# NEG Wiki Doc---Fullertown Doubles

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Exemptions T

#### The scope of antitrust law is exclusively bounded by exemptions and immunities

ABA 7 (American Bar Association, ABA Section of Antitrust Law, Monograph 24, “Chapter 1 Introduction,” *Federal Statutory Exemptions from Antitrust Law*, American Bar Association, 2007, ISBN: 978-1-59031-864-5, pp.4-7)

A. Background: The Broad Scope of Antitrust, and an Introduction to Statutory Exemptions

Because this monograph concerns statutory constraints on the reach of antitrust law, a word is in order about the broad scope of antitrust principles.

Sherman Act sections 1 and 2 apply to “trade or commerce among the several States, or with foreign nations,”11 but the act leaves that phrase undefined. The Clayton and Federal Trade Commission Acts both define the “commerce” to which they apply,12 but give it only a jurisdictional meaning similar to that under the Commerce Clause of the federal Constitution.13 The courts have thus been left to decide just how broadly antitrust applies. Despite some uncertainty in the first half of the twentieth century,14 and with one lingering exception,15

**[FOOTNOTE 15]**

15. Namely, neither the Court nor Congress has ever overruled the Court’s sui generis 1922 rule that professional baseball is not “commerce.” See Fed. Club. 259 U.S. at 209.

**[/FOOTNOTE 15]**

modem courts define this scope very broadly. The inclusive modem definition is perhaps the natural culmination of the Supreme Court’s long-held belief that “Congress intended to strike as broadly as it could in Section 1 of the Sherman Act,”16 a view it developed because “[l]anguage more comprehensive” than that in Section 1 “is difficult to conceive.”17

This view probably also reflects the broad definition given to the terms “trade” and “commerce” for various purposes at common law, as some courts have explicitly held that antitrust was meant to incorporate those ideas." Thus, the courts have held generally that any exchange of money for a good or service, between any persons, is in ‘trade or commerce,”19 and the Supreme Court itself has described “commerce” to include any “exchange of...a service for money.’00 Indeed only in very limited, and sometimes exotic, circumstances have modem courts found conduct to be outside the scope of antitrust.21

**[FOOTNOTE 21]**

21. See. e.g., Dedication & Everlasting Love to Animals v. Humane Soc’y of the U.S., 50 F.3d 710 (9th Cir. 1995) (holding that solicitation of gratuitous charitable donations is not trade or commerce).

**[/FOOTNOTE 21]**

Therefore, in the absence of an explicit statutory exemption or a judicially created immunity, and so long as it is in the interstate or foreign commerce of the United States, the giving of essentially anything in return for money or barter is subject to federal antitrust.

Understanding the scope of modem antitrust also requires recognition of contemporary developments that affect enforcement of antitrust and its substantive reach. The United States is one of the few of more than 100 nations with competition laws that permit private antitrust suits.22 U.S. antitrust has permitted those suits dating from the initial adoption of the Sherman Act in 1890,23 and they comprise by far the largest component of antitrust enforcement.24 However, recent caselaw developments may increase barriers to the private lawsuits on which U.S. enforcement heavily depends. During the past thirty years or so, the federal courts have gradually raised doctrinal barriers to private enforcement of federal antitrust law, particularly through the rule of antitrust injury and the developing doctrine of antitrust standing.25 Partly as a result of these developments, private enforcement has declined.26

#### ‘Expand’ must make more expansive---NOT merely clarify existing principles

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The AFF just clarifies the application of antitrust to already covered practices – it does NOT curtail an exemption or immunity

#### Vote NEG – eliminating exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity

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#### SCOTUS will narrow Chevron in AHA v. Becerra but they will decline to overrule Chevron in its entirety

Nachmany 21 [Eli Nachmany is a third-year law student at Harvard Law School, where he serves as Editor-in-Chief of the Harvard Journal of Law & Public Policy. Prior to law school, Nachmany worked in the White House Office of American Innovation as a domestic policy aide and as the Speechwriter to the U.S. Secretary of the Interior. 8-9-2021 https://www.yalejreg.com/nc/scotus-faces-a-chevron-decision-tree-in-american-hospital-association-v-becerra-by-eli-nachmany/]

The Supreme Court recently granted certiorari in American Hospital Association v. Becerra, a case that presents a question relating to so-called Chevron deference. Chevron USA v. NRDC was a 1984 case in which the Court held that an administrative agency’s interpretation of an ambiguous statute was entitled to judicial deference. But this controversial precedent has come under attack in recent years, with some Justices suggesting that the Court scrap Chevron.

Plenty of good arguments exist for overturning Chevron, but to do so in American Hospital Association, the Court will need to clear a few hurdles. American Hospital Association concerns the Department of Health and Human Services’ (HHS) interpretation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The law sets forth certain formulas for drug reimbursement rates; in 2018, HHS cut reimbursement rates to hospitals that participate in the 340B program based on an interpretation of the statute. The American Hospital Association has challenged the interpretation, while HHS claims that its interpretation is entitled to judicial deference under Chevron.

Chevron has become the target of intense criticism over the years. Some argue that deferring to an agency’s interpretation of a statute that it is charged with administering scrambles the separation of powers. Others point out that Chevron runs counter to the Administrative Procedure Act, which instructs courts to “decide all relevant questions of law” and “interpret constitutional and statutory provisions.” And still others urge that Chevron offends due process, given the systemic advantage it confers upon the government in regulatory litigation.

But is American Hospital Association the proper vehicle for overturning Chevron? Three main obstacles block the way toward the overturning of Chevron in the case. The first is the Court’s resolution of an additional question that it asked the parties to brief, concerning the reviewability of HHS’s interpretation. The second is the Court’s potential interest in a sort of Chevron exceptionalism for interpretations about appropriations provisions. And the third is the possibility that the Court itself is just not ready to overturn Chevron, instead preferring an alternate path even if it reaches the question.

For starters, the Court could stop short of the Chevron question altogether if it finds that the agency action at issue in the case is unreviewable. The Court has long held that administrative action embodies a presumption of reviewability. Essentially, the Court assumes that a given agency action is reviewable unless a statute precludes judicial review or the court has “no law to apply” in evaluating the agency’s action. The presumption of reviewability may also be a check against broad agency discretion; some judges find such discretion—as the recent revival of interest in the nondelegation doctrine evinces—constitutionally dubious.

But Professor Nicholas Bagley has called the presumption of reviewability itself into question. In a recent Harvard Law Review article, Professor Bagley argued that the presumption has no basis in history, positive law, the Constitution, or sound policy considerations. Professor Chris Walker has made the point that because of the longstanding nature of the presumption, the Court is unlikely to shift gears in American Hospital Association. Still, the Court has asked the parties for briefing on the question whether HHS’s action is reviewable. This presents the Court with the opportunity to (1) find that the statute at issue in this case falls into one of the clearly established exceptions to the presumption of reviewability, (2) cabin the presumption somewhat, or (3) draw on Professor Bagley’s work to eschew the presumption altogether. Any of these three options would allow the Court to resolve the case on non-Chevron grounds.

Next, the Court might decline to apply Chevron deference for a reason that is particular to the facts of this case. While jurists and commentators often speak of Chevron in general terms, some have posited that certain areas of public administration should obtain a sort of Chevron exceptionalism. As it pertains to American Hospital Association, Professor Matthew Lawrence has written that “[c]ourts should adopt a bifurcated approach to the application of Chevron for appropriations that disfavors deference for permanent appropriations provisions, but not for annual appropriations provisions.” Because Medicare payment flows from a permanent appropriation of federal money, the argument goes, Chevron deference would be especially inappropriate for HHS’s interpretation of a Medicare appropriations provision. This is because, according to Professor Lawrence, deferring to agency interpretations of permanent appropriations provisions may do significant violence to the separation of powers and seriously encroach on Congress’s domain. The Court could resolve the case on these grounds, or even take a slightly broader view and find that Chevron is inapplicable in the appropriations realm as a general matter. Either way, such a result would likely produce a narrow holding applicable only to a subset of administrative action.

Finally, the Court could squarely answer the Chevron question and still refuse to overrule its precedent. The Court might (1) declare that the statute is clear and, therefore, Chevron deference does not apply; (2) issue a Kisor-esque decision that cabins Chevron’s general applicability but keeps the precedent on life support; or (3) simply reaffirm Chevron on stare decisis grounds and apply it to the present case. There is some overlap among these three doctrinal paths.

Beginning with the first option, Chevron itself set forth a two-step approach. At the first step, if Congress’s intent is clear, the Court must give effect to the clear statutory text. This part of Chevron is uncontroversial—if, for example, a statute commands that an agency “shall” do something, that agency’s interpretation that it “may” (and, by corollary, may not) do the thing would not be entitled to deference, because it conflicts with the clear language of the law. As such, if the Court finds the provision at issue unambiguous, it could answer the question presented in the negative without wading into the deference debate.

The second option laid out above uses the term “Kisor-esque” to refer to the Court’s recent decision in Kisor v. Wilkie. There, the Court was faced with the question whether to overturn Auer v. Robbins, which stands for the principle that courts must defer to agencies’ interpretations of their own ambiguous regulations. In Kisor, the Court upheld Auer, but significantly cabined its application. Writing for the Court, Justice Kagan explained that Auer deference is only proper when a regulation is “genuinely ambiguous,” determined after rigorous deployment of the full set of the canons of statutory interpretation. Moreover, the Court delineated a set of situations in which Auer deference would not come into play, even if the regulation was genuinely ambiguous—these include interpretations that create unfair surprise to regulated parties, interpretations that do not implicate the agency’s substantive expertise, and interpretations that do not reflect fair and considered agency judgment.

In a concurrence, Chief Justice Roberts supplied the key fifth vote for the Kisor majority. To be sure, he wrote that “[i]ssues surrounding judicial deference to agency interpretations of their own regulations are distinct from those raised in connection with judicial deference to agency interpretations of statutes enacted by Congress,” citing Chevron. But in recent years, the Court has narrowed the set of situations in which Chevron applies, establishing what Professor Cass Sunstein once termed a “Chevron step zero.” Given what the Court did in Kisor, it would not be unheard of for the Court to come out a similar way in American Hospital Association, summarizing the step zero doctrine and declining to apply Chevron deference for any one of a host of reasons (perhaps because of the permanent appropriations issue, as described above), while leaving Chevron on the books.

#### The plan causes institutional balancing – SCOTUS couple’s the plan’s regulation with an equal and opposite anti-regulatory ruling in AHA

Masters 20 (Brooke Masters, FT’s Chief Business Commentator and an Associate Editor, US Supreme Court adjusts to new tilt to the right, 12-10, <https://www.ft.com/content/16489a50-e828-4cc6-8d0d-a261c1f1f9d8>)

The US Supreme Court is having adjustment problems. The addition of three conservative appointees by President Donald Trump in four years has disturbed the balance and possibly destroyed the comity of America’s highest court. The arrival of Amy Coney Barrett in October, replacing the late Ruth Bader Ginsburg, gives the court a 6-3 conservative majority after decades of a 5-4 split or control by a moderate block.

A court that has been reliably pro-business for years will stay that way at a time when incoming president Joe Biden is expected to favour stricter regulation and labour rights. The court also appears poised to invalidate or sharply narrow social reforms and government programmes that are popular with the majority of Americans, including abortion rights, gay marriage and Obamacare.

Some of the justices cannot wait. Samuel Alito, long one of the most conservative, recently complained in a speech that the court’s landmark 2015 gay rights decision in Obergefell vs Hodges had made traditional views unacceptable. “You can’t say marriage is a union between one man and one woman,” he said. “Until very recently, that’s what the vast majority of Americans thought. Now it’s considered bigotry.”

The significance of Ms Barrett’s arrival was underscored last month when the court blocked New York’s Covid-19 related restrictions on public religious services, saying they violated the freedom to worship. Before Ginsburg’s death, the court had upheld similar rules in California and Nevada, holding that they were necessary to control the pandemic and did not treat religious gatherings differently from secular ones.

The New York ruling was also notable for its many sharply worded opinions. Trump appointee Neil Gorsuch declared bitterly it was “past time” to strike down such restrictions, writing: “Even if the constitution has taken a holiday during this pandemic, it cannot become a sabbatical.”

The question now is not whether the court will move to the right, but how far. History shows that even though the justices are required to base their decisions on the constitution and legal precedent, popular opinion plays a role. After all, the court has no enforcement mechanism — it de­pends on the rest of government and the respect accorded to its rulings.

In the past, when Supreme Court rulings departed too far from public consensus, it has ended up adjusting. The best known instance is often described as the “switch in time that saved nine”.

In the 1935-36 terms, the justices capped a 40-year period of conservative rulings by striking down several New Deal statutes by 5-4 votes, drawing public opprobrium and a threat from then president Franklin Roosevelt to pack the court with additional liberals. While the bill was still pending, Owen Roberts changed sides — “switched” — and voted to uphold a Washington state minimum wage bill and continued to support regulation of business.

But liberals have seen the court shy away from confrontation as well. In 1954, in Brown vs Board of Education, the court invalidated segregated schools but put off immediate implementation, saying in Brown II a year later that states and school boards merely needed to act with “all deliberate speed”.

Chief Justice John Roberts has already shown he is deeply concerned with maintaining the Supreme Court’s institutional strength. For years, he has sometimes provided the liberals with a fifth vote on questions where he felt the court’s credibility could be at stake, including a 2012 ruling that turned back the first major challenge to the Affordable Care Act (ACA) that established Obamacare, and on cases regarding abortion rights and young immigrants last spring.

Supreme Court watchers observe that its history can place a powerful weight on members

#### Overturning Chevron stops deference for the PTO’s Patent Trial and Appeal Board---that narrows their “broadest reasonable interpretation” standard

Davis 17 – Ryan Davis, Senior Reporter for International Trade at Law360, “Bill To End Chevron Deference May Put Target On USPTO Rules”, Law360, 1-20, https://www.law360.com/articles/883314/bill-to-end-chevron-deference-may-put-target-on-uspto-rules [abbreviation in brackets]

A bill that recently passed the U.S. House of Representatives aimed at ending judicial deference to agency legal interpretations could open the door to new challenges to U.S. Patent and Trademark Office rules governing inter partes reviews and other procedures if it were enacted, attorneys say.

The Regulatory Accountability Act of 2017 passed the House on Jan. 11 by a 238-183 vote and includes a provision that would effectively repeal the U.S. Supreme Court's 1984 decision in Chevron USA Inc. v. Natural Resources Defense Council, which held that courts should defer to agency interpretations of ambiguous statutes.

Under the bill, courts would have to review relevant questions of law in such cases de novo. Republican sponsors of the bill, who decried "runaway regulatory interpretations," may not have had the USPTO in mind when drafting it, but it could provide ammunition for litigants challenging the office's rules.

For instance, the U.S. Supreme Court last year upheld the [PTAB’s] Patent Trial and Appeal Board's claim construction standard for inter partes reviews, ruling that the office's interpretation of the America Invents Act was entitled to Chevron deference. Without that deference, such rules governing the PTAB and other patent procedures could be more susceptible to legal challenges.

"When there are questions about whether the board's regulations are reasonable, there could be a difference," said Craig Countryman of Fish & Richardson PC. "If the courts apply Chevron deference, they may take a more lenient approach, but if this legislation passes, they might take a harder look at it."

Chevron deference has not come into play in patent cases often, but the 2011 America Invents Act gave the patent office the authority to interpret the statute in creating new proceedings to challenge patents like inter partes review. The office has since created numerous rules governing the proceedings, some of which, like the claim construction standard, have been controversial.

Under the current standard, the courts would likely defer to the USPTO's interpretations if they are reasonable, but if the legislation were enacted, courts like the Federal Circuit could review the office's actions afresh and possibly find fault with them more readily.

Eliminating deference to agency rules would change the way attorneys seek appellate review of USPTO rules, though it is difficult to predict if the outcome of such challenges would be any different, said Lawrence Ashery of Caesar Rivise PC.

"For an attorney dealing with PTAB issues, this may become very relevant," he said.

If the bill were to become law, the decision on the PTAB's claim construction standard could provide a test case. The USPTO decided that patents subject to inter partes reviews should be reviewed by giving the claims their "broadest reasonable interpretation," rather than the narrower claim construction standard used in district court.

Cuozzo Speed Technologies LLC challenged that interpretation at the Supreme Court, backed by many patent owners who argued that a broad claim construction standard makes it too easy to invalidate patents because reading the claims broadly increases the amount of prior art that can be used against a patent.

The AIA does not specify how the PTAB should construe claims, so the USPTO used the broadest reasonable interpretation standard, which it has used in other types of proceedings for years.

The Supreme Court concluded that the regulation "represents a reasonable exercise of the rulemaking authority that Congress delegated to the patent office." The court noted that under Chevron, when a statute is ambiguous or has a gap, it gives the agency leeway to enact rules that are reasonable.

"The statute contains such a gap: No statutory provision unambiguously directs the agency to use one standard or the other," the court said.

For patent owners who continue to be vexed by the broadest reasonable interpretation standard, a repeal of the Chevron deference standard underpinning the Supreme Court's decision could provide a new avenue of attack.

#### Narrowing the BRI blocks biomedical research

Jones 16 – Barbara Jones, JD, Lawyer at AARP Foundation Litigation, et al., “BRIEF FOR AARP AS AMICUS CURIAE SUPPORTING RESPONDENT – Cuozzo v. Lee”, 3-30, http://www.scotusblog.com/wp-content/uploads/2016/04/Cuozzo-Speed-Technologies-v-Lee.pdf [abbreviation in brackets]

[Note – “BRC” = Broadest Reasonable Construction, a synonym for Broadest Reasonable Interpretation

This Court’s decision, which will determine the claim-construction rule used at the United States Patent and Trademark Office (PTO), will impact the ability of interested parties to challenge questionable patents. In light of the significance of the issue presented in this case, AARP respectfully submits this amicus curiae brief to address the first question presented to the Court: whether the Patent Trial and Appeal Board may construe patent claims according to their broadest reasonable interpretation.

SUMMARY OF THE ARGUMENT

Congress designed the Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29, 125 Stat. 284 (2011), to overturn patents that should have never been issued in the first place. The current inter partes review (IPR) system is working as intended, and patents that should have never been issued are being invalidated. The Federal Circuit correctly held that the United States Patent and Trademark Office (PTO), in adopting 37 C.F.R. 42.100(b), acted within its rulemaking authority, which consistent with the agency’s settled practice in other post-issuance proceedings provides that patent claims shall be given their [BRC] “broadest reasonable construction” during inter partes review proceedings.

When patents are improperly issued they undermine competition, increase healthcare and other consumer costs, with no offsetting benefit to consumers. The public has a “paramount interest in seeing that patent monopolies . . . are kept within their legitimate scope.” Medtronic, Inc. v. Mirowski Family Ventures, L.L.C., 134 S. Ct. 843, 851 (2014). As a result of the monopolies created by drug patents, health care consumers have paid everincreasing prices for prescription medications.

AARP’s research indicates that between 2006 and 2013, retail prices for 140 brand-name drugs used by many older adults increased by an average of 113 percent. Stephen W. Shondelmeyer and Leigh Purvis, AARP: Rx Price Watch Report 1 (2014).3 Low-quality patents have a direct impact on the cost of pharmaceutical drugs, to the detriment of older individuals and the public, generally. The Court should affirm the judgment of the Federal Circuit.

ARGUMENT

I. CONGRESS CREATED INTER PARTES REVIEW TO IMPROVE PATENT QUALITY AND GAVE THE PTO FULL AUTHORITY TO SET THE APPROPRIATE CLAIM CONSTRUCTION STANDARD.

The Leahy-Smith America Invents Act (AIA) Pub. L. No. 112-29, 125 Stat. 284 (2011) was designed to get rid of patents that should not have been issued in the first place. One of the bill’s authors noted that one of the purposes of the act was “to correct egregious errors” made by the PTO in granting patents. 157 CONG. REC. S7413 (daily ed. Nov. 14, 2011) (statement of Sen. Kyl) (reading into the Record a letter from Lamar Smith, Chairman of the House Judiciary Committee). As Sen. Smith noted: “The strength of our patent system relies on not simply the mechanical granting of a patent, but the granting of strong patents, ones that are truly novel and non-obvious inventions, that are true innovations and not the product of legal gamesmanship.” Id. Through the AIA, Congress sought to provide “a meaningful opportunity to improve patent quality and restore confidence in the presumption of validity that comes with issued patents in court.” H.R. Rep. No. 112-98 pt. 1, at 48 (2011) (House Report).

The AIA instructs the PTO to “prescribe regulations . . . establishing and governing inter partes review.” 35 U.S.C. § 316(a)(4). Exercising that authority, the PTO adopted the broadest reasonable claim interpretation standard. 37 C.F.R. § 42.100. That standard has been employed by the PTO in a variety of contexts for a century, and, as the Federal Circuit noted, “[t]here is no indication that the AIA was designed to change the claim construction standard that the PTO has applied for more than 100 years.” In re Cuozzo Speed Techs., LLC, 793 F.3d 1268, 1277 (Fed. Cir. 2015).

A. The Presumption That an Issued Patent is Valid Does Not Apply to Agency Decisions.

In district court patent infringement litigation, there is a statutory presumption that an issued patent is valid. 35 U.S.C. § 282. That presumption, however, does not apply in IPR proceedings where, unpatentability needs to be proved by a preponderance of evidence. See Resp. Br. 6-7; 19-20. Unlike district court litigation, patent claims can still be amended or replaced during PTO administrative proceedings. Id.; 35 U.S.C § 316 (e). The IPR process can only be instituted when “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C § 314; 324. Given the high standard to even institute IPR, and the “reasonable likelihood” that at least one of the patent claims is invalid it makes sense that the presumption of validity does not apply in IPR proceedings.

