# 1NC---Round 8---NDT

## OFF

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#### Sohn will be confirmed due to a Dem push---that’s key to net neutrality

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Under pressure from progressive activists, Democrats are planning to employ a rarely used parliamentary maneuver to push through President Biden’s nominees for the Federal Trade Commission and Federal Communications Commission, according to people familiar with the matter.

Republicans on the Senate Commerce Committee have so far blocked the nominations of Georgetown University law professor Alvaro Bedoya to the FTC and consumer advocate Gigi Sohn to the FCC, largely on grounds that they are too partisan.

That left both commissions deadlocked with a 2-2 split between Democrats and Republicans, denying agency leaders the majorities they needed to advance the Biden administration’s priorities.

In response, Senate Democratic leaders are preparing to use a parliamentary maneuver known as a discharge petition to allow a floor vote on both nominees, the people familiar said.

The vote for Mr. Bedoya could happen as early as this week, the people familiar said. But the maneuver could be difficult to pull off and could take weeks to accomplish.

A majority vote of the Senate is required to advance the discharge petition and bypass a committee vote. Without Republican support—and so far at the committee level there has been none—that means all 50 Democratic-voting members along with Vice President Kamala Harris must be present to support the petition.

Covid-19 exposures and infections have complicated the Democrats’ effort. In the latest holdup, Sen. Bob Casey (D., Pa.), said March 22 that he had tested positive and would be isolated for five days.

But if Senate Democrats stay healthy this week, the discharge petition could be successfully deployed for Mr. Bedoya, the people familiar with the matter said.

The FTC is considered the higher-stakes vote by both parties. Under Biden-appointed chair Lina Khan, the FTC is expected to advance comprehensive consumer-privacy protections as well as detailed standards for judging whether industry competition is fair. FTC actions also could include new antitrust lawsuits challenging big companies’ dominance.

Many of the actions likely would target the tech industry, which Ms. Khan has criticized for years.

Mr. Bedoya’s work has focused on problems around facial recognition software and other technology that can disadvantage minorities. He declined to comment.

The U.S. Chamber of Commerce—which receives backing from major tech companies—has been so concerned that it publicly declared “war” on the FTC and Ms. Khan’s agenda late last year.

“It feels to the business community that the FTC has gone to war against us, and we have to go to war back,” Suzanne Clark, the chamber’s president and chief executive, said at the time.

Republicans also have chafed over the way Ms. Khan was appointed. Mr. Biden named her FTC chairwoman only after her Senate confirmation as a commissioner. Typically an agency chair is designated as such at the time of nomination, leading some conservatives to label the move a bait-and-switch.

Allies say opposition to Mr. Bedoya has little to do with his qualifications and instead is aimed at derailing the FTC’s regulatory agenda.

“The Republicans are simply trying to keep the FTC deadlocked, without a fifth commissioner, for as long as they can,” said David Vladeck, a former head of the FTC consumer protection bureau during the Obama administration, who is also a Georgetown law professor.

Ms. Khan has said in the past that big internet platforms have helped to create addiction, discrimination and predatory advertising, which she has compared to environmental pollution.

She recently said that the FTC’s regulatory agenda for 2022 would focus on those problems stemming from big tech platforms and the surveillance-based internet economy they have helped build up.

Gigi Sohn has drawn Republican criticism for tweets on political topics.

“Among the many pressing issues consumers confront in the modern economy, the abuses stemming from surveillance-based business models are particularly alarming,” the commission wrote.

The chamber, meanwhile, has followed through on its threats, employing its lobbying resources to focus on defeating the FTC initiatives.

Its lobbying disclosures for late 2021 show that it lobbied on the “overall direction of the Commission,” as well as “policies and practices related to the FTC expanding its authority” and the agency’s strategic plans for coming years.

As Mr. Bedoya’s selection for the FTC was being debated in the Senate, the chamber also lobbied in late 2021 on “nominations at Federal Trade Commission,” according to its disclosures, without providing details.

Several Republicans have argued that Mr. Bedoya’s past tweets on political topics such as immigration show him to be a Democratic partisan who would further polarize the FTC.

“I remain concerned by the frequency with which he has publicly expressed divisive views on policy matters rather than using a more measured and unifying tone,” Sen. Roger Wicker (R., Miss.), the Commerce Committee’s top Republican, argued before a vote on Mr. Bedoya’s nomination in early March.

“There has been a troubling trend of politicization at the FTC which we have not had in the past and I fear Mr. Bedoya would not bring the cooperative spirit that is so greatly needed.”

The vote was a tie, 14-14.

Democrats also hope to use the parliamentary maneuver to gain a floor vote on Mr. Biden’s nominee for the FCC, Ms. Sohn.

Ms. Sohn served as counselor to former FCC Chairman Tom Wheeler and led Public Knowledge, a public-interest group that advocates for stronger antitrust enforcement.

The outspoken progressive consumer advocate has drawn GOP fire for tweets on political topics that conservatives view as partisan—for example, tweeting that Fox News amounts to “state-sponsored propaganda” because of a lack of opposing viewpoints.

Fox News parent Fox Corp. and Wall Street Journal parent company News Corp share common ownership.

Ms. Sohn declined to comment. Progressives view her confirmation as important to a number of FCC priorities, including expanding access to broadband and re-establishing net-neutrality rules, which require internet service providers to treat all internet traffic equally. She also has drawn support from some conservative businesspeople and activists.

#### The plan trades-off

Peter C. Carstensen 21, Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School, LL.B. from Yale Law School, MA in Economics from Yale University, “The “Ought” and “Is Likely” of Biden Antitrust”, Concurrences – Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Net neutrality prevents global internet balkanization

Ido Kilovaty 17, Research Scholar in Law, Cyber Fellow at the Center for Global Legal Challenges, and Resident Fellow at the Information Society Project at Yale Law School, LL.B. from the Hebrew University of Jerusalem, LL.M. from the University of California, Berkeley, School of Law, and S.J.D. from the Georgetown University Law Center, “Repealing Net Neutrality, National Security, and the Road to a Dictatorial Internet”, Harvard Law Review Blog, 12/22/2017, https://blog.harvardlawreview.org/repealing-net-neutrality-national-security-and-the-road-to-a-dictatorial-internet/

On Thursday, December 15, 2017, the Federal Communications Commission (FCC) voted to repeal the Open Internet Order, often referred to as “net neutrality.” This should be no less than a bombshell, as the Internet was originally conceived as a free and open platform, not governed by economic interests, where service providers are neutral as to the data packets flowing through their infrastructure. To solidify that notion, Obama administration rules prohibited internet service providers from discriminating between different websites or services based on whom they wish to promote for financial, ideological, or other reasons. But this net neutrality concept is now being reversed, and we should be thinking about it as no less than a regime change, leading us towards a dictatorial, and potentially not so safe, Internet.

This is not a moment to herald the passing of the Internet entirely. The Internet is still going to be a significant part of our daily lives. However, we are about to witness a true regime change of the Internet. With the FCC’s repeal of net neutrality, the United States, being the leader and proponent of a free and global Internet for at least two decades, is about to create a dictatorial Internet.

This significant Internet regime change could have two important implications, both less intuitive than the commonly discussed consumer-focused concerns. First, internet giants will further consolidate their power, thus increasing our dependence on their services. Subsequently, it could increase their susceptibility to foreign information operations, and potentially pressure them to increase censorship and restrictions on speech, stemming from this national security concern. Second, this will result in an Internet that is less global, encouraging authoritarian regimes to further restrict their own internet, for ideological and political ends.

Consolidation of Power and National Security

Internet giants such as Facebook, Twitter, Amazon, YouTube, and Google, are already in control of a substantial portion of our content consumption, communication, and data hosting activities. It is already difficult for new players to successfully compete against these established Internet players. Without net neutrality, we are about to become even more dependent on these platforms, because they are the ones who will be able to afford more bandwidth and thus be able to block new players from competing under the same rules. This could lead to serious impediments to free speech, but more importantly – new speech and innovation.

But this particular problem goes even further. Consider the Russian meddling in the U.S. presidential election of 2016. The reason why the Russians have been so successful in achieving their goal is due to our already existing dependence on these platforms. Facebook, Google, and Twitter recently came under fire for not acting on the Russian disinformation campaigns on their respective platforms that directly flows from their influence on large groups of people.

Consider this – the Russian disinformation and meddling campaigns took place when net neutrality was still the rule. Whereas repealing net neutrality will result in these Internet giants potentially consolidating their power, which would mean that even more Internet users would be dependent on their almost exclusive services and content, given the convenience of ISP prioritization allowed by the repeal. A post-net neutrality reality will amplify the effects of foreign governments who would attempt to interfere with U.S. internal affairs. Such a scenario could pressure these leading tech giants into censoring and limiting speech allegedly to protect national security interests, to prevent additional foreign meddling.

Such restriction would be in addition to the more intuitive adverse impact on speech with the repealing of net neutrality. This intuitive impact is due to the anticipated prioritization of certain platforms of speech, following the repeal of net neutrality, meaning that no speech will be created equal online. Thinking about the non-intuitive national security implications of the net neutrality repeal described in this section should raise the concern and opposition of other agencies and departments responsible for cybersecurity and national security.

Finally, FCC Chairman, Ajit Pai, has previously claimed that net neutrality provides an excuse for authoritarian states to further isolate their Internet from the global grid. However, repealing net neutrality, and backing off from promoting the Internet as a global and free platform of ideas, will lead to the same. In fact, it will serve as a model for these regimes, whether for commercial or ideological reasons. The result is the same – certain portions of the Internet will be effectively censored.

“Balkanized” Internet

Balkanization of the Internet is a phenomenon that has been discussed over the years, particularly in the context of China, and its approach to Internet governance. The Chinese government has been consistently working on ensuring that the flow of information is heavily controlled, and that the Internet in China is regulated in line with ideological and economic interests. Other countries, like Brazil, have followed suit, particularly in the aftermath of the Snowden revelations. When certain governments are interventionist and paternalistic, the Internet varies from country to country, meaning that transnational communications and information exchanges could be significantly restricted.

With net neutrality about to become a thing of the past, the role of the U.S. as a champion of a free and global internet, where information is flowing across borders and free expression is a central aspect, is diminishing. This should alarm every single one of us, because there is potentially no equivalent leader to assume the role of the champion of a free and global Internet. In Canada, for example, recent Supreme Court decision could have far-reaching implications on the freedom of the Internet. The Court ruled that Google is under obligation to remove search results globally if they hold information pertaining to an ongoing patent infringement trial. Similarly, the European Court of Justice is considering whether EU’s right to be forgotten could apply to search results outside of EU borders. This shows that states are pushing for their conflicting Internet narratives, with potential global implications, while the U.S. is repealing its net neutrality principles, which would remove it from its role of leading the idea of a free and open internet across the globe. This gap in value-driven leadership could reshape the Internet for the decades to come, with voices to regulate and balkanize the Internet becoming louder throughout the world.

#### Extinction

Dr. Nick Merrill 20, Director of the Daylight Lab at the UC Berkeley Center for Long-Term Cybersecurity, PhD from UC Berkeley’s School of Information, and Dr. Konstantinos Komaitis, Senior Director for Policy Strategy and Development at the Internet Society, PhD in Information Technology and Telecommunications Law from the University of Strathclyde, “The Consequences of a Fragmenting, Less Global Internet”, Brookings Institution – Tech Stream, 12/17/2020, https://www.brookings.edu/techstream/the-consequences-of-a-fragmenting-less-global-internet/

But the global internet is now under existential threat from fragmentation. And the problem with fragmentation is that it puts global cooperation at risk, as differences in the internet across borders are predictive of international trade and military relations, according to research conducted as part of the University of California, Berkeley Daylight Security Research Lab.

Such findings should recast discussions about internet fragmentation. Internet fragmentation does not concern narrowly the “free” movement of information (an ideal that has never been fully accomplished), nor does it merely challenge the internet’s “distributed” design, another ideal whose implementation has only ever been partial. Rather, a fragmenting internet is representative of and has the possibility of contributing to a fragmenting world order.

Such analysis of a fragmented internet looks at different layers of the internet “stack”—the building blocks that cobbled together comprise the internet—to quantify, for example, how similar France’s internet is to that of Germany, Canada, or Thailand. Using these country-to-country comparisons, we produce a network graph, with each country related to every other in a web of national internets that are, more or less, interoperable with one another. The graph reveals clusters that correlate with everything from military alliances to trade agreements—even to political principles such as freedom of speech. For example, content blocking patterns in European Union countries are significantly more similar to one another than they are to non-EU countries. The same is true of NATO countries.

Notably, these findings do not indicate that blocking policies cause, for example, freedom of speech to decline. Nor that restrictions on free speech cause a country to block websites. Rather, they indicate that website blocking patterns—the types of websites a country blocks—reveal information about a country’s position on the global stage.

In one sense, the strength of that relationship is unsurprising. The internet is, and has always been, both a product and a driver of political realities on the ground. From the role it played during the Arab Spring in 2012 to the way it has been used as a tool to interfere with the U.S. elections in 2016, the internet is a powerful tool for driving political change.

Internet fragmentation has always existed, but the fact that the internet has evolved the way it has, becoming global, is evidence that interoperability is more than just aspirational. World-scale collaboration, while difficult, is possible. It is as possible now as it was in the late 20th century.

Interoperability opens doors to participation and invites collaboration. To this end, the internet, and the threats to its operation as a global system, are a continuous invitation to work together. Not to agree, per se, but to agree to continue talking. To continue speaking the same proverbial language. Interoperability is not an end in itself. It is a means toward achieving shared goals. As cross-border goals emerge, from containing COVID-19 to battling climate change, interoperable ways of observing and discussing the world become more crucial.

Moving forward, policymakers must safeguard the fundamental interoperability of the global internet. Rules and legislation should prevent fragmentation, enshrining the principles of a decentralized network made from open, interoperable components. As our research shows, the rewards for doing so come in trade, military alliance and social freedoms.

To get to these regulations, policymakers must understand the internet’s ecosystem. Climate change provides an illustrative example: Cooperation is necessary, but action is impossible without understanding.

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#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Limits---many standards, requiring distinct answers, make the topic unmanageable.

#### Ground---fringe standards dodge links and allow bidirectional permissiveness.

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#### The United States federal government should require that anticompetitive private sector collective bargaining exemptions contain sunset provisions. Upon review, the United States federal government should determine that anticompetitive private sector collective bargaining exemptions are to be approved only if they serve procompetitive purposes not already protected in the Sherman Act.

#### That solves---subjecting exemptions to sunsets forces reconsideration and eventual removal.

Roberti et al. 18, Partner at Allen & Overy LLP, former Staff Attorney for the Federal Trade Commission, J.D. from NYU Law; Kelse Moen, Associate Attorney at Allen & Overy LLP, J.D. from Cornell Law School; Jana Steenholdt, Associate Attorney at Allen & Overy LLP, J.D. from The George Washington University Law School, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law,” United States Department of Justice Roundtable on Exemptions and Immunities from Antitrust Law, 03-14-2018, https://www.justice.gov/atr/page/file/1042806/download

Due to these problems, the ABA Section of Antitrust Law has expressed skepticism about antitrust exemptions. The most recent statement of the Section's position was outlined in its Statement in Opposition to three proposed healthcare reform bills of 2011, which sought to allow health care providers to join together to agree on price and service terms. 11 The bills were intended to grant healthcare providers the same power of collective action that healthcare insurers already enjoyed under the McCarran-Ferguson Act. In opposition to this expansion of anticompetitive activity, the Section offered Congress a four-part test to determine when exemptions are appropriate:

First, Congress should grant antitrust exemptions and immunities rarely and only after rigorous consideration of the impact of the proposed exemption or immunity on consumer welfare. Second, Congress should only grant those exemptions and immunities that are drafted narrowly, so that competition is reduced only to the minimum extent necessary to achieve the intended goal. Third, Congress should enact antitrust exemptions and immunities only when the proposed exemption or immunity achieves a Congressional goal that significantly outweighs the aims of the antitrust laws in a particular situation. Finally, the Section proposes that no exemption or immunity should be granted or renewed unless it contains a sunset provision. 12

By requiring Congress to pass new exemptions only after “rigorous consideration,” this test would discourage the passage of most new exemptions in the first place. It also would sharply cabin the scope of any new exemption that Congress did pass, by insisting that new exemptions are “drafted narrowly,” that they achieve significant non-antitrust goals, and that they contain sunset provisions. This is in keeping with the ABA’s general position that, aside from being economically unjustified, many antitrust exemptions do not serve procompetitive purposes that are not already protected through the existing and much simpler Sherman Act.13

#### It avoids controversy.

Anne McGinnis 14, J.D. from the University of Michigan Law School, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, Vol. 47, No. 2, 2014, <https://repository.law.umich.edu/mjlr/vol47/iss2/7>

This reform allows non-partisan experts in antitrust law to examine existing exemptions and make recommendations regarding their continued utility. It then places the burden on supporters of an exemption to demonstrate, to the GAO and to Congress, why the exemption is still necessary. Because this solution requires minimal congressional action, it will hopefully limit the risk of political deadlock. Further, because it would mandate full committee hearings only on exemptions that remain useful, it would allow the docket of exemptions to be cleared with little wasted congressional time. Additionally, because the solution would require Congress to act affirmatively to retain a statutory exemption, the default would switch from perpetuating every exemption—regardless of effectiveness—to automatic sunset of all exemptions absent clear congressional intent to preserve specified ones.

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#### ‘Prohibitions’ and ‘practices’ are plural, requiring more than one

Oxford 21 – Oxford Online Dictionaries, ‘plural’, https://www.lexico.com/en/definition/plural

1Grammar

(of a word or form) denoting more than one, or (in languages with dual number) more than two.

postpositive ‘the first person plural’

#### ‘The’ private sector refers to the group as a whole

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

—used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

*the* elite

#### It’s the entire segment

US Code 21 – “2 U.S. Code § 658 – Definitions”, https://www.law.cornell.edu/uscode/text/2/658#9

(9) Private sector

The term “private sector” means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

#### The plan only regulates a subset of industry

#### Vote neg---it’s key to limits and ground: forcing economy-wide change creates unique links and large-scale action AND avoids a proliferation of tiny industry cases with no good generics

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#### The 50 state governments and relevant sub-federal territories, in coordination through the National Association of Attorneys General, should:

#### ---prohibit anticompetitive private sector collective bargaining business practices in the United States;

#### ---revoke relevant charters if private sector collective bargaining business practices continue to be anticompetitive.

#### State action solves, won’t be preempted, and causes federal follow-on

Juan A. Arteaga 21, Partner at Crowell & Moring LLP, Former Senior Official in the Antitrust Division of the US Department of Justice, JD from Columbia Law School, and Jordan Ludwig, Counsel in the Antitrust Group at Crowell & Moring LLP, JD from Loyola Law School, “The Role of US State Antitrust Enforcement”, Private Litigation Guide – Second Edition, Global Competition Review, 1/28/2021, https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[15] During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[16]

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[17] State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[18]

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

* The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[24]
* In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[19] After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[20] Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[21] and filing submissions that argued against the states’ requested injunction.[22] Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[23]
* None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[25] In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[26]
* After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[27]

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[28]

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#### Bedoya’s nomination as FTC Commissioner will pass and end immigrant surveillance

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On Sept. 13, 2021 President Biden nominated Alvaro Bedoya as a Commissioner to the Federal Trade Commission (FTC). If confirmed, Bedoya would replace the recently departed Commissioner Rohit Chopra who now heads up the Consumer Financial Protection Bureau. As a privacy expert, Bedoya will provide a fresh perspective to the agency charged with antitrust enforcement and consumer protection.

Bedoya was born in Peru and grew up in upstate New York. He earned his B.A. from Harvard College and his J.D. from Yale Law School where he received the Paul & Daisy Soros Fellowship for New Americans. After graduating from law school, he spent two years as an associate at WilmerHale before departing to work in the U.S. Senate. A long-time aide to Sen. Al Franken, Bedoya was the first chief counsel for the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. During his tenure he worked on the USA FREEDOM Act and other privacy and surveillance issues related to biometrics and location tracking. Those who worked with Bedoya on Capitol Hill characterize him as willing to engage with industry and to maintain an open dialogue. See Margaret Harding McGill, Privacy Advocate Will Be New Big Tech Threat at FTC, Axios (Sept. 14, 2021).

Currently, Bedoya serves as the founding director of the Center on Privacy and Technology at Georgetown Law, a think tank focused on privacy and surveillance and their impact on civil rights. He is also a visiting professor at Georgetown Law. His nomination to the FTC comes at a time when data privacy and data security—and their impact on competition and civil rights—have emerged as pressing issues in Washington. In a statement that congratulated Bedoya on his nomination and touted his expertise, FTC Chair Lina Khan noted that Bedoya’s “expertise on surveillance and data security and his longstanding commitment to public service would be enormously valuable to the Commission as we work to meet this moment of tremendous need and opportunity.” See Press Release, Fed. Trade Comm’n, Statement of FTC Chair Lina M. Khan on the Nomination of Alvaro Bedoya to Serve as a Commissioner (Sept. 13, 2021).

Bedoya on Privacy

In 2016, Bedoya and a team from the Georgetown Center on Privacy and Technology released a report studying police use of facial recognition programs across America and proposing policy recommendations. See Alvaro Bedoya et al., The Perpetual Line-Up: Unregulated Police Face Recognition in America, Ctr. on Priv. & Tech. (Oct. 18, 2016). According to the report, one in two American adults—or 117 million people—are in a police facial recognition database. Id. The report exposed the existence of few guardrails to prevent the programs’ misuse or to ensure the accuracy of the databases, and highlighted the disproportionate impact facial recognition programs have on people of color, particularly African Americans. Id.

Bedoya’s academic writings have focused on the intersection of civil rights and privacy, primarily the impact that privacy and surveillance have on marginalized communities. Bedoya has been critical of the way in which data collection and tracking have a disparate impact that “varies greatly by race, class and power.” Alvaro Bedoya, A License to Discriminate, N.Y. Times (June 6, 2018). He has argued that privacy is a civil right because it is about “human dignity.” Alvaro Bedoya, Privacy as a Civil Right, 50 N.M. L. Rev. 301, 306 (2020). Bedoya has also criticized the U.S. Immigration and Customs Enforcement’s (ICE) use of surveillance to track immigrants, cautioning that “[s]urveillance of immigrants has long paved the way for surveillance of everyone.” Alvaro Bedoya, Deportation Is Going High-Tech Under Trump, The Atlantic (June 21, 2017).

Capitol Hill and Digital Privacy

Privacy advocates have long called on Congress to enact a federal privacy law. Despite decades of discussions and proposals, there is no federal law protecting consumer privacy. With 6 in 10 Americans believing data collection is impossible to avoid in daily life, see Brooke Auxier et al., Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information, Pew Rsch. Ctr. (Nov. 15, 2019), consumers are taking an interest in how their data is handled. Technology companies and the data they control have received a renewed focus.

Lawmakers on Capitol Hill and the enforcement agencies have increasingly questioned whether and to what extent digital platforms’ use and control of data impacts privacy and competition. The House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law, on which Chair Khan served prior to joining the FTC, conducted a 16-month investigation of digital markets, culminating in a lengthy report, entitled Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations (Staff Report). The report drew a link between privacy and antitrust laws: “The persistent collection and misuse of consumer data is an indicator of market power in the digital economy.” Staff Report at 51 (citing Howard A. Shelanski, Information, Innovation, and Competition Policy for the Internet, 161 U. Pa. L. Rev. 1663, 1687 (2013)).

The Staff Report led to a legislative effort to crack down on technology companies and ultimately resulted in a bipartisan rollout of a package of bills squarely aimed at large technology companies. The package advanced through committee in the House but is still awaiting a vote. See Press Release, House Comm. on the Judiciary, Chairman Nadler Applauds Committee Passage of Bipartisan Tech Antitrust Legislation (June 24, 2021). Recently, House Democrats released a proposal as part of President Biden’s Build Back Better agenda that would provide the FTC with $1 billion to set up a bureau dedicated to privacy and data protection. While its future is uncertain amid budget reconciliation negotiations, it underscores Congress’s renewed focus on and commitment to data privacy-related issues.

FTC and Privacy

The FTC regulates consumer privacy and data protection under §5 of the FTC Act, which gives the agency authority to bring enforcement actions against unfair and deceptive practices. 15 USC §45(a). In the early days, unfair and deceptive practices typically involved false or misleading claims as to how a company handled consumer data, but privacy enforcement has evolved into “a body of standards that seek to protect consumers’ reasonable expectations of privacy.” Erika M. Douglas, The New Antitrust/Data Privacy Law Interface, Yale L.J. Forum, 647, 652 (Jan. 18, 2021) (Douglas). In addition to §5, the agency is charged with enforcing a number of privacy laws, including the Gramm-Leach Bliley Act, CAN-SPAM Act, Children’s Online Privacy Protection Act, and the Fair Credit Reporting Act. One provision of President Biden’s wide-ranging July 2021 executive order, which outlined a “whole of government” approach to promoting competition, encourages the FTC to crack down on “unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy” in order to “address persistent and recurrent practices that inhibit competition.” Executive Order on Promoting Competition in the American Economy, WhiteHouse.gov, §5(h)(i) (July 9, 2021).

A New Direction

In the recently issued FTC Report to Congress on Privacy and Security, the FTC indicated a shift in how the FTC views—and plans to approach—privacy issues moving forward. See Fed. Trade Comm’n, Report to Congress on Privacy and Security (Sept. 13, 2021) (Privacy Report). The Privacy Report highlights four areas in which the FTC plans to focus its efforts, including “integrating competition concerns” into privacy and data security issues, remedies, digital platforms, and algorithms. Id. at 3-6.

Speaking specifically to the intersection between antitrust and privacy issues, the Privacy Report warns that “violation of consumer protection laws may be enabled by market power, and consumer protection violations, in turn, can have a detrimental effect on competition.” Id. at 4. Chair Khan is expected to use §5’s unfair competition clause to turn up the heat on antitrust enforcement, but a new perspective under which the FTC views its privacy enforcement role raises some interesting issues and implications for antitrust law, particularly where the FTC seeks “competition-based remedies” in consumer protection cases. Id. Unsurprisingly, the Commissioners disagree over this approach. Chair Khan’s statement highlighted the connection, emphasizing that “concentrated control over data has enabled dominant firms to capture markets and erect entry barriers.” Press Release, Fed. Trade Comm’n, Statement of Chair Lina M. Khan Regarding the Report to Congress on Privacy and Security (Oct. 1, 2021). But on the other side of the political spectrum, Commissioner Phillips explained that the report “overstates the synchrony between competition and privacy.” Press Release, Fed. Trade Comm’n, Dissenting Statement of Commissioner Noah Joshua Phillips (Oct. 1, 2021). Though we do not know much about Bedoya’s approach to antitrust enforcement, we can expect that his privacy background will shape how he views competition issues and appropriate remedies.

Privacy and Antitrust

With a renewed emphasis on the overlap between these two policy areas, we can expect to see privacy concerns and considerations raised more often in enforcement actions. But just how privacy applies to antitrust enforcement in practice remains to be seen. Tension between antitrust and privacy can arise when their goals do not align. Privacy goals often seek to limit the sharing and use of consumer data, for example, while the goals of increased competition may seek to expand such information sharing. See Douglas, supra, at 660-61, 668.

The Staff Report states that “[a] firm’s dominance can enable it to abuse consumers’ privacy without losing customers,” Staff Report at 52, but efforts to protect consumer privacy to the detriment of other companies have faced setbacks in court. In hiQ Labs v. LinkedIn, 938 F.3d 985 (9th Cir. 2019), LinkedIn sent hiQ a cease and desist letter to prevent hiQ from collecting and using data from “publicly available LinkedIn member profiles.” 938 F.3d at 989, 992. In response, hiQ sued LinkedIn alleging violations of California’s Unfair Competition Law. See Complaint, hiQ Labs v. LinkedIn, No. 3:17-cv-03301-EMC (N.D. Cal. June 7, 2017), ECF No. 1. Though LinkedIn’s stated intention was to protect its customer’s data, the court was not persuaded by this privacy justification and ordered a preliminary injunction to restore hiQ’s access. See hiQ, 938 F.3d at 994.

Regulators have also started using diminished privacy as an example of consumer harm in antitrust enforcement actions. For example, in United States v. Google, 1:20-cv-03010-APM (D.D.C. 2021), ECF No. 94, the DOJ alleges that the anticompetitive effects of Google’s purported monopolization of internet search and search advertising include reduction in quality of privacy and data protection. Privacy considerations are being used both to criticize and justify conduct in antitrust issues.

Conclusion

While we expect Bedoya to be more vocal on consumer protection issues, particularly facial recognition and artificial intelligence, he joins an FTC that has proven motivated to use the antitrust laws to crack down on big tech companies. If confirmed (as expected), Bedoya will join two Democratic appointed commissioners, Chair Khan and Commissioner Rebecca Kelly Slaughter, in pursuing an aggressive enforcement agenda from all corners of the agency. Chair Khan has been hard at work laying some of the groundwork, from agency structural reforms to the FTC’s recent commitment to approaching enforcement with the overlap between privacy and competition in mind. We can expect to see privacy considerations make their way into more antitrust enforcement actions and, though Bedoya has been relatively quiet on competition issues, his privacy-focused background could impact where the FTC ends up on some of these questions.

#### The plan derails confirmation

William E. Kovacic 20, Professor at the George Mason University School of Law, JD from Columbia University, BA from Princeton University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy”, University of Pennsylvania Journal of Business Law, Volume 23, Issue 1, 23 U. Pa. J. Bus. L. 49, Lexis

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters. Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. Many matters involved powerful economic interests, and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of [\*75] intellectual property. In 1974, the agency also initiated a program that required certain large firms to provide "line-of-business" data concerning a range of performance indicators.

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda. Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements. The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.

As a group, the FTC's competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency's actions in court and before Congress. The complaints of industry resonated with a large, powerful bipartisan coalition of legislators who criticized the Commission's activism, proposed various measures to curb the agency's authority, and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 [\*76] (FTC Improvements Act). In 1980, bitter opposition to elements of the FTC's competition and consumer protection programs led Congress to allow the FTC's funding to lapse, forcing the agency to temporarily cease operations. Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency's funding. In January 1981, David Stockman, Ronald Reagan's first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC's competition policy program.

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency's choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources. Many legislators complained that the agency had disregarded the legislature's preferences and used its powers in ways that Congress never contemplated to fall within the FTC's remit. As Congress considered bills in 1979 to limit the Commission's powers, Congressman [\*77] William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC's excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.

The Commission, Frenzel concluded, was "a rogue agency gone insane."

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency's unauthorized adventurism. Senator Howard Cannon explained: "The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies."

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency's competition mission. Stockman said, " . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress."

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of [\*78] 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC's power to order divestiture or other forms of structural relief in non-merger cases. This was a shot across the bow of the FTC's pending "shared monopoly" cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition. Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC's power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient ("rogue") but [\*79] crazy ("insane"), as well. Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, "is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined." David Stockman's initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC "is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy."

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC's activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively. Leading members of Congress demanded that the agency [\*80] transform its competition and consumer programs or face extinction. Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency's appetite to undertake ambitious, risky projects--to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency's elastic powers innovatively. Congress's admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings. During hearings in 1970 to confirm Caspar Weinberger to be the Commission's new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to "maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well." In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash--including from Congress--that would emerge as the FTC went about "expanding" its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform "tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place."

Weinberger's successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission's powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks. In his appearances as FTC chair before [\*81] congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick's first appearance before the Commission's Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing.

I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . .

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had "responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States." Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency's back: "[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require." McGee closed the proceedings with [\*82] militant instructions:

"Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing."

Kirkpatrick served as the FTC's chair for just over twenty-nine months. The Commission's new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman's confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric.

With evident approval, Moss recounted how the FTC had "stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise." The members of the Senate Commerce Committee, Moss concluded, "consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal." Member after member of the Commerce Committee echoed Moss's message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, "I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned."

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying "to make the most of that other resource given to us by Congress [\*83] -- our statutory powers." Weinberger said the Commission had "encouraged the staff to make recommendations to us which will probe the frontiers of our statutes," had made progress in "[p]robling the outer limits" and "exploring the frontiers" of the agency's authority, and had shown it "is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices." In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was "moving into 'high gear' in the task of preserving and promoting competition in the American economy." He said he and his fellow board members "fully intend to be in the vanguard of exploration of the new frontiers of antitrust law."

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal and petroleum refining industries. With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies. The Joint Committee's chairman, Senator William Proxmire, told Engman "the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence." Perhaps astonished to hear that cases to break up the nation's leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, "The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition."

[\*84] Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors. The Commission's decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands. In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry. Here, also, the agency's decision to prosecute the shared monopolization case against the country's leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems. In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC's activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC [\*85] should do and how it should do it. As described below in Section IV.D., that change in legislative temperament and the response by Congress to industry backlash against the FTC's program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was "insane." Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel. As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases). The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976. In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

[\*86] Another focal point for attention in assessing the FTC's performance in the 1970s was the quality of its substantive agenda. Was the FTC's substantive program in the 1970s "insane"? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures. Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC's flaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency's improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC's knowledge in the 1970s of the positive record of its past enforcement experience.

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration -- a period characterized by what one journalist described as an "almost total abandonment of antitrust policy." In 1987, in discussing Reagan-era [\*87] federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced "the most lenient antitrust enforcement program in fifty years." Professor Milton Handler remarked that in the Reagan era "a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free." Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, "enforcement ceased."

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party's nomination for the presidency, Barack Obama said the George W. Bush administration "has what may be the weakest record of antitrust enforcement of any administration in the last half-century." The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe. After noting that for most of the 20th century "antitrust enforcement waxed or waned depending on the administration in office," Professor Robert Reich recently wrote that "after 1980 it all but [\*88] disappeared." He added that Presidents Bill Clinton and Barack Obama "allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated."

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s. A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC. The Reagan administration [\*89] is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action. The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School's concern that private rights of action over-deter legitimate business conduct by dominant firms. [\*90] This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots. More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC's stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC's relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their [\*91] resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

#### Border surveillance makes inevitable migration flows destablizing

Melissa Godin 21, MPhil in Global Development from Oxford University, BA from New York University, Freelance Newspaper Correspondent, Canadian Journalist Reporting on the Intersection of Climate Change, Gender, International Development, Migration and Human Rights, “The Rise of the Border and Surveillance Industry and Why You Should Be Concerned”, Open Democracy, 4/20/2021, https://www.opendemocracy.net/en/pandemic-border/rise-border-and-surveillance-industry-and-why-you-should-be-concerned/

Companies that profit from selling surveillance technologies and border services to governments are actively lobbying countries to adopt more militaristic approaches to migration. In fact, the border and surveillance industry is now so profitable that it has become a key commodity for major investment companies such as the Vanguard Group, BlackRock, or Capital Research Management, who invest on behalf of pension funds, insurance companies, university endowments or individuals’ savings.

Over the past ten years, the global population of displaced people has grown substantially to at least 79.5 million people, according to the United Nations refugee agency, UNHCR. The agency estimates that since 2012, the number of refugees under its mandate has nearly doubled due to conflicts, including the war in Syria and the Rohingya crisis in Myanmar.

The number of forcibly displaced people is expected to continue to rise, as it is growing even faster than the global population rate, due to conflict, economic insecurity and climate impacts that are forcing people to leave their homes.

However, instead of developing strategies to protect refugees and migrants, several governments around the world have focused their energies on building up borders to keep them out.

A walled world

Over the last 50 years, 63 walls have been built along borders or on occupied territory across the world. Authorities in the United States, Australia and the European Union have increasingly externalised their border controls to foreign countries, stopping displaced people from even arriving on their soil.

