wrong?

Various trillion dollar bills barrelled into Congress. Americans didn’t mind at first. People like receiving large stimulus cheques. Media sycophants hailed Biden’s Build Back Better agenda as the 21st-century answer to Franklin Delano Roosevelt’s New Deal. But Biden was conspicuously vague about how the government would pay for it all — aside from his insistence that the two million Americans who earn more than $400,000 a year might have to cough up. Now Build Back Better is Collapsing Very Quickly as political and fiscal realities catch up with the executive branch. A supply-chain crisis is causing bottlenecks across America and the world. Inflation is biting harder in America than in Britain, and institutions are panicking. The Federal Reserve is this week expected to ‘taper’ its enormous stimulatory bond-buying programme. The Biden administration hopes that once its $1.75 trillion infrastructure bill gets through Congress, the public mood will shift in their favour again. But spend, spend, spend is not always the most sensible political strategy. The Democrats have been squabbling over the bill and the Republicans have done a good job of presenting themselves as the voice of economic sanity.

#### Antitrust harmonization is popular.

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

#### U.S. action alone fails.

I&I 21, Issues & Insights Editorial Board, “There’s Nothing The U.S. Can Do To Affect Global Temperature”, Issues & Insights, 9/7/21, https://issuesinsights.com/2021/09/07/theres-nothing-the-u-s-can-do-to-affect-global-temperature/

“We simulated the environmental impact of eliminating greenhouse gas emissions from the United States completely,” Dayaratna said in testimony.

“Simulation results indicate that if all carbon dioxide, methane, and nitrous oxide emissions were to be eliminated from the United States completely, the result in terms of temperature reductions would be less than 0.2 degrees Celsius, 0.03 degrees Celsius, and 0.02 degrees Celsius, respectively. These temperature reductions would also be accompanied by minuscule changes in sea level rise (less than 2-centimeter reduction).”

This isn’t hard to understand when it’s put next to the fact that more than half of the world’s human greenhouse gas emissions are produced by 25 cities, all but two of them in China, none of them in the U.S.

It’s truly asinine to believe that Washington and our state lawmakers can do anything about greenhouse gas emissions when China and India have been busy building hundreds of coal plants and that, as of last year, 350 coal-fired power plants were under construction worldwide. China – which, we must point out, produces most of the solar panels installed in the West in factories powered by that country’s “mountain” of coal – is not going to yield to John Kerry’s embarrassing begging that it cut emissions. Beijing will do only what it wishes.

#### Warming won’t be catastrophic.

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

## 1AR

### Trade ADV---1AR

#### 4---AFF solves harmonization

Anu 2NC Bradford 7, LL.M. from the University of Helsinki, S.J.D. from Harvard Law School, Henry L. Moses Professor of Law and International Organization at Columbia Law School, Former Professor at the University of Chicago Law School, “International Antitrust Negotiations and the False Hope of the WTO”, Harvard International Law Journal, 48 Harv. Int'l L.J. 383, Summer 2007, Lexis

Finally, even though the conditions surrounding international antitrust cooperation are not presently conducive to negotiating a legally binding agreement, the payoffs available from cooperation may change with time. Dissemination of economic theories underlying antitrust enforcement and informal cooperation among states might gradually reduce existing uncertainty and reconcile divergent preferences among states. The voluntary alignment of preferences is also likely to reduce the costs of cooperation, as states would no longer need to incur significant adjustment costs when bringing their domestic regimes closer to that sought by an international agreement. These developments can be expected to improve the prospects of cooperation in the CGDC situations or to transform a Deadlock into a solvable CGDC.

### K---1AR

#### Value to life is subjective---life is a prerequisite

Lisa Schwartz 02, Chair at the Centre for Health Economics and Policy Analysis, 2002, “Medical Ethic: A Case Based Approach,” Chapter 6, www.fleshandbones.com/readingroom/pdf/399.pdf

The second assertion made by supporters of the quality of life as a criterion for decisionmaking is closely related to the first, but with an added dimension. This assertion suggests that the determination of the value of the quality of a given life is a subjective determination to be made by the person experiencing that life. The important addition here is that the decision is a personal one that, ideally, ought not to be made externally by another person but internally by the individual involved. Katherine Lewis made this decision for herself based on a comparison between two stages of her life. So did James Brady. Without this element, decisions based on quality of life criteria lack salient information and the patients concerned cannot give informed consent. Patients must be given the opportunity to decide for themselves whether they think their lives are worth living or not. To ignore or overlook patients’ judgement in this matter is to violate their autonomy and their freedom to decide for themselves on the basis of relevant information about their future, and comparative consideration of their past. As the deontological position puts it so well, to do so is to violate the imperative that we must treat persons as rational and as ends in themselves.