As this Court has previously noted, the presumption of patent validity is greatly diminished when patent examiners have not considered the prior art. KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398, 426 (2007). The United State Patent and Trademark office’s initial determinations granting patents “…are reached under tight time constraints and on an ex parte basis allowing minimal opportunity to hear a third party’s opposing views.” Fed. Trade Comm, To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy, 28 (Oct. 2003), http://1.usa.gov/1d7fQwQ. As the Federal Trade Commission observed given “all the failings of ex parte examination” there is a compelling case against imposing a heightened evidentiary standard on parties who challenge patent validity. Id.; see also Doug Lichtman & Mark Lemley, Rethinking Patent Law’s Presumption of Validity, 60 Stan. L. Rev. 45 (2007) (noting that given the high volume of patent applications “it is hardly a surprise that the PTO makes mistakes during the initial process of patent review, granting patents that, on the merits, should never have been issued. The real surprise is that the law makes issuance mistakes hard to reverse.”).

II. PATENT CLAIMS THAT DO NOT MEET THE BROADEST REASONABLE INTERPRETATION STANDARD SHOULD BE INVALIDATED.

Patent claims “are required to be cast in clear—as opposed to ambiguous, vague, indefinite — terms. It is the claims that notify the public of what is within the protections of the patent, and what is not.” In re Packard, 751 F.3d 1307, 1313 (Fed. Cir. 2014) (citing United Carbon Co. v. Binney & Smith Co., 317 U.S. 228, 236); see also Nautilus, 134 S. Ct. at 2129) (holding that a patent must be precise enough to afford clear notice of what is claimed to inform those skilled in the art about the scope of the invention with reasonable clarity). The Patent Act mandates that patent specifications be written using “full, clear, concise and exact terms.” 35 U.S.C. § 112(a). The patent specification must particularly point out and “distinctly” claim the subject matter that the inventor regards as the invention. 35 U.S.C. § 112(b).

The public has a “paramount interest in seeing that patent monopolies . . . are kept within their legitimate scope.” Medtronic, Inc., 134 S. Ct. at 851 As this Court noted in Precision Instrument Mfg. Co., [a] patent by its very nature is affected with a public interest. As recognized by the Constitution, it is a special privilege designed to serve the public purpose of promoting the ‘Progress of Science and useful Arts.’ At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope.

The broadest reasonable interpretation (BRI) standard “serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.” In Re Yamamoto, 740 F.2d 1569, 1571 (Fed. Cir. 1984). As the PTO notes in its Patent Trial Guide, the BRI approach ensures that the public can clearly understand the outer limits that applicants and patentees will attribute to their claims. Additionally, although the IPR process is still new, the AIA contemplates that:

[T]here may be multiple proceedings involving related patents or patent applications in the Office at a particular time. For example, there may be an IPR of a patent that is also subject to an ex parte reexamination, where the patent is part of a family of co-pending applications all employing the same claim terminology. The Office applies the broadest reasonable interpretation standard in those proceedings, and major difficulties would arise where the Office is handling multiple proceedings with different applicable claim construction standards.

As the PTO further explains, Only through the use of the broadest reasonable claim interpretation standard can the Office ensure that uncertainties of claim scope are removed or clarified. Since patent owners have the opportunity to amend their claims during IPR, PGR [Post Grant Review], and CBM [Covered Business Method] trials, unlike in district court proceedings, they are able to resolve ambiguities and overbreadth through this interpretive approach, producing clear and defensible patents at the lowest cost point in the system.

Petitioner and its amici urge this Court to force the PTO to adopt the claim construction standard described in Phillips v. AWH Corp., 415 F.3d 1303. The Phillips standard, however, continues to create confusion. See, e.g., Dan L. Burk and Mark A. Lemley, Fence Posts or Sign Posts? Rethinking Claim Construction 157 U. Pa. L. Rev. 1743, 1744-45 (“Despite repeated efforts to set out the rules for construing patent claims, culminating in the Federal Circuit's en banc Phillips decision in 2005, parties and courts seem unable to agree on what particular patent claims mean . . . . Literally every case involves a fight over the meaning of multiple terms, and not just the complex technical ones. Recent Federal Circuit cases have had to decide plausible disagreements over the meanings of the words ‘a’, ‘or,’ ‘to,’ ‘including,’ and ‘through,’ to name but a few.”) (footnotes omitted).

Despite professing to give patent claims their “ordinary and customary” meaning, the Phillips standard upholds patent claims that redefine words and reject the ordinary meaning of words. Claim construction under Phillips specifically permits claim terms to have “a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess.” Phillips, 415 F.3d at 1316. What has been described as the “fractured nature of claim construction” after Phillips has caused some scholars and judges to urge courts to adopt the PTO’s claim construction standard instead of the Phillips claim construction standard. See, e.g., Andrew B. Dzeguze, Did Markman and Phillips Answer the Right Question? A Review of the Fractured State of Claim Construction Law and the Potential Use of Equity to Unify It, 15 Tex. Intell. Prop. L.J. 457, 482- 489 (2007) (noting that post-Phillips claim construction is as fractured as ever; and proposing that district courts use the broadest reasonable interpretation rather than Phillips); Enzo Biochem, Inc. v. Applera Corp, 605 F.3d 1347, 1348-1349 (Fed. Cir. 2010) (Plager J., dissenting from denial of panel rehearing) (noting the differences of approach between the PTO and the courts, and urging the Federal Circuit to “move in th[e] direction” of the PTO). Regardless of which standard would be preferable in district courts, Congress in enacting the AIA was well aware that the broadest reasonable interpretation standard was the prevailing rule at the PTO. See 157 CONG. REC. S1375 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl). As the Federal Circuit held, “It can therefore be inferred that Congress impliedly approved the existing rule of adopting the broadest reasonable construction.” In re Cuozzo Speed Technologies, LLC, 793 F.3d at 1277. Consistent with the BRI standard, the PTO can find claims to be indefinite “whenever reasonable alternative constructions are found to exist, requiring applicants to resolve the discovered ambiguities.” Joshua D. Sarnoff & Edward D. Manzo, An Introduction to, Premises of, and Problems with Patent Claim Construction § 0:5 n.17 in Patent Claim Construction In The Federal Circuit (Edward D. Manzo ed. 2016) (emphasis in original); Ex Parte Kenichi Miyazaki, No. 2007-3300,89 U.S.P.Q.2d 1207 (B.P.A.I. Nov. 19, 2008) (“we hold that if a claim is amenable to two or more plausible claim constructions, the USPTO is justified in requiring the applicant to more precisely define the metes and bounds of the claimed invention”). As Judge Dyk explained in his opinion concurring in the denial of rehearing en banc, there are bills pending in Congress to change the IPR claim construction standard. If the claim construction standard is to be changed, it should be done by Congress, not the Court. Pet. App. 52a & n.1.

III. DUBIOUS PATENTS INCREASE HEALTHCARE COSTS AND BLOCK BIOMEDICAL RESEARCH.

Congress passed the AIA to “improve patent quality” and address a growing concern that the costs of patent litigation were negatively affecting the climate for investment and innovation. House Report 40, 48. The cost of litigating patent claims that result from poor patent quality is exceedingly high to both businesses and consumers. See Joe Matal, A Guide to the Legislative History of the America Invents Act: Part II of II, 21 Fed. Circuit B.J. 539, 600 (noting that the cost of litigating a dubious patent can be millions of dollars, and that “ it is often prohibitively expensive or even impossible to test the validity of a newly-issued patent that is of dubious validity, and the continued existence of a patent can disrupt product development in a field of technology for years.”).

The Federal Circuit itself has noted that when patents are improperly granted, “. . . competition in the marketplace is foreclosed and the public is forced to pay higher prices.” McNeil-PPC, Inc. v. L. Perrigo Co., 337 F.3d 1362, 1368 (Fed. Cir. 2003) (quoting the District Court’s opinion, McNeil-PPC, Inc. v. L. Perrigo Co., 207 F. Supp. 2d 356, 375 (E.D. Pa. 2002)). Unfortunately, the costs of patent litigation “are inevitably passed onto consumers, regardless of the outcome of the case.” Brianna Lennon, Antitrust Implications of Technology Patents, 1 ABA Young Lawyer Div. Antitrust Law Comm. Newsl. 8, 9 (2012), http://bit.ly/1fej47A.

Furthermore, improperly granted patents increase the cost of healthcare to the detriment of older people and the public, generally. AARP’s most recent Public Policy Institute report analyzed the price changes in 622 commonly used drugs and found that: “[t]he average annual cost of [prescription drug] therapy was more than $11,000 per drug per year for widely used prescription drugs at the endpayer (retail) level in 2013.” Stephen W. Shondelmeyer & Leigh Purvis, AARP: Rx Price Watch Report Trends in Retail Prices of Prescription Drugs Widely Used by Older Americans, 2006-2013 6 (Feb.2016), http://bit.ly/1yXUYDN. The $11,000 average annual cost is almost half of the median income for Medicare beneficiaries ($23,500) and almost three-quarters of the average Social Security retirement benefit ($15,526). Id.; see also Jan Blustein, Drug Coverage and Drug Purchases by Medicare Beneficiaries with Hypertension, 19 Health Aff. 219, 226 (2000), available at http://bit.ly/1l371My (noting that high cost of prescription drugs have compelled many older Americans to forgo needed drug treatment).

Prescription drug increases also affect employers, private insurers, and taxpayer-funded programs like Medicare and Medicaid. Generic drugs, available once a patent expires, or is found to be invalid, play a crucial role in containing rising prescription drug costs by offering consumers therapeutically identical alternatives to brand drugs at significantly reduced costs. The Generic Pharmaceutical Association reports that in 2014 alone “[g]eneric drugs were responsible for $254 billion in health system savings . . . bringing the total savings over the last 10 years to $1.68 trillion. Generic Pharm. Ass’n, Generic Drug Savings in the U.S. 1 (7th ed. 2015), http://bit.ly/1Np0dGM. Invalid patent claims not only impact the price of drugs, but can also block biomedical research. See, e.g., Mildred K. Cho et al., Effects Of Patents And Licenses On The Provision Of Clinical Genetic Testing Services, 5 J. Molecular Diagnostics 3, 7 (2003), available at http://1.usa.gov/1bqUNKz (noting that more than half of laboratory directors had decided not to develop or perform tests specifically because of intellectual property considerations). The mere “knowledge that a patent application has been filed can influence the decision to spend the time and resources to develop a clinical test because of the uncertain risk that a patent holder will later prevent the laboratory from continuing to provide this service.” Jon F. Merz, Disease Gene Patents: Overcoming Unethical Constraints on Clinical Laboratory Medicine, 45 Clinical Chemistry 324, 327 (1999), available at http://bit.ly/1gmvaYJ. Such concerns motivated Congress to pass the AIA and authorize the PTO to prescribe regulations establishing and governing IPR review. 35 U.S.C. § 316(a). Patent claims that do not meet BRI standard should be invalidated.

#### Extinction

Bryden 17 – John Bryden, Professor at the Norwegian Institute of Bioeconomy Research, “Inclusive Innovation in the Bioeconomy: Concepts and Directions for Research”, Innovation and Development, Volume 7, http://www.tandfonline.com/doi/full/10.1080/2157930X.2017.1281209

In this introduction to the special issue on inclusive innovation in the bioeconomy, the authors highlight inclusive innovation’s significance to economies that provide the vital resources of food, water, and energy. Innovation in the bioeconomy raises questions of environmental sustainability, human survival, social justice, and human rights. This article thus emphasizes, especially, the roles that institutions play regarding innovation in the bioeconomy. The authors suggest that inclusive innovation be defined as new ways of improving the lives of the most needy. They outline research implications of this definition, and relate these implications to debates about the modes and ethics of innovation. They argue that innovation systems’ design affects these systems’ potential for inclusiveness as well as their value premises. Finally, the contributions to this special issue are introduced and discussed in light of the special issue’s overall purpose and framework.

1. The significance of inclusive innovation in the bioeconomy

This special issue is about inclusive innovation in the ‘bioeconomy’, generally conceived as an economy based on land and marine-based natural resources including eco-systems services and bio-waste. The bioeconomy produces the most vital goods: food, drinking water, breathable air, and energy. Increasingly, the bioeconomy is also seen as offering a green alternative to the fossil fuel-based economy that is largely responsible for climate change. The transition from the fossil fuel economy to the bioeconomy is a large and growing field for all forms of technical and institutional innovation. The cases discussed in this volume all deal with aspects of what is now termed the ‘bioeconomy’ and the related transitions to it.

In this introduction to the special issue we highlight inclusive innovation’s significance to the growing debate about the bioeconomy. We link our topic to the pathbreaking work that has been done by previous researchers on inclusive innovation, and we present our view on two much-debated topics in the inclusive innovation literature: the definition of ‘inclusive innovation’ and the definition’s implications for research. We also wish to stimulate discussion about innovation’s (often tacit) normative premises. It is argued in this special issue that normative premises guide both conventional and alternative notions of innovation, and that different modes of innovation have different normative implications regarding, for example, who’s interests and knowledge count as being significant. We thus wish to contribute in this special issue to the more general debates about innovation’s purposes, innovation’s actors, and the institutional preconditions for innovation’s ability to improve people’s lives. Finally, in the light of these general questions we introduce the papers in this special issue. Thereby, we hope to create useful pointers for future work on inclusive innovation and innovation in the bioeconomy

Newby (1991 Newby, H. 1991. “The Social Sciences and the Environment”, Robbins Lecture, University of Stirling, November.

)11. Howard Newby, one of the UK’s foremost social scientists, was then Chairman of the UK Economic and Social Research Council.

View all notes

noted, in a critical assessment of the science and technology focused first Intergovernmental Panel in Climate Change (IPCC), that ignoring the interplay between technology and people and ignoring the need for public support for changes in policies and lifestyles, would lead policies astray. Arguably, Newby’s position is transferable to the bioeconomy’s resource base in general: land, the marine environment, and water, are vital to human subsistence, limited in supply, and they cannot be reproduced solely by technical means. Importantly, these resources’ primary functions can be easily damaged by misuse.

These characteristics of the bioeconomy’s resource base – that the supply of each resource is limited, sensitive to human misuse, and necessary for subsistence – means that choices between alternative uses becomes a critical issue. Market principles prescribe either a market-based ‘cascading principle’22. Cascading principle means that the highest (social) value uses of biomass should be the first choice, and the lowest value uses the last choice. Different interpretations of ‘value’ in this context tend to be taken by environmentalists, economists, and social scientists.

View all notes

or surrogate pricing (e.g. through environmental taxes) to make such choices. However, given the unequal distribution of purchasing power, market principles prioritize use of these resources for those with the greatest purchasing power, and leave the poorest with no, or short, supplies. Consequently, poor people’s access to vital natural resources can often be ensured only by institutional means. It is against this background that we devote this special issue to the topic of inclusive innovation in the bioeconomy. We wish to address, in particular, the roles that institutions play in securing innovation’s inclusiveness in the bioeconomy.

However, the bioeconomy, as a provider of vital subsistence resources, urges scholars and policy-makers, as argued by Bryden and Gezelius in this volume, to consider the fundamental institution of the human rights regime, which makes access to food, shelter, and clean water, among other things, a basic right. Ethical and legal issues are thus deeply enshrined in the choices to be made in the bioeconomy. Simultaneously, the bioeconomy, with its territorial nature, is deeply embedded in the communities and other social systems that inhabit its territories. These social systems are often very long standing and cannot be easily changed. They depend on natural resources that have many social and cultural uses, including subsistence, recreation, tourism, landscapes, biodiversity, carbon absorption, and others commonly summed up as ‘eco-system services’. Altering any or all of these social and biological systems to ‘grow the new bioeconomy’, therefore, has significant social and human implications that scientists and policy-makers will ignore at their peril, including, of course, the risk of fuelling popular opposition. Social scientists, therefore, have a key role to play in bringing implicit institutional preconditions and value premises to light, discussing them critically, and offering alternatives. Highlighting this role is one of the tasks in this special issue.

### 1NC

#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes prohibitions on anticompetitive practices by nucleus participants at the root layer of blockchains.

#### There is broad range for the FTC to target blockchain under section 5

Thomas 20 --- Ryan C. Thomas is a partner in the Washington, DC office of Jones Day. Peter Julian is an associate in the firm’s San Francisco office. The authors wish to recognize and thank Jones Day summer associate and UC Hastings College of Law student Amul Kalia for his valuable contributions to this article. The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of Jones Day, BLOCKCHAIN TECHNOLOGY: A FUTURE ANTITRUST TARGET?, The Journal of the Antitrust, UCL and Privacy Section of the California Lawyers Association, Vol 30, No. 2 Fall 2020

Section 5 of the FTC Act prohibits unfair competition.76 The FTC has adopted an expansive and at times controversial interpretation of its enforcement powers under this statute, asserting that Section 5 applies to any “deceptive, collusive, coercive, predatory, unethical, or exclusionary conduct or any course of conduct that causes actual or incipient harm to competition,” including conduct that is not covered by the Sherman Act.77 One of the more common applications of Section 5 involves invitations to collude—efforts by one firm to enter into an anticompetitive price fixing or market allocation agreement with one or more of its competitors.78

Because blockchains can be used to share information, they could potentially be used to “signal” future plans to rivals and invite them to follow suit. For example, a competitor could use blockchain transaction histories to demonstrate to its competitors that it had been consistently charging a particular price, and then—successfully or unsuccessfully— suggest that they do the same. Or if a blockchain allowed rivals’ access to prospective pricing or other competitively sensitive information, that could be used to signal plans and invite others to follow. Such activity may be viewed as an invitation to collude in violation of Section 5, particularly if there is evidence that competitors’ subsequent transactions and posted prices were impacted by the signal.

### 1NC

#### Text:

#### The United States federal government should create a domestic competition network over anticompetitive practices by nucleus participants at the root layer of blockchains, and advocate for prohibition.

#### Solves case – builds consensus

Kovacic 13 (William E. Kovacic, Commissioner, U.S. Federal Trade Commission, and Professor, George Washington University Law School, “Distinguished Essay: Good Agency Practice and the Implementation of Competition Law” European Yearbook of International Economic Law 2013. European Yearbook of International Economic Law, vol 4, <https://link.springer.com/chapter/10.1007/978-3-642-33917-2_1>) MULCH

If the answer to all of these queries is to leave the status quo in place, then it is incumbent upon the public agencies with competition or consumer protection duties to spend more effort than they do today to achieve a greater convergence of approaches and to see how collaboration can permit them to achieve results that exceed the grasp of single agencies acting alone. One place to start is to create a domestic competition network and a domestic consumer protection network to engage the public authorities in the kind of discussions and cooperation that U.S. agencies pursue with their foreign counterparts.17 There is no forum in which the U.S. public institutions assemble regularly to discuss what they do and consider, as a group, how the complex framework of federal, state, and local commands might operate more effectively. At best, the U.S. public authorities perform these network building functions in piecemeal fashion at bar association conferences and other professional gatherings. There also are bilateral discussions involving some public bodies.18 These measures are useful, but they are not good substitutes for the establishment of a more comprehensive framework of interagency regulatory cooperation. The U.S. competition agencies spend more time seeking to develop effective mechanisms for cooperation with foreign authorities than they devote to the integration of policymaking across federal and state agencies domestically.

Good examples of how to achieve greater levels of cooperation exist abroad. In the middle of the previous decade, the European Union (EU) created the European Competition Network (ECN) to coordinate the work of the national competition authorities of the EU member states and the European Commission’s Competition Directorate (DG COMP). The ECN meets regularly to discuss matters of common concern and to promote information sharing and other forms of cooperation. The network has achieved considerable success in avoiding conflicts that might have arisen from the EU’s decision to devolve greater levels of responsibility to the member states as part of a modernization of the EU’s competition policy framework.

As suggested above, government agencies in the United States would do well to emulate the European experience and create domestic networks for competition policy and consumer protection, respectively. A domestic competition network could begin with a memorandum of understanding adopted by the public agencies with competition policy duties, including the two federal antitrust agencies, sectoral regulators such as the Federal Communications Commission (FCC) and the antitrust units of the state attorneys general. The agreement might commit the participants to participate in regular discussions about matters such as the coordination of inquiries involving the same transaction or conduct, the development of common analytical standards, information sharing about specific cases, staff exchanges, and the identification of superior investigative techniques. Cooperation could progress toward the pursuit of joint research projects and the preparation of a common strategy to address various commercial phenomena. The network would be a platform for replicating activities that have become core elements of the ECN, such as interagency sharing of practical know-how and sector-specific experience, the development of common training exercises, and benchmarking of procedures across agencies.

#### Federal preemption destroys state prototyping – AND pushback turns case – DCN solves

Hyman and Kovacic 20 (David A. Hyman, Chair in Law and Professor of Medicine, University of Illinois, former Special Counsel at the Federal Trade Commission; and William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; “State Enforcement in a Polycentric World,” BRIGHAM YOUNG UNIVERSITY LAW REVIEW, 2019(6), Summer 9-1-2020, <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3248&context=lawreview>) MULCH

What are the implications of our findings for federalism? To the extent there are differences of opinion within the polycentric federal administrative state on an issue that raises issues of federalism, the case for deference to the approach preferred by the federal government (let alone preemption) is much weaker. After all, if the federal government can’t speak with one voice or one mind on the issue, why should the states lose to an internally divided federal government in federalism cases?53 A hard-nosed approach to this problem will create a substantial incentive for the federal government to do a better job of getting its act together (in every sense of those words) and take the necessary steps to fix the organizational structure of the federal administrative state.

B. Engineering, Not Physics in Managing Federalism

During three years of private practice in the 1980s, one of us (Kovacic) worked extensively with engineers in companies that had participated in the U.S. space program in the 1960s. In a number of conversations, the engineers recounted their frustration in listening to physicists talk about space travel without addressing the practical difficulties associated with sending humans 240,000 miles to the moon—and then returning them alive. As Kovacic recalls, one engineer observed that “the physics of going to the moon was relatively straightforward—but the engineering was really difficult.” Brilliant physics without equally brilliant engineering would guarantee mission failure.