They have also been patrolling borders in ways that lead to the unlawful imprisonment, deportation and inhuman treatment of refugees and migrants. And these walls are not only physical, they are also digital, with governments around the world increasingly relying on artificial intelligence and biometrics.

Although governments are responsible for implementing these policies, it is companies that are lobbying, financing and profiting from the growth of the border and surveillance industry.

Governments are outsourcing border management to household name companies such as Accenture, IBM and Boeing, that provide surveillance technologies and services. And a new report released on 9 April by the Transnational Institute (TNI), in collaboration with Stop Wapenhandel has identified that companies including Capital Research and Management (part of the Capital Group), BlackRock, Morgan Stanley and the Vanguard Group are financing this industry’s expansion.

The result: more severe human rights abuses of refugees and migrants, with less accountability for the actors involved in perpetuating this abuse. “People on the move are increasingly confronted with a border security infrastructure specifically hired to treat them as a threat, to keep them out,” explained Daria Davitti, assistant professor in law at Nottingham University. “The levels of violence and abuse are unprecedented and in many cases unchecked.”

“Military and security companies and their lobby organisations are very influential in shaping border and migration policies”

Rightwing politicians and companies—who have financial incentives to see the border and surveillance industry grow – have framed migration as a security threat in their statements and policy briefs.

“Migration has been portrayed, in the EU and more generally in the Global North, as a threat to ‘our’ economic prosperity, cultural identity and ‘values’,” said Davitti. “Defining migrants’ arrivals as a security threat requires security answers, which the border and surveillance industry is of course best placed to provide with services it offers.”

The framing of migration as a security problem has resulted in the dramatic growth of the border and surveillance industry over the last decade, fuelled by booming budgets for border and immigration control. In the United States alone, budgets for borders increased by more than 6,000% since 1980, according to TNI.

The EU has plans to spend about three times more on border security and control in its new seven-year budget than its previous one. And by 2025, the global border security market is predicted to grow by between 7.2% and 8.6%, reaching a total of $65-68 billion.

According to TNI’s report, the border and surveillance industry is expanding in five key sectors: border security (more equipment and technologies that surveil and patrol borders to deter people from crossing them); biometrics (new technologies for fingerprints, iris scans or social media tracking); advisory and audit services (that lobby governments to adopt harsher border policies); and migrant detention and deportation.

“Military and security companies and their lobby organisations are very influential in shaping border and migration policies,” said Mark Akkerman, lead author of TNI’s report. “Representatives of these industries present themselves as experts on these issues and are embraced as such by authorities.”

The path forward

Displaced people are suffering the consequences of the expanding border and surveillance industry, whether they are being monitored at the border by overhead drones or through social media. “The militarisation of borders has led to more violence against migrants and has pushed them to more dangerous migration routes,” said Akkerman. “There have also been many reports about human rights violations in migrant detention and during deportations.”

The lack of accessible information about these companies’ roles in the border and surveillance industry makes it harder to hold them accountable. “These contracts are often kept secret and governments resist sharing them,” said Antonella Napolitano, a policy officer at Privacy International. “It is a system that lacks oversight and ultimately, accountability.”

#### Extinction

Lucas Perry 21, Project Coordinator at the Future of Life Institute, BA from Boston College, and Dr. Michael Klare, Five College Professor of Peace & World Security Studies, “Michael Klare on the Pentagon’s view of Climate Change and the Risks of State Collapse”, Future of Life Institute, 7/30/2021, https://futureoflife.org/2021/07/30/michael-klare-on-the-pentagons-view-of-climate-change-and-the-risks-of-state-collapse/

The influx of migrants on America’s Southern border, many of these people today are coming from Central America and from an area that’s suffering from extreme drought and where crop failure has become widespread, and people can’t earn an income and they’re fleeing to the United States in desperation. Well, this is something the military has been studying and talking about for a long time as a consequence of climate change, as an example of the ways in which climate change is going to multiply schisms in society and threats of all kinds that ultimately will endanger the United States, but it’s going to fall on their shoulders to cope with and creating humanitarian disasters and migratory problems.

And as I say, this is not what they view as their primary responsibility. They want to prepare for high-tech warfare with China and Russia, and they see all of this as a tremendous distraction, which will undermine their ability to defend the United States against its primary adversaries. So, it’s multiplying the threats and dangers to the United States on multiple levels including, and we have to talk about this, threats to the homeland itself.

Lucas Perry: I think one thing you do really well in your book is you give a lot of examples of natural disasters that have occurred recently, which will only increase with the existence of climate change as well as areas which are already experiencing climate change, and you give lots of examples about how that increases stress in the region. Before we move on to those examples, I just want to more clearly lay out all the ways in which climate change just makes everything worse. So, there’s the sense in which it stresses everything that is already stressed. Everything basically becomes more difficult and challenging, and so you mentioned things like mass migration, the increase of disease and pandemics, the increase of terrorism in destabilized regions, states may begin to collapse. There is, again, this idea of threat multiplication, so everything that’s already bad gets worse.

Lucas Perry: There’s loss of food, water, and shelter instability. There’s an increase in natural disasters from more and more extreme weather. This all leads to more resource competition and also energy crises as rivers dry up and electric dams stop working and the energy grid gets taxed more and more due to the extreme weather. So, is there anything else that you’d like to add here in terms of the specific ways in which things get worse and worse from the factor of threat multiplication?

Michael Klare: Then, you start getting kind of specific about particular places that could be affected, and the Pentagon would say, well this is first going to happen in the most vulnerable societies, poor countries, Central America, North Africa, places like that where society is already divided, poor, and the capacity to cope with disaster is very low. So, climate change will come along and conditions will deteriorate, and the state is unable to cope and you have breakdown and you have these migrations, but they also worry that as time goes on and climate change intensifies, that a bigger and bigger or richer and richer and more important states will begin to disintegrate, and some of these states are very important to US security and some of them have nuclear weapons, and then you have really serious dangers. For example, they worry a great deal about Pakistan.

Pakistan is a nuclear armed country. It’s also deeply divided along ethnic and religious lines, and it has multiple vulnerabilities to climate change. It goes between extremes of water scarcity, which will increase as the Himalayan glaciers disappear, but also we know that monsoons are likely to become more erratic and more destructive with more flooding.

All of these pose great threats to the ability of Pakistan’s government and society to cope with all of its internal divisions, which are already severe to begin with, and what happens when Pakistan experiences a state collapse and nuclear weapons begin to disappear into the hands of the Taliban or to forces close to the Taliban, then you have a level of worry and concern much greater than anything we’ve been talking before, and this is something that the Pentagon has started to worry about and to develop contingency plans for. And, there are other examples of this level of potential threat arising from bigger and more powerful states disintegrating. Saudi Arabia is at risk, Nigeria is at risk, the Philippines, a major ally in the Pacific is at extreme risk from rising waters and extreme storms, and I can continue, but from a strategic point of view, this starts getting very worrisome for the Department of Defense.

Lucas Perry: Could you also paint a little bit of a picture of how climate change will exacerbate the conditions between Pakistan, India, and China, especially given that they’re all nuclear weapon states?

Michael Klare: Absolutely, and this all goes back to water and many of us view water scarcity as the greatest danger arising from climate change in many parts of the world. In the case of India, China, Pakistan, not to mention a whole host of other countries depend very heavily on rivers that originate in the Himalayan mountains and draw a fair percentage of their water from the melting of the Himalayan glaciers and these glaciers are disappearing at a very rapid rate and are expected to lose a very large percentage of their mass by the end of this century due to warming temperatures.

And, this means that these critical rivers that are shared by these countries, the Indus River shared by India and Pakistan, the Brahmaputra River shared by India and China, these rivers, which provide the water for irrigation for hundreds of millions of people if not billions of people, depend on these rivers, the Mekong is another. As the water supply begins to diminish, this is going to exacerbate border disputes. All of these countries, Indian and China, Indian and Pakistan have border and territorial disputes. They have very restive agricultural populations to start with, that water scarcity is going to be the tipping point that will produce massive local violence that will lead to conflict between these countries, all of them nuclear armed.

Lucas Perry: So, to paint a little bit more of a picture of these historical examples of states essentially failing to be able to respond to climate events and the kind of destructive force that was to society and to the status of humanitarian conditions and the increasing need for humanitarian operations, so can you describe what happened in Tacloban for example, as well as what is going on in the Nigerian region?

Michael Klare: So, Tacloban is a major city on the island of Leyte in the Philippines, and it was a direct hit. It suffered a direct hit from Typhoon Haiyan in 2013. This was the most powerful typhoon to make landfall up until that point, an extremely powerful storm that created millions of homeless in the Philippines. Many people perished, but Tacloban was at the forefront of this. A city of several hundred thousand, many poor people living in low lying areas at the forefront of the storm. The storm surge was 10 or 20 feet high. That just over overwhelmed these low lying shanty towns, flooded them. Thousands of people died right away. The entire infrastructure of the city collapsed was destroyed, hospitals, everything. Food ran out, water ran out, and there was an element of despair and chaos. The Philippine government proved incapable of doing anything.

And, President Obama ordered the US Pacific Command to provide emergency assistance, and it sent almost the entire US Pacific fleet to Tacloban to provide emergency assistance on the scale of a major war, aircraft carrier, dozens of warships, hundreds of planes, thousands of troops to provide emergency assistance. Now, it was a wonderful sign of US aid. There are a number of elements of this crisis that are worthy of mention. In addition to all of this, one was the fact that there was anti-government rioting because of the failure of the local authorities to provide assistance or to provide it only to wealthy people in the town, and this is so often a characteristic of these disasters that assistance is not provided equitably, and the same thing was seen with Hurricane Katrina in New Orleans and this then becomes a new source of conflict.

When a disaster occurs and you do not have equitable emergency response, and some people are denied help and others are provided assistance, you’re setting the stage for future conflicts and anti-government violence, which is what happened in Tacloban And the US military had to intercede to calm things down, and this is something that has altered US thinking about humanitarian assistance because now they understand that it’s not just going to be handing out food and water, it’s also going to mean playing the role of a local government and providing police assistance and mediating disputes and providing law and order, not just in foreign countries, but in the United States itself and this proved to be the case in Houston with Hurricane Harvey in 2017 and in Puerto Rico with Hurricane Maria when local authorities simply disappeared or broke down and the military had to step in and play the role of government, which comes back to what I’ve been saying all along. From the military’s point of view, this is not what they were trained to do.

This is not what they want to do, and they view this as a distraction from their primary military function. So, here’s the Pacific fleet engaging in this very complex emergency in the Philippines, and what if there were a crisis with China that were to break out? The whole force would have been immobilized at that time, and this is the kind of worry that they have that climate change is going to create these complex emergencies they call them, or complex disasters that are going to require not just a quick in and out kind of situation, but a permanent or semi-permanent involvement in a disaster area and to provide services for which the military is not adequately prepared, but they see that climate change increasingly will force them to play this kind of role and thereby distracting them from what they see as their more important mission.

Lucas Perry: Right, so there’s this sense of the military increasingly being deployed in areas to provide humanitarian assistance. It’s obvious why that would be important and needed domestically in the United States and its territories. Can you explain why the military is incentivized or interested in providing global humanitarian assistance?

Michael Klare: This has always been part of American foreign policy, American diplomacy, winning friends, winning over friends and allies. So, it’s partly to make the United States look good particularly when other countries are not capable of doing that. We’re the one country that has that kind of global naval capacity to go anywhere and do that sort of thing. So, it’s a little bit a matter of showing off our capacity, but it’s also in the case of the Philippines, the Philippines plays a strategic role in US planning for conflict in the Pacific.

It is seen as a valuable ally in any future conflict with China and therefore its stability matters to the United States and the cooperation of the Philippine government is considered important and access to bases in the Philippines, for example, is considered important to the US. So, the fact that key allies of the US in the Pacific, in the Middle East and Europe are at risk of collapsing due to climate change poses a threat to the whole strategic planning of the US, which is to fight wars over there, in the forward area of operations off the coast of China, or off of Russian territory. So, we are very reliant on the stability and the capacity of key allies in these areas. So, providing humanitarian assistance and disaster relief is a part of a larger strategy of reliance on key allies in strategic parts of the world.

Lucas Perry: Can you also explain the conditions in Nigeria and how climate change has exacerbated those conditions and how this fits into the Pentagon’s perspective and interest in the issue?

Michael Klare: So, Nigeria is another country that has strategic significance for the US, not perhaps on the same scale as say Pakistan or Japan, but still important. Nigeria is a leading oil producer, not as important as it once was perhaps, but nonetheless important, but Nigeria is also a key player in peacekeeping operations throughout Africa and because the US doesn’t want to play that role itself, it relies on Nigeria for peacekeeping troops in many parts of Africa. And, Nigeria occupies a key piece of territory in Central Africa, which is it’s surrounded by countries, which are much more fragile and are threatened by terrorist organizations. So, Nigeria’s stability is very important in this larger picture, and in fact Nigeria itself is at risk from terrorist movements, especially Boko Haram and splinter groups, which continue to wreak havoc in Northern Nigeria despite years of effort by the Nigerian government to crush Boko Haram, it’s still a powerful force.

And, partly this is due to climate change. The Boko Haram operates in areas around Lake Chad, which is now a small sliver of what it once was. It has greatly diminished in size because of global warming and water mismanagement. And so, the farmers and fisher folk whose livelihood depended on Lake Chad has all been decimated. Many of them have become impoverished. The Nigerian government has proved inept and incapable of providing for their needs, and many of these people have therefore fallen prey to the appeals of recruitment by Boko Haram, young men without jobs. So, climate change is facilitating, is fueling the persistence of groups like Boko Haram and other terrorist groups in Nigeria, but that’s only part of the picture. There’s also growing conflict between pastoralists, these are herders, cattle herders whose lands are being devastated by desertification.

In this Sahel region, the southern fringe of the Sahara is expanding with climate change and driving these pastoralists into areas occupied by… These are all Muslim, the pastoralists are primarily Muslims and they’re moving into lands occupied by Christians, mainly Christian farmers, and there’s been terrible violence in the past few years, many hundreds of thousands of people displaced. Again, inept Nigerian response, and so I could go on. There’s violence in the Nigeria Delta region, the Niger Delta area in the south and in the area, their breakaway provinces. So, Nigeria is at permanent risk of breaking apart, and the US provides a lot of military aid to Nigeria and provides training. So, the US is involved in this country and faces a possibility of greater disequilibrium and greater US involvement.

Lucas Perry: Right, so I think this does a really good job of painting the picture of this factor of threat multiplication from climate change. So, climate change makes getting food, water, and shelter more difficult. There’s more extreme weather, which makes those things more difficult, which increases instability, and for places that are already not that stable, they get a lot more unstable and then states begin to collapse and you get terrorism, and then you get mass migration, and then there’s more disease spreading, so you get conditions for increased pandemics. Whether it’s in Nigeria or Pakistan and India or the Philippines or the United States and China and Russia, everything just keeps getting worse and worse and more difficult and challenging with climate change. So, could you describe the ladder of escalation of climate change related issues for the military and how that fits into all this?

Michael Klare: Well, now this is an expression that I made up to try to put this in some kind of context, drawing on the ladder of escalation from the nuclear era when the military talked about the escalation conflict from a skirmish to a small war, to a big war, to the first use of nuclear weapons, to all out nuclear war. That was the ladder of escalation of the nuclear age, and what I see happening is something of a similar nature where at present we’re still dealing mainly with these threat multiplying conditions occurring in the smaller and weaker states of Africa, Chad, Niger, Sudan and the Central American countries, Nicaragua and El Salvador, where you see all of these conditions developing, but not posing a threat to the central core of the major powers, but as climate change advances, the military expects and US intelligence agencies expect, as I indicated, that larger, stronger, richer states will experience the same kinds of consequences and dangers and begin to experience this kind of state disintegration.

So, what we’re seeing in places like Chad and Niger, which involves this skirmishing between insurgents, terrorists, and other factions in which the US is playing a remote role, is playing the role, but it’s remote to situations where a Pakistan collapses, a Nigeria collapses, a Saudi Arabia collapses would require a much greater involvement by American forces on a much larger scale and that would be the next step up the ladder of escalation arising from climate change, and then you have the possibility, as I indicated, where nuclear armed states would engage in conflict, would be drawn into conflict because of climate related factors like the melting of the Himalayan glaciers and Indian and Pakistan going to war or Indian and China going to war, or we haven’t discussed this, but another consequence of climate change is the melting of the Arctic and this is leading to competition between the US and Russia in particular for control of that area.

So, you go from disintegration of small states to disintegration of medium-sized states, to conflict between nuclear armed states, and eventually to conceivable US involvement in climate related conflicts. That would be the ladder of escalation as I see it, and on top of that, you would have multiple disasters happening simultaneously in the United States of America, which would require a massive US military response. So, you can envision, and the military certainly worries about this, a time when US forces are fully immobilized and incapable of carrying out what they see as their primary defense tasks because they’re divided. Half their forces are engaging in disaster relief in the United States and another half are dealing with these multiple disasters in the rest of the world.

Lucas Perry: So, I have a few bullet points here that you could expand upon or correct about this ladder of escalation as you describe it. So at first, there’s the humanitarian interventions where the military is running around to solve particular humanitarian disasters like in Tacloban. Then, there’s limited military operations to support allies. There’s disruptions to supply chains and the increase of failed states. There’s the conflict over resources. There’s internal climate catastrophes and complex catastrophes, which you just mentioned, and then there’s what you call climate shock waves, and finally all hell breaking loose where you have multiple failed states, tons of mass migration, a situation in which no state no matter how powerful is able to handle.

Michael Klare: Climate shock wave would be a situation where you have multiple extreme disasters occurring simultaneously in different parts of the world leading to a breakdown in the supply chains that keep the world’s economy afloat and keep food and energy supplies flowing around the world, and this is certainly a very real possibility. Scientists speak of clusters of extreme events, and we’ve begun to see that. We saw that in 2017 when Hurricane Harvey was followed immediately by Hurricane Irma in Florida, and then Hurricane Maria in the Caribbean and Puerto Rico and the US military responded to each of those events, but had some difficulty moving emergency supplies first from Houston to Florida, then to Puerto Rico. At the same time, the west of the US was burning up. There were multiple forest fires out of control and the military was also supplying emergency assistance to California, Washington State, and Oregon.

That’s an example of clusters of extreme events. Now looking into the future, scientists are predicting that this could occur in several continents simultaneously. And as a result, food supply chains would break down, and many parts of the world rely on imported grain supplies, or other food stuffs and imported energy. And in a situation like this, you could imagine a climate shockwave in which trade just collapses and entire states suffer from a major catastrophe, food catastrophes leading to state collapse and all that we’ve been talking about.

### 1NC

#### The United States federal government should reduce prohibitions on anticompetitive business practices by the private sector by immunizing gun manufacturers from antitrust liability and restricting anticompetitive private sector collective bargaining business practices in the United States.

#### The CP competes:

#### It’s a PIC of the plan’s specification that expanding antitrust law is part of an ‘increase’ in prohibitions.

#### ‘Increase’ means net

Words and Phrases 8 **–** v. 20a, p. 264-265

Cal.App.2 Dist. 1991. Term “increase,” as used in statute giving the Energy Commission modification jurisdiction over any alteration, replacement, or improvement of equipment that results in “increase” of 50 megawatts or more in electric generating capacity of existing thermal power plant, refers to “net increase” in power plant’s total generating capacity; in deciding whether there has been the requisite 50-megawatt increase as a result of new units being incorporated into a plant, Energy Commission cannot ignore decreases in capacity caused by retirement or deactivation of other units at plant. West’s Ann.Cal.Pub.Res.Code § 25123.

#### Expanding antitrust immunity to manufacturers produces de facto gun control

Dr. Ian Ayres 18, Deputy Dean and the Oscar M. Ruebhausen Professor at Yale Law School and a Professor at Yale’s School of Management, PhD in Economist from MIT, and Dr. Abraham L. Wickelgren, Fred and Emily Wulff Chair at the University of Texas Law School, Ph.D. in Economics from Harvard University, JD from Harvard Law School, “A Gun Control Solution Manufacturers Can Get Behind”, Brookings Institution Report, 3/14/2018, https://www.brookings.edu/research/a-gun-control-solution-manufacturers-can-get-behind/

One of the more daunting tasks in the current struggle to pass sensible gun control legislation is how to neutralize the political power of gun manufacturers who potentially have hundreds of millions of dollars at stake.

But there is a straightforward, if perverse, way to co-opt the gun industry into supporting some restrictions: Help firearm manufacturers cartelize their industry. Congress could immunize gun manufacturers from antitrust liability—making it legal for them to collude and raise gun prices.

Our antitrust laws are designed to prevent firms from agreeing to limit supply in order raise prices. In most markets, this is in the service of protecting consumers and enhancing efficiency. But for products that cause harm, both the public and the producers of the product can benefit from higher prices and reduced supply. Legalizing a gun cartel by itself is a kind of gun control. Just as OPEC is the friend of any environmentalist who wants to reduce oil consumption, a gun manufacturing cartel will reduce the quantity of guns sold in order to raise prices.

Consider, for example, the AR-15 rifle. The AR-15 isn’t a brand name sold by single manufacturer. Rather it is a genus of rifles produced by more than a dozen competitors—sometimes with prices less than $700. But protected by antitrust immunity, these erstwhile competitors could band together and raise the price toward what a monopolist would charge. Remember last year when Turing Pharmaceuticals realized it was the only seller of Daraprim and raised the price more than 50 fold. Monopolists sometimes charge prices many multiples of their cost. The demand for guns has been estimated to have a fairly high price elasticity—so even relatively small price increases of these deadly firearms might have put them beyond the means of the purchasers of the AR-15 style rifles used in the Parkland, Newtown, and Aurora mass shootings.

Once we realize competitive gun prices are the enemy of harm reduction, other traditional government goals will stand on their head. Under the General Agreement on Tariffs and Trade, most countries in the world are committed to multi-round negotiations to reduce trade barriers such as tariffs or quotas. But as applied to guns, raising the tariffs of foreign imports can again save lives and increase gun industry profits—by reducing the threat that new entrants will flood the American market with cheaper guns undercutting the price that domestic manufacturers can charge.

#### Otherwise, gun control’s impossible---that causes thousands of systemic deaths

German Lopez 17, Senior Correspondent at Vox and Cohost of The Weeds, BA in Journalism from the University of Cincinnati, “The Research is Clear: Gun Control Saves Lives”, Vox, 10/4/2017, https://www.vox.com/policy-and-politics/2017/10/4/16418754/gun-control-washington-post

In fact, it’s so persuasive that it changed my mind. I was once skeptical of gun control; I doubted it would have any major impact on gun deaths (similar to the views I took on drugs). Then I looked at the actual empirical research and studies. My conclusion: Gun control likely saves lives, even if it won’t and can’t prevent all gun deaths.

America’s affair with guns is unique in the developed world

To understand this issue, there’s one thing you need to know: America stands alone when it comes to guns. Not only does the US have more guns than any other country in the world, it also has far more gun deaths than any other developed nation.

The US has nearly six times the gun homicide rate of Canada, more than seven times that of Sweden, and nearly 16 times that of Germany, according to United Nations data compiled by the Guardian. (These gun deaths are a big reason America has a much higher overall homicide rate, which includes non-gun deaths, than other developed nations.)

The US also has by far the highest number of guns in the world. Estimated in 2007, the number of civilian-owned firearms in the US was 88.8 guns per 100 people, meaning there was almost one privately owned gun per American and more than one per American adult. The world's second-ranked country was Yemen, a quasi-failed state torn by civil war, where there were 54.8 guns per 100 people.

In short, America has the most gun deaths in the developed world, and the most guns period. What’s more, the research indicates these two issues are very much related.

The research is very clear: more guns mean more gun deaths

Going back to the Washington Post op-ed, Libresco argues that her research proved her initial bias — that gun control works — wrong.

But there have been much more thorough statistical analyses than what Libresco published at FiveThirtyEight or wrote about in the Washington Post. They all point to one fact: Gun control does work to save lives.

Last year, researchers from around the country reviewed more than 130 studies from 10 countries on gun control for Epidemiologic Reviews. This is, for now, the most current, extensive review of the research on the effects of gun control. The findings were clear: “The simultaneous implementation of laws targeting multiple firearms restrictions is associated with reductions in firearm deaths.”

The study did not look at one specific intervention, but rather a variety of kinds of gun control, from licensing measures to buyback programs. Time and time again, they found the same line of evidence: Reducing access to guns was followed by a drop in deaths related to guns. And while non-gun homicides also decreased, the drop wasn’t as quick as the one seen in gun-related homicides — indicating that access to guns was a potential causal factor.

Based on the other research, this actually isn’t a very surprising finding. Regularly updated reviews of the evidence compiled by the Harvard School of Public Health’s Injury Control Research Center have consistently found that when controlling for variables such as socioeconomic factors and other crime, places with more guns have more gun deaths.

“Within the United States, a wide array of empirical evidence indicates that more guns in a community leads to more homicide,” David Hemenway, the Injury Control Research Center’s director, wrote in Private Guns, Public Health.

For example, this chart, from a 2007 study by Harvard researchers, shows a correlation between statewide firearm homicide victimization rates and household gun ownership after controlling for robbery rates:

A more recent study from 2013, led by a Boston University School of Public Health researcher, reached similar conclusions: After controlling for multiple variables, the study found that each percentage point increase in gun ownership correlated with a roughly 0.9 percent rise in the firearm homicide rate.

This holds up around the world. As Zack Beauchamp explained for Vox, a breakthrough analysis in the 1990s by UC Berkeley’s Franklin Zimring and Gordon Hawkins found that the US does not, contrary to the old conventional wisdom, have more crime in general than other Western industrial nations. Instead, the US appears to have more lethal violence — and that’s driven in large part by the prevalence of guns.

“A series of specific comparisons of the death rates from property crime and assault in New York City and London show how enormous differences in death risk can be explained even while general patterns are similar,” Zimring and Hawkins wrote. “A preference for crimes of personal force and the willingness and ability to use guns in robbery make similar levels of property crime 54 times as deadly in New York City as in London.”

So America’s easy access to guns seems to lead to more gun violence and death.

But let’s focus on Australia and the UK in particular, since that’s what Libresco did in her Washington Post piece.

It is true that this is a difficult area to study. In part, that’s because these countries have such low homicide rates — to some degree because of previously existing, stricter gun control, criminal justice researcher Jerry Ratcliffe pointed out — that it’s going to be difficult to produce any statistically significant findings. It’s also difficult to wash out external effects, besides gun control, on gun deaths, even under the most statistically rigorous models.

The evidence from Australia in particular, though, is very suggestive. In her article for FiveThirtyEight, Libresco cited two studies — one from 2003 and another from 2016 — that found what she described as little evidence of the effectiveness of gun control. This seems to be true for the 2003 analysis. But the 2016 analysis is much more mixed, noting that there were faster drops in gun deaths after the buyback program was put in place, but failed to reach any hard conclusions because non-gun deaths also dropped more quickly (even more than gun deaths), suggesting that other variables were likely involved.

But this isn’t the only research into Australia’s laws. As my colleagues Dylan Matthews and Zack Beauchamp noted, other studies found positive impacts of the law. A review of the evidence by Harvard’s David Hemenway and Mary Vriniotis, for one, concluded that Australia’s law “seems to have been incredibly successful in terms of lives saved.”

A 2010 study by Andrew Leigh of Australian National University and Christine Neill of Wilfrid Laurier University also found that buying back 3,500 guns per 100,000 people correlated with up to a 50 percent drop in firearm homicides and a 74 percent drop in gun suicides. The drop in homicides wasn’t statistically significant, largely because the country’s gun homicide rate is so low that it’s hard to tease out even sharp drops with a lot of certainty. But the drop in suicides was statistically significant.

Most tellingly, Leigh and Neill’s study found that “the largest falls in firearm deaths occurred in states where more firearms were bought back.” Hemenway and Vriniotis reached similar conclusions in their review: “First, the drop in firearm deaths was largest among the type of firearms most affected by the buyback. Second, firearm deaths in states with higher buyback rates per capita fell proportionately more than in states with lower buyback rates.”

By homing in on individual states and types of guns, these studies provide a more rigorous and robust look at Australia’s law than a study like the 2016 analysis that Libresco cited, which broadly looked at nationwide data. And they conclude that the buyback program, along with other changes brought on by the 1996 law, reduced gun deaths.

But most importantly, this goes along with the rest of the evidence — including the extensive review published in Epidemiologic Reviews. When you put it all together, it’s hard to come to any conclusion other than gun control does, at least to some extent, reduce gun deaths.

Gun control can’t stop all violence. But it can help.

With that said, it's probably true that this aspect of the gun control debate is not emphasized enough: Guns are a factor, not the only factor. Other factors include, for example, poverty, urbanization, and alcohol consumption.

But when researchers control for other confounding variables, they have found time and time again that America's high levels of gun ownership are a major reason the US is so much worse in terms of gun violence than its developed peers — and stricter access to guns could help.

Another issue is that many of the policies researchers have studied seem to have, politically speaking, little to no chance in the US, at least at the federal level. Australia outright banned some types of guns, and set up a registry for all firearms owned in the country, required a permit for all new purchases. And, as if that wasn’t enough, its buyback program was mandatory — meaning you had to turn in your weapons, which is essentially government-mandated confiscation.

America can’t even get universal background checks through Congress. These much stricter measures have almost no chance of happening. That hinders the potential effectiveness of US laws: As Dylan Matthews explained, milder versions of gun control do have some evidence behind them in terms of reducing gun deaths, but they’re nowhere as strong as the effects seen with stricter policies.

It’s also true, as Libresco said on Twitter, that we could always use more research into gun policy (or, really, any policy issue). But the federal government has stifled gun research for years.

Still, the current research is clear: Gun control does cut down on gun deaths. A single data journalist’s look at some of the evidence doesn’t change that fact.

### 1NC

#### The investment in competition compels imposition of extractive economic relations which are unsustainable and culminate in existential collapse.

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After three decades of neoliberal economic policies, we are in the midst of a major global economic crisis, which has not yet reached its zenith. Disparities in wealth have increased and living standards of the lower strata of society in many countries have deteriorated, while unemployment, underemployment, and informal work are on the rise.4 The depletion of natural resources and environmental devastation is reaching new heights, indicating that the forms of production and consumption of the developed world are no longer tenable.5 Safeguarding unbridled competition is nonetheless seen as the apex of restoring economic growth and social welfare. Seemingly unconcerned with growing social protests against neoliberal capitalism, policy-makers, business people and academics alike continue to be enthralled by the false promises of “free market” policies and even suggest an intensified neoliberalization as the route to salvation. So far, the chosen course has proven to be a blind alley, aggravating the crisis only further. A new phase of capitalist expansion and economic growth within neoliberalism seems unlikely, and even if it were to take place, it would not tackle today's social and ecological problems successfully.6 Therefore, a transformation of the socio-economic system itself is required—a transformation that takes into account not only the organization of the economic realm but also its relationship with nature. The exaggerated faith in competitive markets as a panacea for economic slump and recession forms however an obstacle to such a transformation. Entangled in the “Third Way” rhetoric of the 1990s, the political center-left in both the US and Europe suffers from internal fragmentation and ideological insecurity and lacks a coherent vision of possible alternatives to the prevailing neoliberal trajectory. It suggests at best mere reformist strategies that aim at rescuing capitalism from its internal contradictions, such as the implementation of “better regulation” or a turn toward some form of post-Keynesianism. The center-left has moreover in large part accepted and internalized the neoliberal pro-competition stance (alongside many other features of neoliberal thinking). Preoccupied with how the respective economies can win (or survive in) the global competitiveness race, it is instead concerned with how the detrimental effects of competition can be cushioned. Likewise, only a few academics and intellectuals have analyzed the downsides of competition, let alone thought about viable alternatives for post-neoliberal societies.7

This article attempts to contribute to fill this void. As stated by Robert W. Cox, an integral part of critical scholarship is not only to explain and criticize structures in the existing social order, but also to formulate coherent visions of alternatives that transcend this order.8 To this end, the article offers first an explanatory critique of capitalist competition from the vantage point of historical materialism and argues that today's crisis is partly rooted in excessive competition, here referred to as ”over-competition.”9 This leads to an analysis of the current economic crisis in the second section, where it is argued that over-competition is one of the root causes of the crisis. The next two sections address alternative forms of organization of economic life and critically engage with anarchist values and principles, culminating in some general ideas for a post-neoliberal competition order. The last section before the conclusion reflects on how this alternative competition order could be achieved. To be sure, the ambition is not to outline a blueprint of a post-neoliberal competition order in rigid and minute detail but rather to sketch out its contours, as well as to discuss what it would take for it to emerge.

Cross-fertilizing historical materialist insights on competition with visions inspired by anarchist thought and praxis might not seem obvious at first glance—given the joint history of fierce antagonism between various strands of Marxism and anarchism.10 There is however also much common ground that deserves to be explored when thinking about alternatives that go beyond narrow-minded conceptions of what is acceptable and feasible. Thus, the purpose of this article is not to (re-)construct orthodox platitudes or to arrive at some sort of synthesis that reconciles what cannot be reconciled, but rather to explore the creative tensions that anarchist thought provides for critical social research and emancipatory practice. Both perspectives, broadly defined, are wholeheartedly anti-capitalist and dedicated to understanding social life and inducing social change. It will be argued that anarchism has much to offer, but by giving ontological primacy to local initiatives for building an alternative economic order, it also suffers from limitations. In particular, the problems created by the destructive competitive logics operating at systemic level require solutions that exceed the local level and that institutionalize higher-order nested governance structures.

Capitalist Competition—An Explanatory Critique

The vogue for competition is not new. Already Adam Smith has claimed that competition is “advantageous to the great body of the people.”11 It drives “every man [sic!] to endeavor to execute his work with a certain degree of exactness.”12 Consequently, “[i]n general, if any branch of trade, or any division of labor, be advantageous to the public, the freer and more general the competition, it will always be the more so.”13 Neoclassical economists frequently compare competition to a Darwinist form of market justice in which the uncompetitive, weak, and inefficient perish and the successful and efficient win. Although the zero-sum nature of competition is generally accepted (not everyone who plays can win), competition tends to be confused with success only. In line with neoclassical economic models, it is widely assumed that competitive markets deliver an efficient and just allocation of scarce resources.14 This view ignores, however, that real-world competitive markets are also highly inefficient, for instance by producing so-called negative externalities on a massive scale and “underproducing” public goods.15 Competition and the freedom to compete are moreover frequently associated with broader notions of political freedom and individual self-determination.16 This view is however equally mistaken as competition essentially negates individual freedom. As Karl Marx noted in Grundrisse: “[i]t is not individuals that are set free by free competition; it is, rather, capital which is set free.”17 Competition, he argued, “is nothing more than the way in which many capitalists force the inherent determinants of capital upon one another and upon themselves.”18 In Marx's view, competition represents “the most complete subjugation of individuality under social conditions which assume the form of objective powers […].”19 Rather than being the Smithian invisible hand, competition is an uncompromising fist, which exerts coercive pressures on “every individual capitalist,” irrespective of his “good or ill will.”20 In addition, competition disintegrates more than it unites, which means that in a competitive setting cooperation and mutual aid—the antithesis to competition—are marginalized as organizing principles. Mutual aid refers to altruistic and solidary practices aimed at enhancing the welfare of economic entities without the aid provider directly benefiting from it, while cooperation refers to voluntary arrangements between economic entities that focus on joint projects and reaching common goals. Without doubt, “one certainly can act in a solidaristic and cooperative manner within a competitive market system, but to do so often means having to go against the grain and place oneself at a competitive disadvantage.”21

Historical materialism captures the ineluctable toll of capitalist competition, namely that it exacerbates the intrinsic social contradictions and class antagonisms in the process of capital accumulation. The consumption of labor power and natural resources is seen as the source of real added value that makes capital accumulation possible.22 In other words, capital can only grow through the creation of new surplus value and thereby the further exploitation of labor and nature. As individual capitalists cannot afford to lag behind the price and quality standards set by competitors, defeating contender capitalists becomes essential for the reproduction of capital. In the struggle for economic survival, this means that economic power ultimately gravitates to those capitalists who can keep down the price of labor and other factors of production. Marx noted that “[t]he battle of competition is fought by cheapening of commodities. The cheapness of commodities depends all other circumstances remaining the same, on the productivity of labour […].”23 Employees feel the direct repercussions of competition in the form of labor-saving technologies or increased pressures on productivity, unpaid overtime, and degradation of working conditions, (below) subsistence wages and redundancies. In the presence of what Marx termed the “industrial reserve army,” competition directly or indirectly creates a chronic insecurity about the preservation of employment, leaving many people in dire straits regarding their future careers and living standards. Thus, competition might indeed lower prices, but one should not forget that people need a job first before they can consume. The interests of the wealthy few and the working many in the surplus created in the production process are incompatible from the outset, and competition further exacerbates this antagonism.