### Infrastructure DA---1AR

#### Their models are wrong AND adaptation solves

Nils P. Gleditsch 21, Research Professor at the Peace Research Institute Oslo, “This time is different! Or is it? NeoMalthusians and environmental optimists in the age of climate change,” Journal of Peace Research, pg. 5-6, 2021, SAGE. clarification denoted with brackets.

The argument about how climate change may indirectly impact conflict leans heavily on the negative economic consequences of climate change, but with little or no reference to the research that explicitly deals with this topic. In fact, the relevant chapter in AR5 concluded that for most sectors of the economy, the impact of climate change was likely to be dwarfed by other factors. Tol (2018) finds that the long-term global economic effects are likely to be negative, but that a century of climate change will have about the same impact on the economy as the loss of one year of economic growth. Other economists are more cautious, but the dean of climate change economics, William Nordhaus (2018: 345, 359), estimates that ‘damages are 2.1 percent of global income at 3C warming and 8.5 percent of income at 6C’, while also warning that the longer the delay in taking decisive action, the harsher the necessary countermeasures. Stern (2006) is more pessimistic, based mainly on a lower discount rate (the interest rate used to calculate the present value of future cash flows) as are Wagner & Weitzman (2015). Heal (2017) argues that the Integrated Assessment Models generally used in the assessment of the economics of climate change are not accurate enough to provide quantitative insights and should not be taken as serious forecasts. Yet, all these economists take the basically optimistic view that climate change is manageable with appropriate policies for raising the price on the emission of greenhouse gases. With a chapter heading from Wagner & Weitzman (2015: 17): ‘We can do this’.

This more optimistic assessment of climate change does not assume that the challenge will go away by itself or can be left to the market. A plausible approach, favored by most economists,10 is the imposition of a robust and increasing price on carbon emissions (whether as a carbon tax or through a cap and trade scheme) high enough to reduce the use of fossil fuels and encourage the search for their replacement. More than 25 countries had such taxes by early 2018 (Metcalf, 2019), but generally not at a level seen as necessary for limiting global warming to, say, 2C. This approach relies on the use of the market mechanism, but with targets fixed by public policy. Income from a carbon tax can be channeled back to the citizens to avoid increasing overall taxation. To speed up the transition, funds can also be allocated to the research and development of cheaper and more efficient production of various forms of fossil-free energy, including nuclear power (Goldstein & Qvist, 2019).

The response of the environmental optimists continues to emphasize the role of innovations; technological innovations, such as improvements in battery technology, the key element in the 2019 Nobel Prize in chemistry,11 but also social innovations, as exemplified by the experimental approach to the alleviation of poverty, rewarded in the same year by the Nobel Prize in economics.12

While the most important countermeasures will be directed at the mitigation of climate change, there is also a strong case for adaptation. If sea-level rise cannot be totally prevented, dikes and flood barriers will be cost-effective and necessary, at least in high-value urban areas. If parts of Africa suffer from drought, there will be increased use for new crops that are more suitable for a dry climate, possibly developed in part by GMO technology. Industrialization in Africa can decrease the one-sided reliance on rain-fed agriculture, as it has in other parts of the world, which have moved human resources from the primary sector to industry (and then to services). Continuing urbanization will move millions out of the most vulnerable communities (Collier, 2010). While structural change failed to produce economic growth in Latin America and Africa after 1990, Africa has experienced a turnaround in the new millennium (McMillan & Rodrik, 2014) and there are also potentials for increasing productivity by structural change within agriculture in Africa (McCullough, 2017).

#### It’s fraught with delays by a host of external factors.

Jason Linkins 11-13, Deputy Editor, The New Republic, "Here’s How the Build Back Better Act Will Get Enacted," New Republic, 11/13/2021, https://newrepublic.com/article/164386/build-back-better-act-will-get-enacted.

Throughout several months of intense negotiations, progressive Democrats have insisted on bringing the Build Back Better Act, or BBB, to a vote before the bipartisan infrastructure bill. Their strategy has rested on the not-implausible belief that conservative Democrats might withhold support for President Biden’s social provision bill if infrastructure got enacted first. Much like the parents of squalling children, progressives implored everyone to finish their dinner before moving on to dessert.

But last week, a sufficient number of Build Back Better’s guardians relented and allowed the infrastructure bill to pass in the House, thus relinquishing their leverage. So what’s in store now for the BBB, the $1.75 trillion social spending package that includes critical provisions for childcare, health, and saving our planet? I was initially skeptical that it had a future, but perhaps this is unnecessarily cynical. After all, the BBB has stuck it out this long and is still slouching toward the Oval Office. If we’re throwing in the towel, we should at least base it on a realistic analysis of what external forces may determine its future. So let’s examine if any such forces exist.