Discussions about public policy often reflect an analogous form of tunnel vision. Politicians and policymakers (particularly those who wish to be thought of as visionary leaders) routinely set out a grand vision without thinking hard about the steps needed to actually implement that vision in practice. Big policy ideas (the physics of public administration) are destined to disappoint, unless they are accompanied by skillful implementation (the engineering of public administration).

In the federal-state relationship, the tension between policy diversification and policy coherence poses daunting implementation challenges. But treating the matter as one of engineering (rather than of physics) suggests various strategies for moderating these challenges. At the outset, we set aside the most dramatic solution of vesting sole responsibility in federal agencies, and automatic preemption of state efforts and participation. On the whole, we believe the benefits of decentralized authority—notably, useful policy experimentation and prototyping, the supplementation of federal resources with state funding, and a critical safeguard against simultaneous fifty-state catastrophic failure— warrants continuation of a significant state role in multiple policy domains.54 The politics of these issues are also quite daunting. Stated differently, fair-weather federalism is far more common than all-weather federalism.55

**[FOOTNOTE 55]**

55. See, e.g., Glenn Harlan Reynolds, Chuck Schumer and Elizabeth Warren Are All for State Autonomy—When the GOP’s in Charge, USA TODAY (Apr. 23, 2018), https://www. usatoday.com/story/opinion/2018/04/23/chuck-schumer-elizabeth-warren-marijuanafederalism-column/540253002/ (“Schumer and Warren’s interest in federalism would be welcome if it were general and sincere, but it is limited and insincere.”); Michael Jonas, Progressive Politics From the Ground Up, COMMONWEALTH (Jul. 11, 2017), https://commonwealthmagazine.org/politics/progressive-politics-from-the-ground-up/ (“[B]oth sides are fair-weather federalists. Both sides will, depending on the politics of the moment, prefer state or national power, depending on where they’re in control.”) (quoting Dean Heather Gerken); Jacob Sullum, Fair-Weather Federalists, REASON (July 2012), https://reason.com/2012/06/14/fair-weather-federalists/ (noting selective invocations of federalism arguments); Garrett Epps, The Opportunists Friend (and Foe): State’s Rights, N.Y. TIMES (Nov. 20, 2001), https://www.nytimes.com/2001/11/20/opinion/the-opportunist-sfriend-and-foe-states-rights.html (“[W]hen it comes to states’ rights, we are all hypocrites. . . One scans American history in vain to find a major figure whose position on states’ rights was not directly connected to his or her position on the underlying political question. When it suits our leaders, they are in favor of broad federal power; when it does not, they claim ‘states’ rights.’”)

For a recent example, see Kendall, supra note 13 (noting opposition by Democrats in Congress to a federal antitrust investigation of four automobile companies that “struck a deal with California on vehicle-emissions standards”)

**[FOOTNOTE 55]**

At the same time, we think there is considerable room to achieve greater policy coherence and more effective use of public resources through “softer” forms of cooperation. We acknowledge that our proposals are neither earth-shattering nor flamboyant—a weakness which we believe is more than offset by the reality that our modest strategies actually work well in practice, unlike the more sweeping solutions that have been floated.56

**[FOOTNOTE 56]**

56. Three rationales justify starting small. First, such measures can make useful contributions by themselves. Second, in the aggregate, they can create an environment in which bolder approaches might flourish, while simultaneously operating as a test bed for developing prototypes for more elaborate programs in the future. And third, small steps stand a greater chance of success because their scale is more manageable, and they are less likely to trigger push-back than “swinging for the fences.”

[FOOTNOTE 56]

#### Prototyping solves emerging tech and AI best – turns case

McGinnis 11(John, George C. Dix Professor of Law, Northwestern Law School, “LAWS FOR LEARNING IN AN AGE OF ACCELERATION,” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3404&context=wmlr>)

The twenty-first century’s information age has the potential to usher in a more harmonious and productive politics. People often disagree about what policies to adopt, but the cornucopia of data that modern technology generates can allow them to better update their beliefs about policy outcomes on the basis of shared facts. In the long run, convergence on the facts can lead incrementally to more consensus on better policies. More credible factual information should over time also help make for a less divisive society, because partisans cannot as easily stoke social tensions by relying on false facts or exaggerated claims to support conflicting positions. Thus, a central task of contemporary public law is to accelerate a politics of learning whereby democracy improves a public reason focused on evaluating policy consequences. Government should be shaped into an instrument that learns from the analysis of policy consequences made available from newly available technologies of information.1 Greater computer capacity is generating more empirical analysis.2 The Internet permits the rise of prediction markets that forecast policy results even before the policies are implemented.3 The Internet also creates a dispersed media that specializes in particular topics and methodologies, gathers diverse information, and funnels salient facts about policy to legislators and citizens.4 But a public reason focused on policy consequences will improve only if our laws facilitate it. For instance, constitutional federalism must be reinvigorated to permit greater experimentation across jurisdictions, because with the rise of empiricism, decentralization has more value for social learning today than ever before.5 Congress should include mandates for experiments within its own legislation making policy initiatives contain the platforms for their own selfimprovement.6 Creating a contemporary politics of democratic updating on the basis of facts is a matter both of great historical interest and of enormous importance to our future. In the historical sweep of ideas, a government more focused on learning from new information moves toward fulfilling the Enlightenment dream of a politics of reason—but a reason based not on the abstractions of the French Revolution, but instead on the hard facts of the more empirical tradition predominating in Britain. By displacing religion from the center of politics, the Enlightenment removed issues by their nature not susceptible to factual resolution, permitting a focus on policies that could be improved by information.7 The better democratic updating afforded by modern technology can similarly increase social harmony and prosperity by facilitating policies that actually deliver the goods. For the future, a more consequentially informed politics is an urgent necessity. The same technological acceleration that potentially creates a more information-rich politics also generates a wide range of technological innovation—from nanotechnology to biotechnology to [AI] artificial intelligence. Although these technologies offer unparalleled benefits to mankind, they may also create catastrophic risks, such as rapid environmental degradation and new weapons of mass destruction.8 Only a democracy able to rapidly assimilate the facts is likely to be able to avoid disaster and reap the benefits inherent in the technology that is transforming our world at a faster pace than ever before. Every industry that touches on information—book publishing, newspapers, and college education to name just a few—is undergoing a continuous series of revolutionary changes as new technology permits delivery of more information more quickly at lower cost. The same changes that are creating innovation in such private industries can also quickly create innovation in social governance. But the difference between information-intensive private industries and political institutions is that the latter lack the strong competitive framework for these revolutions to occur spontaneously. This Essay thus attempts to set out a blueprint for reform to make better use of some available information technologies. Part I describes the reality of technology acceleration as the acceleration both creates the tools for democratic updating and prompts its necessity. Technological acceleration is the most important development of our time—more important even than globalization. Although technologists have described and discussed its significance, its implications for law and political structure have been barely noticed. Part II briefly discusses how better social knowledge can change political results. A premise of the claim is that some political disagreements revolve about facts, not simply values. As a result, better social knowledge can help democracies design policies to achieve widely shared goals. Social knowledge energizes citizens to act on those encompassing interests, like improved public education, because they come to better recognize the policy instruments to advance those interests. Better social knowledge provides better incentives for citizens to vote on these interests. Part III considers the mechanisms for creating a contemporary politics of democratic updating that begins to meet the needs of the age of accelerating technology. It focuses on two of the new resources that can have substantial synergies in improving social common knowledge and shows how an increase in common knowledge can systematically improve political results by providing better incentives for citizens to work for encompassing social goods. First, Part III considers the improvement in empirical analysis of social policy that flows from increasing computational capacity. It then discusses how specialized and innovative media does much more than disseminate opinions: it widely distributes facts and factual analysis. The combination of these technologies can better discipline experts and representatives, providing stronger incentives for them to update on the basis of new facts. Part IV discusses the information-eliciting rules that will maximize the impact of new technologies of information. These steps include a program of restoring, where possible, governmental structures that permit appropriate decentralization for experimentation, empirical testing, and learning. Congress and regulatory agencies should structure legislation and regulations to include social experiments when such experiments would help resolve disputed matters of policy. The Supreme Court should generally refrain from imposing new substantive rights for the nation so that it is easier to evaluate the consequences of different bundles of rights chosen by the states. But it should also protect the dispersed media, like blogs, from discriminatory laws, because this dispersed media plays a crucial role in modern policy evaluation. In short, the Supreme Court needs to emphasize a jurisprudence fostering social discovery and the political branches need to create frameworks for better social learning. Constitutive structures encouraging and evaluating experimentation become more valuable in an age where better evaluation of social experiments is possible. I. TECHNOLOGICAL ACCELERATION It is the premise of this Essay that technological acceleration is occurring and that our political system must adapt to the world it is creating. The case for technological acceleration rests on three mutually supporting kinds of evidence. First, from the longest-term perspective, epochal change has sped up: the transitions from hunter-gatherer society to agricultural society to the industrial age each took progressively less time to occur, and our transition to an information society is taking less time still. Second, from a technological perspective, computational power is increasing exponentially, and increasing computational power facilitates the growth of other society-changing technologies like biotechnology and nanotechnology. Third, even from our contemporary perspective, technology now changes the world on a yearly basis both in terms of hard data, like the amount of information created, and in terms of more subjective measures, like the social changes wrought by social media. From the longest-term perspective, it seems clear that technological change is accelerating and, with it, the basic shape of human society and culture is changing.9 Anthropologists suggest that for 100,000 years, members of the human species were hunter-gather- ers.10 About 10,000 years ago humans made a transition to agricultural society.11 With the advent of the Industrial Revolution, the West transformed itself into a society that thrived on manufacturing.12 Since 1950, the world has been rapidly entering the information age.13 Each of the completed epochs has been marked by a transition to substantially higher growth rates.14 The period between each epoch has become very substantially shorter.15 Thus, there is reason to extrapolate to even more and faster transitions in the future. This evolution is consistent with a more fine-grained evaluation of human development. Recently, the historian Ian Morris has rated societies in the last 15,000 years on their level of development through objective benchmarks, such as energy capture.16 The graph shows relatively steady, if modest, growth when plotted on a log linear scale, but in the last 100 years development has jumped to become sharply exponential.17 Morris concludes that these patterns suggest that there may be four times as much social development in the world in the next 100 years than there has been in the last 14,000.18 The inventor and engineer Ray Kurzweil has dubbed this phenomenon of faster transitions “the law of accelerating returns.”19 Seeking to strengthen the case for exponential change, he has looked back to the dawn of life to show that even evolution seems to make transitions to higher organisms ever faster.20 In a more granulated way, he has considered important events of the last 1000 years to show that the periods between extraordinary advances, such as great scientific discoveries and technological inventions, have decreased.21 Thus, both outside and within the great epochs of recorded human history, the story of acceleration is similar. The technology of computation provides the second perspective on accelerating change. The easiest way to grasp this perspective is to consider Moore’s Law. Moore’s Law—named after Gordon Moore, one of the founders of Intel—is the observation that the number of transistors that can be fitted onto a computer chip doubles every eighteen months to two years.22 This prediction, which has been approximately accurate for the last forty years,23 means that almost every aspect of the digital world—from computational calculation power to computer memory—is growing in density at a similarly exponential rate.24 Moore’s Law reflects the rapid rise of computers to become the fundamental engine of mankind in the late twentieth and early twenty-first centuries.25 The power of exponential growth is hard to overstate. As the economist Robert Lucas has said, once you start thinking about exponential growth, it is hard to think about anything else.26 The computational power in a cell phone today is a thousand times greater and a million times less expensive than all the computing power housed at MIT in 1965.27 Projecting forward, the computing power of computers twenty-five years from now is likely to prove a million times more powerful than computing power today. To be sure, many people have been predicting the imminent death of Moore’s Law for a substantial period now,29 but it has nevertheless continued. Intel—a company that has a substantial interest in accurately telling software makers what to expect—projects that Moore’s Law will continue at least until 2029.30 Ray Kurzweil shows that Moore’s Law is actually part of a more general exponential computation growth that has been gaining force for over a 100 years.31 Integrated circuits replaced transistors that previously replaced vacuum tubes that in their time had replaced electromechanical methods of computation.32 Through all of these changes in the mechanisms of computation, its power increased at an exponential rate.33 This perspective suggests that other methods under research—from carbon nanotechnology to optical computing to quantum computing—are likely to continue growing exponentially even when silicon-based computing reaches its physical limits.34 Focusing on the exponential increase in hardware capability may actually understate the acceleration in computational capacity in two ways. First, a study considering developments in a computer task using a benchmark for measuring computer speed over a fifteen-year period suggests that the improvements in software algorithms improved performance even more than the increase in hardware capability.35 Second, computers are interconnected more than ever before through the Internet, and these connections increase collective capacity, not only because of the increasing density among computer connections, but because of the increasing density of connections among humans made possible by computers. The salient feature of computers’ exponential growth is their tremendous range of application compared to previous improvements. Almost everything in the modern world can be improved by adding an independent source of computational power. That is why computational improvement has a far greater social effect than improvements in technologies of old. Energy, medicine, and communication are now being continually transformed by the increase in computational power.36 As I will discuss in Part II, even the formulation of new hypotheses in natural and social science will likely be aided by computers in the near future. The final perspective on accelerating technology is the experience that the contemporary world provides. Technology changes the whole tenor of life more rapidly than ever before. At the most basic level, technological products change faster.37 Repeated visits to a modern electronics store—or even a grocery store—reveal a whole new line of products within very few years. In contrast, someone visiting a store in 1910 and then again in 1920—let alone in 1810 and 1820—would not have noticed much difference. Even cultural generations move faster. Facebook, for instance, has changed the way college students relate in only a few years,38 whereas the tenor of college life would not have seemed very different to students in 1920 and 1960. Our current subjective sense of accelerating technology is also backed by more objective evidence from the contemporary world. Accelerating amounts of information are being generated.39 Information, of course, is a proxy for knowledge. Consistent with this general observation, we experience exponential growth in practical technical knowledge, as evidenced by the rise in patent applications.40 Thus, the combination of data from our present life, together with the more sweeping historical and technological perspectives, makes a compelling case that technological acceleration is occurring. It is this technological acceleration that creates both the capacity and the need for improving collective decision making. As technology accelerates, it creates new phenomena, from climate change to biotechnology to artificial intelligence of a human-like capacity. These technologies may themselves have very large positive or negative externalities and may require government decisions about their prohibition, regulation, or subsidization to forestall harms and capture their full benefits. They may also cause social dislocations, from unemployment to terrorism, that also require certain collective decisions. Society can best handle these crises not only by making better social policy to address them directly but by improving social policy more generally to create both more resources and more social harmony to endure them. Thus, society must deploy information technology in the service of democratic updating if it is to manage technological acceleration

### 1NC

Systemic Risk PIC

#### Counterplan:

#### The United States federal government should only allow anticompetitive practices by nucleus participants at the root layer of blockchains where such practices prevent systemic risks.

#### Narrowing the scope of antitrust prohibitions is key to prevent systemic risks unique to procompetitive, decentralized blockchain applications

Weinstein 21 (Samuel N. Weinstein, Associate Professor of Law, Benjamin N. Cardozo School of Law, “Blockchain Neutrality,” Georgia Law Review, vol.55, Winter 2021, 55 Ga. L. Rev. 499, https://www.georgialawreview.org/article/21202.pdf)

Although blockchain has significant procompetitive potential, certain blockchain applications also pose serious fraud and systemic risks. Many ICOs have turned out to be fraudulent,14 and decentralized financial-products trading will make regulators’ task of tracking and mitigating systemic risks more difficult. Blockchain’s ultimate impact in the financial markets—and in the broad range of other markets it might remake—will depend in large part on governments’ competition policy responses.15 Will regulators create the conditions for blockchain-based businesses to transform markets, as they did for the Internet in the past quarter century, or will they disfavor these new business models to protect gatekeeper institutions? To answer this question, financial regulators must weigh blockchain’s potential for increasing competition against its very real risks; so far, they are erring on the side of risk prevention.16

This Article argues that emerging blockchain-based financial services networks offer a rare chance to make the financial sector less concentrated, more competitive, and more democratic. Financial regulators are uncertain stewards for this type of transformation. If the regulatory agencies maintain their narrow focus on fraud prevention and systemic-risk management, they may miss a significant opportunity to help modernize the markets they oversee. Instead, they should seek ways to promote the increased competition that blockchain technology promises to create.

To meet this challenge, this Article proposes a regulatory strategy, modeled on early Internet regulation, to unlock blockchain’s competitive potential while mitigating the risk of fraud. It contends that regulators should promote vigorous blockchain competition—and the resulting market decentralization—except in cases where specific applications are shown to harm consumers or threaten systemic safety. To safeguard the full flowering of blockchain competition, regulators also should ensure open access and non-discrimination on dominant blockchain networks. This strategy will serve traditional antitrust goals of lowering prices, increasing output, and promoting innovation,17 while also potentially achieving broader economic and social ends by reducing the power and influence of the biggest financial institutions. These institutions, especially Wall Street banks, have exercised control over financial-services markets for some time.18 Access to capital is dominated by leading Wall Street firms and Silicon Valley VCs; Wall Street also controls most financial products trading. 19 Blockchain-based networks offer the opportunity to release this stranglehold, giving individuals and firms more freedom about how they consume financial services. This shift might serve distributive goals, too. Availability of financial services historically has been limited by class and race.20 By providing widely accessible competitive alternatives to traditional banks and VCs, public blockchain-based networks could broaden opportunities for individuals and firms from diverse backgrounds to raise capital and enter the financial markets.

A burgeoning body of legal scholarship has documented the spread and implications of blockchain, addressing how the technology works and its potential to upend various markets.21 Much of that scholarship has focused on the financial markets, especially the development of cryptocurrencies.22 A handful of scholars have addressed the regulatory challenges blockchain presents, including in the financial services sector,23 but this literature is still in its infancy. This is particularly true for antitrust and competition scholarship, which is especially sparse.24 This Article addresses that gap in the blockchain literature.

In doing so, the Article draws a distinction between antitrust and competition policy. The former term is used here to refer to enforcement of federal and state antitrust statutes, particularly the Sherman and Clayton Acts.25 This Article treats the latter term as a broader concept encompassing not only decisions about antitrust enforcement priorities, but a wider set of choices made by Congress, the executive branch, sector regulators, and state and local governments that establish the terms on which competition takes place in various markets.26 It argues that concerns among some scholars and practitioners that blockchain threatens effective antitrust enforcement are premature.27 Despite the technology’s disruptive nature, the substantive antitrust challenges blockchain poses are not novel and can be addressed using current law and enforcement strategies. Indeed, the transparency blockchain offers may simplify discovery and prosecution of antitrust violations. Rather than locating and sifting through hundreds of thousands of documents to prove a price-fixing conspiracy, enforcers may find the relevant evidence permanently recorded on a cartel’s blockchain. The ability of blockchain users to mask their identities by employing pseudonyms may raise some technical enforcement challenges, but pseudonymity does not guarantee anonymity.28 Violators typically can be identified, and remedies can attach.29

In contrast, this Article contends that blockchain presents new and difficult competition policy issues that will require innovative regulatory solutions. Because blockchain-related technologies have applications across industries, multiple regulators may be positioned to make blockchain competition policy. Even if the details differ between regulatory regimes, the question these regulators will face should be similar: how to manage markets where incumbents are under attack by new competitors using blockchainbased systems to decentralize and deconcentrate industries. Agencies charged with developing blockchain-related competition policy must grapple with at least three fundamental challenges: (1) balancing the benefits of the increased competition that blockchain networks will make possible against concerns for marketplace and consumer safety; (2) determining how much market decentralization to promote or tolerate; and (3) deciding whether and how to promote standardization, open-access, and nondiscrimination requirements on blockchain networks.

This Article focuses on the financial-services industry, where blockchain-based technologies might fundamentally alter the way business is conducted. Cryptocurrencies like Bitcoin are the leading edge of this transformation, but they likely are just the first step in remaking the financial sector. Bigger changes may be coming in capital markets and equities and derivatives trading. Blockchain technologies are enabling firms to raise significant amounts of capital directly from the public. Several companies already have used ICOs to raise over $100 million each, 30 more than an average initial public offering (IPO) raises, and, in 2019, companies used blockchain-based IEOs to raise $1.7 billion.31 These new funding models might endanger traditional sources of capital formation: if businesses can use token sales to raise public money directly, fewer reasons exist to pay VCs and Wall Street for these services. Blockchains are also being used to build equities and derivatives trading and clearing platforms that can reduce or eliminate the need for traditional dealers and big banks in these markets.32 These platforms allow individual users to trade directly with one another from their personal terminals.33

Together, these blockchain-based services potentially could compete for large chunks of incumbent financial institutions’ most profitable businesses. This development could have significant economic and social consequences. The financial services sector represents seven percent of U.S. GDP,34 and Wall Street banks—for many decades—have been among the most important private institutions in the country.35 The outsized profits these institutions garner have played a role in the nation’s growing income inequality,36 and their gatekeeper function has limited which firms can raise money and who can trade in financial products. Blockchain-based networks offer the opportunity to reshape this financial-services landscape.

Because they oversee financial markets—including capital markets and equities and derivatives trading—sector regulators, especially the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), likely will play a significant role in determining whether blockchain realizes its transformative potential. In doing so, they must determine how to balance enhanced blockchain competition against marketplace and consumer safety, how to manage market decentralization, and whether to promote standardization, open-access, and nondiscrimination on blockchain networks.

Of these issues, perhaps the most pressing is how to weigh the prospects for increased blockchain-related competition and its many benefits against threats to consumer safety and systemic soundness arising from blockchain networks. In antitrust cases, agencies and courts typically reject safety-related justifications for competition restrictions.37

**[FOOTNOTE 37]**

37 See, e.g., FTC v. Ind. Fed’n of Dentists, 476 U.S. 447, 462–64 (1986) (holding that the Federation’s policy requiring members to deny insurers’ requests for dental x-rays violated section 1 of the Sherman Act and section 5 of the Federal Trade Commission Act and rejecting the Federation’s argument that the restraint was lawful under the rule of reason because it was designed to protect patients from being deprived of adequate dental care); Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 693–95 (1978) (rejecting defendant’s proffered safety justification for its ban on competitive bidding and stating that defendant’s attempt to justify the ban “on the basis of the potential threat that competition poses to the public safety and the ethics of its profession is nothing less than a frontal assault on the basic policy of the Sherman Act”).