The process of the competitive accumulation of capital is thus neither stable nor unproblematic, nor linear nor infinite but pervaded by a range of contradictions. Marx famously suggested that competition is essentially a self-undermining process, which “pushes things so far as to destroy its very self.”24 Ultimately, all capital would be “united in the hands of either a single capitalist or a single capitalist company,” effectively putting an end to competition (and capitalism).25 Clearly we have not reached this stage and doubts about whether we ever will are more than justified.26 Yet, the expansionist and deepening nature of the capital accumulation process conquering ever more dimensions of the non-capitalist realm cannot be disputed. Marx also saw correctly that in order to secure profits and economic survival, many capitalists seek to evade the vicissitudes of competition by seeking synergy effects through mergers and acquisitions.27 Capitalists can also choose to “cooperate” with their competitors by concluding cartels and other collusive arrangements. However, like economic concentration, collusive cooperation aims at raising profits through ever tighter agglomerations of corporate power, which does not solve the pernicious and highly unequal nature of the social relations of capitalist production.

Because of these and other contradictions, capitalist markets depend on various forms of extra-economic stabilization to ensure the continued accumulation of capital.28 State apparatuses provide various forms of regulatory arrangements in the management of such contradictions and rules on competition can be such a stabilizer.29 Competition rules generally seek to enable competition and thereby protect capitalism from the capitalists and, to some extent, the capitalists from each other. In the most abstract sense, such rules usually define the scope of state intervention, corporate freedom, as well as the possibilities for market entry and the level of economic concentration.30 Importantly, competition rules are never a functionalist response to overcoming what neoclassical economists term “market failures,” but result from political struggles among socio-economic groups with different and sometimes opposing ideas on how to organize the economic realm. Competition rules frequently draw on notions of equity and justice. Through law as a fictitious equalizer, corporations are standardized and made comparable; they are unitized into something they are not, namely equal players on a level playing field. Moreover, competition rules can never cure the inherent contradictions in the accumulation of capital but only offer a temporary stabilization. In fact, rules aimed at preserving fierce competition can even buttress such contradictions.

The frailty of capital accumulation becomes particularly apparent in the event of structural crises of over-accumulation, referring to moments when capital owners lack attractive possibilities for reinvesting past profits.31 If expected profits on investments are considered unsatisfactory, capitalists can decide either to hold on to their surplus capital or invest it in another part of the system. An investment slowdown can occur because of a profit squeeze resulting from rising real wages in times of low unemployment levels, strong labor unions, or previous over-investment that has led to overcapacity in a sector.32 Another reason for a profit squeeze can be excessive competition, here referred to as over-competition.33 Once competition reaches a point where capitalists can no longer exploit labor to undercut the prices of competitors (either through technological replacements or by keeping down wages), profits and profit expectations fall, resulting in diminishing levels of investments in real production capacities. Moreover, as fierce competition and its unforgiving logic to reduce prices negatively affect wages and employment, it can backlash in decreasing levels in the consumption of produced goods and services, and slow down investments further. This is even more pertinent in the case of vast waves of mergers and acquisitions, which generally go hand in hand with rationalization processes and the elimination of duplicate job functions. As Marx pointed out, “the competition among capitals” and “their indifference to and independence of one another,” drives the capital-labor relationship “beyond the right proportions.”34 Over-competition can also lead to what Harvey calls a “peculiar combination” of low profits and low wages.35 Surplus capital that is not invested in means of real production and in labor can seek refuge in mergers and acquisitions or speculation with financial assets. Bubble markets created by speculation may temporarily offer new outlets for absorbing liquid capital. In fact, there “are even phases in the life of modern nations when everybody is seized with a sort of craze for making profit without producing. This speculation craze which recurs periodically, lays bare the true character of competition […].”36 Financial transactions may temporarily be disassociated from the real economy and generate high yields by adding ephemeral value through the mere circulation of capital. However, speculative bubbles always burst once the “perpetual accumulation of capital and of wealth” and “the perpetual accumulation and expansion of debt” become too far out of sync.37 It follows that financial crises are deeply anchored in the real economy and intimately related to competition.

To recapitulate, a historical materialist perspective highlights the contradictory and crisis-prone nature of capitalist competition. The next section argues that over-competition is one of the root causes of the crisis of neoliberal capitalism that we are currently witnessing.

The Crisis of Neoliberal Capitalism and Over-Competition

Competition is crucial to the capitalist mode of production, and has been present during all stages in the evolution of the capitalist system. It should therefore not be conflated with a particular form of capitalism. This said, competition for profits has probably never been fiercer than in the era of neoliberalism, which gained growing prominence on a global scale in the 1980s alongside what is commonly called the Reagan Revolution in the United States (US), Thatcherism in the United Kingdom (UK), and the dictatorial regime of Pinochet in Chile. Neoliberalism is generally associated with deregulation, the rollback of welfare states, a monetarist focus on keeping inflation low, reduced taxes, fiscal austerity, wage repression, and processes of financialization. Although neoliberal policies have been imposed throughout the world, neoliberalism nowhere became manifest in a pure fashion. Variations in contestation by social groups, regulatory experimentation, and inherited institutional landscapes account for the differences in the neoliberal organization of markets and levels of regulation.38 Nonetheless, as a common denominator, neoliberal policies generally sustain the disembedding of capital from the great part of the web of social, political, and regulatory constraints and the separation of key market institutions from democratic processes.39 Legitimated by neoclassical economics, uncontained competition came to be advertised as the chief catalyzing force for the most efficient and most profitable allocation of the resources of the world.

Rules safeguarding free competition consequently became neoliberalism's juggernaut.40 The expected theoretical benefits of fierce competition and its regulation served to legitimize the opening of markets worldwide: to compete freely eventually requires unimpaired market access. Enforced by “politically independent” (neoliberal newspeak for “democratically unaccountable”) authorities at national and supranational level in the western world, competition rules had to ensure that corporate practices would not interfere with the alleged equilibrium tendencies of capitalist markets (which happen to exist only in the minds of neoclassical economists and their textbooks). Narrow definitions of price competition subsequently received primacy as a benchmark for assessing anticompetitive conduct, supported by sophisticated econometric modeling and complex micro-economic algorithms, leaving no room for social interest criteria or environmental considerations.41 Premised on the idea that economies of scale and scope would be achieved, through competition more efficient corporations would take business away from less efficient ones by decreasing their marginal production costs, which was believed to benefit consumers in the form of price reductions. The particular emphasis on economies of scale and scope implied that economic concentration was not seen as problematic. Neoliberal competition regulation in the western industrialized world hence facilitated a massive centralization and consolidation of corporate power through mergers and acquisitions in nearly every industry, as well as various forms of strategic alliances and joint ventures. Notably, the merger waves that rolled over the global economy in the 1990s and at the dawn of the new century set new records in terms of number and aggregated volume of the companies involved. Under neoliberal capitalism, the conditions once identified by Adam Smith no longer hold: rather than competition between locally based, small-scale, owner-managed enterprises, oligopolistic rivalry of giant transnational corporations constitutes the order of the day.42 Oligopolistic market structures do not however imply that there is no or little competition. Competition between gigantic transnational corporations can be ruthless, as can competition between larger and smaller companies. Indeed, those able to compete set the standards of competition for others: with comparatively easy access to credit and huge advertising budgets aimed at homogenizing consumer preferences across cultures, such corporations can thwart the existence of weaker competitors, including small-scale enterprises at local level.

Alongside the growth of perverse social inequalities, the competitive race to offset products and services to affluent consumers has increased over the past thirty years. In the contemporary context of transnationalized production and geographically segmented, racialized, and gendered labor markets, harsh competition has become an all-pervasive conditioning dynamic. The exhaustion of natural resources, sweeping pollution, and climate change have toughened competition further, and set in motion a vicious spiral causing irreparable damage to the environment worldwide.43 In other words, under the reign of neoliberalism, competition has become ever more tenacious, spanning the entire globe and demanding ever greater competitiveness from capital and labor alike.

#### The alternative is revolutionary optimism targeted at the working class---it overcomes biases towards growth to unleash class consciousness but requires abandoning competition to succeed.

Collin L. Chambers 21, Department of Geography at Syracuse University, “Historical materialism, social change, and the necessity of revolutionary optimism,” Human Geography, Vol. 14, No. 2, 2021, <https://doi.org/10.1177%2F1942778620977202>

The productive forces necessary for socialism exist in the US and throughout the global north. The conditions to eradicate poverty, homelessness, create non-ablest spaces, and so on exist. It just takes the political will to make this material reality free from its capitalist confines. For working-class activists living in the global north, this needs to be emphasized ad nauseum. As Marx says, the bourgeoisie create their own “gravediggers”: “the advance of industry … replaces the isolation of the workers…with their revolutionary combination, due to association (Marx, 1970: 930 FN). However, and most unfortunately, the simple centralization of workers in one place (like a city or a factory) does not automatically produce revolutionary consciousness amongst the workers themselves. Capitalism and all of its vulgarities still persist; something is blocking the transition. Many point to things such as ideology, bourgeois cultural hegemony, “false consciousness,” “desire,” and “mystification” as reasons for the nonexistence of a working-class revolution in the US. The argument goes: the reason feudalism could be transcended was because in feudalism the division between the time when serfs/peasants were working for their own subsistence and directly for the lords was clear as noonday. Feudal exploitation was achieved through “extra-economic” means as Wood (2017) says. In capitalism, “surplus labour and necessary labour are mingled together” (Marx, 1970: 346). “Mystification” is built into the wage-relation itself (see Burawoy, 2012). There is some deal of truth that workers in capitalism can fall for imperialist-capitalist ideology, but I argue that there are actual real material and structural reasons for the nonexistence of working-class revolutions in the US and global north more broadly

If one actually talks to working people, a lot of them know that things in their world are messed up and don’t necessarily buy into capitalist ideology. Though many do not have revolutionary consciousness yet, they are not simply tricked by imperialist-capitalist ideology. “The everyday” for US workers is in the workplace. Many work multiple jobs just to scrape by. Working people just want to come home from work and enjoy the little free time they have, or they are simply working so much that it is almost impossible to have revolutionary consciousness, or if they do they cannot act upon it because they are just trying to survive, and thus doubt better days are ahead. But, these conditions can be overcome.

Truly revolutionary working-class ideas do not arise spontaneously within the working class itself. Marxism has to be learned by the working masses, and it is indeed a science that working and oppressed people can learn; it just has to be introduced. It must be introduced by a revolutionary vanguard party composed of the most advanced and class-conscious working people. Vanguard parties provide the material and infrastructural foundation for working-class people to join the ranks of the revolutionaries (see Dean, 2016). Workers must be able to understand and explain the class character of all political phenomenon—Marxism provides this. In “What Is to Be Done?” Lenin says that a class-conscious worker cannot be left to work 11 hours a day in a factory if we want the worker to develop clear revolutionary class consciousness. Thus, as he says, the party must make the arrangements necessary to ensure that the worker can have more free time for organizing and developing revolutionary class consciousness. The vanguard party form makes joining the revolution truly accessible to the vast masses of people. To paraphrase Lenin (1987 [1929]), the working class left to organize themselves will fall into trade unionism, which is ingrained in bourgeois ideology and thus cannot transcend the capitalist mode of production. A Marxist (i.e. historical materialist) understanding of society can indeed be understood by the masses of people, which will in turn unleash the power of class consciousness itself as a real material power.

The way Marx explains how the capitalist mode of production develops through time empowers workers and provides revolutionary optimism/hope. As the productive forces develop, more and more proletarians are produced and less and less capitalists exist (due to competition and monopolization, etc.). Out of market competition, “[o]ne capitalist always strikes down many others” (Marx, 1970: 929). The means of labor are transformed into forms “that can only be used in common.” Thus, as the capitalist mode of production develops,

The monopoly of capital becomes a fetter upon the mode of production … The centralization of the means of production and the socialization of labour reach a point at which they become incompatible with their capitalist integument. This integument is burst asunder. The knell of capitalist private property sounds. The expropriators are expropriated. (Marx, 1970: 929)

The “immanent laws of capitalist production” itself leads to not only class struggle but also to communist revolution. The laws of competition within the capitalist mode of production have the tendency to constantly revolutionize/ develop the productive forces even in the era of monopoly capitalism. The developed productive forces that are created in capitalism create the foundations from which socialist society can arise (see Phillips and Rozworski, 2019).

In Capital, Marx says it will be easier to move beyond capitalism than it was to move beyond feudalism, for the simple fact that during the transition from feudalism to capitalism “it was a matter of the expropriation of the mass of the people by a few usurpers.” But in the case of transitioning out of capitalism, “we have the expropriation of a few usurpers by the mass of the people[!]” (Marx, 1970: 929–930). Thus, to end capitalist private ownership of the means of production, we only have to usurp a handful of capitalists, which numerically speaking should be easier to do than usurping millions of people as what occurred within the process of primitive accumulation that created the social conditions necessary for the capitalist mode of production.

The inert power working people have exists at all times (even in eras of global working-class defeat and retreat); workers can simply shut production by striking, occupying the workplace, and so on (see Allen and Mitchell, 2003; Glassman, 2003). A nice made-up scenario I like to give students is that no one would really notice if all the bosses/ CEOs did not show up to work for one day, but if all workers did not show up for one day, all of society would simply shut down and reach a standstill. Additionally, and most importantly, the proletariat can use its class power to overthrow and transcend the bourgeois order by seizing political power—that is, the state—and radically transform it to serve the class interests of the working class. This cannot be dismissed as utopian. It has been done in history and it will occur again. This revolutionary takeover allows for the working class to make “despotic inroads on the rights of [bourgeois] property, and on the conditions of bourgeois production” (Marx and Engels, 1978: 490; see also Lenin, 1987 [1932]: 336).

Conclusion

This essay was written with two broad goals in mind: first, to review and reaffirm the central tenants of historical materialism; second, to provide an optimistic and revolutionary outlook for the future using historical materialism. Workers across the capitalist world know that their lives are hard. We do not always need to point out all the evils that capitalism creates. What we need to do is to instill hope and emphasizing how capital provides the material foundations for socialism does just that. Marx “regards communism as something which develops out of capitalism. Instead of scholastically invented, ‘concocted’ definitions and fruitless disputes about words (what is socialism? What is communism?), Marx gives an analysis of what may be called stages in the economic ripeness of communism” (Lenin, 1987 [1932]: 346, emphasis in original). We can say to workers: the material conditions exist to end poverty, there are more empty houses than homeless people, the means exist to end societal degradation, it just takes the political will to do so. Emphasizing this political will is empowering; it says we have the power to change things. We need stop with the talk of how workers and oppressed peoples are chained and have no power. Rather, “[i]t is within the present that the future can emerge,” and we need to force the future upon us (Malott and Ford, 2015: 154).

## Economy ADV

### Circumvention---1NC

#### Ideological judges will gut the plan

John Newman 19, Professor of Law at the University of Miami School of Law and Former Attorney with the U.S. Department of Justice Antitrust Division, JD from the University of Iowa College of Law, BA from the Iowa State University of Science & Technology, “What Democratic Contenders Are Missing in the Race to Revive Antitrust”, The Atlantic, 4/1/2019, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions.

But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well.

No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area.

Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades.

But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up.

Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench.

Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power.

Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing.

And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017.

Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench.

Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system.

There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

#### Antitrust is developed by adjudication---that creates an unpredictable and unenforceable patchwork

Rohit Chopra 20, Commissioner of the Federal Trade Commission, and Lina M. Khan, Academic Fellow at Columbia Law School, Counsel to the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary and Former Legal Fellow at the Federal Trade Commission, “The Case for "Unfair Methods of Competition" Rulemaking”, University of Chicago Law Review, 87 U. Chi. L. Rev. 357, March 2020, Lexis

I. THE STATUS QUO: AMBIGUOUS, BURDENSOME, AND UNDEMOCRATIC?

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the "rule of reason" standard. The "rule of reason" involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for "speculative, possibly labyrinthine, and unnecessary" analysis and appears to exceed the abilities of even the most capable institutional actors. 1 Generalist judges struggle to identify anticompetitive behavior 2 and to apply complex economic criteria in consistent ways. 3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer. 4 And if a standard isn't administrable, it won't yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms [\*360] into their business decisions. 5Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process--a fundamental principle in our legal system. 6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication "may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies." 7Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades. 8

#### Courts lack expertise to make correct decisions. That allows continued market distortion.

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II. BURDENS OF PROOF, QUALITY OF EVIDENCE, AND THE "QUICK LOOK"

A. Cost Savings from the Per Se Rule?

Antitrust policy should strive to reduce the social costs of anticompetitive behavior, which has two distinct components. One is the net social costs of anticompetitive price increasing or output reducing conduct and the private measures taken to defend against it, offset by any economic benefits. Second are administrative costs, including error costs, of operating the enforcement system.

One must assume that a full-blown rule of reason inquiry is much costlier than analysis under the per se rule. Applying the rule of reason typically requires expert testimony identifying a relevant market or alternative mechanisms for estimating market power, as well as some evidence that purports to measure actual anticompetitive effects. 103 By contrast, the per se rule requires only proof that a particular type of conduct has occurred. Thus, the rule of reason is justifiable only to the extent that it provides superior outcomes.

Administrative costs include not only the costs of litigation, whether terminated by settlement, dispositive motion, or trial, including appeals, but also the cost of detecting violations, of determining whether to sue, as well as of antitrust compliance with whatever the rule happens to be. Error costs are particularly relevant to compliance costs. For example, an unduly harsh tying rule may influence firms to avoid socially beneficial tying. By contrast, an overly lenient predatory-pricing rule may yield excessive anticompetitive predation. 104

[\*99] Excessive complexity can increase error costs just as much as excessive simplicity. Antitrust cases in the United States are decided by generalist judges, many of whom lack economics training. Further, facts are often determined by juries, who frequently lack any relevant training whatsoever. In such cases increased complexity can produce poorer rather than better outcomes. 105 As a result, a per se rule that is easily administered but right only 80 percent of the time may actually be preferable to an open-ended rule of reason query with an arbitrary and indeterminate error rate.

### Turn---1NC

#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

### AT: Competitiveness Impact

#### Competitiveness wrong – economies benefit one another, not zero-sum

Nicholas Shaxson 18, investigative journalist, 3-24-2018, “Paul Krugman on Competitiveness: a Dangerous Obsession,” https://foolsgold.international/what-is-competitiveness-2-paul-krugman/

In 2011 the U.S. economist Paul Krugman wrote an article in the New York Times in which he stated: “The idea that broader economic performance is about being better than other countries at something or other — that a companycountry is like a corporation –is just wrong. I wrote about this at length a long time ago, and everything I said then still holds true.\*” Krugman was referring, most notably, to “Competitiveness: a Dangerous Obsession,” a long essay he wrote in 1994 for the U.S. publication Foreign Affairs. A lesser-known essay of his, Pop Internationalism, contains the memorable phase: “If we can teach undergrads to wince when they hear someone talk about ‘competitiveness,’ we will have done our nation a great service.” It’s worth noting that the competitiveness discourse in those days was quite heavily focused on trade: the competitiveness agenda seems to have expanded its reach substantially since then to include tax, labour provisions, welfare, financial regulation, and many other areas of economic life. Jack Copley now examines Krugman’s 1994 essay. This will form part of a permanent collection of essays we’re building up, called “What is Competitiveness?” Paul Krugman on ‘Competitiveness.’ Bad analogies have abounded in the years since the 2008 crisis. Two of the most pernicious have been that national economies are essentially like households or like businesses. While the first comparison has been roundly attacked, the second has been a bit harder to put to bed. However, in his 1994 article for Foreign Affairs, Paul Krugman took this exact same argument head on. He not only challenged the idea that nations have to compete with one another like businesses, but went as far as to argue that “competitiveness is a meaningless word when applied to national economies”. I’ll give an introduction to the main arguments of his piece, and then propose some questions that are raised of its thesis by unfolding global events. Competition is about trade – which is of limited importance. When politicians talk about national economic competitiveness, (like UK Prime Minister David Cameron and his #globalrace), they often mean exports. Krugman accepts this premise and then sets about showing why we needn’t be too concerned about it. “In an economy with very little international trade, the growth in living standards… would be determined almost entirely by domestic factors, primarily the rate of productivity growth… ‘[C]ompetitiveness’ would turn out to be a funny way of saying ‘productivity’ and would have nothing to do with international competition.” Krugman focuses on the U.S., which has a large domestic economy relative to its external trade. For economies with sizeable domestic markets, export competitiveness plays a far smaller role in determining national prosperity than politicians would have us believe. Issues of domestic economic strategy, such as productivity, are more important. Furthermore, trade surpluses are not always a sign of health. Krugman gives the example of Mexico in the 1980s, a country forced to ensure large surpluses “to pay the interest on its foreign debt since international investors refused to lend it any more money”; Mexico then began to run large trade deficits after 1990 as foreign investors recovered confidence and poured in new funds. To find modern parallels one only has to look at the UK, where the current account has been deep in deficit for nearly all of the last 30 years without a commensurate stagnation in living standards. The case of Japan today also springs to mind, as their notorious ‘Lost Decades’ accompanied a huge surplus. Ultimately, competition of the #globalrace variety is generally not as important as it’s made out to be, particularly for larger economies. Countries don’t need to compete like companies do – they are more self-reliant and they benefit much more from the success of others. The competitiveness myth is sexy. Despite relying on simplifications that don’t hold much water, the idea of the nation as a business is compelling. It evokes imagery not just from the business world, but also from sports, with the whole country pulling together as a team in order to assert itself in a fierce global environment. Krugman details numerous examples of how competitiveness jargon was used to sell unpopular policies. But even today governments around the world routinely justify tax breaks for the rich, financial deregulation, attacks on labour unions and public service cuts all in the name of gaining an advantage over other national economies. It’s a dangerous myth. Krugman argues that not only is the obsession with national competitiveness fundamentally misguided, but it is also harmful. If the principle of absolute competitiveness is internalised too much, it can lead to trade wars and protectionism when political leaders feel that their countries are simply unable to compete on an even playing field. Indeed, “a government wedded to the ideology of competitiveness is as unlikely to make good economic policy as a government committed to creationism is to make good science policy”. Another very real danger that Krugman doesn’t mention is the xenophobic and racist sentiments that can be roused when the rhetoric of national competition is drummed into people’s heads. In Britain, UKIP is the most proficient at this particular manoeuvre – but it has been a phenomenon associated with all the major British parties at one time or another.

### AT: Retrenchment Impact

#### Leadership’s irrelevant.

Christopher **Fettweis 17**. Associate Professor of Political Science at Tulane University. “Unipolarity, Hegemony, and the New Peace,” Security Studies, 26:3, 423-451, 5-8-2017, http://dx.doi.org/10.1080/09636412.2017.1306394

Conflict and Hegemony by Region Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic-stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany’s nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear. Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions. If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1. These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace. In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day. The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

### AT: Liberal Order Impact

#### The US isn’t key to their impacts, AND challengers don’t want wholesale revision.

G. John **Ikenberry 18**. Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, also a Global Eminence Scholar at Kyung Hee University in Seoul. 2018. “Why the Liberal World Order Will Survive.” Ethics & International Affairs, vol. 32, no. 01, pp. 17–29.

In this essay I look at the evolving encounters between rising states and the post-war Western international order. My starting point is the classic “power transition” perspective. Power transition theories see a tight link between international order—its emergence, stability, and decline—and the rise and fall of great powers. It is a perspective that sees history as a sequence of cycles in which powerful or hegemonic states rise up and build order and dominate the global system until their power declines, leading to a new cycle of crisis and order building. In contrast, I offer a more evolutionary perspective, emphasizing the lineages and continuities in modern international order. More specifically, I argue that although America’s hegemonic position may be declining, the liberal international characteristics of order—openness, rules, multilateral cooperation—are deeply rooted and likely to persist. This is true even though the orientation and actions of the Trump administration have raised serious questions about the U.S. commitment to liberal internationalism. Just as importantly, rising states (led by China) are not engaged in a frontal attack on the American-led order. While struggles do exist over orientations, agendas, and leadership, the non-Western developing countries remain tied to the architecture and principles of a liberal-oriented global order. And even as China seeks in various ways to build rival regional institutions, there are stubborn limits on what it can do. Power Transitions and International Order There is wide agreement that the world is witnessing a long-term global power transition. Wealth and power is diffusing, spreading outward and away from Europe and the United States. The rapid growth that marked the non-Western rising states in the last decade may have ended, and even China’s rapid economic ascendency has slowed. But the overall pattern of change remains: the “rest” are gaining ground on the “West.” While there is wide agreement that the world is witnessing a global power transition, there is less agreement on the consequences of power shifts for international order. The classic view is advanced by realist scholars, such as E. H. Carr, Robert Gilpin, Paul Kennedy, and William Wohlforth, who make sweeping arguments about power and order. These hegemonic realists argue that international order is a by-product of the concentration of power. Order is created by a powerful state, and when that state declines and power diffuses, international order weakens or breaks apart. Out of these dynamic circumstances, a rising state emerges as the new dominant state, and it seeks to reorganize the international system to suit its own purposes. In this view, world politics from ancient times to the modern era can be seen as a series of repeated cycles of rise and decline. War, protectionism, depression, political upheaval—various sorts of crises and disruptions may push the cycle forward. This narrative of hegemonic rise and decline draws on the European and, more broadly, Western experience. Since the early modern era, Europe has been organized and reorganized by a succession of leading states and would-be hegemons: the Spanish Hapsburgs, France of Louis XIV and Napoleon, and post-Bismarck Germany. The logic of hegemonic order comes even more clearly into view with Pax Britannica, the nineteenth-century hegemonic order based on British naval and mercantile dominance. The decline of Britain was followed by decades of war and economic instability, which ended only with the rise of Pax Americana. For hegemonic realists, the debate today is about where the world is along this cyclical pathway of rise and decline. Has the United States finally lost the ability or willingness to underwrite and lead the post-war order? Are we in the midst of a hegemonic crisis and the breakdown of the old order? And are rising states, led by China, beginning to step forward in efforts to establish their own hegemonic dominance of their regions and the world? These are the lurking questions of the power transition perspective. But does this vision of power transition truly illuminate the struggles going on today over international order? Some might argue no—that the United States is still in a position, despite its travails, to provide hegemonic leadership. Here one would note that there is a durable infrastructure (or what Susan Strange has called “structural power”) that undergirds the existing American-led order. Far-flung security alliances, market relations, liberal democratic solidarity, deeply rooted geopolitical alignments—there are many possible sources of American hegemonic power that remain intact. But there may be even deeper sources of continuity in the existing system. This would be true if the existence of a liberal-oriented international order does not in fact require hegemonic domination. It might be that the power transition theory is wrong: the stability and persistence of the existing post-war international order does not depend on the concentration of American power. In fact, international order is not simply an artifact of concentrations of power. The rules and institutions that make up international order have a more complex and contingent relationship with the rise and fall of state power. This is true in two respects. First, international order itself is complex: multilayered, multifaceted, and not simply a political formation imposed by the leading state. International order is not “one thing” that states either join or resist. It is an aggregation of various sorts of ordering rules and institutions. There are the deep rules and norms of sovereignty. There are governing institutions, starting with the United Nations. There is a sprawling array of international institutions, regimes, treaties, agreements, protocols, and so forth. These governing arrangements cut across diverse realms, including security and arms control, the world economy, the environment and global commons, human rights, and political relations. Some of these domains of governance may have rules and institutions that narrowly reflect the interests of the hegemonic state, but most reflect negotiated outcomes based on a much broader set of interests. As rising states continue to rise, they do not simply confront an American-led order; they face a wider conglomeration of ordering rules, institutions, and arrangements; many of which they have long embraced. By separating “American hegemony” from “the existing international order,” we can see a more complex set of relationships. The United States does not embody the international order; it has a relationship with it, as do rising states. The United States embraces many of the core global rules and institutions, such as the United Nations, International Monetary Fund (IMF), World Bank, and World Trade Organization. But it also has resisted ratification of the Law of the Sea Convention and the Convention on the Rights of the Child (it being the only country not to have ratified the latter) as well as various arms control and disarmament agreements. China also embraces many of the same global rules and institutions, and resists ratification of others. Generally speaking, the more fundamental or core the norms and institutions are—beginning with the Westphalian norms of sovereignty and the United Nations system—the more agreement there is between the United States and China as well as other states. Disagreements are most salient where human rights and political principles are in play, such as in the Responsibility to Protect. Second, there is also diversity in what rising states “want” from the international order. The struggles over international order take many different forms. In some instances, what rising states want is more influence and control of territory and geopolitical space beyond their borders. One can see this in China’s efforts to expand its maritime and political influence in the South China Sea and other neighboring areas. This is an age-old type of struggle captured in realist accounts of security competition and geopolitical rivalry. Another type of struggle is over the norms and values that are enshrined in global governance rules and institutions. These may be about how open and rule-based the system should be. They may also be about the way human rights and political principles are defined and brought to bear in relations among states. Finally, the struggles over international order may be focused on the distribution of authority. That is, rising states may seek a greater role in the governance of existing institutions. This is a struggle over the position of states within the global political hierarchy: voting shares, leadership rights, and authority relations. These observations cut against the realist hegemonic perspective and cyclical theories of power transition. Rising states do not confront a single, coherent, hegemonic order. The international order offers a buffet of options and choices. They can embrace some rules and institutions and not others. Moreover, stepping back, the international orders that rising states have faced in different historical eras have not all been the same order. The British-led order that Germany faced at the turn of the twentieth century is different from the international order that China faces today. The contemporary international order is much more complex and wide-ranging than past orders. It has a much denser array of rules, institutions, and governance realms. There are also both regional and global domains of governance. This makes it hard to imagine an epic moment when the international order goes into crisis and rising states step forward—either China alone or rising states as a bloc—to reorganize and reshape its rules and institutions. Rather than a cyclical dynamic of rise and decline, change in the existing American-led order might best be captured by terms such as continuity, evolution, adaptation, and negotiation. The struggles over international order today are growing, but it is not a drama best told in terms of the rise and decline of American hegemony. Sources of Continuity in Liberal International Order If the liberal international order endures, it will be because it is based on more than American hegemonic order. To be sure, the United States did give shape to a distinctive post-war liberal hegemonic system, and many of its features— including the American-led alliance system and multilateral economic governance arrangements—are themselves quite durable. But the broader features of the modern international order are the result of centuries of struggle over its organizing principles and institutions. Rising states face an international order that is long in the making, one that presents these non-Western developing states with opportunities as well as constraints. The struggles over the existing international order will reshape the rules and institutions in the existing system in various ways. But rising states are not simply or primarily “revisionist” states seeking to overturn the order; rather, they are seeking greater access and authority over its operation. Indeed, the order creates as many safeguards and protections for rising states as it creates obstacles and constraints. For example, the World Trade Organization provides rules and mechanisms for rising states to dispute trade discrimination and protect access to markets. After all, more generally, it was this liberal-oriented international order—its openness and rules—that provided the conditions for China and other rising states to rise. Indeed, if the liberal international order survives, it will be in large part due to the fact that the constituencies for such an order that stretch across the Western and the non-Western worlds are larger than the constituencies that oppose it. We can look more closely at these sources of continuity and constituency.

### AT: Economy Impact

#### Economic decline doesn’t cause war

Dr. Stephen M. Walt 20, Robert and Renée Belfer Professor of International Relations at Harvard University, PhD in International Relations (with Distinction) from Stanford University, MA in Political Science from the University of California, Berkeley, “Will a Global Depression Trigger Another World War?”, Foreign Policy, 5/13/2020, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/

For these reasons, the pandemic itself may be conducive to peace. But what about the relationship between broader economic conditions and the likelihood of war? Might a few leaders still convince themselves that provoking a crisis and going to war could still advance either long-term national interests or their own political fortunes? Are the other paths by which a deep and sustained economic downturn might make serious global conflict more likely?

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

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

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

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

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely.

Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished.

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

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

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

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

## Rule of Law ADV

### Alt Causes---1NC

Tons of alt causes in antitrust such as Noerr AND bank exemptions BUT also outside---proven by Jan. 6th, polarization, AND global democratic backsliding.

#### Decline is because of constitutional structures not norm spillover

Michael Albertus 18, assistant professor of political science at the University of Chicago, 5-8-2018, "Why Are So Many Democracies Breaking Down?," New York Times, https://www.nytimes.com/2018/05/08/opinion/democracy-authoritarian-constitutions.html

Why do democracies backslide toward authoritarianism? Many scholars point to the worrisome erosion of democratic norms rooted in a social consensus about the rules of the game and civility toward fellow citizens. But this erosion of democratic norms is ultimately driven by deeper factors. In many democracies, the roots of breakdown reside in democratic constitutions themselves. Over two-thirds of countries that have transitioned to democracy since World War II have done so under constitutions written by the outgoing authoritarian regime. Prominent examples include Argentina, Chile, Kenya, Mexico, Nigeria, South Africa and South Korea. Even some of the world’s early democracies, such as the Netherlands and Sweden, were marred by deep authoritarian legacies. Democratic institutions are frequently designed by the outgoing authoritarian regime to safeguard incumbent elites from the rule of law and give them a leg up in politics and economic competition after democratization. The constitutional tools that outgoing authoritarian elites use to accomplish these ends include factors like electoral system design, legislative appointments, federalism, legal immunities, the role of the military in politics and constitutional tribunal design. In short, with the allocation of power and privilege, and the lived experiences of citizens, democracy often does not restart the political game after displacing authoritarianism. Furthermore, barriers to changing the social contract in countries that inherit constitutions from a previous authoritarian regime are steep. These constitutions often contain provisions requiring supermajority thresholds for change. And elites from the authoritarian past who benefit from these constitutions utilize their power to pass policies that further entrench their privileges. Myanmar is a prime example of how outgoing authoritarian regimes can game democracy in their favor. The 2015 elections that brought Daw Aung San Suu Kyi and the National League for Democracy to power were conducted within the framework of the 2008 constitution that the military wrote. Before handing over power, the military-dominated legislature passed a flurry of legislation that included promises of amnesty to military generals who have been accused of human rights abuses, a generous pension plan for departing lawmakers, lucrative business contracts slated to benefit outgoing generals and other elites and the transfer of manufacturing plants from the ministry of industry to the ministry of defense. And, critically, the constitution awards the military 25 percent of seats in parliament — precisely the figure needed to block constitutional reform. Its position remains so powerful that many observers wonder whether Ms. Aung San Suu Kyi and the N.L.D., despite winning the 2015 elections in a landslide, are now held hostage by the military’s brutal purging of Myanmar’s Rohingya population. A critical consequence of the trend that new democracies tend to have their social contracts written by outgoing dictators is that while these democracies may be formed of the people, they do not function by or for the people. Citizens may be free from some of the worst abuses of authoritarianism, such as blanket censorship and outright repression, but they are not important players in determining public policy. In this way, democracy is a sort of purgatory in which they wander — sometimes for decades — with little capacity to determine its direction. This is a recipe for discontent with democracy. Major crises like a severe economic recession can provide the tinder for citizen disaffection to crystallize into rage and inciting voters to throw out traditional political parties en masse. This discontent can ultimately lead to democratic demise, as inexperienced new political actors appeal to demagogy and dismantle longstanding institutions without building a more solidly democratic foundation.