We can start with some good news: Soon after passing the infrastructure bill, the House Democrats who’d previously opposed Biden’s social spending plan agreed to back a procedural vote to queue up a House vote on the BBB and pledged to vote on it no later than November 15. Securing this pledge was apparently vital to ensuring that progressives approved the infrastructure bill. Sure, there’s no real enforcement mechanism to keep that pledge in place, and some of the obstructionists, like Representatives Josh Gottheimer and Kurt Schrader, have already made other promises to corporate interests seeking to undermine the BBB. But people can change, right?

Of course, in keeping with the Spirit of Infrastructure, these once (and perhaps future) Democratic holdouts have built themselves an off-ramp. These lawmakers made it clear that they’ll want the Congressional Budget Office to ensure “that this bill is paid for and does the responsible thing fiscally,” as Gottheimer put it. It’s hard to know what this means in practice, but the House holdouts have agreed to “resolve any discrepancies” should they arise from the CBO’s analysis.

But even if the House’s BBB skeptics decide to vote for the bill, there is another force at work: the relentless march of time. As CNN reported this week, the CBO initially stated that it couldn’t predict when it would be able to release its conclusions on the bill. Since then, though, it’s given lawmakers something to work with, releasing some preliminary estimates. But a complete take from Washington’s budget metaphysicians remains elusive, jeopardizing the hoped-for November 15 vote.

There could be other delays, too. Should the agency’s analysis cause more consternation, House Democrats will have to spend additional time in negotiations. Further reporting from Politico suggests that Senate Democrats are also very antsy about the need to pass a long-delayed defense spending bill ahead of the BBB. And in early December, Democrats will once again have to resolve the debt ceiling to prevent economic calamity. All of these factors threaten to push the BBB close to 2022, when lawmakers go into midterm mode and get real, real skittish about passing major legislation.

Still, Democrats have been facing these deadline challenges all along and are resolved to get the BBB out of the House and send it back to the Senate, where—oh, snap!—Joe Manchin awaits. The West Virginia senator, who is icy toward a bill that stands to help his constituents, hasn’t made any pledge to pass the BBB. Now that he’s got the version of the infrastructure bill he wanted (and which he stands to profit from personally) enacted, Democrats no longer have any meaningful leverage over him. And Manchin, who had taken the view that there ought to be a “pause” on further spending, has new concerns about inflation.

There is also, of course, another senator to consider: Kyrsten Sinema, who is not so much a “lawmaker” as an agent of chaos with inscrutable motivations. Sinema has at least expressed support for the recently included immigration measures stuffed into the BBB—good news, provided those policies survive the Senate parliamentarian’s red pen. However, the larger problem, as The New Republic’s Michael Tomasky noted, is that neither Sinema nor Manchin seems to believe that their political fate is tied to the success of Biden’s agenda or his presidency. Could be a problem in convincing them to budge on, well, anything!

Nevertheless, there remains a path to the successful passage of the Build Back Better Act. As long as (deep breath), House holdouts stick to their unenforceable pledge, the CBO doesn’t throw a spanner in the works, the Democrats sort out their impressively daunting honey-do list in a timely fashion, and Manchin and Sinema become unbeguiled from whatever political considerations currently entrance them, the Biden agenda will sail into being, and then all we’ll have to worry about is … well, you know—the failure to pass a voting rights bill and a hostile Supreme Court.

#### Either the CBO report thumps, or proves uniqueness overwhelms.

Alan Fram 11-12, Reporter, NBC, "With Democrats Prized Bill at Stake, a Numbers Game Looms Ahead," NBC Bay Area, 11/12/2021, https://www.nbcbayarea.com/news/politics/with-democrats-prized-bill-at-stake-a-numbers-game-looms-ahead/2731169/.

Like Hercules and his 12 labors, Democrats’ $1.85 trillion package of social and climate initiatives seems afflicted by a maddening parade of hurdles. Looming ahead is the Congressional Budget Office, which could cause problems that would be messy but probably surmountable.

The office, created in 1974 as Congress' nonpartisan fiscal scorekeeper, is working on a 10-year cost estimate of the bill and its component spending and tax proposals. The key question politically is how close the measure comes to paying for itself with savings, like President Joe Biden and top Democrats claim it does.

Here's a guide to understanding the numbers blizzard that CBO is about to unleash:

A BIG DEAL FOR MODERATES

After months of backbiting and bargaining among Democrats, House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer are confronting the same stubborn problem. Facing unbroken Republican opposition, Democrats can lose no votes in the Senate and just three in the House to pass their mammoth bill.