**[/FOOTNOTE 37]**

Sector regulators view this balance differently. Despite statutory mandates to promote competition,38 the SEC and CFTC strongly favor consumer safety and systemic risk prevention over competition concerns.39 These agencies have been active in the blockchain space, especially with regard to ICOs and cryptocurrencies.40 Considering their regulatory priorities, it is unsurprising that the agencies’ focus to date has been on fraud prevention and classification and registration of financial products and entities.41 Less attention is being paid to broader competition issues. This approach is not balanced; it tilts heavily toward harm prevention.

This Article argues that sector regulators should promote the increased competition that blockchain-based networks make possible, rather than focusing solely on the need to ameliorate the potential systemic risk and fraud-related harms those networks may engender. FCC regulation of the telephony system and, later, the Internet provides a useful model for the financial regulatory agencies in this regard. Net neutrality rules and earlier FCC regulations struck a balance between promoting innovation and competition and protecting the public from unsafe practices.42 These rules prohibited networks from discriminating against downstream competitors except when their applications were harmful or fraudulent.43 A similar approach makes sense for the SEC and CFTC as they grapple with emerging blockchain-related competition-policy issues. In general, the agencies should think systematically about how to encourage blockchain-based competition. A narrow focus on fraud and registration requirements misses the forest for the trees.

Market decentralization poses related but distinct challenges for regulators. Among blockchain’s most lauded attributes is its potential to democratize and decentralize markets.44 In theory, blockchain technology offers the possibility for markets to become more competitive by reducing the power of gatekeeper firms— including platform companies—and by creating the potential for new competitors to emerge. This decentralization may have noneconomic benefits too, including spreading opportunity beyond elite institutions and offering market access to underserved populations. But decentralization also raises challenges for regulators. The more decentralized a market becomes, the more problematic it is for regulators to monitor market participants.45 In financial markets, decentralization can create significant difficulties. One only has to recall the role derivatives products played in the 2008 financial crisis to be reminded of the risks posed by widespread, unregulated financial contracts. Presently, the CFTC and SEC can monitor much of the world’s riskiest financial activity by keeping tabs on the largest regulated banks.46 Decentralization through blockchain will likely complicate that task and may compromise consumer safety and systemic stability.

#### Cascades to extinction

Pamlin and Armstrong 15 (Dennis Pamlin, Executive Project Manager Global Risks, Global Challenges Foundation, and Stuart Armstrong, James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, February 2015, p.90-93, https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf)

3. Twelve Global Challenges / 3.1 Current risks

3.1.5 Global System Collapse

Global system collapse is defined here as either an economic or societal collapse on the global scale. There is no precise definition of a system collapse. The term has been used to describe a broad range of bad economic conditions, ranging from a severe, prolonged depression with high bankruptcy rates and high unemployment, to a breakdown in normal commerce caused by hyperinflation, or even an economically-caused sharp increase in the death rate and perhaps even a decline in population. 310

Often economic collapse is accompanied by social chaos, civil unrest and sometimes a breakdown of law and order. Societal collapse usually refers to the fall or disintegration of human societies, often along with their life support systems. It broadly includes both quite abrupt societal failures typified by collapses, and more extended gradual declines of superpowers. Here only the former is included.

3.1.5.1 Expected impact

The world economic and political system is made up of many actors with many objectives and many links between them. Such intricate, interconnected systems are subject to unexpected system-wide failures due to the structure of the network311 – even if each component of the network is reliable. This gives rise to systemic risk: systemic risk occurs when parts that individually may function well become vulnerable when connected as a system to a self-reinforcing joint risk that can spread from part to part (contagion), potentially affecting the entire system and possibly spilling over to related outside systems.312 Such effects have been observed in such diverse areas as ecology,313 finance314 and critical infrastructure315 (such as power grids). They are characterised by the possibility that a small internal or external disruption could cause a highly non-linear effect,316 including a cascading failure that infects the whole system,317 as in the 2008-2009 financial crisis.

The possibility of collapse becomes more acute when several independent networks depend on each other, as is increasingly the case (water supply, transport, fuel and power stations are strongly coupled, for instance).318 This dependence links social and technological systems as well.319 This trend is likely to be intensified by continuing globalisation,320 while global governance and regulatory mechanisms seem inadequate to address the issue.321 This is possibly because the tension between resilience and efficiency322 can even exacerbate the problem.323

Many triggers could start such a failure cascade, such as the infrastructure damage wrought by a coronal mass ejection,324 an ongoing cyber conflict, or a milder form of some of the risks presented in the rest of the paper. Indeed the main risk factor with global systems collapse is as something which may exacerbate some of the other risks in this paper, or as a trigger. But a simple global systems collapse still poses risks on its own. The productivity of modern societies is largely dependent on the careful matching of different types of capital325 (social, technological, natural...) with each other. If this matching is disrupted, this could trigger a “social collapse” far out of proportion to the initial disruption.326 States and institutions have collapsed in the past for seemingly minor systemic reasons.327 And institutional collapses can create knock-on effects, such as the descent of formerly prosperous states to much more impoverished and destabilising entities.328 Such processes could trigger damage on a large scale if they weaken global political and economic systems to such an extent that secondary effects (such as conflict or starvation) could cause great death and suffering.

3.1.5.2 Probability disaggregation

Five important factors in estimating the probabilities of various impacts:

1. Whether global system collapse will trigger subsequent collapses or fragility in other areas.

2. What the true trade-off is between efficiency and resilience.

3. Whether effective regulation and resilience can be developed.

4. Whether an external disruption will trigger a collapse.

5. Whether an internal event will trigger a collapse.

1. Increased global coordination and cooperation may allow effective regulatory responses, but it also causes the integration of many different aspects of today’s world, likely increasing systemic risk.

2. Systemic risk is only gradually becoming understood, and further research is needed, especially when it comes to actually reducing systemic risk.

3. Since systemic risk is risk in the entire system, rather than in any individual component of it, only institutions with overall views and effects can tackle it. But regulating systemic risk is a new and uncertain task.

4. Building resilience – the ability of system components to survive shocks – should reduce systemic risk.

5. Fragile systems are often built because they are more efficient than robust systems, and hence more profitable.

6. General mitigation efforts should involve features that are disconnected from the standard system, and thus should remain able to continue being of use if the main system collapses

7. A system collapse could spread to other areas, infecting previously untouched systems (as the subprime mortgage crisis affected the world financial system, economy, and ultimately its political system).

8. The system collapse may lead to increased fragility in areas that it does not directly damage, making them vulnerable to subsequent shocks.

9. A collapse that spread to government institutions would undermine the possibilities of combating the collapse.

10. A natural ecosystem collapse could be a cause or consequence of a collapse in humanity’s institutions.

11. Economic collapse is an obvious and visible way in which system collapse could cause a lot of damage.

12. In order to cause mass casualties, a system collapse would need to cause major disruptions to the world’s political and economic system.

13. If the current world system collapses, there is a risk of casualties through loss of trade, poverty, wars and increased fragility.

14. It is not obvious that the world’s institutions and systems can be put together again after a collapse; they may be stuck in a suboptimal equilibrium.

### 1NC

Beller K

#### “Anticompetitive practices by nucleus participants at the root layer of blockchains” is synonymous with cooperative economic media that are the only tactic capable of combating computational racial capitalism’s drive to planetary extinction

Beller 21 (Jonathan Beller, Professor of Media Studies at Pratt Institute, member of the Economic Space Agency (ECSA) think tank, “How We Short Capitalism – And Finance the Revolution,” CoinDesk, updated 9-14-2021, first published 9-25-2020, https://www.coindesk.com/markets/2020/09/25/how-we-short-capitalism-and-finance-the-revolution/)

The failed revolution

The internet in 2030? To answer, two assumptions: First, we are still alive. Second, things on Earth are improving for more than just a few as we shake off our 20th century monetary systems and our 18th century systems of governance.

There has been a radical transformation in these infrastructures of sociality for two main reasons: First, survival. The old political, monetary and communication structures simply cannot process the informational complexity necessary to sustain planetary life with 8 billion people. There are social movements demanding new forms of cooperation that take their needs and aspirations into account.

Second, there has been a growing recognition that monetary media and communications media have converged as economic media. Communication, computation and finance have already converged.

The internet, though purporting to solve historical forms of inequality by flattening communications, failed to realize its collective dream. It failed in large part because although it broadened and democratized speech, its economic logic was still beholden to hierarchical capitalist models of value extraction. The internet became, without our really knowing it, an economic medium, and a medium of brutal extraction – a deterritorialized factory.

Indeed, by 2020 world communication had been turned into the most potent engine for centralized value accumulation ever created. The very infrastructure that grew precisely because it promised equality became a distributed machine for the production and intensification of inequality. By 2020, this pyramidal logic of accumulation resulted in a world where three or four individuals held half the world's wealth, and more that two billion people (population Earth, 1929) lived on $2 a day in a "planet of slums."

The digital revolution was a failed revolution. The economic hobbling of communication led to a collapse of governance as everyday meaning-makers were progressively disenfranchised, disempowered and dispossessed. And the internet's extractive model of value capture – long part of colonial, industrial, monopoly, imperial and financial protocols – had been imported into our communications infrastructure.

As computational media colonized our expressive power, our hopes and dreams along with our very struggles to survive made money for our oppressors. The farther down the food chain you were, the more true this was.

Redesigning the convergence

Now, in 2030, there is a global movement to redesign the convergence of communications and monetary media as post-capitalist economic media.

The internet of the past has been clearly grasped as an extension of capitalism that turned everyone to workers in the social factory, who are paid in company scrip, while the real value was hoarded by shareholders. The "background monetization" of our words, images, locations, faces and metabolic processes was recognized as a key impediment to general emancipation and as a blockade against solving world historical problems including climate change.

Indeed, some claimed (rightly from our perspective), that the economic logic of the internet in 2020 also prevented the possibility of adequately addressing the egregious forms of profitable oppression that come under various headings including "racism" and "sexism," endemic to what was essentially racial capitalism.

No longer, it had been decided by a growing number of Earthlings by 2030, will companies and governments strip us of our expressive power, our powers to create cultures, worlds and value(s). No longer will they devalue our lives in accord with their agendas.

We will no longer alienate our "content" as property for someone else's platform, we will no longer provide labor for someone else's capital, we will no longer be a pawn in centralized sovereign governance that couldn't care less about us. We refuse the psychopathology and megalomania that comes from having to assert ourselves by actively denying the real conditions of existence, conditions that inexorably convert our expression into murder. In short, as one manifesto put it, "We will no longer serve as batteries for someone else's matrix."

For many people in 2030, the battle lines are not quite as crystalline as all that. Some clearly see that the redesign of the internet as post-capitalist economic media is the key historical movement that will lead us out of the ongoing crisis that came to a head in 2020. And some are also clear that such a redesign of internet as post-capitalist economic media means as well a redesign of money itself.

These two projects, the redesign of communications and the redesign of money are actually one. We know that you only get democracy with economic democracy, and that both imply radical decentralization. We know quite well that states and banks only serve the poor... on a plate to the rich. We know that our communicative and creative activities have intrinsic value and we want to control what happens to that value (who benefits from it, what values it fosters) with our communication.

In fact, in 2030, most of us live in two worlds: Still, the old capitalist world with all of its waste of the social product on military and police that help keep people on message with regard to the “intrinsic” value of the various fiat currencies. But in addition, we partly live in and are building an emerging, post-capitalist world of shared equity, horizontal governance, trustworthy messaging and co-authored performance.

In this emerging world, we offer our capacities in and as our messages, we collaborate on the intellectual and physical creation of new projects and products, be they software, dance moves, farmed goods, anti-racist organizing. Our messages generate our currency, and our networks platform our equity. We do not convene to make decisions as with some 19th century parliament, we offer decisions as messages that people can join.

In 2030 we do not need banks to provide us with liquidity, we receive liquidity over the same medium we use to communicate; we receive it from our trust-worthy network of peers, who will share stake in our activities as we share stake in theirs.

Our communication is increasingly our economy, and our economy is our communication.

Those whose skills and values were not properly recognized by a world bound to dollars, euros and racial hierarchies, have found their networks and with that recognition and validation, and have done so in a way that translates directly not just into the too-soft currency of "likes," but into economic power.

Here, everything we do that is valuable to anyone else in our network can provide us with liquidity, units of credit on a secure, distributed computing fabric that is collectively built and owned. We provision one another's liquidity and share equity in cooperative projects. We create our own value and do so in accord with our values.

The "tokens" we issue one another are spendable in our networks, and can, if desired be cashed out to interface with the capitalist economy that still persists, but is, we wager, receding. I say that we wager on that recession of capitalism (indeed we do bet on it – we "short" capital and put our resources in post-capitalist economic media), because the internet in 2030, the economic medium that is available for us to use, is itself an offer.

The collectively owned internet of 2030 provides a convivial space of sociality and economy that is not only non-extractive, it is both cooperative and trustworthy because of its peer-to-peer network architecture and issuance protocols. These protocols allow us to create forms of postmodern kinship with trusted peers who are known to us by reputation and interaction histories that can be both measured and felt.

We receive equity in the infrastructure of post-capitalist economic media in exchange for our participation. Accordingly, we move more and more of our economic activity into this medium, one both semiotic and monetary, because it feels better and is more rewarding. It offers the capacity to scale decision making and to finance ideas (futures) that appreciate in value as they are appreciated and that in drawing interest can be self-actualizing.

Crypto as an emergent medium

Although secure messaging and protocolized issuance began to reengineer aspects of the social contract by creating new consensus mechanisms and immutable ledgers, the real breakthrough emerged when all messaging on secure, distributed computing did not have to be reduced to "price" or a single denomination, that is when all information in the network did not have to be collapsed into a quantitative amount of a single value such as dollars or bitcoin.

Though primitive, Bitcoin was like photography in 1845 or cinema in 1900, a new medium answering historical needs and promising an incredible if barely imaginable future.

With the rise of crypto, finance became an expressive medium and value could be multiply denominated in a variety of interoperable secure networks themselves organized by users for their own purposes. In the mid-2020s, in response to social movements seeking access to liquidity and new forms of cooperation, platforms emerged such that those who created value recognized by others could be those who received value.

"Value" was no longer a one-dimensional (dollar denominated) monologue. It became possible to value, in economic terms, "externalities" such as care, the environment, and indigenous forms of life. The wagers that people made in the realm of culture (as they did on say Instagram or TikTok, but also as novelists or technologists or social architects), could, by the late 2020s themselves aggregate participation in complex ways to accomplish their own ends.

Sharing ideas and images became ways of working together, of scripting projects, amalgamating energies and participating in the development of collectively held dreams. Thus today, in 2030, most of us try to build at least some of our relationships and economy on post-capitalist economic media in order to issue futures that we want to make real and also to avoid the extractive logics of a capitalist world that though in recession will not disappear without a fight.

We must add that 2030 also means the further preparation for this fight so that the neo-fascism endemic to the racial capitalism of the early 2020s, bolstered by their banks and media companies, do not foreclose on the diverse futures we seek. We perceive that if we can create an economy that allows broad-spectrum values to persist while offering a collective authorship of options, that is, of futures, we will move towards the horizontalization and democratization of communication and finance, and thus, we might survive.

## ADV 1

### 1NC – SQ Solves

#### Blockchain does NOT inhibit enforcement now

Weinstein 21 (Samuel N. Weinstein, Associate Professor of Law, Benjamin N. Cardozo School of Law, “Blockchain Neutrality,” Georgia Law Review, vol.55, Winter 2021, 55 Ga. L. Rev. 499, https://www.georgialawreview.org/article/21202.pdf)

In doing so, the Article draws a distinction between antitrust and competition policy. The former term is used here to refer to enforcement of federal and state antitrust statutes, particularly the Sherman and Clayton Acts.25 This Article treats the latter term as a broader concept encompassing not only decisions about antitrust enforcement priorities, but a wider set of choices made by Congress, the executive branch, sector regulators, and state and local governments that establish the terms on which competition takes place in various markets.26 It argues that concerns among some scholars and practitioners that blockchain threatens effective antitrust enforcement are premature.27

**[FOOTNOTE 27]**

27 See, e.g., Schrepel, supra note 24, at 335 (“In the face of blockchain, current antitrust law may well be eliminated.”).

**[/FOOTNOTE 27]**

Despite the technology’s disruptive nature, the substantive antitrust challenges blockchain poses are not novel and can be addressed using current law and enforcement strategies. Indeed, the transparency blockchain offers may simplify discovery and prosecution of antitrust violations. Rather than locating and sifting through hundreds of thousands of documents to prove a price-fixing conspiracy, enforcers may find the relevant evidence permanently recorded on a cartel’s blockchain. The ability of blockchain users to mask their identities by employing pseudonyms may raise some technical enforcement challenges, but pseudonymity does not guarantee anonymity.28 Violators typically can be identified, and remedies can attach.29

### 1NC – No ABP

#### No chance of anticompetitive exclusions on decentralized blockchains – BUT, if they’re right, then enforcing the aff is impossible

Pike 20 (Chris Pike, Competition Policy Expert at the Organization for Economic Cooperation & Development; and Antonio Capobianco, Deputy Head of the OECD Competition Division; “Antitrust and the trust machine,” 2020, https://www.oecd.org/daf/competition/antitrust-and-the-trust-machine-2020.pdf)

Permission-less blockchains both compete in, and are in effect, governed by markets. They have no formal governing body. Rather they exist as decentralised organisations, their governance controlled in effect by the validators that vote on whether to adopt the protocols that are proposed by developers and which then define the decision-making of the blockchain, rather than alternative protocols that would create a fork in the chain. These validators are therefore responsible for the service that the blockchain offers to the market.

However, these validators are numerous and their identities are pseudonymous. This means that, as a practical matter, it is extremely difficult to change the behaviour of the blockchain, since forcing the adoption of a protocol requires a degree of consensus amongst the validators of the chain. In effect, permission-less blockchains might therefore be seen as a huge employer-owned mutual (e.g. John Lewis), that can propose motions and vote on the firm’s detailed decision-making, while being unable to delegate decision-making to a board, nor even to recognise one another.4

Now, although we liken this governance framework to a market, the validators would appear unlikely to be considered to be independent contractors (as for example is claimed in the case of ride-sharing platforms), since they follow strict protocols in the gig-work they do for the blockchain. If they are workers or employees they would not face the risk of being accused of colluding with one another, however, this is being tested in the United American Corp. v. Bitmain, Inc. complaint.5

In a sense, they might be seen as a gig-working co-operative who collectively determine the blockchain’s offer to users (like Partners in a law firm), while individually having to follow the collectively determined protocols (like drivers on a ride-sharing platform). Like an oversized board, they may try to agree on the price that should be set. However, as noted, the prospects of countless pseudonymous validators successfully agreeing either to boycott validation of low-margin blocks, or to adopt new ‘price-raising’ protocols, appears far-fetched. Permission-less blockchains may therefore be seen as platforms which might potentially hold latent significant market power, but which are incapable of exercising that power.

As such, competition agencies would be well-advised not to spend time worrying about decentralised permission-less blockchains. Indeed, this form of blockchain offers a number of reasons for competition advocates to be cheerful (see Pike & Carovano, 2020).6 However, a caveat to this is that if – and it is a big if – if, somehow, a decentralised permission-less blockchain were to engage in anticompetitive behaviour, then big questions on practical enforcement arise.7

Firstly, how would you punish an entity with no assets, no bank account, no office, and such a large and pseudonymous board? Secondly, how would you stop the anticompetitive behaviour that was identified? Who would you instruct to change their behaviour. These would be extremely challenging questions. However, for now at least, they appear to be theoretical and not practical problems.

### 1NC – Scalability

#### Technical barriers to scalability thump – BUT overcoming all barriers is either inevitable

Li 19 (Kenny Li, Editor of Worthyt and Secure AI Labs, “The Blockchain Scalability Problem & the Race for Visa-Like Transaction Speed,” 1-30-2019, https://towardsdatascience.com/the-blockchain-scalability-problem-the-race-for-visa-like-transaction-speed-5cce48f9d44)

When examining the previous four scenarios under a proof-of-work consensus, we saw that simply increasing the block size or reducing the mining complexity could only take us so far. Even a combination of this would be limited due to transaction propagation time. Trying to mine new blocks faster than old blocks can propagate will lead to some pretty big security issues. SegWit has helped alleviate some of the TPS issues in the meantime, but a more scalable solution is still needed to achieve Visa-like TPS.

It seems that moving any piece into place to increase TPS moves another piece out of place somewhere else in the blockchain puzzle; regardless, there are projects and startups working to achieve the TPS answers needed to push blockchain adoption into a scalable stage.

Existing and Future Approaches to Solve Scalability

When looking for the potential answer to the scalability problem, multiple other issues arise. For example, if the answer is only applicable for one particular blockchain, then it relies on the assumption that the particular blockchain will be the one that needs that scalability in the future; otherwise, the effort is undue or misplaced. Another consideration is to understand what the trade-off may be. Right now, all solutions available come with limitations.

1. Batch Payments into One Transaction

Pros: Reduces the size of a transaction record by putting multiple transactions into one, allowing for more transactions overall per block, which can increase TPS to an extent.

Cons: Cannot batch multiple wallet’s transactions together; risks privacy

Batch payments has been a feature of Bitcoin (and therefore, Bitcoin’s forks including Digibyte, Dogecoin, Bitcoin Cash, etc.) through the RPC sendmany. Exchanges already do this, and you can see it when you try to look up your transaction ID on a blockchain explorer. What you might end up seeing is one wallet sending out to multiple different wallets. In that case, it’s a batch transaction.

The advantage of this is that putting it into one transaction means that 1) you only have to pay one transaction fee, and 2) you don’t have to write a full transaction that is, as I described previously, approximately 380 bytes, for each transaction. In fact, out of the 380 bytes that the transaction may be, only 34 bytes of that might be the transaction information.