### AT: Rule of Law Impact

#### Rule of law doomed—too many ways for the AFF to solve.

Jon Robins 18, 1-31-2018, "'A crisis for human rights': new index reveals global fall in basic justice," Guardian, https://www.theguardian.com/inequality/2018/jan/31/human-rights-new-rule-of-law-index-reveals-global-fall-basic-justice

Fundamental human rights are reported to have diminished in almost two-thirds of the 113 countries surveyed for the 2018 Rule of Law Index, amid concerns over a worldwide surge in authoritarian nationalism and a retreat from international legal obligations. “All signs point to a crisis not just for human rights, but for the human rights movement,” said Professor Samuel Moyn of Yale University. “Within many nations, these fundamental rights are falling prey to the backlash against a globalising economy in which the rich are winning. But human rights movements have not historically set out to name or shame inequality.” The 2018 index, published by the World Justice Project (WJP), gathers data from more than 110,000 households and 3,000 experts to compare their experiences of legal systems worldwide, by calculating weighted scores across eight separate categories. While Venezuela retains its unwanted position at the bottom of the index – just behind Cambodia and Afghanistan – the Philippines is this year’s biggest faller, dropping 18 places to 88th in the table, on top of a slump of nine places in the 2016 survey. President Rodrigo Duterte’s administration has put a “palpable strain upon established countervailing institutions of society”, according to Jose Luis Martin Gascon, chairman of the Philippine Commission on Human Rights. He said there had been a “chilling effect” on the country’s opposition in the wake of attacks against personalities who have criticised Duterte’s policies. Non-discrimination, freedom of expression and religion, the right to privacy and workers’ rights were all taken into account in calculating observance of people’s fundamental rights across the world. Respondents’ belief in the protections afforded by such rights has dropped in 71 of the 113 countries surveyed for the latest index. “The WJP’s findings provide worrying confirmation that we live in very dangerous times for the rule of law and human rights,” said Murray Hunt, director of the Bingham Centre for the Rule of Law. “The worldwide resurgence of populism, authoritarian nationalism and the general retreat from international legal obligations are trends which, if not checked, pose an existential threat to the rule of law. Preventing violations of the rule of law and human rights is always better than curing them after the event,” Hunt said.

#### Rule of law doesn’t stop abuses of power---history.

Jordan Von Manalastas 17, Cornell JD, 4-26-2017, "The Rule of Law Won’t Save Us," Jacobin, https://www.jacobinmag.com/2017/04/law-constitution-trump-president-abuse-power

Yoo’s op-ed is less interesting as a statement of constitutional theory than as a reminder of something liberals do not like to admit: that the “rule of law” and other bourgeois norms are hardly a good check on presidential mischief. For many decades, presidents were able to exert their worst abuses not despite, but really through, the established rules of our legal order — especially with people like John Yoo on hand to lend them some legitimacy. So what does it say about our current president when he’s decried by those who turned the country into a land of torturers and snoops? In some ways, Trump’s brand of quasi-authoritarianism is a rupture from past precedents: more vulgar, less crafty, and more cruel. But I can’t help but think back to the dictatorship of Louis-Napoléon, which Marx famously described as being “contained readymade in the [preceding] parliamentary republic. It required only a bayonet thrust for the bubble to burst and the monster to leap forth before our eyes.” Our constitutional bubble had been filling up for quite some time, bloating with lawless potential. The germ of a Caesar, or a Louis, was swelling up inside it; all it took was a gibbering billionaire to pop it free. Beating Around the Legal Bush John Yoo is not the only right-wing scoundrel who’s attempted to save face by disavowing Donald Trump. George W. Bush himself became a liberal darling of sorts when he came out to say he didn’t “like the racism” and “name-calling” you see in Trump’s administration. On one hand, his point is taken: there is a difference between the cuddly grandpa George, who says “Islam is peace,” and the blithering uncle Donald. But it’s a very low bar indeed if all it takes is to respect the table manners of the ruling elite. The more you look at it, the more shallow and frivolous their differences become. Trump’s main faux pas is that he breaks the rules of decorum that made otherwise monstrous things sound legitimate. When Yoo and the Office of Legal Counsel authorized the worldwide torture apparatus, they didn’t quite say that torture would be lawful. They got around it by redefining “torture” nearly out of existence, so that nothing the president ordered would even qualify. By comparison, Trump’s open willingness to say that “torture works” — and his pledge to “bring back a hell of a lot worse than waterboarding” — may seem more alarming. But when it comes to industrialized state violence and abuse, word choice is really a distinction without a difference. Still, past presidents were usually more circumspect about adhering (or appearing to adhere) to the law. The Bush administration may not have cared that much about legality before they plunged headlong into Iraq, but they did drum up some bad intel to make a spurious case for “preemptive self-defense,” and they did attempt to use some old UN Security Council resolutions (dating to the 1990s) to authorize their invasion. Likewise, President Obama made creative use of Congress’s 2001 authorization of force against al-Qaeda, which was aimed at states or groups that “planned, authorized, committed or aided” the 9/11 attacks, and stretched it somehow to apply to the Islamic State in Syria. The Obama administration is perhaps the best example of this legal pussyfooting. As the journalist Charlie Savage described in his book Power Wars, Obama’s lawyers scrambled to provide painstaking legal rationales for all sorts of nasty business: targeted killings, mass surveillance, military intervention, preventive detention. The idea was, in Obama’s words, to “turn the page on the imperial presidency”; the effect was to give it newer and fancier clothes. So it’s always been there — the recklessness, the cruelty, the power lust, the downright criminality — lurking just beneath the surface. A thin veneer of legal formality made it more presentable, but even then its ugly head would rear from time to time. What sets apart Donald Trump is only his indifference to those norms and rules behind which our rulers’ savagery could hide before. The Constitutional Dictatorship “Well, when the president does it,” Richard Nixon famously said back in 1977, “that means that it is not illegal.” What’s impressive about this statement isn’t quite its disregard for the law, but rather its twisted and dangerous interpretation of it. It isn’t the expression of one who wishes to break the law, but of one who thinks the law will let him do it. The ruling class have always had this strained and two-faced relationship with their own laws. And when they break the rules, so we are told, it’s for our own good. Who can forget Attorney General John Ashcroft’s claim that individual legal rights are “weapons with which to kill Americans”? Power is unleashed, or the rules are relaxed, to protect us from crises real or imagined. When the penal colony at Guantánamo Bay was opened in 2002, Bush tried very hard to deny his prisoners protection under the black-letter law. He argued that he, as commander-in-chief, had the authority to “suspend” the Geneva Conventions for those dangerous miscreants. Then again, he did say that the United States would be “adhering to the spirit of the Geneva Convention.” But we all know how well that turned out. It wasn’t simply that our rulers weaseled their way past the law; it’s that they stretched and mangled the law itself to suit their needs. By framing their abuses as lawful expressions of the president’s authority, past administrations embedded their abuse within the framework of the legal order. It wasn’t so much about upholding the “spirit” of the law and breaking the “letter,” as much as twisting the letter in order to break its spirit. Through generous readings of the law — and often with the help of Congress and the courts — the executive branch consolidated its power, undermining basic human rights and civil liberties along the way. The effect was to build up what Clinton Rossiter called a “constitutional dictatorship”: where dictatorial powers emanate from, and not despite, the legal regime. That’s because however insincerely, previous presidents were still wedded to the ideal of bourgeois constitutionalism. So even when they strained against the limits of legality, and as their cruelty widened and deepened, they made themselves out to be continuous with the existing legal order. Arguments for the “rule of law” and fidelity to the Constitution were compatible with, and helped to normalize, the constitutional dictator. Now Donald Trump is sitting at the reins of this leviathan. And yet the looseness of his tongue — when he attacks the judiciary, say, or when he threatens war crimes or invasions — doesn’t sound like it belongs to a man who spends much time on legal theory. Indeed he doesn’t sound like one who cares at all for legal limitations. It’s no wonder the old guard would be so wary of the new guy. After all the trouble they went through to mutilate the law, Trump comes along and makes it look easy. The Billionaire Dictator As early as 1917, Max Weber theorized that every democracy tends toward Caesarism, as parliaments grow dysfunctional and the masses yearn for a charismatic strongman. But it was the Nazi jurist Carl Schmitt who gave a still more helpful account of dictatorship by distinguishing a constitutional (or “commissarial”) dictator from a “sovereign” dictator. The former is empowered by the existing legal order to break it if required in a crisis or emergency — an authoritarian safety valve, so to speak. A “sovereign” dictator, on the other hand, ruptures the status quo and ushers in a new regime entirely. What sort of dictator is Donald Trump? It’s clear that he’s inherited the enormous powers of the constitutional dictators who came before him. At the same time, his sheer vulgarity and peurility don’t seem in line with any sense of constitutional fidelity. Just look at his inaugural address, in which he said: “The oath of office I take today is an oath of allegiance to all Americans” — instead of, as it were, to uphold the Constitution. It’s possible he never pondered the significance of that rewording, but it does make one wonder. Trump has tapped into the dark heart of American anxiety and disillusion at a time when the established order struggles to maintain its credibility and legitimacy. To see a blithering bully who doesn’t fuss around with technicalities and fine print must be refreshing. Trump’s appeal is the appeal of power, unmediated and raw: not the kind that quibbles with definitions of “torture,” but that says of course we’ll torture, because it works. This is where the fears of a Schmittian sovereign dictator — or even a proper fascist — come in. An authoritarian strongman comes in to shake up the ossified status quo, not simply above the law but entirely outside it. But in Donald Trump’s America, there is no higher authority, no transcendental order, no radical renewal to upend or replace the old. Beneath the bluster and hysterics, there is only the banal, crude logic of a businessman. He doesn’t even seem especially opposed to the older law: he is in fact extremely litigious, willing to use the law to bludgeon his opponents or to silence them. He thinks of law in terms of use-value, like a business prop or skill. When faced against a judge who halts his immigration ban, Trump attacks his qualifications: “this so-called judge,” says Trump. “I’d bet a good lawyer could make a great case out of the fact that President Obama was tapping my phones in October.” He tells his followers how to deal with protestors at his rally: “Knock the crap out of them….Just the knock the hell — I promise you, I will pay for the legal fees.” Trump doesn’t see the law as an object to uphold or to transform, but as an instrument of business, a weapon of the deal. Because beneath the sturm and drang of the new Trump era, there is only the vulgar misrule of a capitalist. The pathologies of Trumpism were always there, latent and malignant, feeding on the American fetish for maximal power. Trump does what previous rulers had always done, but in a fuller, more open and cavalier way. In that sense, Trump’s America isn’t quite the birth of a brand new order, risen through a putsch or a coup. The real takeover was a kind of coup in slow-motion, of which Trump is the culmination: the long and steady subordination of the law to the whims of capital and empire. The Gangsterization of America For many years, conservatives have claimed the country should be run like a business, by a businessman. The presidency of Donald Trump is their wish come true. Is anyone genuinely surprised that he would treat the law as a personal prop, to ignore or to use at whim, in exactly the way a power-tripping businessman would do — what Cornel West’s calls “the full-scale gangsterization of the world”? In past administrations, the legal order was the medium of power and cruelty, but also their limitation. Trump has peeled back this façade to reveal the ugly, rotten germ of authoritarianism that was latent all along — the impulse for a strongman who gets things done, no matter what. Trumpism is what happens when the best the ruling class can vomit up is the sniveling face of a petty billionaire. So when a reptile like Yoo expresses their half-assed misgivings about Trump, it calls to mind an important lesson about the American system. There is a through line that extends from previous presidents right to Donald Trump, which no constitution-minded critic has any right to ignore. Despite the alarming ways he might misuse or abuse his power, we shouldn’t harbor any illusions that a return to the “rule of law” will save us. The thing about the rule of the bourgeoisie is that it is just that — the way the bourgeoisie rule. As an instrument of capital and empire, the law could be read or stretched to allow all sorts of thuggery and mischief. And as the crises of US hegemony grow and magnify, it perpetuates the urge toward more expansive power and brutality. The “rule of law” was nurturing the seeds of its own abuse.

### AT: Populism Impact

#### Global populism won’t cause war

Niall Ferguson 16, Senior Fellow at Stanford University’s Hoover Institution, Senior Fellow of the Center for European Studies at Harvard University, and Visiting Professor at Tsinghua University in Beijing, Autumn 2016, “Populism as a Backlash against Globalization - Historical Perspectives,” <https://www.cirsd.org/en/horizons/horizons-autumn-2016--issue-no-8/populism-as-a-backlash-against-globalization>

Such comparisons between the United States today and Germany in the 1930s are becoming commonplace. As a professional historian, I would like to offer what seems to me a better analogy. Our Tranquil Times Journalists are fond of saying that we are living in a time of “unprecedented” instability. In reality, as numerous studies have shown, our time is a period of remarkable stability in terms of conflict. In fact, viewed globally, there has been a small uptick in organized lethal violence since the misnamed Arab Spring. But even allowing for the horrors of the Syrian civil war, the world is an order of magnitude less dangerous than it was in the 1970s and 1980s, and a haven of peace and tranquility compared with the period between 1914 and 1945. This point matters because the defining feature of interwar fascism was its militarism. Fascists wore uniforms. They marched in enormous and well-drilled parades and they planned wars. That is not what we see today. So why do so many commentators feel that we are living through “unprecedented instability?” The answer, aside from plain ignorance of history, is that political populism has become a global phenomenon, and established politicians and political parties are struggling even to understand it, much less resist it. Yet populism is not such a mysterious thing, if one only has some historical knowledge. The important point is not to make the mistake of confusing it with fascism, which it resembles in only a few respects. Rather like a television chef, I shall describe a recipe for populism, based on historical experience. It is a simple recipe, with just five ingredients. Five Ingredients for A Populist Backlash The first of these ingredients is a rise in immigration. In the past 45 years, the percentage of the population of the United States that is foreign-born has risen from below 5 percent in 1970 to over 13 percent in 2014—almost as high as the rates achieved between 1860 and 1910, which ranged between 13 percent and an all-time high of 14.7 percent in 1890. So when people say, as they often do, that “the United States is a land based on immigration,” they are indulging in selective recollection. There was a period, between 1910 and 1970, when immigration drastically declined. It is only in relatively recent times that we have seen immigration reach levels comparable with those of a century ago, in what has justly been called the first age of globalization. Ingredient number two is an increase in inequality. Drawing on the work done on income distribution by Thomas Piketty and Emmanuel Saez, we can see that we have recently regained the heights of inequality that were last seen in the pre-World War I period. The share of income going to the top one percent of earners is back up from below 8 percent of total income in 1970 to above 20 percent of total income. The peak before the financial crisis, in 2007, was almost exactly the same as the peak on the eve of the Great Depression in 1928. Ingredient number three is the perception of corruption. For populism to thrive, people have to start believing that the political establishment is no longer clean. Recent Gallup data on public approval of institutions in the United States show, among other things, notable drops in the standing of all institutions save the military and small businesses. Just 9 percent of Americans have “a great deal” or “quite a lot” of confidence in the U.S. Congress—a remarkable figure. It is striking to see which other institutions are down near the bottom of the league. Big business is second-lowest, with just 21 percent of the public expressing confidence in it. Newspapers, television news, and the criminal justice system fare only slightly better. What is even more remarkable is the list of institutions that have fallen furthest in recent times: the U.S. Supreme Court now has just a 36 percent approval rating, down from a historical average of 44 percent, while the Presidency has dropped from 43 percent to 36 percent approval. The financial crisis appears to have convinced many Americans—and not without good reason—that there is an unhealthy and likely corrupt relationship between political institutions, big business, and the media. The fourth ingredient necessary for a populist backlash is a major financial crisis. The three biggest financial crises in modern history—if one uses the U.S. equity market index as the measure—were the crises of 1873, 1929, and 2008. Each was followed by a prolonged period of depressed economic performance, though these varied in their depth and duration. In the most recent of these crises, the peak of the U.S. stock market was October 2007. With the onset of the financial crisis, we essentially replayed for about a year the events of 1929 and 1930. However, beginning in mid to late 2009, we bounced out of the crisis, thanks to a combination of monetary, fiscal, and Chinese stimulus, whereas the Great Depression was characterized by a deep and prolonged decline in stock prices, as well as much higher unemployment rates and lower growth. The first of these historical crises is the least known: the post-1873 “great depression,” as contemporaries called it. What happened after 1873 was nothing as dramatic as 1929; it was more of a slow burn. The United States and, indeed, the world economy went from a financial crisis—which was driven by excessively loose monetary policy and real estate speculation, amongst other things—into a protracted period of deflation. Economic activity was much less impaired than in the 1930s. Yet the sustained decline in prices inflicted considerable pain, especially on indebted farmers, who complained (in reference to the then prevailing gold standard) that they were being “crucified on a cross of gold.” We have come a long way since those days; gold is no longer a key component of the monetary base, and farmers are no longer a major part of the workforce. Nevertheless, in my view, the period after 1873 is much more like our own time, both economically and politically, than the period after 1929. There is still one missing ingredient to be added. If one were cooking, this would be the moment when flames would leap from the pan. The flammable ingredient is, of course, the demagogue, for populist demagogues react vituperatively and explosively against all of the aforementioned four ingredients. Kearney’s Cause Now, my argument is not intended to dismiss or downplay those elements of Donald Trump’s campaign for President of the United States that have been implicitly, if not explicitly, racist. Nor do I treat lightly the various signals he has given of indifference to, or at least ignorance of, the U.S. Constitution. My point is that these demerits do not by themselves qualify Trump for comparison with Mussolini, much less with Hitler. Rather, I want to argue that Trump has much more in common with the demagogues of the earlier, lesser depression of the late nineteenth century, and that it is to that period that we should look for historical analogies and insights. The best illustration of my case is the now forgotten figure of Denis Kearney, leader of the Workingmen’s Party of California and the author of the slogan “The Chinese Must Go!” Himself an Irish immigrant to the United States—as opposed to the son of a Scottish immigrant and grandson of a German, which is what Donald Trump is—Kearney was part of a movement of nativist parties and “Anti-Coolie” clubs that sought to end Chinese immigration into the United States. The report of the Joint Special Committee to Investigate Chinese Immigration in 1877 gives a flavor of the times. “The Pacific coast must in time become either Mongolian or American,” was the committee’s view. The report argued that the Chinese brought with them the habits of despotic government, a tendency to lie in court, a weakness for tax evasion and “insufficient brainspace […] to furnish [the] motive power for self-government.” Moreover, Chinese women were “bought and sold for prostitution and treated worse than dogs,” while the Chinese were “cruel and indifferent to their sick.” Giving such inferior beings citizenship, the committee’s report declared, “would practically destroy republican institutions on the Pacific coast.” The realities were, it scarcely needs to be said, very different. According to the “Six Companies” of Chinese in San Francisco—corporate bodies that represented the Chinese population of the city—there was compelling evidence that Chinese immigration was a boon to California. Not only did the Chinese provide labor for the state’s rapidly developing railroads and farms; they also tended to improve the neighborhoods in which they settled. Moreover, there was no evidence of a disproportionate Chinese role in gambling and prostitution. In fact, statistics showed that the Irish were more of a charge on the city’s hospital and almshouse than the Chinese. Nevertheless, a powerful coalition of “laboring men and artisans,” small businessmen and “grangers” (the term used to describe those who aimed to shift the burden of taxation onto big business and the rich) rallied to Kearney’s cause. As one shrewd contemporary observer noted, part of his appeal was that he was attacking not just the Chinese, but also the big steamship and railroad companies that profited from employing Chinese labor, not to mention the corrupt two-party establishment that ran San Francisco politics: Neither Democrats nor Republicans had done, nor seemed likely to do, anything to remove these evils or to improve the lot of the people. They were only seeking (so men thought) places or the chance of jobs for themselves, and could always be bought by a powerful corporation. Working men must help themselves; there must be new methods and a new departure […] The old parties, though both denouncing Chinese immigration in every convention they held, and professing to legislate against it, had failed to check it […] Everything, in short, was ripe for a demagogue. Fate was kind to the Californians in sending them a demagogue of a mean type, noisy and confident, but with neither political foresight nor constructive talent. Kearney may have lacked foresight and “constructive talent,” but there is no gainsaying what he and his ilk were able to achieve. Beginning with the Page Law (1875) prohibiting the immigration of Asian women for “lewd or immoral purposes,” American legislators scarcely rested until Chinese immigration to the United States had been stopped altogether. The Chinese Exclusion Act (1882) suspended immigration of Chinese for 10 years, introduced “certificates of registration” for departing laborers (effectively re-entry permits), required Chinese officials to vet travelers from Asia, and, for the first time in American history, created an offense of illegal immigration, with the possibility of deportation as a part of the penalty. The Foran Act (1885) banned all contract laborers from immigrating to America. Legislation passed in the Scott Act (1888) banned all Chinese from travel to the United States except “teachers, students, merchants, or travelers for pleasure.” In all, between 1875 and 1924, more than a dozen pieces of legislation served to restrict and finally end altogether Chinese immigration. No one should therefore underestimate the power of populism. For all his coarseness and bombast, Denis Kearney and his allies effectively sealed the American border along the Pacific coast of the United States; indeed, one cartoon of the time depicted them constructing a wall across the San Francisco harbor. In the 1850s and 1860s, as many as 40 percent of all Chinese emigrants had travelled beyond Asia, though the numbers arriving in the United States had in fact been relatively small (between 1870 and 1880, a total of 138,941 Chinese immigrants came, just 4.3 percent of the total, a share dwarfed by the vast European exodus across the Atlantic in the same period). What exclusion did ensure in the late nineteenth was that Chinese immigration would not grow, as it surely would have, but instead dwindled and then ceased. Ironies Populism, then, is not just a form of political entertainment. One sometimes hears it said of Donald Trump: “Ah, he says wild things on the campaign trail, but when he is president it will be fine.” History suggests otherwise. It suggests that men who threaten to restrict immigration—as well as to impose tariffs and to discourage capital export, as populists generally do—mean what they say. Indeed, populists are under a special compulsion to enact what they pledge in the campaign trail, for their followers are fickle to begin with. In the case of Trump, most have already defected from the Republican Party establishment. If he fails to deliver, they can defect from him, too. Of course, populists are bound eventually to disappoint their supporters. For populism is a toxic brew as well as an intoxicating one. Populists nearly always make life miserable for whichever minorities they chose to scapegoat, but they seldom make life much better for the people whose ire they whip up. Whatever the demagogues may promise—and they always promise “jam today”—populism tends to have significantly more economic costs than benefits. Restricting immigration, imposing tariffs on imported goods, penalizing firms for investing abroad: such measures, if adopted by an American government in 2017, would be almost certain to reduce growth and employment, rather than the reverse. That has certainly been the Latin American experience—and few regions of the world have run the populist experiment more often. The foreign dimension brings us to a final irony. Despite their habitual insistence on narrow national self-interest, populists are nearly always part of a global phenomenon. Globalization had been making enormous strides prior to 1873, with world trade, migration, and international capital flows growing at unprecedented rates. But the crisis of that year generated a populist backlash against globalization that was itself global in its scope. Then, just as now, the principal targets of the demagogues were immigration, free trade, and high finance. Just as the United States excluded immigrants and raised tariffs, so did European countries by adopting similar discriminatory measures. In Bismarck’s Germany, populism was often antisemitic—as it was in the France of the Dreyfus Affair—while in late Victorian Britain it was anti-Irish. Tariffs went up almost everywhere except in Britain. Populism today has a similarly global quality. In June, the British vote to leave the European Union was hailed by populists right across the European continent as well as by Donald Trump in the United States and, implicitly, by Vladimir Putin in Russia. Yielding to the Complicators Let me conclude with a note of qualified optimism. Because populism is not fascism, populist victories should not be construed as harbingers of war—if anything, the opposite is true. In the 1870s and 1880s, populists did achieve significant reductions in globalization: not only immigration restrictions, but also higher tariffs. But they did not form many national governments, and they did not subvert any constitutions. Nor were populists much interested in starting wars; if anything, they lent towards isolationism and viewed imperialism as just another big business racket. In most countries, the populist high tide was in the 1880s. What came next—in many ways as a reaction to populism, but also as an alternative set of policy solutions to the same public grievances—was Progressivism in the United States and socialism in Europe. Perhaps something similar will also happen in our time. Perhaps that is something to look forward to. Nevertheless, we would do well to remember that World War I broke out during the progressive not the populist era. The world today is, as I observed at the outset, in much less turmoil than one might infer from television news. Nevertheless, the economic and social consequences of globalization and the most recent financial crisis sowed the seeds for the populist backlash that we now see. Populists are not fascists. They prefer trade wars to actual wars; administrative border walls to more defensible fortifications. The maladies they seek to cure are not imaginary: uncontrolled rising immigration, widening inequality, free trade with “unfree” countries, and political cronyism are all things that a substantial section of the electorate have some reason to dislike. The problem with populism is that its remedies are wrong and, in fact, counterproductive. What we most have to fear—as was true of Brexit—is not therefore Armageddon, but something more prosaic: an attempt to reverse certain aspects of globalization, followed by disappointment when the snake oil does not really cure the patient’s ills, followed by the emergence of a new and ostensibly more progressive set of remedies for our current malaise. The “terrible simplifiers” may have their day then. But they will end up yielding power to well-intentioned complicators, those more congenial to educated elites, but probably every a bit as dangerous, if not more so.

### AT: Sustainability Impact

#### No extinction from lack of sustainability---humans and the environment adapt

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Sustainability tends to be focused on the now and on the future—how can we change what we are doing today to improve the ability of upcoming generations to thrive? We often do not look at the past and always seem to look at the present moment as our starting point for making improvements. On occasion, we point to the industrial revolution as the beginning of when things started to get out of control on the planet, but we rarely assess the sustainability of the past and often consider that times before us were much more simple or easier on the planet than the present. In many ways, this is a fundamental flaw of sustainability—our inability to look at the past creates serious limitations for the discipline. In fact, the field largely emerged out of a single report—The Brundtland Report or Our Common Future from 1987, as was discussed in Chap. 1 (Brundtland 1987). In that report, there were references to the past and unsustainable practices, but it did not systematically assess the past or provide much context beyond referencing relatively recent unsustainable practices of the twentieth century.

This chapter that every living organism has seeks to remedy the lack of substantive historical perspective in the theory and analysis of sustainability by bringing the historic idea front and center. Certainly we know some impact on the planet, but the distribution of the impact varies over time and space. While our impacts can be severe, they are not entirely unique or unexpected based on the places and times when human activity was dominant over other organisms in a region. As we will see, there are surprising and interesting social, economic, and environmental impacts that emerged at different places and times that provide context for our present interpretation of global, regional, and local sustainability. As Stephen King so interestingly notes in his Dark Tower (1982) series, “time moves on.” As it does, it doesn’t fully change human character. As time moves on, we transform the world and it changes us. What allows us to thrive or disappear is our ability to adapt to new conditions—in other words, in order to survive, we need to learn to become more sustainable within our environment.

The study of history shows us that there are many examples of cultural rise and fall. Indeed, we tend to focus on the spectacular events in history that cause sudden shifts. The rise and fall of the Roman Empire is perhaps the most cited example (1782), but the fall of the great monarchies of Europe (Davison 2018) and Asia (Frankopan 2017) are also examples. Yet what is sometimes lost in the telling of these histories is that while there are sudden jolts to human society, there is also great steadiness. The monarchy of the ancient Egyptians, for example, lasted thousands of years until the conquest of Rome. Some would even argue that the Roman Empire lived on in the monarchies of Europe and the Middle East and in the democracies of the Americas. Regardless, the point is that while there are sudden shifts, there are also important adaptations as societies react to changing social values, technologies, and environments. For indeed, regardless of time, humans do change their environments. As early hunters and gatherers, we subtly changed ecosystems as we drove some large animals to extinction (Burney and Flannery 2005). We also preferenced some plants and gradually developed agriculture (Qin et al. 2017). Once established, our farming practices significantly transformed the distribution of plants and animals and changed environments. As we developed settlements and cities, we built buildings, developed trade and transportation networks, and created complex economies and social structures (Earle 2011). Our modern impacts are large, but we have always been transforming the planet. The question is really how quickly can we adapt to the changes and whether or not the changes we make will lead to the region’s ability to support its human population.

This chapter takes a look at three distinct locations to discuss the way we can view sustainability through an historical lens. While Jared Diamond took a similar approach in his book, Collapse: How Societies Choose to Fail or Succeed (2011), my approach is much more positive. Diamond focused on examples where societies made decisions that resulted in significant ecological and social collapse. Perhaps the most cited example is from Easter Island where Diamond notes that the indigenous people of the island cut down all of the trees to make transportation devices to move the spectacular large head carvings that grace the slopes of the island. While it is a fascinating example, I contend that it does not represent the bulk of human society. We certainly do make mistakes, but we also are able to persevere. The presence of nearly 8 billion people is evidence of our success as a population, and not of our collapse and failure. The three examples presented here are all from North America and are significant because they show how societies adapted to social and environmental change over time. Some may question the use of three examples from one part of the world in a book that seeks to address sustainability at a global scale. In reality, one can find examples like this anywhere in the world. These are my examples. I urge readers to find their own historical examples from their own regions where people in the past were challenged by sustainability issues in the realms of social justice, environmental degradation, or economic growth or decline.

The first example is from prehistoric Wisconsin where a local indigenous group was confronted with another colonizing indigenous group. While there is no historical record of the meeting, archaeologists have puzzled out a fascinating interaction from the archaeological record that allow one to consider the issues of social justice within the realm of sustainability from a prehistoric perspective. As will be seen, there was considerable social change in the area that had long-term impacts for the environment and the local population. The second example comes to us from the early nineteenth-century California, where Russian colonists came to the present-day coastal Sonoma County in Northern California to establish a seal-hunting operation. They brought with them native Alaskans and interacted with native Californians, Spanish colonists from California, and Americans who found their way to the western coast of North America. The Russians found themselves in a difficult ecosystem and tried to adapt to the new region. They also caused profound environmental change. Eventually, they, and the people they impacted, had to react to the environmental change by making key decisions that had profound impacts on not only the environment, but the history of the United States and Russia. The final example comes from Michigan State University where archaeologists have been reconstructing the history of the campus through a campus archaeology program. Throughout its history, the university has been making business decisions regarding its operations that can be seen in the archaeological record. The choices that were made by administrators, faculty, and students allow one to consider how practical day-to-day management and economic decision-making can lead to complex sustainability challenges.

Some may consider that the three examples may not represent the challenges we are facing today. I would argue that they actually represent a more realistic way of approaching sustainability than that portrayed by Jared Diamond. I would also argue that while we are facing unprecedented sustainability problems that call into question the future of our society, each example references existential issues for their times. To the people that lived through the events, the issues were just as significant as our modern challenges associated with climate change or water scarcity. The first two examples are from a class of sustainability issues I call suffering sustainability. They reflect on moments of time where there are existential threats to continuation of society. The third example is from a class of sustainability issues I call surfing sustainability. There is no existential threat, just a desire to create a better and more sustainable life. There will be more in upcoming chapters about surfing and suffering sustainability. For now, it is just worth noting that while our times are unique due to the global challenges we face, the actual historical dilemmas individuals faced were similar to our own: how can we and our offspring survive into the future?

### AT: Pandemic Impact

#### The risk of existential disease is .01%

Dr. Ilan Noy 22, Chair in the Economics of Disasters and Climate Change at the Victoria University of Wellington, PhD from the University of California, Santa Cruz, and Dr. Tomáš Uher, PhD, Professor at Masaryk University, “Four New Horsemen of an Apocalypse? Solar Flares, Super-volcanoes, Pandemics, and Artificial Intelligence”, Economics of Disasters and Climate Change, 1/15/2022, SpringerLink

High-Mortality Pandemics

A naturally occurring pandemic (i.e., not from an engineered pathogen) that would threaten human extinction is a very small probability event. However, historical accounts point to several instances where disease spread played an important role in causing very significant decline of specific populations. For example, the introduction of novel diseases to the Native American population during the European colonization of the Americas had deadly consequences. It is difficult to distinguish the effects of the diseases that came with the Europeans from the war and conflict they also brought with them. Nevertheless, during the first hundred years of the colonization period, the American population may have been reduced by as much as 90% (Ord 2020).

Moreover, two major pandemic events, the Justinian Plague in the sixth century and the Black Death in the fourteenth century appear to have been severe enough to cause a significant population decline of tens of percent in the populations they affected. Both events are believed to have been caused by plague, an infectious disease caused by the bacteria Yersinia Pestis (Christakos et al. 2005; Allen 1979). While there is a certain degree of uncertainty involved in studying these events’ societal impacts, historical accounts in combination with modern scientific methods provide us with some valuable insights into the effects they may have had on the societies of the time.

With respect to the possibility of a future catastrophic global pandemic, it appears that this risk is increasing significantly along with the advances in the field of synthetic biology and the rising possibility of an accidental or intentional release of an engineered pathogen. While some of the scientific efforts in the field of synthetic biology are directed towards increasing our understanding and our ability to prevent future catastrophic epidemic threats, the risk stemming from these activities is non-trivial, and may outweigh their benefits.

The Justinian Plague

The Justinian Plague severely affected the people of Europe and East Asia, though estimates of its overall mortality vary. Focusing exclusively on the first wave of the pandemic (AD 541–544), Muehlhauser (2017) suggests the pandemic was associated with a 20% mortality in the Byzantine empire. This estimate is based on the mortality rate estimated for the empire’s capital, Constantinople, by Stathakopoulos (2007) to produce a death toll of roughly 5.6 million. For a longer time span, AD 541 to 600, which included subsequent waves of the plague, scholars estimate a higher mortality rate of 33–50% (Allen 1979; Meier 2016).

The demographic changes associated with this high mortality led to a significant disruption of economic activity in the Byzantine empire (Gârdan 2020). A decline in the labour force caused a decline in agricultural production which led to food shortages and famine (Meier 2016). Trade also collapsed. Decreased tax revenues caused by the population decline initiated a major fiscal contraction and consequently a military crisis for the empire (Sarris 2002; Meier 2016). In the longer run, however, the massive reduction of the labour force appears to have had a positive economic effect for the surviving laborers, as the increased marginal value of labour caused a rise in real wages and per capita incomes. These beneficial effects for the survivors were also observed after the Black Death (Pamuk and Shatzmiller 2014; Findlay and Lundahl 2017).

The mortality and the disruption of activity the plague caused in the Byzantine empire also led to further direct and indirect cultural and religious consequences. Meier (2016) particularly highlights the plague’s indirect effect of an increase in liturgification (a process of religious permeation and internalization throughout society as defined by Meier 2020), the rise of the Marian cult, and the sacralization of the emperor.

The direct and indirect effects of the plague also appear to have had far-reaching and long-term political repercussions. The societal disruptions caused by the plague are believed to have significantly weakened the position of the Byzantine empire and arguably led to the decline of the Sasanian empire (Sabbatani et al. 2012). Interestingly, the pandemic indirectly favoured the nomadic Arab tribes who were less vulnerable to the contagion while traveling through desert and semi-desert environments during the initial expansion of Islam (Sabbatani et al. 2012).

Of note is the absence of a scientific consensus on the severity of the Justinian Plague’s impacts. For example, Mordechai and Eisenberg (2019) and Mordechai et al. (2019) argue against the maximalist interpretation of the historical evidence described above. They suggest that the estimated mortality rate of the plague is exaggerated, and that the pandemic was not a primary cause of the transformational demographic, political and economic changes in the Mediterranean region between the sixth and eighth century. Recently, White and Mordechai (2020) highlighted the high likelihood of the plague having different impacts in the urban areas of the Mediterranean outside of Constantinople.