That gives Sen. Joe Manchin, D-W.Va., and his moderate House counterparts significant leverage. Among other things, the centrists want the measure's savings — chiefly tax increases on wealthy people, big corporations and companies doing business abroad — to fully pay for its family services, health care and environment programs.

Five moderates blocked the House from voting on it last week. They demanded to first see CBO's official estimate of the bill, mainly to see if the agency thinks it would worsen already huge federal deficits. Many centrists are from districts where accusing Democrats of aggravating budget shortfalls is easy fodder for GOP campaign attacks.

In a compromise with progressives, the centrists said they'd vote for the bill if CBO figures are “consistent” with preliminary White House estimates asserting that the measure paid for itself. They promised to try resolving “discrepancies” if CBO’s numbers were worse.

Pelosi, D-Calif., hopes to finally push the measure through her chamber next week. The Senate is certain to change the bill and its work will take longer.

WILL CBO'S NUMBERS HELP DEMOCRATS?

Maybe, eventually.

The budget office has released estimates on pieces of the 2,100-page legislation. It has promised overall figures “as soon as practicable, but the exact timing is uncertain.”

That means a complete score on the bill may not be ready next week.

If that's the case, would House moderates accept partial CBO numbers or cost estimates from another source? Demand fresh assurances from Biden and Pelosi? Insist on changing the bill, or delaying it again?

That's unclear. Concerns about worsening inflation may only intensify moderates’ qualms.

In a reassuring report for Democrats, Congress' Joint Committee on Taxation, which works with CBO and produces nonpartisan estimates about tax legislation, said last week the measure would raise $1.5 trillion in new revenue over the next decade. That alone would cover most of the legislation's cost.

Yet there's another complication.

DUELING NUMBERS

Unlike the White House's early estimate, CBO's score may show the bill isn't fully paid for. It follows stricter rules for making calculations than the White House, which — no matter which party holds the presidency — almost always produces rosier numbers than CBO.

For example, the White House estimated that by increasing IRS tax enforcement, mostly aimed at the highest earners, by $80 billion over 10 years, the bill would raise $480 billion in additional revenue.

Under guidelines CBO follows, it's not expected to credit the bill with any savings from tougher tax audits. In any event, the budget office projected in September that giving the IRS $80 billion would yield just $200 billion in additional revenue.

BUT REMEMBER, THIS IS CONGRESS

Even if CBO's numbers aren't great, there's reason to believe the bill would survive. When lawmakers have reached a political consensus to do something, bad budget numbers seldom upend it.

Democrats know that sinking legislation carrying Biden's top domestic priorities would threaten disaster in next year's congressional elections. At key moments like that, Congress is renowned for its political and budgetary dexterity.

Though CBO's numbers determine a bill's official price tag, Democrats could simply talk instead about better figures from the White House or elsewhere to paint a brighter fiscal picture. That's what Republicans did in 2017 when they claimed their huge tax cut would pay for itself, even though CBO projected it would worsen deficits by well over $1 trillion.

If the bill's savings fall short but Democrats find the political payoff for passage irresistibly strong, they might decide to swallow some red ink and insist the bill would bolster the economy. CBO said the bipartisan $1 trillion infrastructure bill, which Biden plans to sign Monday, will increase deficits by $256 billion over the next decade, but almost all Democrats and some Republicans backed it anyway.

If needed, Democrats could tweak some of the measure's tax provisions to raise more revenue. Moderates could try forcing progressives to accept additional spending reductions in a bill that's already been squeezed down from an earlier $3.5 trillion price tag. That would encounter stiff resistance from progressives who say they've compromised enough.

AND THEN THERE ARE GIMMICKS

The huge bill has plenty of provisions that help keep its price tag in check.

Many of its priorities don't start immediately or are temporary, even though Democrats hope they'll eventually be made permanent. Since the cost of legislation is measured over 10 years, that effectively makes those programs seem more affordable.

More generous tax credits for children and many low-income workers are extended for just one year. Subsidies for buying private health insurance would last four years, while free universal pre-school and bolstered child care benefits would run for six years. New Medicare hearing benefits would begin in 2023, paid family leave in 2024.

The nonpartisan Committee for a Responsible Federal Budget, which advocates fiscal discipline, has estimated that the measure's overall price tag could exceed $4 trillion if its temporary programs were made permanent.