If, for example, I wanted to send ten transactions at once, and I sent them as separate transactions, then it would be 380 x 10 = 3,800 bytes of space that I would take up on a block. On the other hand, if I batched the transaction together, the first transaction in the block would be included in the 380 bytes, and the next 9 would just be 34 bytes each; i.e., 380 + (34 x 9) = 686 bytes, which is 5.5x smaller.

It does come with limitations, though; different transactions from different wallets cannot be batched. In other words, if there were ten people in line for coffee, those ten people can’t put all their transactions into one batch and send it off the Starbucks. Each would have to produce an individual transaction. Batch transactions are limited to one-to-multiple, not multiple-to-one. A batch transaction would be great, for example, in paying bills (electricity, Internet, phone, NetFlix, Hulu, insurance, etc.) at once.

Furthermore, a batch transaction may not be something you want to do for privacy’s sake. As

David A. Harding

mentions in his article about Bitcoin batch transactions, one issue of privacy in batch transactions may arise if you were to do payroll — anyone could check their transaction and see what other wallets (employees) were sent.

2. Bitcoin Cash

Pros: can store more transactions than Bitcoin in one block, which increases capable TPS

Cons: is only a temporary solution, as its TPS is still far below the 1,700 global TPS that Visa conducts on an average day. The solution is also limited to Bitcoin Cash, so it cannot be a solution for other blockchains.

If you look back at the scenarios that I proposed previously to theoretically scale TPS, scenario 1 might sound familiar. That’s because an attempt at it has already occurred — namely, the Bitcoin Cash hard fork, which occurred in August 2017. The primary motivator of the hard fork was to increase the block size to 8MB (an increase of 8x) from 1MB non-SegWit Bitcoin blocks.

But in a best-case scenario, this solution is still far from the answer that the world is looking for in regards to scalability.

Bitcoin Cash is a hard fork of Bitcoin, designed as an alternative to Bitcoin with the added value proposition of faster transactions. It does primarily increasing the block size (B); even though it has increased transaction speed compared to Bitcoin, it still does not have nearly enough TPS to compete in the global transacting space.

3. The Lightning Network

Pros: near-instant transactions between parties, with no fees

Cons: transacting occurs off-chain, requires users to have a lightning node, and is limited to Bitcoin-core-based blockchains (e.g., Bitcoin Cash, Litecoin, Digibyte, Dogecoin)

Going into the details of how the Lightning Network works on a granular level will be a bit too detailed for this article, but there are plenty of resources that guide you in a way that I think is easy to understand. In a nutshell, the Lightning Network lets you take your Bitcoins off the blockchain and transact with another party privately. For example, I might plan to have coffee every morning for the next month. I want to transact in Bitcoin, but I don’t want to stand in front of the coffee line waiting for my block confirmations like a dweeb who doesn’t know what Lightning Network is.

So what I do is, I can create what’s called a payment channel on the Lightning Network. This new payment channel doesn’t run transactions through the Bitcoin blockchain — instead, think of it as a reserve. I deposit, say 0.5 BTC into it, and that’s a reserve that I can then use to pay anyone else that I’m connected with on the Lightning Network.

Once I’m done, I come back to the blockchain and tell it, “Hey, I sent Starbucks 0.1 BTC for coffee over the course of a month, just deduct that from the balance I put in initially.” Then I have 0.4 BTC left over. Of course, this is a very simplified way of explaining what actually goes on, so definitely take a look at other resources if you want to learn about the features of the Lightning Network.

Unfortunately, it is a Bitcoin-only solution for off-chain transacting, available for Bitcoin and Bitcoin-forked blockchains like Digibyte and Litecoin. The advantage that the Lightning Network delivers is its instant and zero-fee transacting, which enables micro-transacting as well as the ability to buy coffee without the wait.

In its current stage, though, creating the payment channel requires a bit more knowledge than what the average Bitcoin buyer might be comfortable with, and it still requires on-chain transacting before and after the life of a user’s Lightning node. Therefore, the Lightning network is a great solution for scaling TPS for Bitcoin and Bitcoin-like cryptocurrencies, but it only solves the problem off-chain.

4. EOS & Other High-Performance Blockchains

Pros: high theoretical scalability

Cons: centralization, which can lead to (and has historically led to) censorship

High-performance blockchain projects use different consensus mechanisms. One of the most popular alternatives to Proof of Work (PoW) is Proof of Stake (PoS). A recent project, EOS, uses what it calls a delegated proof-of-stake (dPoS), which is a modified version of PoS. In dPoS, users like you and me who stake aren’t actually part of the virtualized mining process; instead, we vote on who is. EOS use delegated PoS (dPoS)to claim up to 3,996 TPS but the trade-off is centralization, which gives key stakeholders more power than the rest of the community.

EOS only has 21 nodes (Block Producers), and in June 2018, those Block Producers froze seven EOS accounts. While the reasoning behind the freezing may be justified, it demonstrates the amount of authority one organization has on the entire blockchain, and their ability to execute on that authority.

The blockchain community wants scalability, which is what gave rise to the popularity of EOS, but the trade-off is censorship and control due to centralization. For a list of other additional flaws that can compromise the integrity of EOS, take a look at this article: EOS is not a blockchain, it’s a glorified cloud computing service (disclaimer: the research was funded by Consensys, and the founder of Consensys is the cofounder of Ethereum).

5. bloXroute

Pros: it is a on-chain solution and blockchain-agnostic, so it can be an answer for scalability for potentially all blockchains

Cons: it is still in development, and building/operating a global CDN is an expensive feat that is yet to be accomplished in the blockchain space

Outside of blockchain-specific projects, startups are starting to emerge to tackle the problem on a larger scale. One of the most interesting projects I’ve seen so far in the space is a startup called bloXroute. I discovered the company last week during my research into the blockchain space. The idea behind the company is to transpose a content delivery network (CDN) onto blockchain networks to solve the scalability issues.

What Is a CDN?

CDNs are what supercharge Internet speed today. They are the reason why, when you turn on your next YouTube video, it no longer needs to show you the loading spinner and make you wait three minutes to watch a one-minute video. If you’ve never experienced those issues before, you’re just too young to understand.

#### OR impossible

Franz J. Hinzen 19, Ph.D. Candidate in Finance at New York University’s Stern School of Business; Kose John, the Charles William Gerstenberg Professor of Banking and Finance at the Stern School of Business, New York University; and Fahad Saleh, Assistant Professor of Finance at McGill University, 9/27/19, “Bitcoin’s Fatal Flaw: The Limited Adoption Problem,” https://www.stern.nyu.edu/sites/default/files/assets/documents/Hinzen%20John%20Saleh-Bitcoins\_Fatal\_Flaw\_The\_Limited\_Adoption\_Problem.pdf

A question remains whether Bitcoin’s limited usage arises due to its infancy or because of its underlying economic structure. This paper answers that question by demonstrating that limited adoption constitutes an endogenous characteristic of not only Bitcoin but also Proof-of-Work (PoW) payments blockchains more generally. We demonstrate that the economics of PoW payments blockchains make limited adoption an inescapable equilibrium outcome. Our critique does not apply to other blockchains such as smart contract platforms and permissioned platforms. In fact, our analysis explicitly highlights that permissioned blockchains may overcome limited adoption. Recently, that insight has become particularly salient with Facebook’s announcement of the Libra blockchain, a permissioned platform with the explicit goal of widespread adoption. Nonetheless, our analysis does not explicitly endorse any particular project; rather, our work highlights the need for research on alternatives to Bitcoin in the nascent field of blockchain economics.

PoW dates back to Dwork and Naor (1992) and later gained mainstream attention when Nakamoto (2008) popularized the concept by employing it to allegedly induce good validator behavior within a permissionless blockchain setting.1,2 Nakamoto (2008) envisioned a decentralized network that admits free entry and perfect competition among validators. To achieve that vision while creating appropriate validator incentives, Nakamoto (2008) specified that agents must solve a verifiable puzzle to update the blockchain.3 Nakamoto (2008) specified the puzzle difficulty as a parameter so that the block arrival rate (i.e., rate of blockchain updating) may be targeted. The motivation for this targeting feature arises from the premise that blockchain updates occurring faster than the network delay undermines validators agreeing on ledger contents.4 Narayanan, Bonneau, Felten, Miller, and Goldfeder (2016) argue that the block rate “should be [targeted as] a fixed amount” because “blocks [coming] very close together [induces] a lot of inefficiency.” The block arrival rate targeting, however, artificially constrains ledger space. We demonstrate that this artificial supply constraint interacts with network delay and PoW’s permissionless nature to make limited adoption endemic to PoW payments blockchains.

Due to PoW’s supply constraint, an increase in transaction demand endogenously generates an increase in fees. That fee increase in turn induces validators to enter the PoW network. The PoW network expansion then exacerbates network delay and protracts the validator agreement process. For users, this delay amounts to increased payment confirmation times which drives users away from the blockchain platform towards traditional payment systems. In equilibrium, the blockchain maintains only users relatively insensitive to payment confirmation delays. Thus, our analysis demonstrates that PoW payments blockchains cannot simultaneously sustain large volumes and a nonnegligible payments market share - we term this problem the limited adoption problem.

To overcome the limited adoption problem, we consider dynamic adjustment of PoW’s block rate. That putative solution corresponds economically to expanding supply. However, it falls short as a remedy due to the need for validators to obtain consensus. If the block rate fails to keep pace with transaction demand, then demand outpaces supply and prohibitive wait times drive users from the blockchain. Alternatively, if the block rate keeps pace with transaction demand, then supply meets demand but the rapid block rate leaves validators insufficient time to communicate across the network thereby protracting the validator agreement process. The protracted validator agreement process elongates payment confirmation times and drives users away from the blockchain. Increasing block sizes yields similar results as increasing block-rates because network delay increases approximately linearly in block sizes for non-trivial block sizes (see Decker and Wattenhofer (2013)). Thus, dynamic supply fails to overcome the limited adoption problem. This reasoning breaks down only if the PoW blockchain features a single validator. A single validator network allows simultaneously for arbitrarily fast block rates and an expedient validator agreement process.

The necessity of centralization to break PoW’s limited adoption problem motivates us to consider permissioned blockchains. A permissioned blockchain offers a semicentralized setting with neither an artificial supply constraint nor free entry among validators. We demonstrate that a permissioned blockchain induces lower payment confirmation times than a PoW blockchain and overcomes the limited adoption problem. Nonetheless, we acknowledge that a permissioned blockchain may not dominate a PoW blockchain because malicious validator behavior may arise in equilibrium for a permissioned blockchain. We, therefore, turn to examining validator incentives for this class of blockchains.

### 1NC – AT: ! Energy / Waste / Supply Chains / Filter

#### No blockchain impact---reject their ev from a blockchain consultant (deVries) and head of bitcoin magazine (McShane)

Paul Krugman 21, Distinguished Professor at the City University of New York Graduate Center, won the 2008 Nobel Memorial Prize in Economic Sciences, 5/20/21, “Technobabble, Libertarian Derp and Bitcoin,”

A number of readers have asked me to weigh in on Bitcoin and other cryptocurrencies, whose fluctuations have dominated a lot of market news. Would I please comment on what it’s all about, and what’s going on?

Well, I can tell you what it’s about. What’s going on is harder to explain.

The story so far: Bitcoin, the first and biggest cryptocurrency, was introduced in 2009. It uses an encryption key, similar to those used in hard-to-break codes — hence the “crypto” — to establish chains of ownership in tokens that entitle their current holders to … well, ownership of those tokens. And nowadays we use Bitcoin to buy houses and cars, pay our bills, make business investments, and more.

Oh, wait. We don’t do any of those things. Twelve years on, cryptocurrencies play almost no role in normal economic activity. Almost the only time we hear about them being used as a means of payment — as opposed to speculative trading — is in association with illegal activity, like money laundering or the Bitcoin ransom Colonial Pipeline paid to hackers who shut it down.

Twelve years is an eon in information technology time. Venmo, which I can use to share restaurant bills, buy fresh fruit at sidewalk kiosks, and much more, was also introduced in 2009. Apple unveiled its first-generation iPad in 2010. Zoom came into use in 2012. By the time a technology gets as old as cryptocurrency, we expect it either to have become part of the fabric of everyday life or to have been given up as a nonstarter.

If normal, law-abiding people don’t use cryptocurrency, it’s not for lack of effort on the part of crypto boosters. Many highly paid person-hours have been spent trying to find the killer app, the thing that will finally get the masses using Bitcoin, Ethereum or some other brand daily.

But I’ve been in numerous meetings with enthusiasts for cryptocurrency and/or blockchain, the concept that underlies it. In such meetings I and others always ask, as politely as we can: “What problem does this technology solve? What does it do that other, much cheaper and easier-to-use technologies can’t do just as well or better?” I still haven’t heard a clear answer.

Yet investors continue to pay huge sums for digital tokens. The values of major cryptocurrencies fluctuate wildly — Bitcoin fell 30 percent Wednesday morning, then made up most of the losses that afternoon. Their collective value has, however, at times exceeded $2 trillion, more than half the value of all the intellectual property owned by U.S. business.

Why are people willing to pay large sums for assets that don’t seem to do anything? The answer, obviously, is that the prices of these assets keep going up, so that early investors made a lot of money, and their success keeps drawing in new investors.

This may sound to you like a speculative bubble, or maybe a Ponzi scheme — and speculative bubbles are, in effect, natural Ponzi schemes. But could a Ponzi scheme really go on for this long? Actually, yes: Bernie Madoff ran his scam for almost two decades, and might have gone even longer if the financial crisis hadn’t intervened.

Now, a long-running Ponzi scheme requires a narrative — and the narrative is where crypto really excels.

First, crypto boosters are very good at technobabble — using arcane terminology to convince themselves and others that they’re offering a revolutionary new technology, even though blockchain is actually pretty elderly by infotech standards and has yet to find any compelling uses.

Second, there’s a strong element of libertarian derp — assertions that fiat currencies, government-issued money without any tangible backing, will collapse any day now. True, Britain, whose currency was still standing last time I looked, went off the gold standard 90 years ago. But who’s counting?

Given all this, are cryptocurrencies headed for a crash sometime soon? Not necessarily. One fact that gives even crypto skeptics like me pause is the durability of gold as a highly valued asset. Gold, after all, suffers from pretty much the same problems as Bitcoin. People may think of it as money, but it lacks any attributes of a useful currency: You can’t actually use it to make transactions — try buying a new car with gold ingots — and its purchasing power has been extremely unstable.

So when John Maynard Keynes called the gold standard a “barbarous relic” way back in 1924, he wasn’t wrong. But the metal’s mystique, and its valuation, live on. It’s conceivable that one or two cryptocurrencies will somehow achieve similar longevity.

Or maybe not. For one thing, governments are well aware that cryptocurrencies are being used by bad actors, and may well crack down in a way they never did on gold trading. Also, the proliferation of cryptocurrencies may prevent any one of them from achieving the semi-sacred status gold holds in some people’s minds.

The good news is that none of this matters very much. Because Bitcoin and its relatives haven’t managed to achieve any meaningful economic role, what happens to their value is basically irrelevant to those of us not playing the crypto game.

### 1NC – AT: ! Bees

#### Pollinator collapse does not cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 118

And while extinction is a useful measure of biodiversity loss, it is not the whole story. It doesn’t capture population reductions or species disappearing locally or regionally. While “only” 1 percent of species have gone extinct on our watch, the toll on biodiversity within each region may be much higher, and this may be what matters most. From the perspective of existential risk, what matters most about biodiversity loss is the loss of ecosystem services. These are services—such as purifying water and air, providing energy and resources, or improving our soil—that plants and animals currently provide for us, but we may find costly or impossible to do ourselves.

A prominent example is the crop pollination performed by honeybees. This is often raised as an existential risk, citing a quotation attributed Einstein that “If the bee disappeared off the surface of the globe then man would only have four years of life left.” This has been thoroughly debunked: it is not true and Einstein didn’t say it.109 In fact, a recent review found that even if honeybees were completely lost—and all other pollinators too—this would only create a 3 to 8 percent reduction in global crop production.110 It would be a great environmental tragedy and a crisis for humanity, but there is no reason to think it is an existential risk.

### 1NC – AT: ! Crypto Leadership

#### They don’t solve their Sandgren light-touch internal link – assumes regulation NOT antitrust – AND it’s about a regulatory agenda that’s already underway – which plan does NOT erase –if anything, implied immunity means it will crowd-out liability under the plan

## Adv 2

### No Air/Naval Impact---1NC

#### Military Primacy fails

Dr. Andrew Bacevich 20, Professor of History and International Relations at Boston University, Ph.D. in American Diplomatic History from Princeton University, and Graduate of the U.S. Military Academy, “The Endless Fantasy of American Power”, Foreign Affairs, 9/18/2020, https://www.foreignaffairs.com/articles/united-states/2020-09-18/endless-fantasy-american-power

Unfortunately, this frenetic pace of military activity has seldom produced positive outcomes. As measured against their stated aims, the “long wars” in Afghanistan and Iraq have clearly failed, as have the lesser campaigns intended to impart some approximation of peace and stability to Libya, Somalia, and Syria. An equally unfavorable judgment applies to the nebulous enterprise once grandly referred to as the “global war on terrorism,” which continues with no end in sight.

And yet there seems to be little curiosity in U.S. politics today about why recent military exertions, undertaken at great cost in blood and treasure, have yielded so little in the way of durable success. It is widely conceded that “mistakes were made”—preeminent among them the Iraq war initiated in 2003. Yet within establishment circles, the larger implications of such catastrophic missteps remain unexplored. Indeed, the country’s interventionist foreign policy is largely taken for granted and the public pays scant attention. The police killing of Black people provokes outrage—and rightly so. Unsuccessful wars induce only shrugs.

THE CHIMERA OF “AMERICAN LEADERSHIP”

With something approaching unanimity, Americans “support the troops.” Yet they refrain from inquiring too deeply into what putting the troops in harm’s way has achieved in recent decades. Deference to the military has become a rote piety of American life. In accepting the Democratic Party’s nomination for the presidency, for example, Joe Biden closed his remarks with an appeal to the Divine on behalf of the nation’s soldiers: “And may God protect our troops.” Yet nowhere in his 24-minute address did Biden make any reference to what U.S. troops were currently doing or why in particular they needed God’s protection. Nor did he offer any thoughts on how a Biden administration might do things differently.

Americans don’t particularly want to hear about war or the possibility of war in the present season of overlapping and mutually reinforcing crises. And Biden obliged them in the most important speech of his career. The famously garrulous politician mentioned recent U.S. wars only in passing, briefly referring to his late son, who served in Iraq, and excoriating U.S. President Donald Trump for not responding more aggressively to revelations that Russia put bounties on U.S. soldiers in Afghanistan.

This aversion to taking stock of recent U.S. wars is by no means unique to Biden or confined to the Democratic Party. It is a bipartisan tendency. It also inhibits a long overdue reexamination of basic national security policy.

Between the fall of the Berlin Wall and the 2016 presidential election, leaders of both political parties collaborated in trying to demonstrate the efficacy and necessity of what they habitually referred to as “American global leadership.” Embedded in that seemingly benign phrase was a grand strategy of militarized primacy. Unfortunately, the results achieved by this assertion of global leadership proved to be anything but benign, as turmoil in Afghanistan and Iraq attest. Although the defense industry and its allies have profited from American wars, the American people have done less well. Protracted wars are not making Americans freer or more prosperous. They have instead saddled the nation with enormous debt and diverted attention and resources from neglected domestic priorities.

In 2020, further occasions for bristling, militarized U.S. leadership beckon. China offers the most obvious example for hawks, with demands that the United States confront the People’s Republic growing more insistent by the day. Many in Washington appear to welcome the prospect of a Sino-American cold war. Other prospective venues for demonstrating assertive U.S. leadership include in operations against Iran, Russia, and even poor benighted Venezuela, with prominent figures in the Beltway eager to have a go at regime change in Caracas.

To cling to this paradigm of U.S. global leadership is to perpetuate the assumptions and habits defining post–Cold War U.S. national security policy—and above all the emphasis on amassing and employing military might. The United States grants itself prerogatives allowed to no other country to remain, in its own estimation, history’s “indispensable nation.” To judge by the results achieved in Afghanistan, Iraq, and other recent theaters of war, this imperative will only continue to wreak havoc in the name of freedom, democracy, and humane values.

### 1NC---AI Global Governance Fails

#### AI global governance fails.

-international community is slow at adopting new rules; strategic competition will contribute to regulatory fragmentation

Camino Kavanagh 19, visiting fellow in the Department of War Studies at King’s College London, “New Tech, New Threats, and New Governance Challenges: An Opportunity to Craft Smarter Responses?,” Carnegie, https://carnegieendowment.org/2019/08/28/new-tech-new-threats-and-new-governance-challenges-opportunity-to-craft-smarter-responses-pub-79736

CHALLENGES TO EFFECTIVE GOVERNANCE AND COORDINATION

The international environment is hardly conducive to discussions of how best to coordinate responses to the complex, cross-border dilemmas emerging around new technologies. In some corners, existing multilateral platforms are increasingly perceived as unsuitable for resolving these challenges. The international community is notoriously slow at adopting new rules and institutions to deal with new challenges, and the quandaries posed by questions of national sovereignty and democratic legitimacy are persisting. In contrast, corporate actors appear to be racing ahead, intent on shaping the “science, morality and laws” of new technologies such as AI, with limited public debate underpinning or guiding their efforts.8 Many of these same companies and the technologies they produce or exploit are increasingly viewed as instruments of state power, a fact that only adds to these sovereignty and legitimacy-related questions.

Meanwhile, growing strategic competition between the world’s leading powers, especially in high-tech sectors, does not bode well for multilateral efforts to respond cooperatively and effectively. Such a competitive landscape is contributing to regulatory fragmentation and will likely delay much needed normative and regulatory action. This potential impasse places strains on existing efforts and could further delay the attainment of pressing social and economic objectives such as the 2030 UN Sustainable Development Goals, which are already under stress. Moreover, the resulting trust deficit between countries poses a significant threat to international peace and security, one that existing political institutions are not necessarily prepared to handle.