The Black Death

The Black Death which ravaged Europe, North Africa, and parts of Asia in the middle of the fourteenth century is considered the deadliest pandemic in human history and potentially the most severe global catastrophe to have ever struck mankind. With respect to its mortality, Ord (2020) argues that the best estimate of its global mortality rate is 5–14% of the global population, largely based on Muehlhauser (2017).

The plague created a large demographic shock in the affected regions. It reduced the European population by approximately 30–50% during the 6 years of its initial outbreak (Ord 2020). It took approximately two centuries for the population levels to recover (Livi-Bacci 2017; Jedwab et al. 2019b). As the mortality rates appear to have been the highest among the working-age population, the effects on the labour force were acute (Pamuk 2007).

The plague's mortality, morbidity and the associated societal disruption led to a major decline in economic output both in Europe (Pamuk 2007) and the Middle East (Dols 2019). In Europe, however, this decline in economic output was smaller than the decline in population; output per capita began to increase within a few years of the initial outbreak (Pamuk 2007).

The large demographic shock caused by the plague led to a shift in the relative price of labour which, similarly to the Justinian Plague, had a positive impact on wages. With a reduced labour force, real wages and per capita incomes in many European countries increased and were sustained at higher levels for several centuries (Voigtländer and Voth 2013a; Jedwab et al. 2020; Pamuk and Shatzmiller 2014). Scott and Duncan (2001) point out that real wages approximately doubled in most countries of Europe in the century following the plague.

An additional insight into the long-run relationship between the Black Death’s mortality and per capita incomes in Europe is offered by Voigtländer and Voth (2013a). Using a Malthusian model, they suggest that over time, the rise in income caused by the plague’s mortality led to an increase in urbanization and trade. Furthermore, the increased tax burden (per capita), combined with the contemporary political climate, increased the frequency of wars. Consequently, higher urbanization and trade led to an increase in disease spread which along with a more frequent war occurrence caused a long-term increase in mortality and a further positive effect on per capita incomes. In this way, the Black Death appears to have created a long-lasting environment of high-mortality and high-income specifically in Western Europe, functioning as an important contributing factor to its economic growth in the next centuries (Alfani 2020). However, while in Western Europe incomes remained elevated over the next centuries, in Southern Europe they began to decline as the Southern European population started recovering after AD 1500 (Jedwab et al. 2020).

Apart from the positive effects on wages, the increased marginal value of labour combined with other factors had further economic and social implications. A decreased relative value of land and the lack of workforce to use it effectively caused land prices and land rents to decrease (Jedwab et al. 2020; Pamuk 2007). A decreased marginal value of capital assets in general led to a lapse in the enforcement of property rights (Haddock and Kiesling 2002). Interest rates and real rates of return on assets also decreased (Pamuk 2007; Jedwab et al. 2020; Pamuk and Shatzmiller 2014; Jordà et al. 2021; Clark 2016).

Higher wages in combination with a relative abundance of land increased people’s access to land/home ownership, likely reducing social inequality (Alfani 2020). On the other end of the income distribution, decreased incomes for landowners led to an overall decrease in income inequality (Jedwab et al. 2020; Alfani and Murphy 2017).

With respect to the effects on agriculture, the structure of agricultural output moved away from cereals to other crops following the plague. Furthermore, the workforce shortages and the incentives to increase the labour supply are believed to have caused a shift from male-labour intensive arable farming towards pastoral farming, consequently raising the demand for female labour (Voigtländer and Voth 2013b). However, while the Black Death appears to have caused certain structural agricultural changes, Clark (2016) finds no effect of the plague on agricultural productivity in the long run.

In terms of other social consequences, the evidence suggests that the plague's mortality reduced labour coercion, particularly throughout Western Europe (Jedwab et al. 2020; Haddock and Kiesling 2002; Gingerich and Vogler 2021). The increased bargaining power of labour caused by the plague’s demographic shock contributed to and accelerated the decline in serfdom and development of a free labour regime. Gingerich and Voler (2021) further argue that these effects may have had long-lasting political implications and that a decline of repressive labour practices (such as serfdom) permitted the development of more inclusive political institutions. They find that the regions with the highest mortality were more likely to develop participatory political institutions and more equitable land ownership systems. They find that centuries later, In Germany, the populations in these high-mortality regions were less likely to vote for Hitler’s National Socialist (Nazi) Party in the 1930 and 1932 elections in Germany.

However, the positive effects on the emergence of freer labour did not take place in Eastern Europe, where serfdom was sustained and even intensified. Robinson and Torvik (2011) attempt to explain this asymmetry arguing that these differential outcomes may have been caused by the varying power and quality of institutions. The authors suggest that opportunities generated by the increased bargaining power of labour, in an environment of weak institutions, were less likely to lead to a positive effect than in the case of regions with stronger institutions (with more robust rule-of-law or less corrupt or predatory practices).

Apart from causing a negative demographic shock to the affected populations, the Black Death appears to have caused further indirect demographic changes, particularly in Western Europe. The increased employment opportunities for females caused by worker shortages and a higher female labour demand led to a decline in fertility rates and an increased age of marriage (Voigtländer and Voth 2013b). This demographic transition to a population characterized by lower birth rates likely helped to preserve the high levels of per capita incomes and contributed to further economic development of certain parts of Europe, enabling it to escape the “Malthusian trap” in the following centuries (Pamuk 2007). Siuda and Sunde (2021) confirm the pandemic’s effect on the accelerated demographic transition empirically, as they find that greater pandemic mortality was associated with an earlier onset of the demographic transition across the various regions of Germany.

Unfortunately, the Black Death also led to an increase in the persecution of Jews (Finley and Koyama 2018; Jedwab et al. 2019a). Interestingly, Jedwab et al. (2019a) were able to estimate that in the case of regions with the highest mortality rates, the probability of persecution decreased if the Jewish minority was believed to benefit the local economy.

It is important to highlight that the long-term repercussions of the Black Death were highly asymmetrical. While in Western Europe the pandemic appears to have led to some long-term dynamic shifts associated with increased wages, decreased inequality and a decrease in labour coercion, this was not the case for other regions. A decrease in wages was observed for example in Spain (Alfani 2020) and Egypt. In Spain, the plague's demographic impact on an already scarce population caused a long-lasting negative disruption to the local trade-oriented economy. The workforce disruption in Egypt led to a collapse of the labour-intensive irrigation system for growing crops in the Nile valley, with consequent disastrous effects on the rural economy (Alfani 2020). Borsch (2005) argues that the economic decline in Egypt caused by the Black Death “put an end to the power in the heartland of the Arab world” (p. 114) and to the impressive scientific and technological developments that came out of this region.

A consensus for an explanation of the Black Death’s varied impacts across regions, and their determinants, does not appear to exist. However, several researchers attempt to provide partial insights. For example, Alfani (2020) considers the differential outcomes to be broadly dependent upon the initial conditions in each region. More specifically, both Robinson and Torvik (2011) and Pamuk (2007) propose that the asymmetry of impacts can largely be explained by the differences in the institutional environments of the affected societies.

It is argued that the Black Death defined the threshold between the medieval and the modern ages, similarly to the way the Justinian Plague did for antiquity and the Middle Ages (Horden 2021). Furthermore, the differential long-term outcomes of the Black Death likely provided a significant contribution to the so-called “Great Divergence” between Europe and the rest of the world and the “Little Divergence” between North-western and Southern and Eastern Europe (Jedwab et al. 2020; Pamuk 2007).

From this perspective, it would seem rational to conclude that apart from causing substantial and long-term demographic, economic, political, and cultural changes, both the Justinian Plague and the Black Death likely significantly altered the course of human history.

Considering the above, it is not unreasonable to expect that a pandemic of a similar magnitude to these past catastrophes would do the same in the present day. However, what societal impacts a pandemic of similar or higher mortality would inflict in the twenty-first century has not really been the subject of any study, as far as we were able to identify. A possibility exists, given the newly developed capacity of humanity to create new pathogens, that the outcomes of a future catastrophic pandemic will be even more adverse than those of the Justinian Plague and the Black Death.

Probability

In terms of the probability of naturally occurring pandemics, an informal survey of participants of the Global Catastrophic Risk Conference in Oxford in 2008 shows that the median estimate for a probability of a natural pandemic killing more than 1 billion people before the year 2100 was surveyed to be 5%, and the probability of such pandemic to cause human extinction was 0.05%. Ord (2020) uses a slightly broader definition of existential risk, which apart from human extinction also includes a permanent reduction of human potential. He estimates the probability of an existential risk stemming from a natural pandemic in the next 100 years to be 0.01%.

### AT: Democracy Impact

#### Democracy resilient

Daniel Treisman 18, UCLA political science professor, 6-7-2018, “Is Democracy in Danger? A Quick Look at Data,” online pdf

Available measures suggest the proportion of democratic countries in the world today is at or near an all-time high. The few indicators that show some backsliding indicate only a return to the level of the 1990s, a time when liberal democracy was widely considered triumphant. The rate of increase has slowed. But this follows the stunning surge of democracy’s “third wave.” The rate of failures among existing democracies is close to that predicted by their levels of economic development, income growth, and past democratic experience. Moreover, whereas previous waves have been followed within 10-15 years by a significant fall in the proportion of democracies, that has not occurred this time, at least so far. Neither the rate of democratic breakdowns nor that of quality deteriorations in existing democracies is historically high. Previous literature and the survival models presented here confirm that high economic development, positive economic growth, and extensive democratic experience are associated with much lower odds of democratic breakdown. Based on such estimated relationships, the hazard of a breakdown in the US today appears extremely low. While some data suggest a weakening of commitment to democracy among parts of the US public—which is worrying in itself—it is hard to find any systematic evidence that low or falling public support for democracy causes democratic breakdowns. As for elite norms, Latin American countries where a radicalized military supported dictatorship have sometimes succumbed to antidemocratic coups. But excluding such extreme cases, the claim that eroding norms cause democracies to fail appears to rest on anecdotal evidence. Even if it does not constitute a general trend, deterioration in the quality of democracy in countries such as Hungary and Poland is obviously cause for concern, as is the reversion to authoritarianism in Russia and Turkey. It is certainly possible that a global slide in democracy has begun that will accelerate in coming years. It is also possible that US institutions will prove weaker than expected. Few democracies have been tested by the kind of demographic change forecast for coming decades, as the previously dominant race loses its majority status. Still it is important to distinguish between fears for the future and expectations that are reasonable based on available evidence. The historical record suggests that democracies like the US have inner resources that distinguish them from younger and poorer ones. They are far less vulnerable to destructive demagogues than much current commentary implies.

#### Democratic peace is statistically disproven.

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The democratic peace—the observation that democracies are less likely to fight each other than are other pairings of states—is one of the most widely acknowledged empirical regularities in international relations. Prominent scholars have even characterized the relationship as an empirical law (Levy 1988; Gleditsch 1992). The discovery of a special peace in liberal dyads stimulated enormous scholarly debate and led to, or reinforced, a number of policy initiatives by various governments and international organizations. Although a broad consensus has emerged among researchers regarding the empirical correlation between joint democracy and peace, disagreement remains as to its logical foundations. Numerous theories have been proposed to account for how democracy produces peace, if only dyadically (e.g., Russett 1993; Rummel 1996; Doyle 1997; Schultz 2001).

At the same time, peace appears likely to foster or maintain democracy (Thompson 1996; James, Solberg, andWolfson 1999). A vast swath of research in political science and economics proposes explanations for the origins of liberal government involving variables such as economic development (Lipset 1959; Burkhart and Lewis-Beck 1994; Przeworski et al. 2000; Acemoglu and Robinson 2006; Epstein et al. 2006) and inequality (Boix 2003), political interests (Downs 1957; Bueno de Mesquita et al. 2003), power hierarchies (Moore 1966; Lake 2009), third party inducements (Pevehouse 2005) or impositions (Peceny 1995; Meernik 1996), geography (Gleditsch 2002b), and natural resource endowments (Ross 2001), to list just a few examples. Each of these putative causes of democracy is also associated with various explanations for international conflict. Indeed, some as yet poorly defined set of canonical factors may contribute both to democracy and to peace, making it look as if the two variables are directly related, even if possibly they are not.

We seek to contribute to this literature, not by proposing yet another theory to explain how democracy vanquishes war, but by estimating the causal effect of joint democracy on the probability of militarized disputes using a quasi-experimental research design. We begin by noting that some of the common causes of democracy and peace may be unobservable, generating an endogenous relationship between the two. Theories of democracy and explanations for peace are at a formative state; it is not possible to utilize detailed, validated and widely accepted models of each of these processes to assess their interaction. Indeed, to a remarkable degree democracy and peace each remain poorly understood and weakly accounted for empirically, despite their central roles in international politics. We address the risk of spurious correlation by applying an instrumental variables approach. Having taken into account possible endogeneity between democracy and peace, we find that joint democracy does not have an independent pacifying effect on interstate conflict. Instead, our findings show that democratic countries are more likely to attack other democracies than are non-democracies. Our results call into question the large body of theory that has been proposed to account for the apparent pacifism of democratic dyads.

### AT: Nuclear Terrorism Impact

#### No nuke terror NOR retal

---Technical barriers, op costs, organizational schisms, deterrence

Christopher **McIntosh &** Ian **Storey 18**. McIntosh is visiting assistant professor of political studies at Bard College; Storey is a fellow at the Hannah Arendt Center for Politics and Humanities at Bard College. 06/01/2018. “Between Acquisition and Use: Assessing the Likelihood of Nuclear Terrorism.” International Studies Quarterly, vol. 62, no. 2, pp. 289–300.

When looked at in isolation, each of the three areas of potential loss presents significant disincentives for immediate attack. In combination—as they would be considered in practice—the higher strategic value of available alternatives appears decisive. In other words, even if one reads our analysis as affirming the importance of nuclear acquisition, when considering competing options and the dangers that attach to any detonation attempt, nuclear attack is highly unlikely. Strategic Opportunity Costs Future opportunities available for “using” a nuclear weapon are effectively foreclosed depending on the aggressiveness of the option a group chooses. The two-by-two matrix of nuclear strategies in Figure 1 is only a rough guide encompassing many possible permutations in the nuclear sphere. The organization always retains non-nuclear options, even once they acquire nuclear weapons. As evidenced by the Cold War and in Kargil, the stability-instability paradox holds empirical weight. Nuclear acquisition by two opposing actors does not necessarily foreclose conventional and/or asymmetric attacks (Cohen 2013; Kapur 2005). Given the unique relationship between a state and terrorist organization, we can expect similar and even exacerbated levels of instability. This can expand even beyond aggression. Remaining options range all the way from the pacific—pursuing negotiations, cooption, entrance into the legitimate political arena (for example, Sinn Fein)—to heightened conventional attacks and the usage of non-nuclear forms of WMDs. This last point is worth emphasizing. Even in the remote case where an actor successfully acquires a nuclear weapon and primarily seeks raw numbers of casualties—whether due to outbidding or audience costs—other forms of WMDs are likely to be more appealing. As Aum Shinrikyo indicates, this is particularly the case for the group that overcomes the inevitable political and technological hurdles (Nehorayoff et al. 2016, 36–37). For these groups, chemical, biological, and radiological weapons (CBRW) are considerably easier to acquire, use, and stockpile. This is especially true when considered over time, rather than a single operation.18 While there are certainly downsides to CBRWs vis-à-vis nuclear weapons (delivery may paradoxically be easier and the maintenance risks comparatively smaller), they are undoubtedly easier to procure and produce (Zanders 1999). More importantly, CBRWs are perceived as easier to produce and thus likely to be viewed by targets as iterable. Unlike a nuclear attack, CBRW threats are more credible because a single CBRW attack can likely precipitate an indefinite number of follow-ups. In addition to the problem of iterability, a terrorist organization must always worry about the possible ratchet effect of an attack—a problem Neumann and Smith (2005, 588– 90) refer to as the “escalation trap.” A terrorist organization is different than a state at war because it manipulates other actors primarily through punishment. Campaigns are a communicative activity designed to convince the public and the leaders that the status quo is unsustainable. The message is that the costs of continuing the target state’s policy (such as the United States in Lebanon, France in Algeria, or the United Kingdom in Northern Ireland) will eventually outweigh the benefits. Once an organization conducts a nuclear attack, it lacks options for an encore. Not even the most nightmarish scenarios involve an indefinite supply of weapons. If a single attack plus the threat of one or two others does not induce capitulation, the organization might unwittingly harden the target state’s resolve. The attack could raise the bar such that any future non-nuclear attack constitutes a lessening of costs vis-à-vis the status quo. There are also heavy opportunity costs involved in pursuing, developing, and maintaining a nuclear capacity, let alone actually deploying and delivering it. As Weiss puts it, “even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects” (Weiss 2015, 82). Organizational Survival Terrorist organizations are not monolithic entities, nor are they wholly self-sufficient actors. Historically speaking, these groups consider the public reception of their attacks in a complex manner. As Al Qaeda, the Palestine Liberation Organization (PLO) of the 1970s, the IRA, and anarchist groups of the nineteenth and twentieth centuries all demonstrate, these groups’ thinking about public reception is nuanced and complex, regardless of time or place. We focus on two types of audiences that would be affected by decisions to attack: those internal to the group itself, and their own broader public. While many claim that terrorists are undeterrable, the argument misconstrues the relational dynamics between a terrorist organization, target state, international community, and the internal dynamics of the organization itself (Talmadge 2007). It is undoubtedly the case that deterring a terrorist organization in the traditional sense is difficult (Whiteneck 2005; Mearsheimer and Walt 2003). Many lack a recognized territorial base, work on the fringes of the global economy, and are internally structured to be difficult to combat directly. Nearly all possess some permutation of these factors. Combined with the symbolic importance of even relatively small terror attacks—especially given the role of international media—physically denying a group the ability to conduct attacks is uniquely challenging. It is minimally a vastly different proposition than precluding a state’s ability to successfully invade its neighbor or conduct ongoing missile strikes.19 Despite these concerns, there are important reasons deterrence can and empirically does work in the case of terrorist organizations. This is especially possible when the state-terrorist relationship is not zero-sum and the target retains some influence over the realization of the group’s eventual goals (e.g., by denying the group access to territory or withholding international recognition) (Trager and Zagorcheva 2006, 88–89). Nuclear attack presents two significant threats to the organization’s continued existence: internal threats of disintegration and external threats to their continued operations and survival. Terrorist organizations are not unitary, homogenous organizations. This is especially true for groups possessing the size and competence likely necessary for operational nuclear capacity. As many have noted, the terrorist organizations of the present are vastly different from those Marxist- Leninist groups that terrorized Europe and the United States in the 1970s and early 1980s. There is a well theorized psychological value of the organization to individual terrorists themselves (Post 1998), but there is more to the organizational valuation of survival than captured in this atomistic picture. Modern, large-scale terrorist organizations are typically heavily intertwined with the social fabric of the groups from which they originate (Cronin 2006; Hoffman 2013). Beyond significant networks of financial connections, accounts, and moguls (Hamas, for example, draws funding from a massive international system of mosque-centered charities, while the IRA’s extensive connections to the Irish diaspora in the United States were well documented), many terrorist organizations build extensive networks of sub-organizations that tie them to the communities in which they are based. Hezbollah, like the IRA, is internally divided between a military arm and a political arm and has run an extensive network of community schools, medical care centers, and religious outreach groups. Together they are designed to embed the organization in the social life of (predominantly southern) Lebanon’s Muslim population and provide Hezbollah with fresh recruits (Parkinson 2013). The group’s persistence as a dominant political force in southern Lebanon nearly two decades after the initial Israeli decision to withdraw demonstrates terrorist organizations grow to exceed their initial military objectives. The spread of Al Qaeda and its affiliates has followed a similar path. Maintaining the continued support of these multiple audiences is therefore a crucial consideration for these organizations. While these audiences could conceivably be more casualty-acceptant than the individuals deciding the group’s operations, the broader public will usually moderate extreme behavior. The literature assessing so-called “radical- ization” and violence by individual actors emphasizes that there isn’t a one-to-one relationship between ideological extremism and acceptance of extraordinary violence in pursuit of those goals (McCauley and Moskalenko 2014; Jurecic and Wittes 2016). It is important to resist the assumption that a politically extreme ideology automatically corresponds to shared assumptions regarding casualty-acceptance. Some argue that the move toward “mass-casualty” terrorism obviates these concerns. Aside from the fact that the trend line is either flat or receding in terms of the death toll of individual attacks (even if campaigns themselves might be becoming deadlier), there is an orders of magnitude distinction in casualties between a nuclear attack and even the 2001 attack in the United States. While the psychological restraints on nuclear use among states do not translate precisely to this context, there is good reason to believe that transgressing the longstanding nuclear taboo would have dramatic and negative effects on broader public support. In an urban environment, the media would inevitably capture the attack and its gruesome after-effects in photography or video. This imagery would be inconceivable, ubiquitous, and inescapable. Even if supporters accept a highly retributive mentality, or as Hamid (2015) argues about the Islamic State, actively accept the potential of death, this would pose a severe problem for all but the most extreme supporters.20 Beyond these supporters, a nuclear attack affects the internal dynamics of the terrorist organization in multiple ways. There could be divisiveness regarding the most effective use of the weapon. This would be magnified by the scale of the opportunities and perceived opportunity costs. Such debates have the potential to splinter the organization as a whole (Cronin 2009, 100–02). Factional conflict in terrorist organizations appears frequently over questions of goals and tactics (Crenshaw 1981; Chai 1993). A decision to attack with a nuclear weapon risks considerable internal alienation over a variety of issues—targeting decisions, method of attack, campaign goals, potential deaths of supporters, and the domestic and international response (Mathew and Shambaugh 2005, 621–22). Finally, a nuclear attack would exponentially raise the threat to each individual who composes the extended organization. Post-nuclear attack, the greatest strengths of a terrorist organization—its lack of material territory, economy, or overt institutions and reliance on individuals—could turn into its greatest weaknesses (Eilstrup-Sangiovanni and Jones 2008). Currently, a wealthy financier found to have ties to a terrorist group would be monitored for intelligence, arrested, and brought up on criminal charges. Post-nuclear attack, the consequences would be immediate and rather worse. Externally, in a world post-nuclear attack, international cooperation would be instant and deep. One of the only international treaties to even define a terrorist in international law post-2001 has been the Nuclear Terrorism Convention (Edwards 2005). A nuclear attack would be far outside the norm of international politics. It would disrupt the dominance of state-actors and likely stimulate unparalleled cooperation to apprehend the responsible parties to prevent future attacks. Moreover, many large terrorist organizations require (some) tacit acquiescence by a host state. Even those with hostile host states have territory where they remain relatively unaffected by local governments (Korteweg 2008). Post-nuclear attack, these host states face an enormous incentive to find the actors responsible before the target state does. After an attack, regimes would find it difficult to claim that they “didn’t know” or “couldn’t stop them.” Claims of corruption or ineffective institutions would be unlikely to find much sympathy. Faced with potential organizational extinction itself, a host state/government will likely be much less committed to the survival of the terrorist group. This is likely to vary significantly from how they might otherwise behave after a more conventional attack. For these states, there would be a real fear of “Talibanization” and ruthless attempts at regime change post-attack. From the perspective of the group, it would know that it could be facing a unified international community and the removal of tacit state support. It would take a particularly confident leadership to presume it could continue to function post-attack without massive disruptions. Most strategic actors are risk-averse when facing the potential of complete elimination. There is little reason to believe terrorist groups would act any differently.

#### No means or motive.

John Mueller 18, Adjunct Professor of Political Science and Woody Hayes Senior Research Scientist at Ohio State University, November/December, "Nuclear Weapons Don’t Matter," Foreign Affairs, https://www.foreignaffairs.com/articles/2018-10-15/nuclear-weapons-dont-matter

As for nuclear terrorism, ever since al Qaeda operatives used box cutters so effectively to hijack commercial airplanes, alarmists have warned that radical Islamist terrorists would soon apply equal talents in science and engineering to make and deliver nuclear weapons so as to destroy various so-called infidels. In practice, however, terrorist groups have exhibited only a limited desire to go nuclear and even less progress in doing so. Why? Probably because developing one’s own bomb from scratch requires a series of risky actions, all of which have to go right for the scheme to work. This includes trusting foreign collaborators and other criminals; acquiring and transporting highly guarded fissile material; establishing a sophisticated, professional machine shop; and moving a cumbersome, untested weapon into position for detonation. And all of this has to be done while hiding from a vast global surveillance net looking for and trying to disrupt such activities. Terrorists are unlikely to get a bomb from a generous, like-minded nuclear patron, because no country wants to run the risk of being blamed (and punished) for a terrorist’s nuclear crimes. Nor are they likely to be able to steal one. Notes Stephen Younger, the former head of nuclear weapons research and development at Los Alamos National Laboratory: “All nuclear nations take the security of their weapons very seriously.” The grand mistake of the Cold War was to infer desperate intent from apparent capacity. For the war on terrorism, it has been to infer desperate capacity from apparent intent.

# 2NC---Round 8---NDT

## Sunsets CP

### Theory---2NC

#### EDCUATION---its an under-explored but necessary area of policymaking

Jacob E. Gersen 7, Assistant Professor of Law at the University of Chicago School of Law, J.D. from the University of Chicago School of Law, “Temporary Legislation,” University of Chicago Law Review, Vol. 74, No. 1, Winter 2007, accessed via HeinOnline

An overwhelming portion of legislation enacted by the United States Congress is actually what might be termed temporary legislation-statutes containing clauses limiting the duration of their own validity. In modern legislation, these provisions are often termed "sunset" clauses, but for many years they were simply known as "duration" clauses and virtually ignored by courts and commentators alike. Even scholars of other arcane elements of legislative process tend to skip duration clauses as legally irrelevant, substantively unimportant, or both.

In form, temporary legislation merely sets a date on which an agency, regulation, or statutory scheme will terminate unless affirmative action satisfying the constitutional requirements of bicameralism and presentment is taken by the legislature.' In function however, temporary legislation differs systematically from permanent legislation in significant ways that implicate core problems of institutional design, intertemporal allocation of political control within the legislature, the ability of concentrated interests both to lobby for rents and to have rents extracted from them by legislators, the production and aggregation of information and expertise in the policymaking process, and the transaction costs of enacting and maintaining public policy. Temporary and permanent laws differ only in their respective default rules, but given the magnitude of transaction costs in legislatures, the import of that difference is remarkable. Both because temporary legislation constitutes so significant a portion of the overall legislative docket and because of the far-reaching impact on law and politics, more extensive and nuanced analysis of temporary legislation is critical. This Article represents the first systematic attempt to analyze the historical, legal, and political implications of temporary legislation.

### Solvency---AT: Say No

#### Comprehensive review turns the tide against anticompetitive immunities.

Bush et al. 5, Darren Bush, Assistant Professor of Law at the University of Houston Law Center, Ph.D. and J.D. from the University of Utah; Gregory K. Leonard, Vice President of NERA Economic Consulting, Ph.D. in Economics from the Massachusetts Institute of Technology; Stephen F. Ross, Professor at the University of Illinois College of Law, J.D. from the Boalt Hall School of Law at the University of California, Berkeley, “A Framework for Policymakers to Analyze Proposed and Existing Antitrust Immunities and Exemptions,” Consultants to the Antitrust Modernization Commission, 10-24-2005, https://govinfo.library.unt.edu/amc/commission\_hearings/pdf/IE\_Framework\_Overview%20\_Report.pdf

In the context of antitrust immunities, legislation ostensibly reflects a policy judgment that immunized conduct would currently confer a net benefit to society. In a dynamic economy, however, circumstances may change so that an immunity previously considered to be in the public interest may at some future time become socially harmful. Moreover, there is always a risk that affected parties and/or courts can misinterpret legislation granting an immunity. Policymakers can minimize these risks by means of unset provisions coupled with regular post-enactment review and the requirement that every immunity terminates unless renewed through an affirmative act of Congress.

Every immunity granted should include a sunset provision to ensure that the immunity is revisited periodically by policymakers and that the information, assumptions, and other factual bases for previously granting the immunity still justify its existence. Existing immunities should be amended to include sunset provisions and should be reviewed using the framework contained within this Report. If Congress opts to initiate a renewal process for a terminating immunity, the legislative history of its previous enactment will be particularly. Specifically, the legislative history of an immunity should identify the problem the immunity seeks to address, a description of how the immunity resolves the problem, the congressional calculus of benefits and costs described in Stage 3 (including specifying anticipated cost and benefits), and any limitations on the scope of the immunity. The most comprehensive legislative history would be contained in the conference committee report, and/or in a detailed report of the relevant committee or subcommittee. 48 Where this is not feasible, at a bare minimum the legislative sponsor should provide the necessary information and data in prepared floor remarks.

The regular reviews required as a result of a sunset provision enable policymakers to address any errors they perceive have arisen in interpretation of the immunity. Most importantly, the sunset provision provides policymakers with a fresh opportunity to examine the immunity with a greater level of information; they can examine its “track record.” As a rule of thumb, a reasonable length for these sunset periods is five years. 49 For certain immunities, however, it may be appropriate to have shorter or even slightly longer sunset provisions.

Prior to the expiration of a sunset period, policymakers should hold public hearings regarding possible renewal of the immunity. These reviews would be substantially similar to the process characterized in Stages 1 through 4, supra. However, in addition to examining the historical record of an immunity, policymakers should collect new information that was not available previously but could be relevant to their current analysis of that immunity. Key issues would include (i) whether economic or legal conditions have changed such that the problem would not exist even in the absence of the immunity; (ii) whether other potential (and less restrictive) alternative solutions could remedy the problem; and (iii) what effects the immunity has had since its passage or last renewal.

Participation of a wide range of stakeholders is critical to this review. Specifically, the enforcement agencies could provide information as to whether the immunity has deterred enforcement actions from taking place and the degree to which potential enforcement actions were subject to the immunity. Moreover, in instances where Congress required proponents of the immunity to undertake additional requirements (e.g., notice and/or reporting filings), the enforcement agencies could provide data as to the number, nature, and breadth of such filings, as well as the degree to which such filings were rejected. Finally, all interested parties could provide an assessment of the effects not anticipated when the immunity initially passed (or was last renewed).

This dynamic, as opposed to merely static, analysis would provide policymakers an opportunity to check the accuracy of the assumptions and forecasts upon which they based their previous opinions about the immunity. If certain costs or benefits turned out to be substantially different than anticipated previously, it could change the way policymakers view the immunity upon renewal.

#### It results in the repeal of outdated, anti-competitive exemptions.

Roberti et al. 18, Partner at Allen & Overy LLP, former Staff Attorney for the Federal Trade Commission, J.D. from NYU Law; Kelse Moen, Associate Attorney at Allen & Overy LLP, J.D. from Cornell Law School; Jana Steenholdt, Associate Attorney at Allen & Overy LLP, J.D. from The George Washington University Law School, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law,” United States Department of Justice Roundtable on Exemptions and Immunities from Antitrust Law, 03-14-2018, https://www.justice.gov/atr/page/file/1042806/download

Today, the law has changed. The collective negotiation of a broadcast agreement by a sports league would likely be viewed under the rule of reason and seems unlikely to be found unlawful.27 Likewise, the sports broadcasting market and the technologies underlying it have changed in dramatic ways since Congress passed the 1961 Act. Now, the same sports leagues make hundreds of millions—if not billions—of dollars in media income every year, so that any “protection” from competition that they once needed is clearly needed no longer. 28 At the same time, broadcasting has followed any inverse trend, where the big networks have been weakened and decentralized into many competing cable networks and online streaming services, which could get the same content to consumers much more cheaply than the old monopolies. Streaming services in particular have shaken the traditional cable networks framework, providing customers more services and at lower prices, yet these changes have had a much smaller effect on sports broadcasting, as a result of these longstanding exclusivity agreements with the large network providers. This in particular shows the importance of ABA’s prong 4 (“the sunset provision”), which, had it been in place in the original Act, would have afforded the opportunity to re-evaluate the cable network landscape and make necessary adjustments as the competitive market changed. Even if we accept that Congress gave rigorous consideration to the need for this exemption in 1961, the factors it considered are unlikely to apply in any market decades later. Moreover, it is unlikely that the SBA would satisfy ABA’s prong 3 (achieving a goal that “significantly outweighs” the antitrust laws) because its chief aim—even at the time it was passed—was to protect certain market actors. It does not serve any higher purpose like free speech or federalism, but simply intends to create artificial conditions that allow sports leagues to obtain higher profits. Since, as discussed above, the goal of competition law is to protect consumers, these kind of anticompetitive restrictions go against the grain of existing law.

#### Forcing procompetitive justification guarantees bad exemptions are removed.

Bobak Razavi 8, Attorney at Briggs and Morgan LLP, J.D. from the University of Wisconsin Law School, “Harmonizing Antitrust Exemption Law: A Hybrid Approach to State Action and Implied Repeal,” Journal of Business and Securities Law, Vol. 9, No. 1, Fall 2008, https://www.amherst.edu/system/files/JBSL%2520Harmonizing%2520Antitrust%2520article%2520%2528Razavi%2529.pdf

The AMC Report has three main aims: (1) it advocates a transparent and inclusive process for implementing such safeguards; (2) it suggests that those people seeking the immunity should have the burden of showing its necessity; and (3) it provides that when immunities are conferred, they should feature sunset provisions to control against “unintended consequences.”54

First, a transparent and inclusive process entails gathering information from a wide cross-section of people and sources, including public hearings.55 Once the information is gathered, it should be widely disseminated so that all interested parties are adequately informed and engaged.56 Second, placing the burden of proof on the proponent of the immunity requires an explanation of (1) why the contemplated conduct is “both prohibited and unduly inhibited” by antitrust, and why the conduct is in the public interest; (2) what the effects of the proposed immunity will be aside from its intended effect; and (3) how the requested immunity is “necessary to achieve the desired policy outcome.”57 Third, sunsetting provisions facilitate intelligent and informed periodic review of conferred immunities so that policymakers can fine-tune the ever-changing balance of social benefits and harms.58

#### It exposes the true costs of immunities, forcing repeal.

D. Daniel Sokol 9, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “Limiting Anticompetitive Government Interventions that Benefit Special Interests,” George Mason Law Review, Vol. 17, Fall 2009, accessed via Lexis

The legislature is not the only institution that suffers from public choice concerns. It is endemic to all institutions. 59 However, unlike other institutions, like the judiciary, the legislature has the ability to significantly reduce its public choice problems through the creation of sunset provisions that would cause immunities from antitrust regulation to expire at a certain set date. 60 With sunset provisions, political factions would need to revisit the political debate to justify the continuation of immunities via the legislative process. This would increase accountability and most probably reduce the number of immunities because the true costs of such legislation would be exposed. 61

#### Antitrust enforcers lobby for expiration.

Anne McGinnis 14, J.D. from the University of Michigan Law School, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, Vol. 47, No. 2, 2014, https://repository.law.umich.edu/mjlr/vol47/iss2/7

Government enforcers of antitrust laws are similarly suspicious of statutory exemptions. While advocating against the passage of a new exemption for credit card fees in 2008, the Principal Deputy Assistant Attorney General for Antitrust, Keith B. Nelson, stated that the Department of Justice “believes that antitrust exemptions can be justified only in very rare instances, when the fundamental free-market values underlying the antitrust laws are compellingly outweighed by a clearly paramount and clearly incompatible public policy objective.”86 He explained that the Department of Justice is reluctant to support new exemptions because “antitrust laws are the chief legal protector of the free-market principles on which the American economy is based.”87 Further, “[c]ompanies free from competitive pressures have incentives to raise prices, reduce output, and limit investments in expansion and innovation to the detriment of the American consumer.”88

### Perm Do Both---2NC

#### The aff makes it a substantive issue---that magnifies the link.

Stephen Calkins 6, Professor of Law and Director of Graduate Studies at the Wayne State University Law School, J.D. from Harvard Law School, “The Antitrust Enterprise: Principle and Execution: Antitrust Modernization: Looking Backwards,” Journal of Corporation Law, Vol. 31, Winter 2006, accessed via Lexis

The striking successes of antitrust commissions have not been on matters of substance, but rather on matters of procedure and remedy. The 1955 Report led quickly to a federal statute of limitations, to a government right to recover single damages, to government access to pre-complaint discovery, to increased fines, and, a little later, to Civil Investigative Demand authority. 217 The call of the Neal and Stigler Reports to limit the length of government decrees was eventually heeded, as were the calls by one or the other report to require premerger notification, increase penalties, and repeal the Expediting Act. 218 The Shenefield Report led to the Antitrust Procedural Improvements Act of 1980 and provided important encouragement to federal judges to manage trials including the massive AT&T trial effectively. 219 These accomplishments stand in stark contrast to the uneven record of more substantive recommendations.