#### He has no PC.

Miranda Devine 11/10, Australian columnist for the Sydney Morning Herald, B.S. in Mathematics from Macquarie University, M.S. in Journalism from Northwestern University, “A President doesn't lie about good policy,” The Daily Telegraph, 11/10/21, Lexis

But the $4 trillion social welfare bill Biden tried to link to it is hostage to the Democrats' wafer thin majority and dwindling political capital.

As energy prices soar, heading into a forecast bitter winter, Biden is talking about shutting down another gas pipeline from Michigan to Canada, to the dismay of everyone except hardcore progressives in his party.

And to cap it all off, the Democrats copped a shellacking in elections across the country which are seen as a harbinger of the mid-term races next year when Republicans expect to take back the House and the Senate and leave Biden as a lame duck - if he lasts so long.

So, it's fair to say things haven't been going well for the President ­lately.

In fact, voters have already had enough of him, 10 months into his presidency. A new USA Today/Suffolk University poll asked voters to name the single most important thing for Biden to do in the next year.

The top response was "Resign or Retire".

Ouch.

His approval rating in that poll has dropped to 38 per cent, amid concerns about inflation, the economy and ­illegal migration. The only consolation is that Kamala Harris, his cackling Vice President, is even more unpopular, at 28 per cent, so no one is speaking seriously of a palace coup, despite Biden's woes.

Even though nearly two-thirds of Americans say they don't want him to run for a second term in 2024, he seems oddly insouciant about the ­parlous state he is in, even bantering on Monday with a basketball team owner about running for a second term, when he will be 82.

While hip pocket issues are uppermost on voter minds, the border crisis is a running sore that his administration has resorted to lies and trickery to hide it.

#### It’s packed AND defense spending is on top.

Burgess Everett 11/9, Co-congressional bureau chief for POLITICO, specializing in the Senate, B.A. in Journalism from the University of Maryland; Marianne Levine, reporter for POLITICO specializing in the Senate, B.A. in International Relations and French from Stanford University, M.A. in Communication and Media Studies from Stanford University, “The Senate’s year-end to-do list is ‘going to be a train wreck’,” Politico, 11/9/21, https://www.politico.com/news/2021/11/09/senate-dems-year-end-train-wreck-520275

The Senate is only scheduled to be in three weeks for the rest of 2021, with a recess set to start Dec. 10. There's almost no chance that schedule holds at this point, with the Democratic majority facing a to-do list more daunting than a Black Friday sales rush. Congress has to fund the government past Dec. 3, pass a massive defense policy bill, finish out a $1.75 trillion party-line social spending bill and potentially maneuver around a U.S. credit default.

Each of those four bills could take several days of Senate floor time, not to mention the myriad negotiations still left to hash out Biden's GOP-free domestic agenda with Sen. Joe Manchin (D-W.Va.), who wants to slow things down. Already some senators are anticipating a short-term government funding patch for a few weeks, potentially right up until Christmas. And in a worst-case scenario, the debt limit would need to be raised right around that same time - something Republicans say they won't help with.

"It's going to be a train wreck," surmised Sen. John Thune (R-S.D.), the minority whip.

Of course, last year's Republican Senate was barely better - passing a spending deal in late December and having to work on New Year's Day 2021 to finish the defense authorization bill. But the better parallel to this year's coal-lumped holiday season might be 2009, when then-Majority Leader Harry Reid (D-Nev.) leveraged the holidays to pass the Affordable Care Act on Christmas Eve. That included holding a Saturday session during a driving snowstorm, the type of work that focuses lawmakers on getting out of Washington as soon as possible.

While Democrats still sound bullish on closing out their social safety net and climate measure by Thanksgiving, 2022 may be the real hard deadline. That's when Democrats' expanded child tax credit expires anyway - and when lawmakers will really, truly be desperate to get home after months of protracted negotiations.

"We'll finish most of our work by December 31," said Sen. Ben Cardin (D-Md.).

Senate Majority Leader Chuck Schumer was publicly eyeing Monday as the date his chamber would take up the social spending bill. But that timeline is no longer feasible, after House Democrats pushed their vote on the long-planned bill until that week, amid demands from moderates for a score from the Congressional Budget Office.

Prior to leaving for this week's recess, senators acknowledged it's possible they consider the defense policy bill before the social spending bill instead, given some of the outstanding hiccups they face finishing out Biden's agenda.

Already, the Senate is delaying the defense bill much later than usual. It's one of the few pieces of legislation that regularly passes Congress every year, usually with a strong bipartisan vote. And some senators have relayed their concerns about the delay to Schumer.

Sen. Jon Tester (D-Mont.) said that the defense bill would come "up the first day we're back" next week, "which is good."

"We will go to the reconciliation bill sometime" after that, Tester added. "But I think it's going to take a while."