### 1NC---Squo Solves Global AI Governance

#### Or it will be effective now---norms for safe development will sideline China

Lewin Schmitt 21¸ predoctoral researcher at Institut Barcelona Estudis Internacionals, 8/17/21, “Mapping global AI governance: a nascent regime in a fragmented landscape,” AI and Ethics, https://doi.org/10.1007/s43681-021-00083-y

The preceding overview of the global AI governance landscape allows for several relevant observations, which are discussed in the following section.

First, there is a clear tendency to accommodate governance initiatives within the existing architecture, both by state and non-state actors. This could have several potential explanations. States and other global governance actors might be wary of foundational innovation and starting from scratch. Instead, they prefer to build on existing, proven governance arrangements. Alternatively, more attempts might have been made with new instruments and these might simply have been less fruitful and thus did not feature in this overview. In any case, the case of the GPAI suggests a gravitational pull towards established governance mechanisms.

Second, there is a fairly equitable distribution of labor between national governments (state-led) and international organizations (non-state-led). The community of international organizations moved early to occupy an open policy space, thus carving out a considerable competence vis-à-vis its member states. These, in return, offloaded some of the AI policy work to international organizations (CoE, OECD via GPAI). This would suggest that states accept their role as useful fora for international cooperation and the steering of AI development into globally beneficial directions. However, global coordination in this realm has so far not touched upon legally binding treaties. It may well be that governments decided to transfer some authority to IOs only as long as they deal with rather abstract principles or soft governance, but would withdraw or stall as soon as work proceeds towards more regulatory, hard governance. Whether the CoE will produce any meaningful conclusions by the end of the year may be a good indication of the potential for such binding international rules.

Thirdly, international standards organizations play a role in the development of AI governance, as is the case for most emerging technologies. More worrying is the shift towards geopolitics: in the last years, the development of international AI standards has increasingly received attention from key governments such as China, the EU, and the US. Their renewed interest and subsequent strategic engagement risks contention and the encroachment of geopolitical considerations into domains that ought to be technical [62, 63]. This may not only affect the quality of standards but also obstruct debates around AI ethics. As standards cannot be completely detached from the policy world, scholars of global AI governance need to have a sound understanding of the proceedings in the international standard-setting arena. Future research should explore the interactions and means by which governments aim to steer the development of standards to further their own perceived interests.

Lastly, sub-state actors from the public sector are practically not present in the discussions around global AI governance. This is in stark contrast to other policy domains such as global climate change governance, where city networks play an important role. It is also a bit surprising, given that cities are one of the focal points of AI rollout and several cities have subsequently taken notable actions with regards to AI policy. However, to date, these actions are isolated and do not engage at the supranational or global level.

In light of the fuzzy nature of AI, it is barely surprising that the current landscape is somewhat fragmented. Promising moves towards some degree of centralization and coordination are found in the prominent role of the OECD. With its epistemic authority and its norm- and agenda-setting power, it managed to act as a reference point for the G7 and G20. Through its close collaboration with other multilateral actors such as the European Commission, the UN, and the CoE, and by using the GPAI as a dedicated tool for advancing global AI governance, it may continue to play a leading role.

With all this in mind, this article argues that we are witnessing the first signs of consolidation in this fragmented landscape. The nascent AI regime that emerges is polycentric and fragmented but gravitates around the OECD, which holds considerable epistemic authority and norm-setting power. It is polycentric because it features different epistemic communities and multiple centers of decision-making, each operating with some degree of autonomy. It is fragmented because there is substantial overlap in different actors’ membership and the topics addressed by these initiatives; the well-connected epistemic communities are equally overlapping. As with other polycentric governance architectures, global AI governance will likely continue to struggle with the challenge of coordination [64]. While epistemic and membership overlap may benefit consolidation or convergence, topic overlap tends to foster fragmentation and adds complexity to the regime.

This article has been mostly agnostic to the content of what these global governance initiatives and arrangements actually entail. It was a deliberate choice to focus the analysis on structure, actors and instruments, to avoid confusion between structure and content. Nevertheless, a quick look at the main developments suggests that there is convergence on a certain type of AI values and principles, as put forward by the European Commission and the OECD. These are focusing on trustworthy, human-centric AI.

Such terms are of course abstract and somewhat vague, thus leaving room for interpretation. This interpretation, contextualization, and operationalization of AI values will without doubt experience major contestation by different actors. While China is side-lined from most of the above initiatives, its role in AI governance cannot be understated. The government has signaled willingness to engage in global governance as a responsible actor, and specifically on AI ethics has made some steps towards conciliation. Yet, it will want to interpret AI ethics in accordance with its own cultural context and promote these views globally. Hence, how China engages with the GPAI and other governance initiatives (and vice-versa) will be an interesting space to watch and leaves ample room for future research.

### 1NC---AT: Private Chains IL

#### Their scenario is only possible on private blockchains

Thibault Schrepel 19, Assistant Professor at Utrecht University School of Law, Associate Researcher at University of Paris 1 Panthéon-Sorbonne and Invited Professor at Sciences Po Paris, Spring 2019, “IS BLOCKCHAIN THE DEATH OF ANTITRUST LAW? THE BLOCKCHAIN ANTITRUST PARADOX,” 3 Geo. L. Tech. Rev. 281

3. Predatory innovation. Innovation is "the implementation of a new or significantly improved product (good or service)." 146 Accordingly, when the blockchain governance is modified, it could be seen as an innovative practice. In fact, where there is innovation, there is a risk of predatory innovation: "the alteration of one or more technical elements of a product to limit or eliminate competition." 147 Predatory innovation appears at first to mirror authentic innovation--it is, after all, a new version of a product or technology--but it is not innovative because it does not bring any real improvements to consumers. In short, predatory innovation encompasses all anticompetitive strategies that, under the guise of being real [\*314] innovations, aim at eliminating competition without benefiting consumers or users.

While the initial choice of the public or private nature of a blockchain should be exempt from antitrust scrutiny, 148 the type of governance that is chosen implicates the likelihood of anticompetitive practices. What is particularly worrisome is that current legal concepts are blind to the full extent of predatory innovation. 149

Predatory innovation is expected on private blockchains, which highlights the need to tackle this practice using an effective regime. 150 In the words of Ethereum creator Vitalik Buterin, "the consortium or company running a private blockchain can easily, if desired, change the rules of a blockchain, revert transactions, modify balances, etc." 151 This may lead to predatory innovation, which should be more common on private blockchains where a change in the rules is easy and does not require any approval from the users. 152 Private blockchains can indeed modify their governance design any time, since they do not need to convince users to adopt the change. The TrustJobs example shows how X may modify its blockchain in order to eliminate Y and Z.

Predatory innovation might even become a common practice on blockchain for several reasons. First, predatory innovation can be implemented at no cost by simply modifying the blockchain code. Its implementation can also be very fast, as interactions and validations via blockchain usually only take a few seconds or a few minutes at most. [\*315] Additionally, although transactions and modification are not invisible on public blockchain, they can be on private blockchains. And predatory innovation on blockchain can have a radical effect by allowing for the exclusion of targeted users who are also competitors. Lastly, predatory innovation practices can take different forms with multiple effects beyond mere exclusion from the blockchain. A company that owns a private blockchain can modify its governance design so that a user's access is simply denied or so that the user can no longer read all the information on the blockchain, register transactions, or take part in the block validation process.

As far as public blockchain are concerned, predatory innovation could be implemented if a new governance design is adopted by a majority of the miners. This, however, seems unlikely. First, any change to public blockchain governance design requires coordination and consensus among all of the stakeholders. 153 Second, it is impossible to replace the original blockchain. 154 When the governance design is modified, a "hard fork" is created, 155 a copy of the ledger is made, and miners switch their hardware to the new governance design. If they do not, the software running under the old rules sees the blocks produced according to the new rules as invalid. 156 For that reason, as the community on public blockchains grows, it becomes increasingly difficult to reach a consensus on changing governance. 157 And yet, future introduction of new governance models using off-chain and sidechain mechanisms in public blockchain may reduce these difficulties and therefore facilitate predatory innovation.

### Bees D---1NC

#### Pollinator collapse does not cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 118

And while extinction is a useful measure of biodiversity loss, it is not the whole story. It doesn’t capture population reductions or species disappearing locally or regionally. While “only” 1 percent of species have gone extinct on our watch, the toll on biodiversity within each region may be much higher, and this may be what matters most. From the perspective of existential risk, what matters most about biodiversity loss is the loss of ecosystem services. These are services—such as purifying water and air, providing energy and resources, or improving our soil—that plants and animals currently provide for us, but we may find costly or impossible to do ourselves.

A prominent example is the crop pollination performed by honeybees. This is often raised as an existential risk, citing a quotation attributed Einstein that “If the bee disappeared off the surface of the globe then man would only have four years of life left.” This has been thoroughly debunked: it is not true and Einstein didn’t say it.109 In fact, a recent review found that even if honeybees were completely lost—and all other pollinators too—this would only create a 3 to 8 percent reduction in global crop production.110 It would be a great environmental tragedy and a crisis for humanity, but there is no reason to think it is an existential risk.

### 1NC---IOT Innovation Turn

#### IoT growth and innovation now---any issues can be handled through consumer protection law or other regs---holding off on antitrust is key to allow organic innovative development

Gregory G. Wrobel 14, head of the Antitrust Practice Group of Vedder Price P.C., Fall 2014, “Connecting Antitrust Standards to the Internet of Things,” Antitrust, 29(1), <https://www.vedderprice.com/-/media/files/vedder-thinking/publications/2014/09/connecting-antitrust-standards-to-the-internet-of/files/aba-antitrustconnecting-antitrust-standards-to-the/fileattachment/aba-antitrustconnecting-antitrust-standards-to-the.pdf>

FTC commissioners and staff have articulated core principles for suppliers of IOT products to protect consumer protection, privacy, and data security rights of consumers and other users, focused largely on transparency and full disclosure (i.e., prominent and accessible disclosure about data collection and use), consumer control (i.e., let individual consumers decide what data to share), and data security (i.e., use of industry standard technology and methods to protect data from unauthorized disclosure and use).29 The Commission has refrained from rulemaking that might shape or restrict business models in the early-stage IOT, and the FTC’s initial enforcement action involving an IOT product aligns with Commission actions directed at non-IOT products.30 IOT products often operate without human interaction, and this functionality may complicate how suppliers and users comply with these enforcement standards and goals (e.g., once a consumer or property owner installs an IOT thermostat in a dwelling, the consumer and future occupants may not be aware that the product supplier is receiving Internet-enabled data about the dwelling and settings on the device, etc.). These tensions may give rise to new or refined enforcement standards for suppliers of IOT products, property owners, and others to comply with consumer protection, privacy, and data security rights.

Importantly, these consumer protection concerns with data from IOT products do not appear to create new conflicts with antitrust standards in the early-stage IOT. The rights in question warrant protection both in fragmented and highly concentrated market settings. Nor do these rights depend on the market position of the IOT products and related data systems, or whether suppliers or users are engaged in conduct that may harm competition. In fact, enforcement efficiencies may arise in concentrated markets where monitoring and enforcement against only one or a small number of key suppliers, platforms, or networks may achieve compliance with consumer protection rights.31

Conclusion

The early-stage IOT is evolving rapidly and presents many open questions about the viability of IOT products, the contours of relevant markets, and the benefits and needs for open or closed business models for particular IOT products.

These dynamics and uncertainties may mitigate some potential antitrust risks for now, but suppliers should take a cautious approach about business models, IP licensing, and sales and distribution practices used to achieve commercial success with new IOT products.

Antitrust risks may arise at a later stage if the supplier develops a network or installed base using an open model but then shifts to a closed model that unduly restricts customer choice or market access by rivals.32 Suppliers may evaluate potential antitrust risks for now based on their current position in relevant markets for non-IOT products that they sell, but they should closely monitor industry dynamics and the focus of market analysis as customer demand for IOT products evolves and the contours emerge for distinct relevant markets for particular IOT products or networks.

The FTC has focused largely on consumer protection rather than antitrust concerns with the IOT. The regulatory humility

implicit in the Commission’s approach to the IOT is even more important from the perspective of antitrust than consumer protection enforcement, so that regulatory oversight or enforcement pressures do not thwart technological innovations and growth in customer acceptance and demand, or pick winners in the competitive struggle among suppliers and business models for IOT products in diverse consumer and business markets.33 Tensions between consumer protection and antitrust standards do not appear evident in the early-stage IOT, but technology is advancing rapidly and business models that offer significant procompetitive benefits to customers may confront difficulties in assuring compliance with consumer protection, privacy, and data security rights. Over time, these tensions may present challenges for product suppliers, and the FTC and other antitrust/consumer protection enforcers, in balancing these consumer welfare effects.

With its dual enforcement mandate, the FTC is uniquely positioned as it embarks on its second century—and the Internet passes the quarter-century mark—to provide targeted enforcement and constructive advocacy on how to balance such conflicts, and thereby help connect consumer protection and antitrust standards in a consistent way to the Internet of Things.

# 2NC---Fullertown Doubles

## CP---PIC

### 2NC---O/V

#### Specifically, water infrastructure – determines whether all impacts are existential

Assad, et al 19 (Ahmed Assad, Department of Building, Civil and Environmental Engineering, Concordia University; Osama Moselhi, Department of Building, Civil and Environmental Engineering, Concordia University; and Tarek Zayed, Department of Building and Real Estate (BRE), The Hong Kong Polytechnic University; “A New Metric for Assessing Resilience of Water Distribution Networks,” Water, 11, 1701, 2019, DOI:10.3390/w11081701)

Water distribution networks (WDNs) are critical infrastructure systems that are responsible for securing adequate quantities of safe, high-quality water to the public [1]. Maintaining a proper functioning of the water systems has always been a primary concern for cities and municipalities because of their direct impact on the health and safety of the people [2]. Following any hazard, water infrastructures play a dominant role in firefighting and other rescue efforts. Thus, attaining functionality of such critical systems is a more appealing demand after any hazard event [1]. During their extended service life, WDNs face a broad spectrum of hazards that disturb their functionality and potentially threaten human survival. These hazards that are becoming more frequent and of more damaging consequences are either natural disasters or human-made ones. Earthquakes, floods, hurricanes, extreme temperatures, and climate change are examples of natural hazards that affect the WDNs. Human-made risks may include terrorist attacks, cyber-attacks, overloading, and vandalism [3]. Aging and deterioration of WDNs increase their vulnerability and the likelihood of function interruption during and after the disruptive events. Pipe breaks, loss of pressure, leaks, and contaminants entering the network are all instances of such consequences [3]. Traditionally, the focus was placed on physical protection of water systems by avoiding or mitigating the likelihood of disruptive events and their adverse impacts [4]. However, because of the high uncertainty nature of hazards and complex interdependency of infrastructure systems, it is not possible to protect water networks from all hazards using classical strategies. Therefore, infrastructure resilience is emerging as an essential consideration in the planning and management of WDNs. In this context, water networks will be strong enough to withstand any disruption with a minimum impact on its performance and to recover quickly in case of service loss [4]. Resilience capabilities in infrastructure systems are usually described by three main aspects, namely: absorptive, adaptive, and restorative capacities [5]. Absorptive capacity measures the ability of a system to withstand the impact of a hazard event with minimum disruption in the services it provides. Adaptive capacity measures the system’s capability to adjust itself under a new disrupted state and to continue delivering its service. Restorative capacity is a measure of the system’s ability to recover efficiently. The American Society of Civil Engineers defines resilience of infrastructure systems as the ability to mitigate all-hazard risks and rapidly recover critical services with minimum harm to the public safety, health, economy, and national security [6]. This definition, among others reported in the literature, interprets resilience of infrastructure systems as a process that inherits the four distinct phases. The process always starts with some preparedness measures to mitigate the impacts of anticipated hazards. After the occurrence of a hazard event, a response process starts, and recovery actions are taken to restore the service. Subsequently, policies are revised to be better prepared for the next hazard events.

#### 2. Grid collapse turns military strength

Ahmed 19 --- Nafeez Ahmed, Vice, “U.S. Military Could Collapse Within 20 Years Due to Climate Change, Report Commissioned By Pentagon Says”, Oct 24th 2019, https://www.vice.com/en/article/mbmkz8/us-military-could-collapse-within-20-years-due-to-climate-change-report-commissioned-by-pentagon-says

The US Army report shows that California’s power outage could be a taste of things to come, laying out a truly dystopian scenario of what would happen if the national power grid was brought down by climate change. One particularly harrowing paragraph lists off the consequences bluntly:

“If the power grid infrastructure were to collapse, the United States would experience significant:

Loss of perishable foods and medications

Loss of water and wastewater distribution systems

Loss of heating/air conditioning and electrical lighting systems

Loss of computer, telephone, and communications systems (including airline flights, satellite networks and GPS services)

Loss of public transportation systems

Loss of fuel distribution systems and fuel pipelines

Loss of all electrical systems that do not have back-up power”

Although the report does not dwell on the implications, it acknowledges that a national power grid failure would lead to a perfect storm requiring emergency military responses that might eventually weaken the ability of the US Army to continue functioning at all: “Relief efforts aggravated by seasonal climatological effects would potentially accelerate the criticality of the developing situation. The cascading effects of power loss… would rapidly challenge the military’s ability to continue operations.”

Also at “high risk of temporary or permanent closure due to climate threats” are US nuclear power facilities.

There are currently 99 nuclear reactors operating in the US, supplying nearly 20 percent of the country’s utility-scale energy. But the majority of these, some 60 percent, are located in vulnerable regions which face “major risks” including sea level rise, severe storms, and water shortages.

### 2NC---AT: PDCP

#### 1 – “prohibition” – the counterplan restricts, but does NOT prohibit – requires banning all practices deemed anticompetitive

James Broaddus 50. February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220. https://casetext.com/case/city-of-meadville-v-caselman-1

"Under power conferred on cities of the fourth class `to regulate and license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.'" (Citing text writers and cases.)

#### It’s most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### 2 – business practices are classes of behavior, NOT individual acts

Kerry Lynn Macintosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis

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

#### 3 – “expanding the scope” precludes excluding practices currently included

Garubo 84 --- Angelo G. Garubo, Senior Vice President and Corporate Secretary, Commercial Credit Group, Juris Doctor, magna cum laude, from California Western School of Law, “Severing the Legislativ ering the Legislative Veto Provision: The Aftermath of Chada vision: The Aftermath of Chada”, California Western law Review, Vol 21 No 1, 1984, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1559&context=cwlr

Since a veto provision can qualify as a proviso, the rule in Davis v. Wallace 147 and Frost v. Corporation Commission 148 can be applied to show that the legislative intent test is inadequate to determine if a veto provision should be severed. In Davis and Frost, the Supreme Court ruled that a proviso could not be severed if it was originally written into the statute. 149 The Court reasoned that severing such a provision would result in an extension of the scope of the statute.' 50 Such an extension would be contrary to the legislative intent of a statute by including subject matter which the legislature expressly chose to exclude.151 The Davis and Frost analysis can be applied to the "congressional veto" because (1) the veto provision can be considered a proviso 152 and (2) severing a veto provision will expand the scope of the statute contrary to legislative intent. 5 3 By severing a veto provision the executive branch would be free to expand or limit the scope of a statute through its implementation. Such an expansion or limitation would constitute a defacto contradiction of legislative intent by altering the purview of the statute.' 54 A veto provision is a control mechanism.' 55 Its mere presence in a statute indicates the legislature's desire to restrict the scope of that statute. 5 6 By removing it, the court would affect a fundamental change in the nature of the statute, which was not accounted for when the legislature enacted the law. 157 Because a veto provision is a proviso, its excise from a statute would contradict legislative intent. A test which uses legislative intent to determine if a veto provision is severable could only find that the provision is not severable. Thus, when literally applied, the legislative intent test is not adequate to determine if a veto provision should be severed from its statutory framework.

#### Counterplan does that – current law conclusively prohibits even when there’s systemic risk

Weinstein 21 (Samuel N. Weinstein, Associate Professor of Law, Benjamin N. Cardozo School of Law, “Blockchain Neutrality,” Georgia Law Review, vol.55, Winter 2021, 55 Ga. L. Rev. 499, https://www.georgialawreview.org/article/21202.pdf)

Antitrust courts and enforcement agencies typically reject safety and soundness justifications for restraints on competition. In its 1978 decision in National Society of Professional Engineers v. United States, the U.S. Supreme Court stated that a party’s attempt to justify a competitive restraint based on “the potential threat that competition poses to the public safety” amounted to “nothing less than a frontal assault on the basic policy of the Sherman Act.”205 That case involved a challenge to the National Society of Professional Engineers’ canon of ethics, which barred members from participating in competitive bidding for their services.206 Under the canon, members agreed not to negotiate or “even to discuss the question of fees” until after being chosen for a particular job.207 If a prospective client insisted on receiving pricing information, the canon mandated that the member withdraw from consideration for the contract. 208 This policy made it difficult, or even impossible, for potential clients to compare prices for engineering services. The Court had no trouble determining that the agreement, on its face, was a restraint of trade under section 1 of the Sherman Act.209 The Society, however, asserted that the restraint was justified because, in its absence, engineers would be tempted to make low bids on jobs and “do inferior work with consequent risk to public safety and health.”210

The Court conceded that vigorous competition sometimes may threaten consumer safety: the downward pricing pressure competition creates in some circumstances can lead suppliers to cut corners and market flawed or dangerous products.211 But the Sherman Act, the Court reasoned, embodies the idea that competition will result not only in lower prices, but also in higher quality goods and services.212 Even if competition occasionally leads to lower quality or risky goods, the “statutory policy” underpinning the Sherman Act “precludes inquiry into the question whether competition is good or bad.”213 The Court stressed that engineers’ frequent involvement in projects “significantly affecting the public safety” did not change the analysis: “[e]xceptions to the Sherman Act for potentially dangerous goods and services would be tantamount to a repeal of the statute.”214 In other words, the antitrust laws presume that competition will protect consumers both from higher prices and from unsafe goods and services.215

## CP---Sec 5

### 2NC---Condo

## Adv---Blockchain

### 2NC---AT: I/L

#### Blockchain doesn’t complicate enforcement---existing methods solve, particularly DOJ

Samuel N. Weinstein 21, Associate Professor of Law, Benjamin N. Cardozo School of Law, Winter 2021, “Blockchain Neutrality,” Georgia Law Review, 55 Ga. L. Rev. 499

Large financial institutions will not allow these transformations to occur without a fight, however. To ensure that fight is fair, antitrust authorities and regulators must consider how best to shape antitrust enforcement and competition policy for blockchain technologies. Much of the competition-related scholarship on blockchain has focused on the technology's potential impact on [\*538] antitrust risks and enforcement, and the bulk of that literature has sounded dire warnings about blockchain's anticompetitive potential and the possibility that it will enable cartel members to escape prosecution. 161 These concerns are premature.