It is not surprising that procedure is easier to influence than substance. Congress is more likely to defer to experts about procedural rules of uncertain effect than about substantive rules with obvious consequences. Even though procedure can be critical to outcomes, it does not seem as important. Similarly, courts may be more willing to listen to suggestions about managing cases than about the wisdom of departing from perceived Supreme Court precedents.

#### Only the CP alone breaks institutional stagnation.

Anne McGinnis 14, J.D. from the University of Michigan Law School, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, Vol. 47, No. 2, 2014, https://repository.law.umich.edu/mjlr/vol47/iss2/7

Any effective solution must do two things. First, it must provide a way to review the statutory exemptions currently in place to determine whether they are still necessary and beneficial to society. Second, it must switch the default from one where a statutory exemption, once enacted, remains on the books until Congress acts affirmatively to repeal it to one where a statutory exemption is presumed to expire after a short period of time unless Congress believes that it is still necessary. Further, any solution must be an efficient use of congressional time and must break the institutional stagnation that has prevented the review and repeal of statutory exemptions to date.

### Perm Do The CP---2NC

#### Termination only occurs after final evaluation.

Sofia Ranchordás 15, Professor of Public Law and a Rosalind Franklin Fellow at the Faculty of Law of the University of Groningen, Ph.D. from Tilburg University, LL.M. from the Utrecht University and Law, “Innovation-Friendly Regulation: The Sunset of Regulation, the Sunrise of Innovation,” Jurimetrics, Vol. 55, No. 2, Winter 2015, accessed via HeinOnline

The term sunset clause has been used in the literature to describe a broad range of statutory or regulatory mechanisms that entail the termination of a 21 statute at a previously determined time. Sunset clauses or provisions can be 22 applied to entire statutes or determined provisions. A sunset clause imposes not only the expiration of a law or agency, but it should also submit a legislative 23 act to a final evaluation. In theory, sunset clauses may be renewed but this would imply the verification of exceptional circumstances, which would 24 have to be evidenced by those defending the renewal.

#### The scope of antitrust is unchanged.

Konstantinos Stylianou 18, Lecturer in Competition Law and Regulation at the University of Leeds School of Law, S.J.D. from the University of Pennsylvania School of Law, LL.M. from Harvard Law School, “Exclusion in Digital Markets,” Michigan Technology Law Review, Vol. 24, Spring 2018, accessed via Lexis

The previous part on ability to exclude discussed the conditions that determine how easy or hard it is for firms to amass the necessary market power to effectively exclude rivals from the market. But, even if firms succeed in positioning themselves in a way to be able to engage in exclusionary conduct, adopting preventive or suppressive measures is not warranted unless the exclusionary conduct can persist in time. 211 This is for two reasons: first, because regulatory, judicial, or antitrust measures are quasi-irreversible, whose effect extends into the future, and therefore should be forward looking and reflect expected future conditions. 212 Starting from the assumption of free self-correcting markets, intervention is warranted when the markets' self-correcting mechanism has been given enough time to generate results, and it has failed. 213 In its stead, regulatory or antitrust intervention will artificially create the desirable conditions. However, because these measures do not expire and are not recalled (sunset clauses are rare, and changes in regulatory and antitrust policy are infrequent), the conditions they will create are semi-permanent until they are rendered irrelevant by market forces (or a policy change). Therefore, one should make sure that they are indeed needed to replace what the market should have taken care of itself.

#### Prohibitions’ are strictly mandatory

Rodney King Potter 83, Judge on the California Court of Appeal, 2nd District, J.D. from the University of California, Berkeley, BA from the University of California, Los Angeles, Former Partner at O’Melveny & Myers, “People v. Superior Court (Spencer)”, Court of Appeal of California, Second Appellate District, Division Three, 189 Cal. Rptr. 669, 677-678, 1983 Cal. App. LEXIS 1434, 2/25/1983, Lexis

However, the framer's use of the term “prohibited” manifests their intent to make the “Limitation of Plea Bargaining” mandatory. In Bright v. Los Angeles Unified Sch. Dist. (1976) 18 Cal.3d 450, 462 [134 Cal.Rptr. 639, 556 P.2d 1090], the court stated: “We observe that the word ‘prohibit’ is defined as follows: ‘(1) to forbid by authority or command: … 2.a: to prevent from doing or accomplishing something….’ (Webster's Third New Internat. Dict. (1963 ed.) p. 1813.) [\*678] ” It would be difficult to conceive of more mandatory language than that which is employed in section [\*\*21] 1192.7.

#### ‘Increase’

Dr. Howard Newby 4, BA and PhD from the University of Essex, Chair of the Higher Education Funding Council for England, Former Vice-Chancellor of the University of Liverpool, “Joint Committee on the Draft Charities Bill - Written Evidence”, Memorandum from the Higher Education Funding Council for England, 9/30/2004, http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/167/167we98.htm

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[ 45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[ 46]

9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself.

9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

#### ‘Resolved’

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### ‘Should’

David H. Sawyer 17, Judge on the Michigan Court of Appeals, J.D. from Valparaiso School of Law, “Spartan Specialties, Ltd. v. Senior Servs.”, Court of Appeals of Michigan, 2017 Mich. App. LEXIS 1178, 7/20/2017, Lexis

The specifications in the drawings for the mini-piles stated that the capacity for the mini-piles was "to be" 6,000 or 8,000 pounds and that the length of the mini-piles was "to be" adequate to get into undisturbed soil to a depth adequate for obtaining the required capacity. The specifications in the project manual stated that the mini-piles "should" have a capacity of 4 tons and 3 tons, that the mini-piles "should" be driven to minimum depth of 25 feet, and that a grout bulb "should" be formed at the base of a mini-pile. Kenneth Winters, an expert in structural engineering, and Richard Anderson, an expert in geotechnical engineering, agreed with Steve Maranowski, plaintiff's president, that the specifications in the project manual, because those specifications used the word "should," were permissive and suggestions of what plaintiff could do to achieve the required capacity. However, the trial court, when it instructed the jury on how to interpret the contract, instructed the jury that it was to interpret the words of the contract by giving them their ordinary and common meaning. An ordinary and common meaning of the word "should" is that it denotes a mandatory obligation. [\*9] See People v Fosnaugh, 248 Mich App 444, 455; 639 NW2d 587 (2001) (stating that "the word 'should' can, in certain contexts, connote an obligatory effect"); Merriam-Webster's College Dictionary (11th ed) (defining "should," in pertinent part, as "used in auxiliary function to express obligation, propriety, or expediency"). Accordingly, viewing the evidence in a light most favorable to defendant, reasonable jurors could have honestly reached different conclusions on whether the specifications in the project manual were mandatory and, because Maranowski admitted that plaintiff did not use grout bulbs and did not drive all the mini-piles at least 25 feet into the ground, whether plaintiff breached the contract. Morinelli, 242 Mich App at 260-261.

#### ‘Substantial’

Words and Phrases 64 (40W&P 759)

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

### Solvency---AT: Certainty

#### Sunset clauses are the most certain policy possible and enhance legislative quality.

Helen Xanthaki 20, Professor of Law at the University of London, Ph.D. and LL.M. from the University of Durham, President of the International Association for Legislation, “Sunset clauses: a contribution to legislative quality,” in *Time, Law, and Change*, Hart Publishing, 2020, https://discovery.ucl.ac.uk/id/eprint/10091123/1/Xanthaki\_2019%20Ranchordas%20Sunset%20clauses.pdf

Where do sunset clauses come into this paradigm of legislative quality? Sunset clauses serve as tools of clarity, precision and unambiguity; and as tools for efficacy. Let us explore the two angles separately.

Sunset clauses convey clearly, with precision, and unambiguously when the legislation will end. They manage to convey one of the most complex and, until recently, vague regulatory messages, namely that of the precipitated end of the legislation. This allows users to organise their affairs accordingly. Thus, they serve legal certainty and, as such, the rule of law.24

In doing so, sunset clauses also let the user into the regulatory plan. They offer them the knowledge that this piece of legislation is introduced under the condition that it will be assessed in a set period of time. This contextual knowledge may be instrumental in instigating the behavioural changes sought by the regulators. When legislation is experimental, harsh to implement, or even seemingly nonsensical, users are encouraged to still comply with it in the comfort of the knowledge that its effectiveness will be reviewed and the legislation terminated, if justified.25

Moreover, this invitation to participate in the regulatory game reassures users that legislation is passed after due consideration and only if needed, that its effect is indeed monitored closely, and that action will be taken to remove or reinstate it, as proven appropriate by post-legislative scrutiny exercises. 26 And so, sunset clauses contribute to the reversal of users’ mistrust to legislation, to the law, and to authority. This in turn feeds into effectiveness, as it supports an environment of regulatory compliance nurtured by trust.

Finally, sunset clauses enhance legislative quality within the statute book as the whole body of legislative texts by cleaning it from legislation that served its purpose and can now go or legislation that missed its regulatory targets.27 Sunset clauses can be the optimal answer to the labyrinth of legislative texts that plague the statute book with complexity. In fact, they can be the civil law equivalent to law revision in the common law.28

Having identified the role of sunset clauses as contributors to effectiveness and, ultimately, efficacy, let us explore their role as guardians of legislative quality.

#### The plan’s haphazard overrule is less certain than a guaranteed review process.

Barry C. Harris & Kathryn M. Fenton 96, Principal and Senior Vice President at Economists Incorporated, Ph.D. in Economics from the University of Pennsylvania; Partner at Jones, Day, Reavis & Pogue LLP, J.D. from the Georgetown University Law Center, “Congress and Antitrust Exemptions: Is Statutory Antitrust Relief Necessary for Health Care Reform?”, Antitrust Bulletin, Vol. 41, 1996, accessed via HeinOnline

Even if a case could be made at some point in time that a carefully tailored exemption from the antitrust laws was necessary, there can be no assurance that the conditions requiring this solution will extend into the future. Because it is much more likely that changes will occur, it therefore is desirable, in enacting any antitrust immunity proposal, to consider including a sunset provision or other "snap-back" mechanism that would insure that any antitrust exemption does not outlive the market conditions that prompted its adoption. As noted, the health care industry provides an example of rapid change, and little is certain except for the fact that it will certainly look very different in 5 or 10 years. Given this certainty (and the likely legislative inertia that probably will make it difficult to convince Congress to revisit the question of antitrust exemptions once they are enacted), it may be desirable to include a sunset or similar provision that will generate review of the exemption at some appropriate time. Some have urged, for similar reasons, that outright statutory exemptions be rejected in favor of some administrative mechanism that allows greater flexibility to respond to changing market conditions. 31

### AT: Sunsets Bad---2NC

#### About agency sunsets which are not the CP

---[UK in yellow]

Martin Totaro and Connor Raso 21. Connor Raso is an attorney at the Securities and Exchange Commission. “Agencies should plan now for future efforts to automatically sunset their rules” Brookings. 02-25-21. https://www.brookings.edu/research/agencies-should-plan-now-for-future-efforts-to-automatically-sunset-their-rules/

First, an agency generally must go through the same rulemaking process to rescind a rule as it would to promulgate a new rule, including public notice of the agency’s explanation for changing policy and the opportunity to comment. The sunset rule, however, would have given the agency carte blanche ability to rescind a rule without notice and comment if the agency decided not to take the necessary steps to avoid sunsetting. That rescission-by-inaction would be vulnerable to a challenge that it draws no support from any statute or precedent; it deprives the public of the chance to comment on rescission of a particular rule; and it **inverts the basic principle** that a rule generally **stays on the books** absent an affirmative agency determination—after notice and comment and reasoned decision making and consideration of alternative approaches—that rescission is warranted.

Second, the sunset rule would have applied to already-final regulations. A challenger could have argued that, by doing so, the final rule in essence would have imposed a limitation on duration not intended at the time the original regulation was promulgated without adequate justification and opportunity for public comment. This type of automatic expiration differs in kind from other types of conditional expiration dates agencies sometimes embed and justify in specific rules at the time they are promulgated.

We offer no prediction whether these two challenges would have succeeded. But they will be important to consider as agencies decide whether and to what extent to try to insulate their rules from future sunsetting efforts.

PLANNING FOR FUTURE SUNSETTING EFFORTS

Agencies that want to protect their newly adopted rules should think about what they can do now in anticipation of likely future regulatory sunsetting efforts. We offer one such proposal: Agencies should consider including in new regulations a clear **anti-sunset statement** indicating that the agency **adopted the regulation with the expectation** that it would **not expire** absent a future rulemaking rescinding that particular rule. Although the language might vary depending on the nature of a particular regulation, the following template should help guide the process:

The agency is promulgating this rule based in part on its prediction of the specific costs and benefits of this rule. The agency **believes that its estimates are accurate** but recognizes the inherent uncertainty of any prediction. The agency wishes to make clear that, if the actual costs and benefits vary from these estimates, it does not intend for this rule to automatically sunset. Instead, the agency retains the opportunity to reevaluate the rule in the future based on a context-specific analysis of the facts and circumstances that led to the regulatory impact differing from the initial prediction.

### AT: Links to Politics---2NC

#### It requires less action to let it expire.

Anne McGinnis 14, J.D. from the University of Michigan Law School, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, Vol. 47, No. 2, 2014, https://repository.law.umich.edu/mjlr/vol47/iss2/7

Perhaps the most critical aspect of this Note’s proposed reform is the five-year general sunset provision that would apply to all statutory exemptions currently in place.118 This provision switches the default from one where every exemption remains in effect indefinitely to one where irrelevant and harmful exemptions are automatically stripped from the law absent an affirmative act by Congress. This provision will force the proponents of a statutory exemption to once again make their case for why the exemption is appropriate.

#### Sunsets are the spoonful of sugar that allows controversial legislation to go down, and legislators don’t perceive them as controversial.

Ittai Bar-Siman-Tov & Gaya Harari-Heit 20, Associate Professor and Head of the Lab for Law, Data-Science, and Digital Ethics at the Bar Ilan University School of Law, J.S.D. and LL.M. from Columbia Law School; Law Clerk to the Hon. Justice Anat Baron of the Supreme Court of Israel, LL.B. from Bar Ilan University, “The Legisprudential and Political Functions of Temporary Legislation,” in in *Time, Law, and Change*, Hart Publishing, 2020

Through extensive and in-depth qualitative exploration of the legislative processes of temporary bills in the Knesset, we uncovered a variety of examples of the ways in which temporary legislation soothes resistance to the bill.

First, we revealed multiple indications that the different participants in the process themselves express the opinion that temporary legislation raises less resistance. For example, we came upon incidents where Members of the Knesset explicitly said that if the bill would have been permanent, they would have opposed it, but they were willing to support it as temporary legislation. Clear examples of this could be seen in the parliamentary debates on the Citizenship and Entry to Israel law. For example, MK Moshe Gafni had said: ‘I think it must not be a permanent law. I oppose a permanent law on this issue […] I am against the idea of this law [...] I do not accept the idea, but I accept the temporary provision.’ 52 MK Shai Hermesh similarly stated: ‘I want to say just one thing, I am against legislating this law [...] [But] I am definitely in favour of the temporary provision because I am fundamentally optimistic […] Better days will come and we will not need this law. Let’s not create laws that maybe one day we will not need.’ 53

We also found statements by Knesset committee chairs, in which they explicitly stated that their parliamentary scrutiny is laxer when enacting temporary legislation. For example, in debating the Criminal Procedure Law (Detainees Suspected of Security Offenses) (Temporary Provision), which was eventually found to be partially unconstitutional by the Court, 54 the Committee Chair openly admitted:

Had this been a law that is not temporary, perhaps it would have been treated differently, my consideration of different sections [of the bill] would also be different. Since this is a temporary provision, and not a temporary provision for several years, I imagine it will be a maximum of one year, then we will definitely be able to examine the issues during this year, and if we will want to make additional legislation – we will do so, and if not – we won’t.55

This citation may demonstrate a more general theoretical effect of temporary legislation: it may create a ‘moral hazard’ effect.56 That is, the knowledge that there will be a future chance to examine the law may cause legislators (and even committee chairs) to shirk their responsibility to scrutinize the law when enacting it.

We also found instances where temporary provisions were used as tools to overcome differences within the government. An interesting example can be seen in the enactment of the National Authority for Road Safety law. This government bill was not originally proposed as temporary legislation, and in fact, during its discussions the Minister of Transportation at the time, Meir Shitrit, argued that there is no good reason to enact the law as a temporary statute. 57

Since the legislative process of this bill was not completed during the 16th Knesset, the process continued during the 17th Knesset, this time promoted by the Minister of Transportation Shaul Mofaz. During the third meeting of the Economics Committee, in its preparation of the bill for second and third reading, the matter of temporary legislation has risen for the first time. Minister Mofaz opened the debate with the suggestion of promoting the bill as a temporary law in order to establish the National Authority for Road Safety as quickly as possible. Mofaz argued that there is disagreement in the government as to the question of establishing the Authority as a separate statutory authority, outside of the Ministry of Transportation, and that enacting the law as a temporary statute would help resolving the disagreement. Mofaz stated: ‘We have decided […] to establish the National Authority of Road Safety as a statutory authority, as a temporary law, in order for it to be established it in January 2007[…]’58 Mofaz then continued to explain that enacting the law as a temporary measure ‘solves my problem with the Prime Minister, since a large portion of the Ministers as well as the Prime Minister wanted this matter to be inside the Ministry. I convinced them and got their agreement to the formulation I have just talked about’. 59

A particularly interesting case about the use of temporary legislation to overcome disagreements within the government was discovered in a bill regarding the electronic supervision of detainees. The bill had a sunset clause and after the committee members expressed their wonder for the need to use temporary legislation in this case, it turned out that this was part of a solution to a disagreement within the government. As the Chair of the Committee, MK Gafni explained:

It turned out that there is a disagreement between the Ministry of Finance and the Ministry of Welfare […] and in this disagreement the compromise was to enact the law as temporary law for 3 years and afterwards to have a discussion. I said: this is out of the question, it disgraces the Knesset, it is like a coalition negotiation between the Ministry of Finance and the Ministry of Welfare in primary legislation, and we absolutely disagreed […] There cannot be such legislation, which contains a temporary provision because they do not get along.60

This is an instructive example of how the government attempts to use temporary legislation to solve inter-governmental disagreements. It is also fascinating since it demonstrates that Knesset committees may resist such use of temporary legislation when they believe that the sole reason for using temporary legislation is resolving ministerial disputes.

In another matter, MK Gafni claimed that temporary legislation enables the government to extend statutes in controversial matters not only to overcome ministers’ disagreement, but also as a way to avoid public and media criticism. This was what Gafni claimed regarding of the government’s request not to repeal the Law on Partial Payment of a Convalescence Allowance in the Public Service in 2009 and 2010 (Temporary Provision), but to leave it in the statutebook even though it expired. He argued that: ‘We [the Committee] are proposing to repeal the law, which is the simplest thing. Legally speaking this is what needs to be done, [... whereas ...] they [the Ministry of Finance] say, no. We will leave it; we will make a temporary law.’ 61

In explaining what he believes to be the government’s motivation, Gafni stated: ‘If the law is repealed and they want to do it again, they will have to come to the government with the whole plan and then the Ministers will come and ask why, why decrease convalescence allowance from the employees.’ On the other hand, if the expired temporary law had remained on the statute book and would not be officially repealed, they would not have to come with this new law. Instead, ‘they will say no convalescence, nothing, we are not taking anything from the workers, we are only [temporarily] extending the validity of this law that was enacted in 2009 […] When a minister will be interviewed by the media and asked why he voted [for this decrease], he will say that he did not vote [for it] but merely extended the date. That’s what they intend.’ 62

Finally, we also found statements indicating that Knesset Members perceive temporary legislation not only as a tool to overcome parliamentary and public objections, but also as a means of dealing with future judicial review and reducing the fear of invalidating the law. This was explicitly stated by the Chair of the Interior and Environmental Protection Committee, MK Ophir PazPines, when referring to the Citizenship and Entry into Israel Law: ‘If this law is not enacted as temporary legislation, it has no chance in the world of passing the Court.’ 63

These examples reveal the uses of temporary legislation as a means of facilitating legislation, overcoming parliamentary and governmental objections to the bill, perhaps even evading effective parliamentary, public, media and judicial scrutiny. These findings clearly illustrate the abovementioned claim in the theoretical literature that sunset provisions are ‘the spoonful of sugar that helps controversial legislation go down.’

## Offsets CP

### AT: Condo Bad---2NC

### The List---2NC

#### Here’s a comprehensive list---we’re inserting it.

Christopher L. Sagers 15, James A. Thomas Distinguished Professor of Law and Faculty Director of the Cleveland-Marshall Solo Practice Incubator at the Cleveland-Marshall College of Law, Cleveland State University, “Table of Contents,” Handbook on the Scope of Antitrust, American Bar Association, Section of Antitrust Law, 2015, <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/ecd/ebk/140535931/5030623-TOC.pdf>

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## Economy ADV

### Rant---2NC

### Econ D---2NC

#### Empirics prove austerity pressures overwhelm.

Christopher **Clary 15**, Ph.D. in Political Science from MIT, Postdoctoral Fellow, Watson Institute for International Studies, Brown University, “Economic Stress and International Cooperation: Evidence from International Rivalries,” April 22, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2597712

Do economic downturns generate pressure for diversionary conflict? Or might downturns encourage austerity and economizing behavior in foreign policy? This paper provides new evidence that economic stress is associated with conciliatory policies between strategic rivals. For states that view each other as military threats, the biggest step possible toward bilateral cooperation is to terminate the rivalry by taking political steps to manage the competition. Drawing on data from 109 distinct rival dyads since 1950, 67 of which terminated, the evidence suggests rivalries were approximately twice as likely to terminate during economic downturns than they were during periods of economic normalcy. This is true controlling for all of the main alternative explanations for peaceful relations between foes (democratic status, nuclear weapons possession, capability imbalance, common enemies, and international systemic changes), as well as many other possible confounding variables. This research questions existing theories claiming that economic downturns are associated with diversionary war, and instead argues that in certain circumstances peace may result from economic troubles. Defining and Measuring Rivalry and Rivalry Termination I define a rivalry as the perception by national elites of two states that the other state possesses conflicting interests and presents a military threat of sufficient severity that future military conflict is likely. Rivalry termination is the transition from a state of rivalry to one where conflicts of interest are not viewed as being so severe as to provoke interstate conflict and/or where a mutual recognition of the imbalance in military capabilities makes conflict-causing bargaining failures unlikely. In other words, rivalries terminate when the elites assess that the risks of military conflict between rivals has been reduced dramatically. This definition draws on a growing quantitative literature most closely associated with the research programs of William Thompson, J. Joseph Hewitt, and James P. Klein, Gary Goertz, and Paul F. Diehl.1 My definition conforms to that of William Thompson. In work with Karen Rasler, they define rivalries as situations in which “[b]oth actors view each other as a significant political-military threat and, therefore, an enemy.”2 In other work, Thompson writing with Michael Colaresi, explains further: The presumption is that decisionmakers explicitly identify who they think are their foreign enemies. They orient their military preparations and foreign policies toward meeting their threats. They assure their constituents that they will not let their adversaries take advantage. Usually, these activities are done in public. Hence, we should be able to follow the explicit cues in decisionmaker utterances and writings, as well as in the descriptive political histories written about the foreign policies of specific countries.3 Drawing from available records and histories, Thompson and David Dreyer have generated a universe of strategic rivalries from 1494 to 2010 that serves as the basis for this project’s empirical analysis.4 This project measures rivalry termination as occurring on the last year that Thompson and Dreyer record the existence of a rivalry.5 Why Might Economic Crisis Cause Rivalry Termination? Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

#### Decline increases cooperation.

Christina L. **Davis &** Krzysztof J. **Pelc 17**, Christina L. Davis is a Professor of Politics and International Affairs at Princeton; Krzysztof J. Pelc is an Associate Professor of Political Science at McGill University, “Cooperation in Hard Times: Self-restraint of Trade Protection,” Journal of Conflict Resolution, 61(2): 398-429

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

#### Stats prove

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

## Rule of Law ADV

### Democracy D---2NC

#### This is true in all scenarios, including against other democracies

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We now turn to the results from the outcome stage, where militarized conflict initiation is regressed on democracy measures and other covariates. The univariate clog-log model 32 that ignores the endogeneity, shown in column (1) in Table 1, successfully replicates the standard, dyadic democratic peace finding that democracies are peaceful, though only toward other democracies. Note that, while individual democracy measures have either a positive or insignificant coefficient, joint democracy has a negative coefficient that overwhelms the positive coefficients of individual democracy measures in the univariate model. As a result, the univariate model produces a result that, while democracy may increase conflict against a non-democracy, it decreases conflict against a democracy.

To illustrate this, we calculate the average treatment effect of joint democracy for the challenger and for the target based on the univariate model. These effects are calculated by comparing the predicted probabilities of conflict initiation when changing the regime type of self (challenger or target) from non-democracy to democracy, holding constant the regime type of the other (target or challenger) as democracy. 33 Gray, hollow circles in Figure 4 show the treatment effects of challenger’s and target’s democracy. We can see that both effects are negative and statistically significant at the 95% confidence level.

Once we correct the endogeneity, however, the data no longer support such conclusions. In column (2) in Table 1, the negative coefficient for joint democracy no longer overwhelms the positive coefficient of challenger’s democracy. Challenger’s democracy now appears to increase conflict even against a democratic target. Red, solid circles in Figure 4 show the average treatment effects of challenger’s and target’s democracy, calculated from the trivariate model. The effect is positive and statistically significant for challenger’s democracy, although the effect is indistinguishable from zero for target’s democracy.

Whether we correct for endogeneity thus makes a significant difference in our estimates of the effect of joint democracy on conflict. The key to understanding why these changes occur lies in the estimated correlations between the error terms for different equations. The estimated error correlation between equations for conflict and challenger’s democracy, 12, is negative and statistically significant. This suggests that unobservable or unmeasured determinants of a country’s democracy make it less likely for that country to attack another country. A failure to control for such factors would generate a negative omitted variable bias, making it look as if challenger’s democracy has a pacifying effect on conflict behavior. On the other hand, the estimated error correlation between conflict and target’s democracy equations, 13, is indistinguishable from zero, suggesting that the endogeneity problem does not seem to operate for target’s regime type.

#### It's an empirical question, answered by statistical methods---failing to code based on exogenous variables corrupts their evidence

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Before we review our approach in detail, it may be useful to explain why this type of analysis has not been pursued successfully in the past and what makes our effort different from other, broadly related projects. We are not the first to apply an IV framework (more specifically) or multi-equation models (more broadly) to the democratic peace. However, previous attempts suffer from two major problems. First, previous studies have typically used a dyad (country pair) as the unit of observation in analyzing conflict, which requires some summary measure(s) of democracy for a pair of countries rather than the state-level (monadic) democracy measure. 6 Use of a dyadic aggregate to represent regime type creates a discrepancy between the first stage regression (predicting democracy at the country level) and the outcome stage regression (predicting conflict at the dyad level). 7 We avoid this problem by using the directed dyad as the unit of observation in predicting conflict, distinguishing between the potential challenger and target in a dispute. This allows us to connect the first stage equations (predicting the challenger’s and target’s regime types) and the outcome stage equation seamlessly. Doing so has several benefits: the outcome stage model could directly include country-level covariates (such as challenger’s and target’s democracy) without having to convert them to a dyadic summary. This also allows us to estimate the system of equations jointly rather than relying on the “forbidden regression.” 8

Second, a more daunting challenge in applying an IV approach to democratic peace research is the difficulty of finding a plausible instrument for regime type — a variable that is strongly correlated with regime type but is unrelated to war. This is the challenge that has plagued empirical researchers in many fields. For example, a recent study of the effect of regime type on economic growth uses a diffusion-based measure of democracy (i.e., average value of democracies in a given region) as an instrument for democracy (Acemoglu et al. 2019). However, diffusion-based instruments such as this are unlikely to be a valid instrument, due to spatial spill-over, interdependence, and, most importantly, simultaneity (Betz, Cook, and Hollenbach 2018). Recognizing problems with spatial instruments, McDonald (2015) seeks to exploit the very discrepancy between country-level and dyad-level designs as the source of identification. His discussion, however, lacks a clear explanation as to why some determinants of regime type do not influence conflict. 9

We turn to a demographic variable — average female fertility rate in a given country — as a source of variation in regime type that is exogenous to international conflict. As we will argue below, a lower fertility rate is a strong driver of democratization. We will also present theoretical arguments and a series of falsification tests that support the claim that average national fertility rate does not directly influence international conflict.

# 1NR

## Sohna DA

### Impact---2NC

#### It sparks World War III

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

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

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

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

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

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

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

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

#### Net neutrality underpins global innovation, solving disease, food, and environmental crises---extinction

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The novel SARS-COV-2 virus that leads to COVID-19 disease is teaching us a great many lessons about infrastructure writ large. We are discovering weaknesses in socio-economic safety nets, in our healthcare systems, public transportation system, our education systems and many others. Societies around the world are organized around a presumption that people can work, play and interact with each other in close proximity. Our dependence on this assumption has been upended by a virus that propagates through proximity and through the air and on commonly touched surfaces. Among the responses, social distancing has become a strong recommendation around the globe. But our physical infrastructure is operationally dependent on people being able to work together in proximity. That includes traveling together. One has only to look at the airline industry to see how quickly that mode of travel has evaporated. Schools have been closed in favor of remote education and “work from home” has become a guideline for those whose jobs permit it. For many, of course, work requires proximity, from haircuts to grocery stores, people need to be present. If that isn’t safe, many people cannot work and the economic impact is catastrophic.

To the degree that working and living can be done in some remote way, the Internet has become an important component of COVID-19 response. It permits remote interaction with customers and even patients. It allows people to order goods and services online for delivery to doorsteps. It provides researchers with access to global sources of information and to computing power in unprecedented quantities. The openness, interoperability and distributed nature of the Internet has contributed to its utility. Its scalability in many dimensions has allowed it to expand to accommodate new demands. Remarkably, the capacity to support streaming video is now also supporting real-time videoconferencing as a substitute for in-person meetings.

Of course, the Internet is not uniformly implemented. Only about one half of the world’s population appears to have direct access to the Internet and much of that is via mobile 3G-4G-5G services. There is a clear urban/rural Internet access divide. There is an economic divide as well. Even if the service is available, it may be unaffordable. In inner urban environments, cost may inhibit effective uses. These observations suggest several potential remedies. Physical build-out of Internet access is necessary. This could range from direct optical fiber access to homes, to free-space laser “middle miles”, to 5G mobile implementation. Where costs are high, subsidies may be warranted – not unlike the notion of Universal Telephone Service subsidized by a Universal Service Fund.

Novel ideas are emerging, like outfitting school buses with WiFi and parking them to provide residential access at night. Libraries and other public facilities as well as commercial enterprises are offering WiFi access to the Internet. Private sector companies such as SpaceX are placing tens of thousands of satellites in low Earth orbit with the intent of providing Internet access to every square inch of the Earth’s surface. Cost of Internet capable equipment is also coming down with low-cost pads, tablets and notebook computers. Given the rich varieties of Internet-based services aimed at facilitating socially distant economies, it is not hard to argue for policies that encourage more Internet infrastructure.

Of course, it cannot stop with the physical infrastructure. The operation of the Internet must be robust, safe, secure, reliable and adapted to improve privacy. Useful content must be available in locally common languages. The scourge of misinformation and disinformation needs to be attenuated and better global or at least bi-lateral or multi-lateral cooperation is needed to cope with harmful and criminal behaviors on the Internet. Strong authentication and cryptography are needed to defend against identity theft and hacking. Variations of the European Union’s General Data Protection Regulation (GDPR) are propagating around the world with good intent although implementation has shown some unintended consequences, not least of which may be the ability to share health information that would assist in finding a vaccine against SARS-COV-2.

As we try to move education to online modes of operation, it has become very apparent that learning this way is different from traditional teaching formats. Adapting online regimes to allow students to work together remotely, to allow teachers to track and coach student progress, to support individualized remedial lessons at need, among other things, highlights the challenges and opportunities that online education brings.

More directly associated with COVID-19 is the need for detecting exposure and tracking contacts to reduce the spread of the disease. Mobiles and the Internet appear to have roles to play for at least some tracking and tracing system designs. The application of machine learning to large medical datasets may help identify the ways in which SARS-COV-2 actually works. It seems that we are finding new syndromes triggered by this virus as research progress is made. We don’t know enough and we must learn more.

Among the stark lessons we have learned is the fragility of food and medical equipment supply chains, either because of excessive concentration or because transport connections are broken. We are seeing this dramatically in the United States where farmers have been unable to sell to restaurants that are closed or operating at much reduced capacity out of concern for the propagation of the virus. These lessons should teach us to create much more resilient infrastructure in every dimension. We need to refresh national stockpiles of protective equipment, medical devices and vaccines. More generally, we must imagine other potential global catastrophes and put in place plans to mitigate. The time to agree on best practices for emergency response is before the emergency, not during.

We must not allow this pandemic or a future one to become our society’s Titanic.

Internet Openness toward Digital Sustainability

Managing the worldwide health crisis is an ongoing challenge, not only for our healthcare system, but also for our economy and our everyday life. Covid19 changed the way we work, we interact, we socialize, relying even more than before on digital tools. This crisis was, as a consequence, from the very beginning a stark reminder of how vital networks are. It also brings to light that Internet and telecoms networks constitute the “Infrastructures of freedom”. Freedom of expression, freedom to communicate, freedom to access knowledge and to share it, but also freedom of enterprise and innovation, which are keys for each country to grow and provide jobs. It is more crucial than ever to guarantee that internet stays smooth-running, open and accessible common good.

A prerequisite is thus to guarantee accessibility to those networks. The obvious and absolute need for connectivity is pointed out by many authors in this symposium, notably Vint Cerf, Rolf H. Weber, the Alliance for Affordable Internet, the Internet Freedom Foundation or APC in partnership with Rhizomatica. As explicated by Luca Belli, providing real accessibility also requires Internet openness, and net neutrality is at the core of an open Internet. During the Covid19 crisis, in Europe, net neutrality regulation has once again proven its relevance and its capacity to adapt, given the specific risks of networks congestion. More importantly, it is showing the way forward. When it comes to governing common assets, the “law of the crowd” will always win out over “law of the strongest”.

European Union regulators who are members of BEREC and the European Commission all reiterated these principles throughout the crisis, as depicted by Frode Sørensen. In France, Arcep worked to ensure that no content were prioritized, despite the very singular charge over the networks. As showed by Smriti Parsheera, in India, one of our key partner of BEREC on open internet issues, the crisis also challenged net neutrality rules and led to recommendations on its implementation. In the opposite direction, the crisis also highlights that the freedom of access to the Internet continues to be threatened in a number of countries. Anna Orlova and Andrey Shcherbovich give insights of the restrictions observed in Russia in response to the COVID-19 crisis.

This period and the many events that punctuated it also fueled awareness of the need for more interaction between stakeholders. In addition to the non-discrimination obligation imposed on operators, major content and service providers’ tremendous impact on the networks warrants attention. The dialogue between these players (video streaming players especially) and operators over improving network management has sometimes seemed like one of variable geometry, for instance when rolling out new services, introducing certain options or posting updates to certain especially popular games online. It would be wise to establish a proper dialogue mechanism that would enable operators to anticipate and plan for these events. It would also be worth assessing how efficient online service providers’ optimisation measures (downgraded video format) were in reducing their bandwidth consumption. But, let us be clear, permission-less innovation needs to remain the rule for one and all, even if the handful of heavyweight OTT companies whose traffic shapes how networks are provisioned should proactively commit to a systematic dialogue.

The development of contact tracing solutions to help fight the spread of the epidemic, thanks to the use of digital technology, also confirmed how important it is that everyone work to ensure an open Internet, beyond telecom operators. As to the decisive role played by the two main mobile operating system (OS) providers, it seems increasingly vital to be able to challenge these players on their technological choices, and the fetters they place on app developers. Is it really acceptable that private sector players’ technical decisions can influence the choices made by democratic governments such as ours, on matters of public health? This is the question that the current public health crisis is forcing us to ask, separate from any underlying debates about the tool itself. Extending the principle of an open Internet to include operating systems, which Arcep has been proposing to public policymakers since 2018, seems more pressing than ever before. Moreover, to respond to the challenges of Big Tech, Arcep has also proposed to the European Commission to set up a new ex ante regulatory regime, inspired by telecoms regulation and targeted at a few structuring players.

Finally, the period of crisis that we experienced confirmed how urgent it is to make environmental issues the centrepiece of our actions. In France, Arcep is firmly committed to this path, with the launch of a collaboration platform “Toward digital sustainability”. This platform calls on all interested associations, institutions, operators, digital industry businesses and experts to invent together a new framework to make sure that communication networks, devices and usage are developed in the respect of environmental concerns.

This year, for the first time, Arcep’s report on the state of the Internet in France devotes an entire chapter to environmental issues, including a reminder of the first available quantified findings on digital technology’s carbon footprint, and an exposé on the preliminary actions that Arcep has taken to measure the environmental impact of a sector that today represents around 3% of the globe’s greenhouse gas emissions.

But let there be no misunderstanding. The necessary digital sobriety must not be seen as synonymous with placing limits on online exchanges. The crisis revealed how crucial these interactions are to the life of the Nation, and no authority in a democracy could or should stand as arbiter of good or bad uses. The Internet’s profusion must remain an inexhaustible source of vitality, expression and innovation. The challenge that awaits us is far more meticulous: it is by breaking down the different uses’ technical chains that we can make every link along those chains accountable, maintaining an overall cap on digital technology’s environmental footprint, and remaining deeply committed to eco-friendly design.

This unprecedented period confirmed the extent to which networks must be a “common good”. The situation raised a number of questions regarding unlimited trade globalization, the level of decentralization for public decisions, risks related to climate change, loss of digital sovereignty, etc. It reinforces the citizens’ calls to place the “common good” at the center of our life, decisions, societies, institutions. Those demands are opportunities to be seized for the telecoms sector. Starting with the regulation itself, innovative spectrum approaches could be of great interest following the logic of spectrum commons, i.e. free access to certain frequency bands, of which Wi-Fi remains the global standard. Those innovative strategies are initiated notably in South Africa, as presented by Dr Senka Hadzic, Pablo Aguera, and Dr Alison Gillwald, in France where Arcep has also initiated a reflection about dynamic spectrum management. The global demand for establishing the “common good” at the center of all that we do will necessarily require regulators around the globe to take action swiftly.

#### It turns every impact

Wolfgang Ehringer 17 & Henrik Söderström 17. Halmstad University. 02-23-17. “Framing Global Catastrophic Risk – Recent and Future Research.” <http://www.diva-portal.org/smash/get/diva2:1077151/FULLTEXT01.pdf>

Other future studies: What will happen to the modern civilization, if the internet is failing? Since everything is built on this kind of system today, we also become dependent on it and its functionality. We consider this topic as an emerging global catastrophic risk.

### AT: No Link

#### Exemptions cause industry backlash and lobbying.

Melissa Mayeux 20, Notes Editor of the Washington University Jurisprudence Review, J.D. from the Washington University School of Law, “A Match Made in Antitrust Heaven? A Liberalistic Exploration of the Medical Match's Antitrust Exemption,” Washington University Jurisprudence Review, Vol. 13, No. 1, 2020, accessed via HeinOnline

One of the main goals of federal antitrust laws is to protect competition, which is considered beneficial to the public. 3 2 Competition is necessary for "real freedom of association-and [for] real power dispersion. All monopolies, and all very large organizations of sellers (or buyers), are impairment of that freedom."'3 3 Antitrust exemptions are essentially legal monopolies and directly conflict with this purpose of protecting competition. Thus, exemptions have been enacted sparingly.' 3 4 Historically, the majority of statutory exemptions have been enacted in response to temporal pressures and special interest lobbying. 135 "Many scholars believe that, regardless of the rationale stated during debate, statutory exemptions are often special interest legislation, passed at the behest of a particular industry without full consideration of the larger social or economic impact." 136 Henry Simons warned "private monopolies with the blessing of regulation and the support of law are malignant cancers in the system."' 37 When faced with competition, monopolies seek government regulation and antitrust exemptions to maintain control. 138 Critics of antitrust exemptions have rightly pointed out that government implementation of exemptions is disjointed, inconsistent, and often in response to passing or temporal pressures. 139 "Some of these exemptions are partial, others complete. Some apply to particular industries or organizations, others immunize specific activities and practices. Some were originally installed in periods of depression, others in periods of war or defense mobilization. Some are de jure, others de facto."' 40 Monopolists, disguising their motives as the promotion of a public purpose, have been able to use their political influence to persuade the government to grant them a special commercial advantage.' 4

Simons cites this hodgepodge method of government interference as one of the main reasons for ridding the economy of private monopolies. Every legal monopoly inevitably requires government intervention through regulation.' 4 2 Government regulation begins a cycle that ultimately leads to even more government regulation.' 4 3 "[E]very interference by government on behalf of one group necessitates . . . additional interference on behalf of others."144 The accumulation of government interference and regulation creates an "enterprise economy paralyzed by political control."' 45

#### Repeal signals legislative failure and strengthens opposition.

D. Daniel Sokol 9, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “Limiting Anticompetitive Government Interventions that Benefit Special Interests,” George Mason Law Review, Vol. 17, Fall 2009, accessed via Lexis

The legislative failure that strengthens the position of interest groups over that of the general population explains why many antitrust immunities come into being. 40 In a world of interest groups, antitrust agencies may be less politically powerful than other interest groups that shape regulation. Antitrust law does not have a well organized and powerful constituency with which to push for procompetitive change. 41 Unlike specific policies that benefit a particular industry or other interests (e.g., labor), the benefits of antitrust law are diffuse. Increased welfare affects each consumer, whether a business or individual, only marginally, though the aggregate societal consequences may be significant.

There are many examples of how the public choice dynamic works in legislation that negatively impacts or limits antitrust regulation. The passage of the Robinson-Patman Act, 42 for example, can be explained in large part as a public choice story. 43 The Act's purpose was to protect competitors. 44 The Act had its origins in the work of the United States Wholesale Grocers Association, which proposed the precursor to the Act at its 1935 annual meeting. 45 The initial title of the Act reflected the particular interest group that sought protection-"Wholesale Grocer's Protection Act." 46 In particular, the Act was an attempt by politically well-organized smaller retailers to reduce the ability of the A&P grocery chain to use its scale ad vantage to extract better terms from suppliers than its smaller competitors through price discrimination or buyer power. 47

Explicit and implicit immunities to antitrust regulation may be included in the initial antitrust law and regulations of a country's antitrust system for public choice reasons. Restrictions on the ability of an antitrust agency to act because of immunities in the antitrust law, or other laws that provide sole jurisdiction to sector regulators, set up the parameters for antitrust regulation in a given market. This limits the ability of antitrust agencies to police against market-distorting behavior that the government creates or facilitates. One such case of a direct exemption is Singapore's Competition Act of 2004. The Act's prohibitions against anticompetitive conduct do not apply to the government, any statutory body, or person acting on behalf of the government. 48 Moreover, the Act creates a number of sector exclusions, such as for postal, rail, and cargo services. 49 In other areas, competition oversight of sector-specific businesses has been exempted (e.g., telecoms, media, and energy). Given the political power of some of the state-owned enterprises in Singapore (via the government holding company Temasek Holding Pte., which, as a sovereign wealth fund, also bought a stake in Merrill Lynch in late 2008) and the problems of public choice in regulation, such exemptions have the potential for significant anticompetitive effect. 50 In countries that are far less open to competition, such as China, a similar pattern is emerging. Article 7 of the new Chinese Anti-Monopoly Law 51 creates immunities from antitrust regulation for state owned enterprises in "strategic" sectors, which include such economic drivers as aviation, banking, electricity, oil, railroads, and telecommunications. 52

The political process may, after adopting an antitrust law, add various immunities from antitrust coverage for favored industries and sectors, for reasons of public choice. The U.S. experience, in which immunities have had significant staying power, exemplifies how difficult it is to get a domestic legislature to rein in these exemptions. 53 A statutorily embedded system of immunities makes remedying such conduct difficult because favored interest groups will lobby hard to keep those immunities. 54 Indeed, such preferences strengthen existing interest groups, and can even create additional interest groups, with a vested interest in the continued regulatory creep of such immunity. 55

#### There’s no uniform advocacy for repeal, so the only effective lobbying comes from businesses.

Anne McGinnis 14, J.D. from the University of Michigan Law School, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, Vol. 47, No. 2, 2014, https://repository.law.umich.edu/mjlr/vol47/iss2/7

Once in place, exemptions are rarely revisited,112 and powerful industries continue to lobby for new ones.113 For example, regardless of whether the McCarran-Ferguson Act remains warranted or not, every attempt to repeal the Act has failed. In fact, every recent attempt to reform any current statutory exemption has failed.114 The harm, or, at the very least, the ineffectiveness of many of these statutory exemptions is neither partisan nor heartily contested by antitrust experts.115 But efforts to repeal exemptions rarely gain traction. Interest groups advocating for an exemption may be powerful and strongly motivated, but groups advocating against an exemption are often fragmented and have little stake in pursuing repeal.116

#### Even with anti-competitive effects, revoking exemptions creates a political firestorm and business catastrophe.

Roberti et al. 18, Partner at Allen & Overy LLP, former Staff Attorney for the Federal Trade Commission, J.D. from NYU Law; Kelse Moen, Associate Attorney at Allen & Overy LLP, J.D. from Cornell Law School; Jana Steenholdt, Associate Attorney at Allen & Overy LLP, J.D. from The George Washington University Law School, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law,” United States Department of Justice Roundtable on Exemptions and Immunities from Antitrust Law, 03-14-2018, https://www.justice.gov/atr/page/file/1042806/download

Finally, even when exemptions are ill-considered, they are difficult to remove. Exemptions create a classic public-choice problem: they create a concentrated group of industry beneficiaries who benefit greatly from their special privileges, while the consumers who suffer higher prices are diffuse, are harmed individually only in small amounts, and therefore are unlikely to exert much effort for the repeal of existing laws, even if the laws’ macroeconomic harm is great. To be fair to the exempt industries, removing the exemption would require a fundamental change in the way that they have built their business and expectations, making a rapid removal of the exemption difficult to implement. The corresponding “stickiness” of these exemptions is evidenced by the fact that many of the existing exemptions were passed nearly a hundred years ago and still exist today, even after economic theory has moved away from the theoretical foundations on which they were originally built.

### AT: Won’t Pass

#### She’s squeak by unless there’s late Dem defection

IR 3-31 – Inside Radio, “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo”, 3/31/2022, https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html

Five months after President Biden nominated Gigi Sohn to fill an open Democratic seat on the Federal Communications Commission, she is still on the sidelines and the FCC remains with a two-two deadlock along party lines. If and when her nomination advances will not only come down to whether Senate Democrats all support her, but also attendance in the chamber.

Sohn’s nomination vote in the Senate Commerce Committee tied 14-14 earlier this month. That means it will require a motion to discharge from the Majority Leader in order to be placed on the Senate calendar. But in order for that to pass, all 50 Democrats will need to be present to overcome what is expected to be universal opposition among Republican lawmakers. Vice President Kamala Harris would then break the tie in the evenly split Senate. Supporters of Sohn’s nomination are hoping that the two-step process – a vote on her confirmation would follow the discharge – could come within the next week or two.

One D.C. lobbyist told Inside Radio they believe that at the end of the day, Sohn will squeak by and be confirmed this spring. The only issue, they said, is whether the Senate will find the time before diving into the debate and vote for Supreme Court nominee Ketanji Brown Jackson. That is looking less likely. The latest indicators suggest a Sohn vote will not happen until the end of April.

But GOP members are hoping to peel off a Democrat, arguing Sohn’s positions on broadband net neutrality would be bad for rural states. They also argue that her past work with the now-closed television streaming service Locast should disqualify her from consideration. Sohn has agreed to recuse herself temporarily from matters involving retransmission consent or television broadcast copyright for the first three years of her term in order to address those concerns.

“Why on Earth should we choose a commissioner who would have to recuse herself from participating in substantial parts of the FCC's work? How does it serve Americans to have an FCC Commissioner who can't fully do her job,” said Senator John Thune (R-SD). “Surely, there are other qualified nominees who don't have Ms. Sohn's conflict of interest,” he said in a speech on the Senate floor earlier this month.

An indication of whether Sohn will advance may come from a vote on Alvaro Bedoya, a Democrat nominated for a post on the Federal Trade Commission. His nomination also failed to clear the Senate Commerce Committee with a 14-14 split, meaning Democrats will need to go through a similar two-vote process in order to confirm him. That could happen in the next few days according to some Washington insiders.

Some outside groups are hoping to put pressure on the Senate to act on Sohn’s nomination before its April recess. The left-leaning Media and Democracy Project is running a social media campaign complaining it has been more than a year since there was a “fully functioning” FCC and urging people to call their lawmaker. It calls Sohn an “impeccably qualified” nominee. “She represents a tie-breaking fifth vote at an FCC that must create a more just, equitable and diverse media system,” it says. The group also accuses media companies of “trying to undermine” her nomination.

But such a claim may not get far after the National Association of Broadcasters – which initially said it had “serious concerns” that the ethics agreement submitted by Sohn would not do enough to separate her from what it called a “clear and troubling” conflict of interest – has since reversed course. It got behind Sohn’s nomination in January after she agreed to recuse herself temporarily from a pair of broadcast regulatory issues that are critical to local TV station revenue.

If she is confirmed, Sohn would give the Democrats a third vote on the Commission and break its current 2-2 deadlock. It would also allow FCC Chair Jessica Rosenworcel to take on several more controversial items that an evenly split FCC would not approve.

#### There’s enough support BUT it isn’t guaranteed

Jimm Phillips 3-31, Associate Editor at Communications Daily, Former Reporter at Washington Post and the American Independent News Network, Graduated from American University, and Karl Herchenroeder, Associate Editor and Technology Policy Journalist at Communications Daily, BA in Journalism from the University of Maryland, “Bedoya Confirmation Timeline Questioned After Senate Party-Line Discharge Vote”, Communications Daily, 3/31/2022, https://communicationsdaily.com/news/2022/03/31/Bedoya-Confirmation-Timeline-Questioned-After-Senate-PartyLine-Discharge-Vote-2203300069

Sohn Uncertainty

Uncertainty about the Senate’s timeline to act on Sohn fueled chatter on and off Capitol Hill about whether there are Democratic holdouts who could endanger the nominee’s confirmation prospects.

“I don’t think they will” bring Sohn up for a discharge vote “unless they have the votes” to clear that hurdle, meaning “I don’t think they’ll bring her up” this week, Senate Minority Whip and Communications Subcommittee ranking member John Thune, R-S.D., told reporters. Sohn will likely need unanimous support from all 50 Senate Democrats to clear the discharge hurdle since all 50 Republicans are expected to oppose her. Harris would be expected to again cast the tiebreaker in Sohn’s favor in a 50-50 tie.

Senate GOP aides noted chatter that Sen. Joe Manchin of West Virginia and a handful of Democratic senators facing tough re-election fights this year, including Sen. Catherine Cortez Masto of Nevada, remain undecided on Sohn amid the Fraternal Order of Police’s opposition to the nominee. FOP opposes Sohn because of her role as an Electronic Frontier Foundation member (see 2201040071). The group cites EFF’s backing of end-to-end encryption and “user-only-access.”

Spokespeople for Cortez Masto and two other Democratic senators considered potential Sohn holdouts -- Maggie Hassan of New Hampshire and Mark Kelly of Arizona -- didn’t comment. The National Republican Senatorial Committee criticized the trio last week, along with Sens. Michael Bennet of Colorado and Raphael Warnock of Georgia, for considering backing Sohn on the floor because of the FOP concerns. Former Nevada Attorney General Adam Laxalt (R), who’s challenging Cortez Masto, also previously cited the FOP concerns (see 2203230071).

“I understand there’s concerns” from FOP about Sohn, but “we haven’t gone into it that much with them,” Manchin told us Wednesday. His office didn’t comment further.

Cantwell told us Senate leadership hadn’t fully ruled out holding a discharge vote on Sohn this week, as of Wednesday afternoon. “We’re busy and there are so many things we’re trying to get done,” particularly before anticipated floor action next week on Jackson, Cantwell said. “If we had more cooperation from our colleagues, it would be an easier thing” to accomplish. She insisted she’s “not going to speak” about any other Democratic senator’s position on Sohn.

“These votes are becoming more and more difficult for Democrat senators,” said Sullivan. Sohn “looks like she might go down even with some Dems against.”

“We certainly hope” senators up for re-election this year think twice before backing Sohn, but there’s been no firm commitments among Democrats to oppose the nominee, FOP Executive Director Jim Pasco said in an interview. “We’ll find out” whether any of them vote against Sohn “the way people normally find out” when Senate margins are tight, “once the votes are counted.” FOP doesn’t “discard our right to hold those who vote for” the nominee “accountable,” including potentially withholding endorsements for those incumbents, he said. The group has “reached out to numerous senators individually as well as to the Senate as a whole” to raise concerns about Sohn.

Sohn’s supporters called into question chatter about Democratic holdouts. They believe any delays in Senate consideration of the nominee now reflect competing priorities for floor time. “There aren’t any holdouts” on the Democratic side “we’re aware of,” said Public Knowledge Government Affairs Director Greg Guice. “It’s really about how much time there is on the floor and” Senate Majority Leader Chuck Schumer, D-N.Y., “having to manage that.” The "hope is that" the Senate holds a discharge vote on Sohn "next week, but they've got a lot on their plate" and leaders are aiming to confirm Jackson before the chamber goes on a two-week recess that's set to begin the week of April 11, Guice said.

#### The votes are there

Todd Shields 22, Reporter at Bloomberg LP, and Maria Curi, Government Journalist at Bloomberg LP, “Biden's FCC Choice Is Set for Vote in Senate Even as GOP Opposes Pick”, Bloomberg, 3/2/2022, https://www.bloomberg.com/news/articles/2022-03-02/biden-s-fcc-nominee-opposed-by-gop-gets-another-vote-in-senate

Democrats will try again Thursday to advance President Joe Biden’s choice for the Federal Communications Commission over objections from Republicans.

Gigi Sohn, a communications lawyer who has drawn GOP opposition in part for criticizing Fox News, is set to be considered by the Senate Commerce Committee. An earlier vote was postponed after a Democratic senator fell ill.

Sohn would give the FCC its first Democratic majority of the Biden presidency. Her arrival could boost policy initiatives such as net neutrality rules to govern broadband traffic. Committee approval would send her nomination to full Senate, where she would be favored to prevail since Democrats control the chamber.

“While I think the votes are there on Gigi’s side, I think it will ultimately take awhile,” Robert McDowell, a Washington-based partner at Cooley LLP and former Republican FCC commissioner, said in an interview.

Committees are evenly split in the 50-50 Senate. If the panel vote results in a tie, Democrats could force a vote in the full Senate to bring the nomination to the floor. It would take a series of votes there to confirm.

#### She’ll be approved but the margin’s tight

Linda Hardesty 3-17, Editor-in-Chief at Fierce, BA in Journalism from the Metropolitan State University of Denver, BS in Economics from the Missouri University of Science and Technology, “Senate May Soon Vote on Gigi Sohn Nomination to FCC”, Fierce Wireless, 3/17/2022, https://www.fiercewireless.com/wireless/senate-may-soon-vote-gigi-sohn-nomination-fcc

Since then, the Senate Commerce Committee voted to advance the nomination of Sohn, which now goes to the Senate. “We expect her to be approved, albeit by a slim margin,” wrote New Street Research policy analyst Blair Levin. But he said the situation in Ukraine and the Supreme Court nomination are both requiring Senate time, and those will be higher priorities for the Senate and the White House.

#### Dems are in line. That lets Harris break the tie by April recess.

Jimm Phillips 3-23, Associate Editor at Communications Daily, Former Reporter at Washington Post and the American Independent News Network, Graduated from American University, and Karl Herchenroeder, Associate Editor and Technology Policy Journalist at Communications Daily, BA in Journalism from the University of Maryland, “Senate Sohn, Bedoya Discharge Vote Timing in Doubt Amid Dem Attendance Issues”, Communications Daily, 3/23/2022, https://communicationsdaily.com/article/view?search\_id=535122&p=1&id=1200189&BC=bc\_623a668a13048

It remained unclear Tuesday afternoon if Senate leaders would move to hold initial votes later this week on Democratic FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya, amid uncertainties about whether all 50 Democratic caucus members will be available to appear on the floor. Senate Commerce Committee Chair Maria Cantwell, D-Wash., and Minority Whip John Thune, R-S.D., told us earlier in the day that chamber Democratic leaders were eyeing floor votes this week to discharge Bedoya and Sohn from the committee's jurisdiction (see 2203220034). Senate Commerce voted 14-14 earlier this month on Bedoya and Sohn, meaning the full chamber would need to vote to discharge both nominees before lawmakers could act on their confirmations (see 2203030070).

Senate aides and lobbyists told us Bedoya is the likeliest to get a discharge vote this week, but Sohn and Federal Reserve board nominee Lisa Cook were also in the mix. Senate Democratic leaders pressed to confirm both nominees "by April at the latest," said a telecom lobbyist who focuses on Hill Democrats. The Senate is scheduled to be in recess for the weeks of April 11 and 18.

Senate leaders have faced pressure to prioritize Bedoya because his vote is needed to break the FTC's 2-2 tie amid hopes a majority-Democratic commission will challenge Amazon's $8.5 billion purchase of MGM, lobbyists said. Amazon closed on the MGM buy last week (see 2203170007), but an FTC spokesperson noted the commission "may challenge a deal at any time if it determines that it violates the law." The office of Senate Majority Leader Chuck Schumer, D-N.Y., didn't comment.

There has "been some discussion about whether" Senate leaders will try to hold discharge votes on Bedoya, Cook and Sohn "later this week," said Thune, who's also Communications Subcommittee ranking member. Whether the Senate holds discharge votes on any of the trio this week is "going to be [the Democrats'] call" and will be "somewhat based on whether they have enough people here" from the Democratic caucus to get them through. Discharge votes on any of those nominees would likely end up in a "50-50" party-line tie with Vice President Kamala Harris casting the tiebreaker, Thune said.

"It's all about attendance" on the Democratic side of the aisle, Cantwell said. "If people are there" in enough numbers to ensure a tie, "they'll try to get it done." Cantwell is "not going to speculate" on whether all 50 Senate Democrats are now on board with Sohn and Bedoya, alluding to pushback she received after telling reporters last month that Commerce Democratic member Kyrsten Sinema of Arizona backed Sohn before the committee vote occurred.

Sen. Joe Manchin of West Virginia, seen as the most likely swing Democratic vote on Sohn, told reporters Tuesday her nomination "hasn't been given to me yet." Manchin's office didn't comment. Senate leaders are also eyeing whether Sen. Jeanne Shaheen, D-N.H., will be able to make it to floor votes later this week. She has been absent since testing positive March 13 for COVID-19, Senate aides and lobbyists said.

Shaheen's office didn't comment. She was the only Democrat not to cast a vote Monday on invoking cloture on the motion to proceed to the House-passed America Creating Opportunities for Manufacturing, Pre-Eminence in Technology and Economic Strength Act (HR-4521), seen as the first in potentially a weekslong series of procedural hurdles (see 2203210063) before moving to conference with the Senate-passed U.S. Innovation and Competition Act (S-1260). Three Democrats -- Manchin, Shaheen and Sen. Bob Casey of Pennsylvania -- missed a Tuesday vote on U.S. District Court nominee Ruth Bermudez Montenegro.

Senate Communications Chairman Ben Ray Lujan, D-N.M., who partially returned to the Senate earlier this month amid his recovery from a stroke, is now "fully back here in the Senate, and working fully and as normal," a spokesperson said.

"I know there's talk" of discharge votes on Bedoya and Sohn, but "I haven't heard anything definite," said Senate Commerce Committee ranking member Roger Wicker, R-Miss. "I hope" all 50 Senate Republicans uniformly oppose both nominees and "I'm trying to make sure senators understand the importance of these votes." Sen. Jerry Moran of Kansas said "I know of nothing that has changed that would cause my [Republican] colleagues or me to change" from opposing Bedoya and Sohn.

"As soon as we have 50 Democrats present, we can move forward" on Bedoya and Sohn, said Sen. Brian Schatz, D-Hawaii. It's "our charge" to ensure all 50 Democrats vote for the two nominees, said Sen. Ed Markey, D-Mass. "If there's unified Republican opposition, there will be no other option." Sen. Jon Tester, D-Mont., said he thinks Democrats have the support they need, but "I have no reason to know whether we do or don't truthfully."

#### A big push is coming in the next few days

Eric Boehm 3-31, Reporter at Reason, Degree from Fairfield University, Former bureau chief of the Pennsylvania Independent, “Gigi Sohn, Biden's Pick for FCC Vacancy, Is Still Pushing Pointless 'Net Neutrality' Regulations”, Reason Magazine, 3/31/2022, https://reason.com/2022/03/31/gigi-sohn-bidens-pick-for-fcc-vacancy-is-still-pushing-for-pointless-net-neutrality-regulations/

Sohn, who is now President Joe Biden's nominee to fill a crucial, tiebreaking vacancy at the Federal Communications Commission, was a crucial player in the Obama administration's efforts to reinstate net neutrality regulations in 2015. After that version of rules for internet service providers (ISPs) was scrapped by the Trump administration in 2017, she went right back to predicting a worsening online experience with consumers getting unfair treatment. "Those 'fast lanes' will put those who won't or cannot pay in the slow lane," Sohn told CNN in 2018.

Federal regulations for online traffic have come and gone, and the online ecosystem is constantly in flux. But about the only constant over the past decade or so has been a steady increase in both internet speed and overall bandwidth. "From 2010 to 2020, average data consumed by U.S. households rose 37-fold," economist Thomas W. Hazlett noted in the August 2021 issue of Reason. The online applications available to any internet user today pale in comparison to what was available around the time that Sohn was first fretting about "fast lanes" for some users. The average home internet speed in 2009 was just five megabits per second—barely enough to stream Netflix in high definition, as long as you weren't doing anything else at the same time. Even the sudden surge in working and schooling from home due to the COVID-19 pandemic was no problem with today's connections.

You might say that we all ended up in the "fast lane."

But the Biden administration seems determined to reimpose net neutrality, a catchall term for a variety of federal regulations that effectively require ISPs to operate as public utilities. It might be more accurate to say that the Biden administration—and Sohn, whose nomination could go before the Senate for a final vote within the next few days or weeks, according to The Wall Street Journal—is stuck in the past, pushing a solution to a problem that never really existed and certainly doesn't right now.

#### It requires a full court press, particularly from Biden---otherwise swing votes like Manchin will defect

Jimm Phillips 22, Associate Editor at Communications Daily, Former Reporter at Washington Post and the American Independent News Network, Graduated from American University, and Karl Herchenroeder, Associate Editor and Technology Policy Journalist at Communications Daily, BA in Journalism from the University of Maryland, “Long Senate Road Ahead for Sohn, Bedoya After Tied Commerce Votes”, Communications Daily, 3/4/2022, https://communicationsdaily.com/news/2022/03/04/long-senate-road-ahead-for-sohn-bedoya-after-tied-commerce-votes-2203030070

Democratic FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya cleared an initial confirmation hurdle Thursday after the Senate Commerce Committee voted 14-14 on both picks, but they still face a long road to floor approval, said lawmakers and other officials in interviews. Panel Democrats uniformly backed Sohn and Bedoya, but all Republicans opposed them. Six of the 14 Republicans attended the executive session, fulfilling expectations they wouldn't boycott the meeting (see 2203020076). The committee also tied 14-14 on Consumer Product Safety Commission nominee Mary Boyle. It advanced National Institute of Standards and Technology director nominee Laurie Locascio and International Trade Administration nominee Grant Harris on voice votes.

"We'll see what happens" in the full Senate, Commerce Chair Maria Cantwell, D-Wash., told reporters after the vote. "We need functioning" operations at the FCC and FTC, something not possible while both entities remain in 2-2 deadlocks. The Thursday votes mean neither Sohn nor Bedoya is automatically advanced out of Commerce, but they give Senate Majority Leader Chuck Schumer, D-N.Y., an opportunity to have floor votes to discharge the committee from further consideration of the nominees and bring them to the floor. The Senate could then hold votes on invoking cloture and final confirmation.

"We moved them" now in hopes the Senate will be able to prioritize votes on both nominees "soon," perhaps before the Judiciary Committee acts on Supreme Court nominee Ketanji Brown Jackson, Cantwell said. "We'll have to see" whether that's possible. "Obviously you can see, just like [Senate Commerce] today, you've got to get everybody in the Senate, at least on our side," and "that's not always as easy when people have illnesses and deaths in the family," so it will require coordination, Cantwell said. Judiciary hearings on Jackson are expected to begin March 21 and committee Chairman Dick Durbin, D-Ill., is hoping a final confirmation vote can happen by April 8.

Senate Communications Subcommittee Chairman Ben Ray Lujan, D-N.M, helped secure the ties on Sohn and Bedoya by showing up to the meeting in person. It was his first official Hill appearance since he began his recovery from a January stroke that partially led to the committee's delayed consideration of the nominees (see 2202010070). "I'm ready to work," he told reporters after the vote. Lujan "was eager" to make his Senate return last week, but some within his team suggested he take more time to get back to full strength. "The compromise was let's get back this week," he said. It's no "surprise" the return came in time for votes with Sohn and Bedoya since "I have been talking about the FCC and the FTC for some time, and also on the consumer protection side."

Cantwell defended Sohn Thursday amid criticism from Commerce ranking member Roger Wicker of Mississippi, Sen. Ted Cruz of Texas and other Republicans. Sohn is unlikely to "actively participate in partisanship or even censorship" if confirmed to the FCC, Cantwell said before the vote: The nominee "certainly knows the rules at the FCC" given her past role as an aide to FCC Chairman Tom Wheeler. Cantwell called Bedoya the "right person" to carry out the FTC's mission. She told reporters she's pleased Sen. Kyrsten Sinema of Arizona, the only committee Democrat who hadn't publicly backed Sohn before Thursday, ultimately voted for the nominee but wouldn't assign any motives for the move. Sinema's office didn't comment.

"I do appreciate [Sohn's] willingness to be responsive and to engage with the members of this committee," including a second confirmation hearing last month (see 2202090070), "but unfortunately, this committee's vetting process has clarified that she is not the right choice to fill this vacancy at the FCC," Wicker said. Republicans cited several concerns as reasons to oppose Sohn, including the nominee's candor over her role as a board member for Locast operator Sports Fans Coalition in a shift in the settlement of broadcasters' lawsuit against the shuttered rebroadcaster, and her social media comments about conservative media outlets.

Republicans similarly criticized Bedoya for his Twitter activity linking the Trump administration to white supremacy, which caused them to oppose the nominee during a December markup (see 2112010043). Wicker said he remains concerned by the "frequency" of Bedoya's public, "divisive views" on policy matters, rather than "using a more measured, unified tone." There's been a "troubling trend of politicization" at the FTC unseen in the past, casting doubt Bedoya will bring the "cooperative spirit" needed at the agency, Wicker said.

Partisan Path Forward

The Biden administration "has ways of getting their troops" within the Senate Democratic caucus "in line," but there's still no guarantee either Sohn or Bedoya will clear the divided 50-50 chamber, Wicker told us. Support for Sohn in particular has become a "blood oath test ... for loyalty" among Senate Democrats, said Communications ranking member John Thune, R-S.D. "I think they really worked hard to whip everybody" on the Democratic side "into line. If they could vote their state's interest, I think you could argue a very different conclusion" might have happened Thursday.

"I would think if you're a rural Democrat, if you're" someone like Sen. Joe Manchin, D-W.Va., a Wednesday letter from former Sen. Heidi Heitkamp, D-N.D., on "Sohn's actions and attitudes toward rural broadband could be very problematic," Thune told us. "If they discharge" Sohn and Bedoya from Commerce's jurisdiction "and the Democrats can hold their caucus together" and ensure all 50 of their senators are present "they could get confirmed, but if any one of those Democrats is persuaded" by some of the arguments against the nominees, it could pose problems. Sohn's supporters and opponents will likely focus the most attention on lobbying Manchin in the weeks ahead since he has been a perennial Democratic swing vote, lobbyists told us. Manchin's office didn't comment.

### AT: Won’t Pass---Wong #1

#### They’ll follow the same path as Bedoya---a discharge, then full Senate vote

MC 3-30 – Media Confidential, “Senate Vote On FCC Nominee Sohn Expected After Easter Recess”, 3/30/2022, http://mediaconfidential.blogspot.com/2022/03/senate-vote-on-fcc-nominee-sohn.html

Senate Majority Leader Chuck Schumer on Tuesday night opened a path to break a deadlock and force a confirmation vote on the nomination of Alvaro Bedoya to the Federal Trade Commission.

Gigi Sohn

Bloomberg reports the vote, scheduled for Wednesday, would bring Bedoya’s nomination out of the Senate Commerce, Science, and Transportation Committee, where it has been blocked by committee Republicans for months.

Schumer’s move allows Democrats to side-step a committee deadlock. They used the same maneuver earlier Tuesday to advance Federal Reserve nominee Lisa Cook.

A final confirmation vote, however, won’t likely take place until after the Senate’s two-week Easter recess, as Schumer plans to spend next week on confirming Supreme Court nominee Ketanji Brown Jackson.

Another deadlocked appointee, Gigi Sohn, is expected to be advanced through similar methods. Her nomination to the Federal Communications Commission has also been stalled along party lines in the Senate Commerce Committee.

### AT: Won’t Pass---Wong #2

#### It’s about one random Republican AND says other GOP ‘hope’---but doesn’t connect it with COI concerns.

Alex 2AC Wong 3/31. Staff Writer at Inside Radio. “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo.”https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html.

But GOP members are hoping to peel off a Democrat, arguing Sohn’s positions on broadband net neutrality would be bad for rural states. They also argue that her past work with the now-closed television streaming service Locast should disqualify her from consideration. Sohn has agreed to recuse herself temporarily from matters involving retransmission consent or television broadcast copyright for the first three years of her term in order to address those concerns. “Why on Earth should we choose a commissioner who would have to recuse herself from participating in substantial parts of the FCC's work? How does it serve Americans to have an FCC Commissioner who can't fully do her job,” said Senator John Thune (R-SD). “Surely, there are other qualified nominees who don't have Ms. Sohn's conflict of interest,” he said in a speech on the Senate floor earlier this month.