Blockchain's primary effect in the antitrust arena may be to facilitate collusion. 162 As a general matter, distributed ledgers make sharing information among participants easier. When that sharing includes competitively sensitive data, such as pricing information, firms may be able to use blockchains to form and maintain price-fixing cartels. Some have suggested that blockchains, combined with the Internet of Things and artificial intelligence, could serve to monitor adherence to a cartel agreement (for example by measuring and reporting production volumes) and automatically punish defectors through smart contracts. 163 Even without explicit collusive agreements, blockchain's enhanced information-sharing capabilities might facilitate tacit collusion among participants. 164

[\*539] Another antitrust harm that might arise from blockchain use is anticompetitive access denial to permissioned ledgers. In the case of DTCC's blockchain-based, derivatives-processing network, for example, participating big banks potentially could disadvantage derivatives-dealing rivals by excluding them from the ledger. 165

Price-fixing cartels and denial of access to competitively necessary facilities fall squarely within the ambit of standard antitrust theory and enforcement practice. The Antitrust Division of the U.S. Department of Justice is equipped to root out price-fixing conspiracies in a range of technological settings. In 2015, the Division prosecuted participants in a cartel that relied on algorithms to fix prices for posters sold on the Amazon Marketplace. 166 While the technology this cartel employed was different than that used in the proverbial smoke-filled rooms of the nineteenth and twentieth centuries, the Division and the Federal Bureau of Investigation were capable of uncovering the scheme and prosecuting the participants. 167 The Division's prosecutorial tools should prove as effective in the blockchain setting as in any other context. This is especially true of the Leniency Program, under which the Division grants prosecutorial immunity to cartel members who are first-in-the-door to report cartel activity and cooperate in the subsequent investigation. 168 This program is the Division's most effective criminal enforcement tool and it should operate equally well in prosecuting blockchain cartels as it does in more traditional industries. 169

[\*540] Denial of access to nodes on a clearinghouse blockchain would also represent an old story in a new technological setting. Indeed, accusations against big banks of anticompetitive access denial to clearing services pre-date the transition to blockchain. Plaintiffs in In re Credit Default Swaps Antitrust Litigation settled, for $ 2 billion, their claims that big banks used their positions on clearinghouse risk committees to refuse access to dealer rivals in a fashion that harmed competition. 170 These types of "essential facilities" or refusal-to-deal cases can be difficult for plaintiffs to win, but the theory of harm is familiar, regardless of the technological context. 171

The same enhanced information-sharing and immutable record-keeping that might appeal to price-fixing cartels also could make blockchain-related antitrust enforcement more effective. A leniency applicant may give enforcers access to a permissioned blockchain, allowing them to observe the entire history and ongoing operation of a price-fixing cartel, an advantage difficult to duplicate without the blockchain. 172 Blockchains' ability to accurately preserve and offer easy access to data could reduce the burden of data collection and analysis in both merger and civil non-merger investigations. 173 [\*541] Regulatory nodes on blockchains might allow agencies to detect anticompetitive conduct in real time.

#### Anonymity and pseudonymity don’t complicate enforcement

Samuel N. Weinstein 21, Associate Professor of Law, Benjamin N. Cardozo School of Law, Winter 2021, “Blockchain Neutrality,” Georgia Law Review, 55 Ga. L. Rev. 499

Blockchain technology does present certain non-antitrust-specific challenges to the legal system that antitrust enforcers and plaintiffs may have to contend with. Blockchain users sometimes protect their identities using pseudonyms, which may make identifying them for purposes of legal sanctions difficult. So far, this issue is more theoretical than practical, as researchers have demonstrated that most blockchain users' identities can be uncovered, 174 and prosecutors have successfully linked individual defendants to blockchain transactions. A high-profile example of law enforcement's ability to pierce blockchain pseudonymity took place in the trial of Ross Ulbricht, who was accused of controlling Silk Road, an online bazaar offering drugs and various illegal services. 175 Prosecutors produced evidence of transactions between bitcoin addresses in Silk Road's digital wallet and Ross Ulbricht's digital wallet, which the FBI found on his seized laptop. 176 Ulbricht was convicted and sentenced to life in prison for operating Silk Road. 177 Further, in what appears to be among the earliest antitrust cases filed in the blockchain space, a plaintiff was able to identify the defendants, who are individuals and business entities. 178 Undoubtedly, blockchain designers will continue to strive toward [\*542] true anonymity for users, but to date this threat appears overblown. 179

#### FTC can’t stop other governments from using AI, only companies

Heaven 21 (Will Douglas Heaven, senior editor for AI at MIT Technology Review, covers new research, emerging trends and the people behind them. Previously, founding editor at the BBC tech-meets-geopolitics website Future Now and chief technology editor at New Scientist magazine, April 21st 2021, “This has just become a big week for AI regulation” MIT Technology Review <https://www.technologyreview.com/2021/04/21/1023254/ftc-eu-ai-regulation-bias-algorithms-civil-rights/>) MULCH

One big limitation common to both the FTC and European Commission is the inability to rein in governments’ use of harmful AI tech. The EU’s regulations include carve-outs for state use of surveillance, for example. And the FTC is only authorized to go after companies. It could intervene by stopping private vendors from selling biased software to law enforcement agencies. But implementing this will be hard, given the secrecy around such sales and the lack of rules about what government agencies have to declare when procuring technology.

### 2NC---AT: Blockchain Good !

#### No blockchain extinction impact

Red Herring 18, Red Herring is a global media company which unites the world’s best high technology innovators, venture investors and business decision makers in a variety of forums, 11/3/18, “Blockchain Won’t Save the World – But it Might Help Us Be Better,” https://www.redherring.com/opinions/blockchain-wont-save-the-world-but-it-might-help-us-be-better/

Ever noticed how everybody telling us how blockchain is going to save the world, is the head of a blockchain company? It’s almost as if they’ve got something to gain personally by announcing that the technology will rid us of corruption, revolutionize global banking – and even protect the Amazon Rainforest from oblivion.

Like much of the evangelism riding tech’s cutting-edge – AI, self-driven cars, cryptocurrency – there is a distinct anarcho-utopian spirit that pulses through speeches and presentations about blockchain-related solutions. Government stealing your land? Blockchain can solve that. Want faster, safer public transport? Turn to the blockchain.

Undoubtedly, blockchain can help sure up these issues. Sweden is implementing a blockchain-powered land registry, as are Kenya and Ghana. Tiny Malta, a petri dish for many European tech rollouts, launched a project with British firm Omnitude to improve its buses (the EU member, in its latest of many image campaigns, wants to become the Blockchain Island: more on that at Red Herring soon).

The biggest problem with blockchain, as with most technologies, is not the tech at all but the people using them. First, who will convince politicians to go fully transparent with their meetings? Canada has experimented with Ethereum as a way to track a state committee’s spending habits. But the silence of leaders in Nigeria, for example, Africa’s largest economy, is deafening when questions turn to blockchain.

Blockchain might seem an obvious opportunity for US President Donald Trump, who wants to streamline the state and “drain the swamp” of “special interests” (which is a curiously partisan clique). But as in the music industry, middlemen and those peddling dark money want nothing that reveals their role greasing the wheels of American democracy. If the President’s taxes are a black hole, don’t expect blockchain any time soon.

There are additional questions about privacy where the regular public is concerned. Must a citizen really make all their transactions and movements within a certain context available to view and track publicly, by anyone?

Oddly enough, despite its growing crusade against privacy violations, the European Union published what may be the most optimistic piece of blockchain-related information from a public body, “How Blockchain Technology Could Change Our Lives”, a 24-page evaluation of the platform.

“For each transaction that uses a distributed ledger instead of a traditional centralized system, the intermediaries and mediators are displaced, missing out on their usual source of power and income,” concluded the paper, highlighting both the advantage of blockchain – and why it will be so difficult to implement.

Blockchain is a potentially wonderful invention, with the possibility to ease many of society’s greatest ills. But it will not neutralize them – and, like all new things, whether it is a utopian seachange depends very much on who controls it. Expect that power struggle to be the key component of the blockchain story heading into 2019.

#### No broad blockchain impact

Jesse Frederik 20, economics correspondent for The Correspondent, 8/21/20, “Blockchain, the amazing solution for almost nothing,” https://thecorrespondent.com/655/blockchain-the-amazing-solution-for-almost-nothing

And then the Dutch state secretary for the Interior, Raymond Knops arrived, decked out in tech couture: a black hoodie. He’s here as a “super accelerator” (whatever that means). “Everyone senses that blockchain is going to change government drastically,” the state secretary said.

I’ve been hearing a lot about blockchain in the last few years. I mean, who hasn’t? It’s everywhere.

I’m sure I wasn’t the only one who thought: but what is it then, for God’s sake, this whole blockchain thing? And what’s so terribly revolutionary about it? What problem does it solve?

That’s why I wrote this article. I can tell you upfront, it’s a bizarre journey to nowhere. I’ve never seen so much incomprehensible jargon to describe so little. I’ve never seen so much bloated bombast fall so flat on closer inspection. And I’ve never seen so many people searching so hard for a problem to go with their solution.

‘Agents of change’ in a small Dutch town

They knew nothing about the blockchain yet in Zuidhorn, a town with just under 8,000 people in the north-east of the Netherlands.

“What we did know is that it’s coming for us and that it’s disruptive,” a civil servant from the town told a Dutch weekly news magazine. “We could sit back and wait, or choose to move forwards.”

In Zuidhorn they decided to move forwards. A municipal poverty aid package for children would “be put on the blockchain”. Maarten Velthuijs, a student and blockchain enthusiast, was given an internship with the municipality.

His first job was to explain what blockchain is. When I asked him, he said it is “a kind of system that can’t be stopped”, that it’s “actually a force of nature”, or rather, “a decentralised consensus algorithm”. OK, it’s hard to explain, he conceded eventually. “I said to Zuidhorn: ‘I’ll just build you an app, then you’ll understand’.”

So he did.

The children’s aid package gives families living in poverty the right to a bicycle, trips to the theatre and the cinema, and so on. In the past, that was a nightmare of bureaucracy, receipts and documentation. But thanks to Velthuijs’s app it became simple: you scan your code in the shop, you get your bike, and the shopkeeper gets their money.

Suddenly, the tiny town was proclaimed “one of the international forerunners in blockchain technology”. There was national media attention and even awards: they won a prize for pioneers in municipal work and received nominations for an IT project award and a civil service award.

Local administrators became more and more enthusiastic. Velthuijs and his team of “students” were the ones who shaped this new world. But that term didn’t show enough respect. In Zuidhorn some people already preferred to call them “agents of change”.

How does it work?

OK, OK, agents of change, revolution, nothing can stay the same. But what is blockchain?

At its core, blockchain is a glorified spreadsheet (think: Excel with one table). In other words, a new way to store data. In traditional databases there’s usually one person who’s in charge, who decides who can access and input data, who can edit and remove it. That’s different in a blockchain. Nobody’s in charge, and you can’t change or delete anything, only view and input data.

The first, best-known – and practically only – use of blockchain technology is bitcoin, the digital currency that allows you to transfer money from A to B without the involvement of a bank.

How does this work? Imagine that money needs to be transferred from Jesse to James. Banks know how to do this. I ask the bank to send money to James. The bank carries out the necessary checks – Is there enough money in the account? Does the account number exist? – and taps into its own database: send money from Jesse to James.

This is slightly trickier with bitcoin. You announce the payment request in a kind of giant chat: one bitcoin from Jesse to James! Then there are users (so-called miners) who collect various transactions in little blocks.

In order to add these blocks of transactions to the public blockchain ledger, the miners have to crack a complicated puzzle (actually, they have to guess a very large number from a very, very long list of numbers). Solving that puzzle takes about 10 minutes – and if it’s solved more quickly, for instance because people use more hardware to solve the puzzle, it automatically becomes more difficult.

Once it’s been solved, the miners add the transactions to the latest version of the blockchain ledger, in the version they have saved locally. They post an announcement in the chat: we solved it, see! Everyone can verify that the solution is correct, and everyone updates their own blockchain ledger. Voila! Transaction complete. As a reward for their work, the miners receive a handful of bitcoin.

What’s with the puzzle?

Why is there a puzzle? If everyone behaved honourably, you wouldn’t need it. But imagine someone wanted to spend the same money twice. I tell both James and John: I’m giving you this bitcoin. Someone needs to check if that’s possible. And miners do the work that a bank usually does: they decide which transactions can be carried out.

Of course, a miner could try to scam the system by being in cahoots with me. But other people can see straight away if I spend the same money twice, and they can refuse to update the blockchain. So a malicious miner who’s done his best to solve the puzzle gets nothing. Because it’s so hard to guess the number, it pays to stick to the rules.

This is pretty inefficient. And it would be a lot less complicated if you trusted someone to manage your data (a bank, for instance). But that’s not what Satoshi Nakamoto did, which is what the inventor of bitcoin calls himself. He thought banks were bad news. They can make money disappear from your account. So he invented bitcoin.

And bitcoin works, it exists, and according to the latest count, there are nearly 1,855 other bitcoin-like currencies out there.

And yet, bitcoin isn’t an unqualified success. There are very few shops that accept the digital currency – and rightly so. It’s very slow (sometimes a transaction takes nine minutes, sometimes nine days!), a lot of hassle (try it for yourself – cutting open hard plastic packaging with scissors is more user friendly), and very unstable (its price rose to €17,000 euros; dropped to €3,000; rose again to now €10,000).

Not only that, but the decentralised utopia that Nakamoto dreamed about, namely avoiding trusted third parties, is still far out of reach. Ironically, there are now three mining pools – a type of company that builds rooms full of servers in Alaska and other locations way up above the Arctic circle – which are responsible for more than half of all the new bitcoin (and also for checking payment requests).

For the time being, bitcoin has been especially successful for speculation. Someone who happened to buy 20 or 20 euros’ worth of the cryptocurrency in its early days now has enough money for several round-the-world trips.

Which brings us to the blockchain. Because impenetrable technology that brings sudden wealth is a tried and tested formula for hype. Councillors, managers and consultants read about a mysterious currency in the papers that turns people into millionaires. We need to get in on that, they think. But you can’t do much with bitcoin. But blockchain, on the other hand: it’s the technology behind bitcoin, which makes it cool.

Blockchain generalises the bitcoin pitch: let’s not just get rid of banks, but also the land registry, voting machines, insurance companies, Facebook, Uber, Amazon, the Lung Foundation, the porn industry and government and businesses in general. They are superfluous, thanks to the blockchain. Power to the users!

A €600m industry

Meanwhile, Bloomberg estimates the worldwide blockchain industry at around $700m (over €600m). Large companies like IBM, Microsoft and Accenture have entire divisions dedicated to this revolutionary technology. In the Netherlands there are all sorts of subsidies available for blockchain innovation.

The only thing is that there’s a huge gap between promise and reality. It seems that blockchain sounds best in a PowerPoint slide. Most blockchain projects don’t make it past a press release, an inventory by Bloomberg showed. The Honduran land registry was going to use blockchain. That plan has been shelved. The Nasdaq was also going to do something with blockchain. Not happening. The Dutch Central Bank then? Nope. Out of over 86,000 blockchain projects that had been launched, 92% had been abandoned by the end of 2017, according to consultancy firm Deloitte.

Why are they deciding to stop? Enlightened – and thus former – blockchain developer Mark van Cuijk explained: “You could also use a forklift to put a six-pack of beer on your kitchen counter. But it’s just not very efficient.”

I’ll list a few of the problems. Firstly: the technology is at loggerheads with European privacy legislation, specifically the right to be forgotten. Once something is in the blockchain, it cannot be removed. For instance, hundreds of links to child abuse material and revenge porn were placed in the bitcoin blockchain by malicious users. It’s impossible to remove those.

Also, in a blockchain you aren’t anonymous, but “pseudonymous”: your identity is linked to a number, and if someone can link your name to that number, you’re screwed. Everything you got up to on that blockchain is visible to everyone.

The presumed hackers of Hillary Clinton’s email were caught, for instance, because their identity could be linked to bitcoin transactions. A number of researchers from Qatar University were able to ascertain the identities of tens of thousands of bitcoin users fairly easily through social networking sites. Other researchers showed how you can de-anonymise many more people through trackers on shopping websites.

The fact that no one is in charge and nothing can be modified also means that mistakes cannot be corrected. A bank can reverse a payment request. This is impossible for bitcoin and other cryptocurrencies. So anything that has been stolen will stay stolen. There is a continuous stream of hackers targeting bitcoin exchanges and users, and fraudsters launching investment vehicles that are in fact pyramid schemes. According to estimates, nearly 15% of all bitcoin has been stolen at some point.

And it isn’t even 10 years old yet.

Bitcoin and Ethereum use the same amount of energy as the whole of Austria

And then there’s the environmental problem. The environmental problem? Aren’t we talking about digital coins? Yes, which makes it even stranger. Solving all those complex puzzles requires a huge amount of energy. So much energy that the two biggest blockchains in the world – bitcoin and Ethereum – are now using up the same amount of electricity as the whole of Austria. Carrying out a payment with Visa requires about 0.002 kilowatt-hours; the same payment with bitcoin uses up 906 kilowatt-hours, more than half a million times as much, and enough to power a two-person household for about three months.

And the environmental problem is only going to grow. As miners put more effort into solving the puzzles (ie, building more of those dark server caves in Alaska), the puzzles will automatically become more difficult, requiring more calculation power. It’s an endless, pointless arms race in order to facilitate the same number of transactions with more and more energy.

And for what? This is actually the most important question: what problem does blockchain actually solve? OK, so with bitcoin, banks can’t just remove money from your account at their own discretion. But does this really happen? I have never heard of a bank simply taking money from someone’s account. If a bank did something like that, they would be hauled into court in no time and lose their license. Technically it’s possible; legally, it’s a death sentence.

Of course scammers are active everywhere. People lie and cheat. But the biggest problem is scams by data suppliers (for instance: someone secretly registers a hunk of horse meat as beef), not by data administrators (for instance: a bank makes money disappear).

Some people have suggested putting the Land Registry on the blockchain. That would solve all kinds of problems in countries with corrupt administrations. Take Greece, for example, where one in five buildings is not registered. Why are these buildings not registered? Because the Greeks just start building and then there’s suddenly a house that’s not in the Land Registry.

Except a blockchain can’t do anything about that. A blockchain is a database – it’s not a self-regulating system that checks all data for correctness, let alone one that calls a halt to unauthorised building works. The same rules apply for blockchain as for any database: if people put garbage into it, what comes out is also garbage.

Or as Bloomberg columnist Matt Levine wrote: “My immutable unforgeable cryptographically secure blockchain record proving that I have 10,000 pounds of aluminium in a warehouse is not much use to a bank if I then smuggle the aluminium out of the warehouse through the back door.”

Data should reflect reality, but sometimes reality changes and the data stays the same. That’s why we have notaries, supervisors, lawyers – actually, all those boring people that blockchain thinks it can do without.

Very little blockchain under the hood

So what about that pioneering town of Zuidhorn, wasn’t blockchain successful there?

Well, not quite. I had a look at GitHub – a site where programmers post their software – and there was very little resembling blockchain under the hood of the children’s aid package app. At any rate, there was one lonely miner working away, on a server, not connected to the internet, for internal research. But what those families living in poverty and shopkeepers were using was a very simple app, using very simple code, running on very simple databases.

I called Maarten Velthuijs.

Hey, I noticed that your app doesn’t actually need blockchain at all.

Velthuijs: “That’s right.”

But isn’t it strange that you won all those awards, even though you aren’t actually using the blockchain?

Him: “Yes, it’s weird.”

So how is it possible?

Him: “I don’t know. We keep trying to tell people, but it doesn’t seem to stick. You’re calling me about it again now … ”

So where is the blockchain?

Zuidhorn is no exception. If you look carefully, you’ll see that there are all kinds of blockchain experiments that only contain a suggestion of blockchain now.

Take My Care Log, another one of those award-winning experiments, this time in maternity care. All Dutch people with a newborn baby are allocated a certain amount of maternity care. Just like the children’s aid package in Zuidhorn, this was a bureaucratic nightmare, but now there’s an app on your smartphone where you can log how much care you have received and see how much you have left.

The final report shows that My Care Log doesn’t use any of the features that make blockchain so unique. A number of third parties were identified beforehand as exclusive miners: in other words, they have the right to veto any maternity care data logged. Better for the environment and in accordance with privacy regulations, the report notes. But wasn’t that the whole point of blockchain, that you could do without these trusted third parties? So what are they doing here?

If you ask me, they’re building a completely normal, run-of-the-mill database, but extremely inefficiently. Once you’ve cut through all the jargon, the report turns out to be a boring account of database architecture. They write about a distributed ledger (that’s a shared database), about smart contracts (that’s an algorithm) and about proof of authority (that’s the right to veto whatever is entered in the database).