### AT: Sohn Not Key

#### That unlocks a broad internet agenda

Jon Brodkin 22, Senior IT Reporter, Covering the FCC and Broadband, Telecommunications, Tech Policy, and More at Ars Technica, “Comcast Trying To “Torpedo” Biden FCC pick Gigi Sohn, Advocacy Group Says”, Ars Technica, 1/13/2022, https://arstechnica.com/tech-policy/2022/01/comcast-trying-to-torpedo-biden-fcc-pick-gigi-sohn-advocacy-group-says/

FCC’s 2-2 deadlock persists

Sohn's confirmation would break a 2-2 deadlock between Democrats and Republicans that has persisted throughout Biden's term as president. Sohn has a long history as a consumer advocate and has faced plenty of opposition from Senate Republicans.

"The Federal Communications Commission has been without a governing majority for the entire Biden administration," Free Press wrote in its email to members. "That means that the agency hasn't been able to do things like restore net neutrality and the FCC's authority over high-speed Internet, begin the process of reckoning with its shameful history on race or repair all of the damage done during the Trump years."

Biden nominated Sohn on October 26, 2021, and resubmitted the nomination on January 4. A Commerce Committee spokesperson said the committee may vote on Sohn's nomination during the week of January 24, according to Politico.

A Democratic majority is needed for the FCC "to begin the process of reversing the misguided decisions of the [Ajit] Pai FCC and reasserting its authority over broadband, an essential service that currently lacks any meaningful federal oversight," a coalition of advocacy groups wrote Tuesday. Those groups are the Benton Institute for Broadband & Society, Demand Progress, Electronic Frontier Foundation, Fight for the Future, Free Press Action, MediaJustice, Open Technology Institute, Public Knowledge, and United Church of Christ Media Justice Ministry.

"For more than a year, the FCC has been operating without a full slate of commissioners, hampering its ability to advance all of the important tasks on its agenda... All of these proceedings need a fully functioning FCC, which means Ms. Sohn needs to be voted out of the Committee this month and moved to the full Senate for a floor vote," the groups wrote. "The time for these votes is now."

#### 2. It’s her top priority, creates Title II authority AND causes Congressional reinstatement

Jacob Seitz 22, Freelance Journalist and Writer for The Daily Dot, BA in Journalism from Emerson College, BS in Political Economy from Antioch College, “Gigi Sohn Passes Out of Committee, Nomination to FCC Goes to Full Senate”, Daily Dot, 3/3/2022, https://www.dailydot.com/debug/gigi-sohn-senate-nomination/

After passing, Sohn is headed to a vote in the full Senate. If she’s confirmed—which is no guarantee as the Senate is split 50-50—the FCC will have a strong internet rights and privacy advocate among its members.

With Sohn onboard, the FCC is expected to tackle a number of matters of Biden’s telecommunications agenda, including reinstating net neutrality. Sohn has long called for a return of net neutrality, which was repealed by former President Donald Trump’s FCC.

In her confirmation hearings, Republicans painted Sohn as an extreme partisan and an “unqualified hack” and repeatedly brought up ethical concerns from Sohn’s past. Sohn vehemently denied all the allegations, saying that she has been subject to “unrelenting, unfair, and outright false criticism and scrutiny.”

Republicans cited her alleged “bias” for tweets of hers that were critical of Fox News. Then, in January, Sen. Roger Wicker (R-Miss.), the ranking member of the Senate Commerce Committee and a net neutrality opponent, asked for another hearing for Sohn because of “ethical concerns” he had over her ties to Locast, a now-defunct streaming service.

Mark Stanley, the director of operations at Demand Progress, told the Daily Dot that the timing of Wicker’s complaints felt like he was trying to delay the nomination, calling his attempts “dubious” and “cynical.”

Sohn’s confirmation to the FCC would be a huge win for internet rights advocates, who have been pushing for her hard since she was first nominated. Sohn’s position on the FCC could push the commission towards Title II authority over broadband, a designation that will help the FCC enforce strong net neutrality laws.

In an interview with the Daily Dot last year, Sohn said that would be her first order of business for a fully staffed FCC.

Sohn’s confirmation—if it happens—could spark a chain reaction of legislation in the Senate. Sen. Ed Markey (D-Mass.) has repeatedly promised to introduce a net neutrality bill to the Senate once Biden’s FCC was fully staffed.

#### 3. Enforcement---without Sohn, the FCC’s kneecapped, making regulation toothless

Evan Greer 21, Director of Digital Rights Group Fight for the Future and Writes Regularly for Outlets like the Washington Post, The Guardian, Time, and NBC News, “Restore Net Neutrality, Or Facebook Will Dominate The Internet Forever”, Vice, 11/17/2021, https://www.vice.com/en/article/epxndw/restore-net-neutrality-or-facebook-will-dominate-the-internet-forever

Without a functioning FCC, it’s only a matter of time before Big Tech and Big Telecom team up to screw us all.

US lawmakers have been talking a big game about reining in the ballooning monopoly power of Big Tech companies like Facebook and Google. We’re about to find out how serious they really are.

The White House has nominated public interest advocate Gigi Sohn to become the fifth commissioner of the Federal Communications Commission (FCC), and acting chair Jessica Rosenworcel to remain as the agency’s permanent chair. The Senate is expected to hold confirmation hearings in the coming weeks, and the way lawmakers vote will reveal whether they really want to crack down on monopoly power and Big Tech abuses—or whether that’s just an empty slogan to stoke their fundraising efforts.

The FCC is primarily responsible for providing oversight of cable and phone companies like AT&T, Comcast, and Verizon. With the rise of remote work and online classes, the COVID-19 pandemic has shown that the mission of ensuring equitable and affordable access to the internet is more urgent now than ever before. But getting the agency back up and running is also essential for addressing the tightening stranglehold that Silicon Valley giants maintain over our ability to communicate. Along with antitrust and privacy legislation, a functioning FCC is essential for ensuring we have alternatives to Big Tech.

Without net neutrality rules––which prevent Internet providers from blocking, throttling, discriminating or charging extra fees to access online content––and a functioning agency to enforce them, it’s only a matter of time before incumbent giants like Facebook, YouTube, and Amazon cut anti-competitive deals with internet service providers like Verizon and AT&T to prioritize their services, or exempt them from arbitrary (and unfair) data caps.

This would be disastrous for new platforms and services trying to compete with Silicon Valley giants. Why would anyone try a new, alternative social media app when it will cost them precious data, while Instagram is “free”? How could small businesses who host their own online stores compete in a world where Amazon can pay internet providers to make their site load twice as fast as the little guys? What happens to the livelihoods of independent musicians when you can stream all the music you want on Spotify and YouTube with no extra charge but have to pay a fee to access Bandcamp and Patreon?

These scenarios are not just theoretical. In 2017, Facebook negotiated monopolistic deals with internet providers in a number of developing countries as part of its controversial “Free Basics” scheme, which was eventually banned in India. When AT&T bought HBO, they made it so you could stream all the HBO video you wanted without it counting against your monthly data limit. When FaceTime first became available, AT&T blocked it unless users paid an extra fee. Verizon notoriously throttled the Internet connection of firefighters in California, telling them they needed to upgrade their plan. The list goes on.

Public anger at Big Tech companies like Facebook and Google has reached a boiling point. Both Democrats and Republicans have lambasted these corporate behemoths over everything from data harvesting and algorithmic manipulation to artificially amplifying harmful content and silencing political dissent. People desperately want alternatives on the menu––services with better privacy protections and more transparent content moderation practices. But if we don’t restore the rules that prevent Big Tech monopolies from joining in unholy matrimony with Big Telecom monopolies, we’ll be stuck eating whatever the Mark Zuckerbergs of the world decide to serve up––forever.

Restoring net neutrality should be noncontroversial. More than 80 percent of voters, including Democrats, Republicans, and Independents, opposed former FCC chairman Ajit Pai’s reckless repeal of these basic internet protections. Heck, even 75% of self-identified Trump supporters were against it. The repeal of Title II sparked some of the largest online protests in human history, prompting millions people to speak out, and unprecedented opposition from civil rights groups, veterans, librarians, teachers, small business owners, and grassroots groups on both the left and right.

But there is far more at stake with these nominations than net neutrality protections. Deadlocked at 2-2, the FCC has been effectively kneecapped throughout the entire COVID-19 pandemic, unable to do much of anything to address the deepening digital divide even as millions of people were forced to work and attend school from home.

Both Gigi Sohn and Jessica Rosenworcel have long track records working on issues of internet access, like building out broadband networks into rural areas and underserved communities, and pushing for competition and affordability. Sohn’s nomination has also won support from across the political spectrum, with policies that have found a rare common ground by eschewing partisanship and defending free speech.

Some Republican Senators have already started saber rattling about the nominations. But their hypocrisy is showing through. If conservatives are concerned about social media platforms removing individual posts, surely they should want basic rules to prevent Internet providers blocking entire websites and apps? After all, Comcast owns MSNBC, and AT&T owns CNN.

If there’s one thing that lawmakers from both parties should be able to agree on, it’s that kids shouldn’t be sitting outside of Taco Bell to do their homework in the middle of a pandemic. And the companies that connect us to the internet shouldn’t be able to dictate what we see and do once we get there.

Telecom companies have spent hundreds of millions of dollars lobbying against the public interest. They were even caught red handed funding a massive flood of fraudulent comments to the FCC, attempting to create the illusion of public support for pro-monopoly policies.

But it’s not going to work. Three Republican Senators voted to restore net neutrality back in 2018, citing overwhelming support from constituents and small businesses in their district. Legislation attempting to restore net neutrality passed in both the House and Senate with bipartisan support. Even Republicans who disagree on the details of the policy should agree that it’s best not to kneecap the agency responsible for ensuring Americans’ access to the Internet in the middle of an ongoing pandemic.

Telecom lobbyists can spin all the lies they want. Democrats and Republicans know that we need a functional FCC that’s working to get every American, regardless of their income or political affiliation, connected to the Internet. And we need that agency to be able to prevent companies like Google and Instagram from cutting anti-competitive deals that solidify their monopoly power, leaving us stuck with their parasitic business models forever.

The Senate Commerce Committee will take up Rosenworcel’s nomination Wednesday, along with privacy champion and facial recognition expert Alvaro Bedoya, who has been nominated for the Federal Trade Commission. Senator Maria Cantwell (D-WA), the committee’s chair, should schedule Sohn’s nomination immediately. It’s essential that both nominees move forward as quickly as possible, so that the FCC can get back to working for the public rather than telecom companies.

### AT: NN Not Key

#### It’s key to U.S. leadership AND a model for global openness

Sherisse Pham 17, MS in Journalism from the Columbia University School of Journalism, BA from the University of British Columbia, Head of Internal Communications at Netflix, “What Does The End Of U.S. Net Neutrality Mean For The World?”, CNN, 12/15/2017, https://money.cnn.com/2017/12/15/technology/net-neutrality-global-implications/index.html

The vote to roll back net neutrality rules in the U.S. could have major global implications.

While Thursday's decision by the Federal Communications Commission could yet be challenged in court or Congress, experts say the U.S. risks surrendering its role as the champion of a free and open internet.

"This will be another instance of the U.S. ceding leadership in a global area," said Nick Frisch, a resident fellow at Yale Law School's Information Society Project.

"It is going to set a bad example for other countries, coming from the country that invented the internet," he said.

Take China, for example, where the notion of an open internet has been effectively killed by the country's vast censorship apparatus.

#### Repeal green lights worldwide balkanization AND even if not, all traffic routes through the U.S., so the effect is the same

Alan Crosby 17, Senior Correspondent for RFE/RL, “Explainer: Why Other Countries Care That The U.S. Ditched Net Neutrality”, Radio Free Europe, 12/15/2017, https://www.rferl.org/a/united-states-internet-neutrality-explainer/28920398.html

In large part, this is an internal battle within the United States over consumer choice and how the Internet will operate. Nonetheless, it also could have a significant impact beyond America's borders, especially for those who routinely interact with U.S.-based Internet services in their daily or professional lives.

Though you may not see the changes overnight, many critics say that, in the long run, Internet users around the world may not know what products or services they are missing out on because of the rollback of net neutrality in the United States.

What exactly is net neutrality?

Coined in 2003 by Columbia University professor Tim Wu, the phrase "net neutrality" refers to the principle that ISPs should treat all data provided to customers equally and without restriction to block out competitors. In essence, it keeps ISPs from choosing which data gets streamed at a faster rate and which websites are blocked or throttled.

Net neutrality was made official policy in 2015 through new FCC regulatory rules that treated ISPs as a public utility following extensive industry and public debate.

Why does net neutrality matter?

Net neutrality is the law in more than 40 countries, including the United States and the European Union. But with the shackles for U.S.-based ISPs off, equality in cyberspace may disappear.

Companies or individuals willing to pay more may get a freer, faster Internet service, which could lead to two classes of Internet user: one rich in money and information, the other poor in both.

“The ending of net neutrality in the U.S. could be the beginning of the end of the open, interoperable, free Internet,” said Quinn McKew, deputy executive director of ARTICLE 19 in the United Kingdom.

“It is now a question of how much, not if, freedom of expression online will be undermined around the world as a result of this shortsighted decision to enrich the entrenched near-monopolies who control Internet access in the United States.”

For example, if a company from the Balkans, Russia, or Central Asia develops its own video-streaming service, an ISP may slow its delivery because the provider has a competing service of its own unless the company agrees to pay additional fees to have its product streamed at higher rates.

And obviously it’s not only about entertainment.

The Public Library of Science (PLOS), a U.S.-based nonprofit open-access publisher and advocate dedicated to progress in science and medicine through a transformation in research communication, warned that allowing ISPs to sort traffic based on content, sender and receiver, opens the door for corporate and government censorship that would greatly hinder access to scientific information around the globe.

"If you want to promote any other culture in the U.S., and you start driving lots of [Internet] traffic through the U.S., and you have to go through these ISPs, they can throttle you," according to Dwayne Winseck, a professor at Carleton University in Ottawa and director of the Canadian Media Concentration Research Project.

Or, as Andrew McDiarmid, a senior policy analyst for the Center for Democracy and Technology, put it: “I think it’s a case that the U.S. remains a model for Internet policy for the world. Not having it here may make it less likely to have it in other places.”

Could dismantling it affect human rights?

As with many things, the United States is seen as a global leader on the Internet. Thus, many critics fear that a loosening of its regulatory system may embolden others to crack down on a completely open Internet.

Estelle Masse, senior policy analyst at Access Now, a digital-rights advocacy group, said the repeal of net neutrality rules would make the U.S. “an outlier on an issue of critical importance to the future of the Internet, both as an engine for innovation and a platform for human rights, to the detriment of users.”

Some critics say the erosion of net neutrality in world leaders such as the United States could prevent events such as the 2010 Arab Spring, when social media played an integral part in the movement to overthrow oppressive regimes.

“Americans aren’t the only ones who would be harmed by a U.S. decision to repeal net neutrality rules,” Hadi Ghaemi, executive director of the Center for Human Rights in Iran, said in response to the move to end net neutrality.

He says that as the most economically advanced country in the world, such a move by the United States could give the green light to repressive countries like Iran to continue applying the same policies.

“The Internet is the most valuable invention of the 20th century, and we should all be fighting to keep it free. As the birthplace of the Internet, the U.S. should be carrying the torch on net neutrality, not following in the footsteps of autocrats,” he said.

### AT: Antitrust Now---T/L

#### A vote’s coming in the next 10 days, before the April recess

Jimm Phillips 3-23, Associate Editor at Communications Daily, Former Reporter at Washington Post and the American Independent News Network, Graduated from American University, and Karl Herchenroeder, Associate Editor and Technology Policy Journalist at Communications Daily, BA in Journalism from the University of Maryland, “Senate Sohn, Bedoya Discharge Vote Timing in Doubt Amid Dem Attendance Issues”, Communications Daily, 3/23/2022, https://communicationsdaily.com/article/view?search\_id=535122&p=1&id=1200189&BC=bc\_623a668a13048

It remained unclear Tuesday afternoon if Senate leaders would move to hold initial votes later this week on Democratic FCC nominee Gigi Sohn and FTC nominee Alvaro Bedoya, amid uncertainties about whether all 50 Democratic caucus members will be available to appear on the floor. Senate Commerce Committee Chair Maria Cantwell, D-Wash., and Minority Whip John Thune, R-S.D., told us earlier in the day that chamber Democratic leaders were eyeing floor votes this week to discharge Bedoya and Sohn from the committee’s jurisdiction (see 2203220034). Senate Commerce voted 14-14 earlier this month on Bedoya and Sohn, meaning the full chamber would need to vote to discharge both nominees before lawmakers could act on their confirmations (see 2203030070).

Senate aides and lobbyists told us Bedoya is the likeliest to get a discharge vote this week, but Sohn and Federal Reserve board nominee Lisa Cook were also in the mix. Senate Democratic leaders pressed to confirm both nominees "by April at the latest," said a telecom lobbyist who focuses on Hill Democrats. The Senate is scheduled to be in recess for the weeks of April 11 and 18.

#### Biden’s focusing on the home stretch

Joe Pitts 3-22, Program Director for Business Ballot and Executive Director for the Arizona Junior Fellows Program, “Controversial Biden FCC Nominee Faces Further Scrutiny, Uphill Confirmation Battle”, Chamber Business News, 3/22/2022, https://chamberbusinessnews.com/2022/03/22/controversial-biden-fcc-nominee-faces-further-scrutiny-uphill-confirmation-battle/

Gigi Sohn, President Joe Biden’s nominee to fill the final vacancy on the Federal Communications Commission, has faced a rocky confirmation battle, but soon could be considered by the full U.S. Senate.

Sohn’s nomination in February faced headwinds after it was discovered that she had failed to inform the U.S. Senate’s Commerce Committee of past business dealings, including her board membership of a nonprofit that faced up to $32 million in damages. The less-than-$1 million it ultimately only paid resulted from a settlement that was reached one day after Sohn was nominated by Biden.

Sohn also was involved in the posting of billboard ads in 2019 which decried Sen. Kyrsten Sinema, D-Ariz., as “corrupt” for not supporting net neutrality regulations.

Still, the Biden administration has continued to push for Sohn to fill the vacancy.

### AT: Antitrust Now

#### Antitrust action is stalled---it’s just talk

Scott Bicheno 3-18, Editorial Director of Telecoms.com, BSc in Microbiology from the University of Bristol, “So Much for the FTC’s Trustbusting Agenda”, Telecoms, 3/18/2022, https://telecoms.com/514263/so-much-for-the-ftcs-trustbusting-agenda/

US trade regulator, the FTC, has allowed Amazon’s acquisition of MGM to proceed without so much as a whimper of dissent.

This is not the kind thing we were led to expect when the slayer of monopolies Lina Khan was appointed Federal Trade Commission boss a year ago. In fact, she arrived with the reputation of feeling especially antagonistic towards Amazon, having previously written at length about how something needs to be done to curb the company’s power.

So when Amazon announced its intention to buy movie studio MGM, despite already being a video content producer via its Prime Video division, the scene was set for Khan to put her money where her mouth is. And yet, just a couple of days after the EU somehow determined the acquisition presented no competition concerns, Amazon declared the deal done.

What happened Lina? Surely this was a perfect opportunity for you to put a trustbusting stake in the ground and show these cocky tech giants who they’re dealing with. A report by Politico pins the blame of the absurdly politicised US system of regulatory agencies, in which commissioners always seem to be overtly partisan.

Usually this doesn’t matter because the party in power gets to pick the majority of commissioners, who simply overrule the Pavlovian opposition of the others. For a time after Khan’s appointment by President Biden there were indeed three Democrat-affiliated commissioners to two Republican ones. But then Biden moved Rohit Chopra to the Consumer Financial Protection Bureau and, due to the partisan nature of the approval process, has struggled to confirm Alvaro Bedoya as his replacement.

Lacking the customary majority among the FTC Commissioners, it seems Khan figured there was no point in even trying to move against the MGM acquisition because the vote would be deadlocked. What a tangled web we weave. You’d think she might have given it a go, just to say she did, or at least make a big show of her personal objections to the move, but Khan seems to have been surprisingly muted on the matter.

The US state has been signalling its eagerness to take on Big Tech for ages. Prior to this matter it wasted everyone’s time by moaning about some Facebook acquisitions, having previously approved them, and then failed in its bid to go after Qualcomm’s licensing practices. If, as we suspect, the underlying motive for this crusade is to give the government leverage to bend big tech to its agenda, we can only conclude it has largely failed in that aim so far.

#### Nothing prior has altered the scope.

Stephen Conley 22, Associate at Wiley Rein LLP, former Law Clerk at the FCC, JD George Washington University Law School; Duane Pozza, Partner at Wiley Rein LLP, former FTC Assistant Director of the Bureau of Consumer Protection, JD Stanford Law School; Kathleen Scott, Partner at Wiley Rein LLP, JD American University Washington College of Law; “’An Avalanche of Rulemakings’ – The FTC Gears Up for an Active 2022”, Privacy In Focus, JD Supra, 1/19/2022, https://www.jdsupra.com/legalnews/an-avalanche-of-rulemakings-the-ftc-1324181/

Much of the FTC’s Expansive Rulemaking Agenda Likely Hinges on Confirmation of a Fifth Commissioner

President Biden originally nominated Alvaro Bedoya on September 13, 2021 to fill the FTC Commissioner seat vacated by former Commissioner Rohit Chopra upon his confirmation as Director of the Consumer Financial Protection Bureau on September 30. Bedoya is the founding director of the Center on Privacy & Technology at Georgetown Law and previously served as the first Chief Counsel to the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. He faced opposition from Republican senators on the U.S. Senate Committee on Commerce, Science, & Transportation (Committee) during his November 17, 2021 confirmation hearing, but President Biden renominated him to the FTC Commissioner spot on January 4, 2022. He appears likely to be the swing vote on many of these proposed rulemaking initiatives – not just whether they will go forward, but also their scope and ambition if they do so.

#### Anything controversial has stalled

Christopher B. Leach 22, Partner in Mayer Brown's Washington DC office and Member of the Litigation & Dispute Resolution Practice, JD from Duke University School of Law, BA from Dartmouth College, “US FTC Holds Its First Open Meeting of 2022: What Happened?”, Mayer Brown, 1/24/2021, https://www.mayerbrown.com/en/perspectives-events/publications/2022/01/us-ftc-holds-its-first-open-meeting-of-2022-what-happened

The upshot, for busy people:

* On January 20, 2022, the US Federal Trade Commission (FTC) continued its recent experiment in holding open meetings of its commissioners. These meetings typically last around an hour and involve two segments: (1) comments from members of the public and then (2) official FTC business, where commissioners vote on matters and make statements on the FTC’s initiatives and goals.
* In this meeting, the FTC did not vote on new initiatives, and the commissioners’ individual statements were anodyne on the topic of preventing identity theft. This is not surprising—the FTC is split 2-2 between Democrats and Republicans, meaning that Chair Lina Khan will need to wait for the third Democratic commissioner before plowing ahead with the non-bipartisan portions of her agenda.
* Public comments focused on two areas: possible anticompetitive conduct in the franchise industry against franchisees, including practices such as requiring franchisees to purchase products from the franchisor; and data privacy concerns related to children using payment apps that might not be subject to the Children’s Online Privacy Protection Rule (COPPA), which the FTC enforces with civil penalties.
* Franchisors and fintechs offering payment systems should take note and examine the practices highlighted by the public’s comments. The comments from the public often trigger interest by commissioners, other FTC officials or staff.

Background: In the past, FTC commissioner meetings have taken place exclusively behind closed doors. Breaking with tradition, Chair Khan began her tenure at the agency by holding monthly meetings of the FTC commissioners that are open to the public. To be sure, the vast majority of the commissioners’ deliberations and meetings are closed to the public. But over the past half year, the FTC has held monthly open meetings where the commissioners vote on certain, pre-selected agency initiatives and read pre-written statements. The FTC also allows individuals from the public two minutes of airtime to raise issues for the FTC’s consideration.

So far, these meetings have seen a number of recurring themes:

* The issues up for consideration are often more partisan—before then-Commissioner Rohit Chopra left to lead the US Consumer Financial Protection Bureau (CFPB) as its director, many of the open meetings generated 3-2 party-line votes. That pattern has changed now that the commission is deadlocked 2-2 between Democrats and Republicans. But expect party-line votes to return when the Senate confirms Chopra’s replacement, Alvaro Bedoya.
* The Republican commissioners, Christine Wilson and Noah Phillips, often use their speaking time to observe the shortcomings of the open-meeting format and to raise broader concerns regarding the FTC’s direction under Chair Khan, in addition to comments regarding the specific matters under consideration.
* FTC staff frequently make presentations about various initiatives or topics that often are related to the items the commissioners will be voting on.
* The FTC has been playing with formatting. For the first handful of meetings, the commissioners voted on matters before hearing from the public, the reverse of what one would expect. Starting in November, Chair Khan switched the order after receiving comments to that end.
* The individuals from the public who participate range wildly in perspective and experience, from industry representatives raising broader policy concerns to individual workers bringing their personal experiences to the FTC’s attention.

The “tentative” agenda. A week prior to these public meetings, the FTC typically releases a tentative agenda. Released on January 13, the tentative agenda for this meeting stated that Chair Khan would begin the meeting with opening remarks and that the “business” for the day would consist of a staff presentation on recent trends in identity theft.

What actually happened? True to the FTC’s word, its only official business consisted of a staff presentation regarding identity theft and comments from the commissioners regarding the FTC’s law enforcement efforts in that space. The lack of acrimony of this latest meeting is consistent with the FTC’s public meetings since Chopra left for the CFPB. For example, the previous two open meetings dealt with bipartisan votes related to a rulemaking on impersonation scams and a study of supply chain disruptions.

#### Nothing concrete has been implemented---the question is what will actually get through

Alden Abbott 1-26, Senior Research Fellow at the Mercatus Center at George Mason University, and Andrew Mercado, Adjunct Professor and Research Assistant at George Mason University's Antonin Scalia Law School, Master's Degree in Economics from George Mason University, “Developments in Competition Policy During the First Year of the Biden Administration”, Mercatus Center Policy Briefs, 1/26/2022, https://www.mercatus.org/publications/antitrust-and-competition/developments-competition-policy-during-first-year-biden

Conclusion

Competition policy developments in the first year of the Biden administration have a common theme. Very few concrete, actionable steps have been taken, but the groundwork has been laid for far greater government intervention to curtail disfavored types of business conduct. By bringing interventionist individuals into top positions at the antitrust agencies and releasing an executive order focused primarily on directing federal agencies to intervene to a greater extent in the economy, the new administration has made it clear that more aggressive antitrust enforcement actions—and novel competition rulemaking proposals—are in the offing. What’s more, growing fervor in the halls of Congress has led to bipartisan support for bills that would expand the power of antitrust agencies to limit or block mergers and other transactions by dominant firms. These developments all point to what may be the largest antitrust policy shift in nearly half a century, one that could significantly reshape the fabric of the economy and the welfare of consumers. Year two of the Biden administration will provide greater insights regarding the extent to which such a dramatic policy transformation will actually come to pass.

### AT: Antitrust Now---Biden

#### No backlash.

[Kentucky in green].

Nicolás Rivero 3-29. Tech reporter. “Biden proposed a big funding increase for US antitrust enforcers” Quartz. 03-29-2022. https://qz.com/2147910/biden-proposed-a-big-funding-increase-for-us-antitrust-enforcers/

US president Joe Biden wants to give American antitrust enforcers an **extra $227 million to crack down on monopolies** this year. Biden included the request—which represents a **44% jump in funding** for the Federal Trade Commission (FTC) and the Department of Justice (DOJ)’s antitrust division—in the proposed budget (pdf) he sent to Congress on March 28.

Biden has **vowed to restore competition** to the American economy. He appointed **Lina Khan**, a prominent **Amazon critic**, as head of the FTC, and staffed the White House with a **new school of antitrust crusaders** that believes in taking a harder line against big companies. He issued an **executive order** on July 9 directing federal agencies to set rules designed to lower prices and boost competition among powerful companies in sectors ranging from agriculture to pharmaceuticals to tech, remarking that “capitalism without competition isn’t capitalism; it’s exploitation.”

Now, **the White House wants to fund its antitrust ambitions** with what it calls “**historic** **increases**” in the budgets of the two biggest monopoly-busting agencies in the US government, doling out an extra $139 million to the FTC and $88 million to the DOJ antitrust division. Congress, however, will craft its own budget—and lawmakers don’t always pay much attention to White House budget proposals, which are often seen as wishlists that signal a president’s policy priorities.

### Turns Case

#### It massively turns growth

Marvin Ammori 14, Future Tense Fellow at the New America Foundation, Professor of Law at the University of Nebraska-Lincoln, JD from Harvard Law School, BA from the University of Michigan, “The Case for Net Neutrality: What’s Wrong With Obama’s Internet Policy”, Foreign Affairs, July/August 2014, https://www.foreignaffairs.com/articles/united-states/2014-06-16/case-net-neutrality

However, in 2002, Michael Powell, then chair of the FCC, classified ISPs not as common carriers but as “an information service,” which has handicapped the FCC’s ability to enforce net neutrality and regulate ISPs ever since. If ISPs are not reclassified as common carriers, Internet infrastructure will suffer. By authorizing payments for fast lanes, the FCC will encourage ISPs to cater to those customers able and willing to pay a premium, at the expense of upgrading infrastructure for those in the slow lanes.

The stakes for the U.S. economy are high: failing to ban ISPs from discriminating against companies would make it harder for tech entrepreneurs to compete, because the costs of entry would rise and ISPs could seek to hobble service for competitors unwilling or unable to pay special access fees. Foreign countries would likely follow Washington’s lead, enacting protectionist measures that would close off foreign markets to U.S. companies. But the harm would extend even further. Given how much the Internet has woven itself into every aspect of daily life, the laws governing it shape economic and political decisions around the world and affect every industry, almost every business, and billions of people. If the Obama administration fails to reverse course on net neutrality, the Internet could turn into a patchwork of fiefdoms, with untold ripple effects.

#### AND the rule of law and trust.

Dr. David Eagleman 11, PhD in Neuroscience from Baylor University, Adjunct Professor of Neoroscience at Stanford University, Former Guggenheim Fellow, Director of the Center for Science and Law, BA from Rice University, Why the Net Matters: Six Easy Ways to Avert the Collapse of Civilization, p. eBook

In the same way that bodies require an unobstructed flow of blood in arteries, societies need the free flow of information. In both cases, barriers to the flow can be fatal.

Political censorship has been a familiar specter in the last century, with state-approved news outlets ruling the press and airwaves in Romania, Cuba, China and Iraq, among many others. The official newspapers of the former Soviet Union held a complete lock on the news, and foreign newspapers were allowed only if they were published by Communist Parties and approved by the Soviets.

And censorship didn’t end with news stories. Copying machines were tightly controlled by the Soviets to prevent dissemination of self-published books or magazines.

Even weather reports were censored. In Nicolae Ceauşescu’s Romania, certain temperature extremes translated into time off work – so the weather reports were doctored so that these levels were not reached. Stalin manipulated weather forecasts if they suggested that the sun would not shine on the day of celebration for the labor movement.

In Saddam Hussein’s Iraq, maps of Baghdad were not allowed to be printed, lest some enemy of the state get hold of it and decipher the street names for easy navigation. The Iraqi’s did not bother to doctor weather reports; instead they simply locked them away as classified information.

Beyond changing new news, the Soviets loved to change the old news. They held a not-so-secret fondness for rewriting their national story on the fly, routinely editing photographs to remove comrades who had fallen out of favor with the party.

The Soviets were fond of editing photographs to alter history when someone fell out of favor with the Party

Take a close inspection of the photographs here. The first photograph proudly captures Lenin and other Soviet leaders in Red Square, Moscow, in 1919. After Leon Trotsky fell from party favor, he was airbrushed out of history from Lenin’s left – you can note his absence in the revised photograph. Note also that another man, Kamenev, disappears to Lenin’s right. The bearded man two rows in front of Trotsky, a Bolshevik leader from Georgia, has also vanished.

In the second photograph, the man to the left of Stalin is the ruthless Nikolai Yezhov, then head of the secret police (NKVD). After years of brutally purging enemies of the state (typically without evidence, and often for personal reasons), Yezhov finally earned the same treatment himself: in 1940 he was stripped, beaten, and shot in the basement of an NKVD station. Stalin wrapped up loose ends by deleting Yezhov from history.

Not surprisingly, governments famous for blocking information flow are the same ones we think of when we hear of purges, shortages, repression of civil and political rights, and isolation. Censorship rarely works well for regimes, perhaps because a population fed doctored messages never truly falls for the trick. Instead, the draconian control of information tends to hobble cultural progress and foment revolution. We turn to an example of that now.

Censorship can be more dangerous than books and photos and weather: its tyranny can bring down a nation. Trofim Lysenko was a Soviet agronomist who proposed stunning new scientific theories about how to grow wheat better and faster. Favored by Stalin, he rose through the ranks of power.

But it turns out Lysenko’s theories were scientifically fraudulent. As it also turns out, that inconvenient feature of his claims did not stop him from gaining impressive influence in the party, and by the 1940s he steered the agricultural program for the entire USSR.

There was a grave problem with this centralized command. The USSR spanned 13 time zones and an astounding variety of soils, climates and local knowledge. Applied to a landscape this size, the central rule-setting was disastrous for wheat production. Local farmers knew better how to care for their crops, but were disallowed the freedom. Scientists who disagreed with Lysenko found themselves disbarred from their positions. Several agronomists were executed.

Part of the downfall of the USSR can be traced to this centralization of agricultural decisions. It hobbled the economy and the crippled proletariat confidence in the new system.

The lesson for history: a centralized tyranny rarely works as well as local information and nested feedback loops.

Historically, a more successful strategy has been to confront free speech with free speech. The internet engenders this in a natural way. It democratizes the flow of information by giving open access to the newspapers of the world, the photographers of every nation, the bloggers of every political stripe. Some postings are full of doctoring and dishonesty while others strive for independence and impartiality – but all are available for the end-user to sift through for reasoned consideration.

Beyond news sites, the simple redundancy of information on search engines and mirror sites changes the censorship equation irreversibly. Imagine Hussein trying to eradicate maps when anyone can surf satellite photos to two-meter resolution; imagine Ceauşescu trying to doctor weather reports when anyone can pull up the weather of the world; imagine Stalin trying to delete Trotsky from the mirrored photos on Google images or the Internet Archive.

The inability to erase information has already taken on a name: the Streisand Effect. In 2003, an environmental activist named Kenneth Adelman snapped an aerial photo of entertainer Barbra Streisand’s home in Malibu, California – and he posted the photo on his website. For privacy reasons, Streisand wanted it off the net; when Adelman wouldn’t comply, she sued him for $50 million. Her actions had drastic unintended consequences: until that moment, almost no one knew where her home was. By trying to suppress the information, she promptly drove over one million visitors to his site.

Observing the Streisand incident, net-watchers realized they were seeing the new rules of the game in action: trying to suppress information on the web only magnifies it.

The new inability to hide information has found its highest expression in WikiLeaks, a site whose mission statement is to ‘open governments’. WikiLeaks publishes documents disclosed by anonymous sources. It now possesses many millions of such documents.

The site was launched in 2006 by Australian journalist and digital activist Julian Assange, and the documents it leaks are as varied as their countries of origin. Recent examples of leaks include Sarah Palin’s Yahoo email account, membership lists of illegal parties in the UK, internal United Nations reports, senatorial campaign documents, oil scandals and airstrike videos. In April 2010, WikiLeaks released 76,900 classified documents about the war in Afghanistan, and in October 2010 it published close to 400,000 documents from the war in Iraq.

The leaks can directly foment social change. Consider the recent media cover-up in which Icelandic bank Kaupthing gagged the national broadcaster of Iceland from reporting on its debt default risk. After a whistleblower got the news onto WikiLeaks, Icelanders went into an uproar – and that rapidly led to new legislation in their Parliament ensuring media freedom.