Merkle trees (a way of unlinking data from checks on that data – long story) are the only blockchain element to make the final cut. And that’s perfectly good technology, nothing wrong with it. The only thing is that Merkle trees have existed since 1979 and have been used for years, for instance in Git, a version-control system (which is used by pretty much every software developer in the world). They are not unique to the blockchain.

There’s a market for magic, and that market is big

I already said it earlier: this story was a bizarre journey to nowhere.

While writing, I decided to have a chat with one of our developers. There are actually real, live developers roaming around our editorial office. This developer, Tim Strijdhorst, didn’t know much about blockchain. But he did tell me something else.

“I work with code, so people see me as a magician,” he said proudly. It was always rather surprising to him – a magician? He spends half his time yelling at his screen in frustration, while he programmes strips of duct tape to repair creaky PHP script from years and years ago.

What Tim meant was that ICT is like the rest of the world – a big old mess.

And that’s something that we – outsiders, laypeople, non-tech geeks – simply refuse to accept. Councillors and managers think that problems – however large and fundamental they are – evaporate instantaneously thanks to technology they’ve heard about in a fancy PowerPoint presentation. How will it work? Who cares! Don’t try to understand it, just reap the benefits!

### 2NC---AT: Bitcoin !

#### Bitcoin collapse inevitable---takes the blockchain with it

Baruch Silvermann 21, Founder of The Smart Investor, 7/19/21, “The Inevitable End of the Bitcoin,” https://www.fxstreet.com/education/the-inevitable-end-of-the-bitcoin-202107191452

Those currently investing in Bitcoin believe that the inflation rate in the US will continue to rise for the next few years. This will cause the Dollar to weaken, and thus holding USD is not optimal right now.

Bitcoin, on the other hand, has a limited supply. Furthermore, the rate at which more Bitcoins are added to the blockchain automatically reduces itself after a certain amount of time. This process is known as halving.

The fact is that it is extremely easy to predict the total number of Bitcoins that will be a part of the blockchain at any point in time. This makes Bitcoin akin to gold in some ways. However, Bitcoin and gold are actually quite different, and must not be confused as a substitute for each other.

Based simply on the belief that the Dollar will weaken as time goes by, Bitcoin’s price has been driven up by investors over the last few months. However, that synopsis may not be correct. In my opinion, two main scenarios are likely to happen, both of which will eventually cause the downfall of Bitcoin.

Scenario 1: The FED Fights Back

In the first scenario, the US FED may try to fight back against the decline in the Dollar. In this case, the FED will not only reduce the amount of money they print but also increase the interest rates.

An increase in the interest rates makes the cost of debt go up, meaning businesses will require a higher rate of return on their earnings to compensate for the increase in interest payments. This causes the stock market and the real estate market to decline, as many businesses (especially those that are highly leveraged) will face trouble paying back their debt.

Considering the massive increase in both of these markets in the last year, it is more than likely that this approach will cause the markets to crash. People will pull out their investments, opting to save their money at the bank instead.

What Will Happen to Bitcoin?

The stock market and precious metals is considered by many to be a good hedge against inflation. This is because as the prices of goods rise, so do the profits of businesses.

As such, it comes as no surprise that stocks and Bitcoin are closely correlated. During times when the FED is going off the rails with its printer, both stocks and Bitcoin see a massive rise. It makes perfect sense that once the FED tightens the monetary policy, both Bitcoin and stocks will suffer as a result.

However, one thing that you must remember is that Bitcoin is driven a lot more by market sentiment as compared to stocks. As an asset, this is much more volatile, and a single major event can drive its price downward significantly. This is evident by the fact that Bitcoin has experienced numerous market crashes despite its relatively short-lived existence.

Due to this, Bitcoin will probably fall by a huge amount. While it will probably not go to zero, it will still suffer huge setbacks.

Scenario 2: The FED Caves in

In the second scenario, it is possible that the FED does not try to fight back against the inflationary pressures that have been levied as a result of the printing. Instead, it decides to cave in and reduce the value of the Dollar.

A Dollar devaluation will have a lot of benefits for the government. For one, it will make debt payments easier, as the intrinsic value of the dollar will now be much less while the debt payments will remain the same.

Secondly, it will not require the FED to reduce growth by increasing the interest rate. Businesses will still be able to acquire debt at comparatively low-interest rates and will be able to achieve their growth targets (for the most part).

What Happens in the Short Run?

In the short run, we will see both the stock market and the Bitcoin rise even more. If history is anything to go by, then the price of Bitcoin will skyrocket, hitting new all-time highs, whereas stocks will experience a gradual rise.

The price of Bitcoin will not only increase because of the investment thesis that Bitcoin excels where the US Dollar fails, but also because of the market sentiment. Amateur investors with no knowledge and no way to gauge the intrinsic value of the coin will pile their money into it, pushing the price even further.

The Major Problem

Just because Bitcoin will rise in the short run, doesn’t mean it will continue to rise.

The main reason for this is simple: No government will allow the public to have a currency over which it has no control. If the major way that people exchange value is a decentralized currency, the government will have no choice but to use that currency to fund its projects. As we know, with the amount of money printing that governments around the world do to fund their expenses, this will be impossible.

As such, the governments will have one of two choices. The first one will be to do nothing and accept that crypto is here to stay. This would require most governments around the world to significantly reduce their expenses. There will be huge levels of unrest as governments will be unable to fund most of their social programs including education, healthcare, and public works.

This will force the governments to follow the second approach: Banning cryptocurrency and force people to use a different coin. We have already seen governments exercise this step, as cryptocurrency is banned in numerous countries at the moment.

So, What’s the Future of Bitcoin in This Scenario?

If Bitcoin is banned in the US, it is more than likely that other countries will follow suit. Right now, there are two major reasons why the price of Bitcoin is continuing to rise. The first is the bullish sentiment of the public, and the second is the increased number of institutions that are investing in the coin.

If the currency is banned, the institutions will have no choice but to pull out of the currency, causing major selloffs across the board. This will also cause the bullish view of the individual investors to change, further causing the price to plummet.

In all likelihood, an outright ban of the currency will cause Bitcoin to crash. Chances are that within a few months after the announcement, the price of the coin will be something close to zero.

It is also possible that the US government issues its own cryptocurrency. Many people believe that this is the next major step in the evolution of blockchain technology. Nobody can deny that cryptocurrency has inherent benefits over fiat currency. However, the major problem of the governments is that they do not have any control over it.

The US issuing its cryptocurrency will solve such problems and cause other countries to follow suit. What the specifics of that currency will be, we do not know. In all probability, it will not be a decentralized currency like Bitcoin. However, the US will probably have to restrict some of the freedoms that they have when it comes to printing if they do switch to a crypto-based Dollar.

Conclusion

The end result for Bitcoin, however, will still be the same. No matter which route the government ends up going, the long-term future of Bitcoin looks bleak.

### 2NC---AT: Bees !

#### Pollinator collapse does not cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 118

And while extinction is a useful measure of biodiversity loss, it is not the whole story. It doesn’t capture population reductions or species disappearing locally or regionally. While “only” 1 percent of species have gone extinct on our watch, the toll on biodiversity within each region may be much higher, and this may be what matters most. From the perspective of existential risk, what matters most about biodiversity loss is the loss of ecosystem services. These are services—such as purifying water and air, providing energy and resources, or improving our soil—that plants and animals currently provide for us, but we may find costly or impossible to do ourselves.

A prominent example is the crop pollination performed by honeybees. This is often raised as an existential risk, citing a quotation attributed Einstein that “If the bee disappeared off the surface of the globe then man would only have four years of life left.” This has been thoroughly debunked: it is not true and Einstein didn’t say it.109 In fact, a recent review found that even if honeybees were completely lost—and all other pollinators too—this would only create a 3 to 8 percent reduction in global crop production.110 It would be a great environmental tragedy and a crisis for humanity, but there is no reason to think it is an existential risk.

#### No impact to bees

Palmer 15 **–** Brian Palmer, Writer for OnEarth Magazine, “Would a World Without Bees Be a World Without Us?”, National Resources Defense Council, 5-18, <https://www.nrdc.org/onearth/would-world-without-bees-be-world-without-us> [language modified]

Albert Einstein is sometimes quoted as saying, “If the bee disappears from the surface of the earth, [hu]man[s] would have no more than four years to live.” It’s **highly unlikely** that Einstein said that. For one thing, there’s **no evidence** of him saying it. For another, the statement is **hyperbolic** and **wrong** (and Einstein was rarely wrong). But there is a kernel of truth in the famous misquote.

Bees and humans have been through a lot together. People began keeping bees as early as 20,000 BCE, according to the late and eminent melittologist Eva Crane. (Yes, someone who studies bees is a melittologist.) To put that length of time into perspective, the average global temperature 22,000 years ago was more than 35 degrees Fahrenheit cooler than today, and ice sheets covered large parts of North America. Beekeeping probably predates the dawn of agriculture, which occurred about 12,000 years ago, and likely made farming possible.

How important are bees to farming today? If you ask 10 reporters that question, you’ll get 11 answers. Some stories say that bees pollinate more than two-thirds of our most important crops, while others say it’s closer to one-third. A spread of that size indicates a lack of authoritative scholarship on the subject. My review of the literature suggests the same.

The **most thorough and informative study** came back in 2007, when an international team of agricultural scholars reviewed the importance of animal pollinators, including bees, to farming. Their results could encourage both the alarmists and the minimizers in the world of bee observation. The group found that 87 crops worldwide employ animal pollinators, compared to only 28 that can survive without such assistance. Since honeybees are by consensus the most important animal pollinators, those are scary numbers.

Look at the data differently, though, and it's clear why the misattributed Einstein quote is a **bit of an exaggeration**. Approximately 60 percent of the total volume of food grown worldwide **does not require animal pollination**. Many staple foods, such as wheat, rice, and corn, are among those 28 crops that require **no help from bees**. They either self-pollinate or get help from the wind. Those foods make up a **tremendous proportion** of human calorie intake worldwide.

Even among the 87 crops that use animal pollinators, there are **varying degrees** of how much the plants need them. Only 13 absolutely require animal pollination, while 30 more are “highly dependent” on it. **Production of the remaining crops would likely continue without bees with only slightly lower yields**.

So **if honeybees did disappear** for good, **humans would probably not go extinct** (at least not solely for that reason). But our diets would still suffer tremendously. The variety of foods available would diminish, and the cost of certain products would surge. The California Almond Board, for example, has been campaigning to save bees for years. Without bees and their ilk, the group says, almonds “simply wouldn’t exist.” We’d still have coffee without bees, but it would become expensive and rare. The coffee flower is only open for pollination for three or four days. If no insect happens by in that short window, the plant won’t be pollinated.

### 2NC---AT: Leadership !

#### 2. Infrastructure provisions and SEC regulations thump. MSU reads (go) green.

Matt 1AC Sandgren 21, Former Staff Director of the Senate Republican High-Tech Task Force, Former Senior Counsel on the Senate Judiciary Committee, Final Chief of Staff to Senator Orrin G. Hatch, Executive Director of the Orrin G. Hatch Foundation, “How New Regulations from Washington Could Lead to a Blockchain Brain Drain”, The Hill, 10/27/2021, https://thehill.com/blogs/congress-blog/technology/578834-how-new-regulations-from-washington-could-lead-to-a-blockchain

The internet is what it is today—with its ability to connect people across countries, time zones, and cultures—thanks to the friendly regulatory climate it was born into. Sadly, the regulatory climate of 2021 is far less welcoming to disruptive technologies. This is bad news for the future of U.S. innovation and the emerging blockchain industry.

Whether Washington takes a heavy-handed or a light-touch approach to crypto regulation over the next few months could make a multitrillion-dollar difference over the next few years. To understand how much we stand to lose as a result of bad blockchain policy, it’s first important to understand just how much we have gained as a result of good internet policy in the ’90s.

It’s easy to forget that the success of today’s internet behemoths was anything but certain in the early years of the tech boom. During the Dotcom Bubble of the late '90s, for example, many companies were dismissed as scams (and some of them were). But even the most promising companies were still seen as speculative bets, and their stock prices were subject to extreme volatility.

It’s also easy to forget that the very concept of the internet was foreign to most people in its early years. By today’s standards, it was slow, overly complex, and difficult to use by anyone without a strong technical background. Many dismissed the internet as a fad, including Nobel Prize-winning economist Paul Krugman, who made this prediction in 1998: “By 2005 or so, it will become clear that the internet’s impact on the economy has been no greater than the fax machine’s.”

Noted.

“A scam,” “a fad,” “a bubble,” “overly complex,” “too volatile.” Does any of this sound familiar? History doesn’t rhyme so much as it plagiarizes. And it’s impossible to ignore that the crypto skeptics of today use the same vocabulary as the internet naysayers of yesteryear.

Now imagine if U.S. policymakers had heeded the words of the internet’s critics in the mid-to-late ’90s. Imagine if they had cracked down on e-commerce, digital publishing, and fledgling social media platforms to preserve the old way of doing things. Imagine if they had shaped regulations to stem the free flow of physical goods, ideas, and information made possible by the internet.

The American people would have missed out on trillions of dollars in economic opportunity—and the bounties of the digital age would have gone to countries with more tech-friendly policies.

This is the risk we face today.

We find ourselves at the dawn of a new age of American innovation. Like the internet before it, crypto has the potential to redefine everything we know about how business, politics, media, finance, and even relationships work. But if legislators give in to crypto’s critics by taking a draconian approach to regulation, the U.S. will fail to reap the economic rewards of this world-changing technology—and entrepreneurs will flee to friendlier shores.

Even now, the stage is being set for a blockchain brain drain. Take the Senate-passed infrastructure bill, which includes a provision that would define crypto miners, validators, and even software developers as “brokers,” requiring them to report information to the IRS about anonymous blockchain participants that they would have no way of obtaining. In effect, this provision would kill the nascent DeFi (decentralized finance) industry and make it almost impossible for everyday Americans to invest in new cryptocurrencies. In other words, this latest move sends a hostile message to blockchain advocates: “We don’t want you here.”

At best, the Senate proposal belies a gross misunderstanding of how cryptocurrencies work; at worst, it exposes regulatory capture and the willingness of legislators to give in to special interests.

Sadly, the threat of bad regulation doesn’t end there. SEC Chair Gary Gensler has expressed his belief that many digital assets are not commodities but securities and should be regulated as such. Following this same logic, he’s signaled his intent to crack down on the use of stable coins—cryptocurrencies pegged to the value of the U.S. dollar. Americans are using stable coins to earn 4 to 8 percent APY on their savings through various lending programs. But the SEC wants to put a stop to these lending programs, ostensibly “to protect investors.” (What’s unclear is which government agency will protect investors from the unlimited money printing that is devaluing their dollar savings at a rate of 5.3 percent per year.)

Washington has gotten off on the wrong foot when it comes to crypto. But it’s not too late to correct course.

Regulation of crypto is not necessarily a bad thing. In fact, it’s a key step on the path to mainstream adoption. It’s critical, however, that policymakers shape regulation in a way that minimizes the risks of this new technology without eliminating its benefits. Congress found a way to do this with the internet in the ’90s. Section 230—while far from perfect and in need of reform today—paved the way for a flexible regulatory environment that allowed for many online companies to thrive. In the famous words of Jeff Kosseff, Section 230 contains “the 26 words that created the internet” (and, it’s worth adding, “trillions of dollars in economic wealth”).

Indeed, regulatory clarity is key to extracting maximum value from the emerging crypto economy, whether that value comes from DeFi protocols, decentralized forms of social media, tokenized assets, NFTs, or some other application of blockchain technology that we can’t even imagine today.

As policymakers seek to find the right balance on regulation, they should remember that the U.S. didn’t become the tech capital of the world by choking innovators with red tape. The U.S. became what it is today by taking a prudential approach to regulation—one that enabled the entrepreneurial spirit.

This is the same entrepreneurial spirit that inspired the private sector technological advances that made the Apollo moon landing possible. It’s the same spirit that brought about smartphones millions of times more powerful than the Apollo 11 guidance computers. And it’s the same spirit that has motivated a group of visionaries to push the boundaries of the digital frontier through blockchain technology.

Will Washington’s leaders stifle that spirit to the detriment of our economy and our reputation as a global leader in innovation? Or will they nourish that spirit to usher in the next chapter of the digital revolution?

Let’s hope they choose the latter.

#### SEC regulations are way more impactful than antitrust.

**Tucker 17** [Jeffrey A. Tucker, Editorial Director for the American Institute for Economic Research, he is the author of many thousands of articles in the scholarly and popular press and eight books in 5 languages, most recently The Market Loves You, “What Is the SEC Doing to Blockchain Technology?,” July 26, 2017, https://fee.org/articles/what-is-the-sec-doing-to-blockchain-technology/]

In case you haven't heard, the SEC has just issued a very strange warning/threat/edict to the effect that cryptoasset tokens of “distributed autonomous organizations” will be regulated like regular securities. The announcement casts doubt that these crypto-innovations are anything but deceptive ways to get around the law, so the SEC is provoked to say: we still matter, and all your fancy language about tokens and assets changes nothing.

For anyone in this industry, it is a strange thing to claim. It comes across like the Department of Agriculture's announcing that satellites will be regulated like livestock, or that math will be controlled under a law designed for vegetables.

However, the SEC also says that whether digital assets will be considered securities "will depend on the facts and circumstances, including the economic realities of the transaction." Only the SEC can say for sure.

The question is how narrowly or broadly will this regulatory threat apply. This is where the confusion begins. Does it apply narrowly only to the DAO case from last year, which was huge at the time but buggy and led to the Etherium fork? In other words, is this just the usual pretend excuse of consumer protection?

Or will it apply to every case of a token sale that uses blockchain technology? You can’t really tell from the language of the announcement, which is circuitous and merely suggestive amidst its faux-decisiveness. The SEC announcement on cryptoassets is ambiguous as a Papal encyclical issued under Pope Francis.

Maybe it is nothing serious, as the well-connected Coin Center hopes:

What the SEC did not say is that all tokens are securities. Rather, they suggest a facts and circumstances test but only analyze the facts and circumstances surrounding last year’s DAO token sale.

We believe that applying the same facts and circumstances test to other tokens will mean that some do not fit into the definition of securities, particularly tokens with an underlying utility rather than a mere speculative investment value.

The Blockchain Makes Peace and Prosperity Possible

Or perhaps someone in Washington truly believes that the most extraordinary technological innovation since the Internet can be made to work like the technology it is intended to replace. It’s like trying to make the lightbulb operate just like the whale-oil lamp. And actually it is not different from Ayn Rand’s tale of Anthem.

The market for cryptoassets is booming beyond belief, approaching the market capitalization of Ireland or Austria, all in a few short years. It’s because smart money is figuring out just what an amazing innovation blockchain is. It has taken nine years to fully dawn on people.

This is not really about Bitcoin as such, or even just monetary innovation, though there is that, and that in itself would be amazing enough. This is about a new and vastly improved path for human engagement itself: documenting claims, establishing ownership, communicating in a reliable way across the globe person to person, and establishing new rules for making peace and prosperity possible.

In the particular case of these “tokens” or “coins,” they do not operate like securities, which are ownership shares in the profits and interest of particular companies. These crypto tokens are vessels for valuing the authority to access ledgers that power human services. They come and go, as with any other market. Yes, people lose their shirts in this market, and others get rich. This is part of the exploratory process that is embedded in market evolution, particularly in these early days.

The market must be allowed to work at warp speed! As for the many, many pump-and-dumps, scams, and silly claims in deceptive white papers, there is just no way for government to police all this. The market is too new and active. These markets regulate themselves. Also: consumer beware!

There are plenty of legitimate companies in this sector now, many built on the platform that the SEC seems to disrespect. Even government agencies have contracted with them to provide services that are otherwise unavailable.

Also, these token sales help raise capital for new ventures, precisely because they are unregulated on platforms that have never existed before in human history. They have come along at a time when VC and bank funding have dried up, and when the practice of going public on regulated exchanges has become the privilege of a few. Everyone but the most highly capitalized has been shut out. Cryptoasset markets are free, which is why they are unleashing an amazing amount of creative and wealth-creating energy.

A Good Idea Cannot By Killed Bureaucracy

The SEC seems inclined literally to stop the progress of history, with old world coercion, as if mere announcements from bureaucrats will shape the world and the pace of social evolution in the long run. If this is serious, and if the bureaucracy follows through, it could be the most devastating economic regulation of our lifetimes.

However, there is the short run and the long run. Perhaps in the short run, this news could have a chilling effect on the market, or worse. Or maybe it is all just bluster.

The markets have so far sent mixed signals on the announcement. They are generally down across the board, but not nearly as much as you might expect from an existential threat. It seems like there are many buyers in the space right now, hoping for bargains.

In the long run, there is nothing that can stop a good idea from triumphing over reactionary attempts to stop it. That’s because ideas are portable and live on a metaphorical distributed ledger themselves, one that long pre-exists the blockchain. A good idea cannot be killed by mere bureaucracy.

There is also the matter of geography and borders, which thankfully still restrain the state to some extent. Intellectual and digital capital fly to where they are loved and not bludgeoned. The United States could become the world haven for great innovation, but not with these kinds of actions from the SEC (but you could substitute any bureaucracy in for those letters).

## Adv---FTC

### 2NC---AT: City Innovation !

#### Smart cities consume too much

John Gibbons 21. Environmental journalist and co-author of the Routledge International Handbook of Environmental Journalism. Resolving the paradox of satisfying the needs of all while using far less energy. Irish Times. 5-6-2021. https://www.irishtimes.com/news/science/resolving-the-paradox-of-satisfying-the-needs-of-all-while-using-far-less-energy-1.4542693

‘Drastic changes’ “Our intention is to imagine a world that is fundamentally transformed, where state-of-the-art technologies merge with drastic changes in demand to bring energy (and material) consumption as low as possible, while providing decent material conditions and basic services for all”, the authors state. Only through such a radical transformation, they add, can human needs be met within critical planetary boundaries. At present, those daring to suggest alternatives to our current model of constant economic growth or promoting steady state economics are likely to be dismissed as new age cultists or “degrowth fetishists” trying to make everyone poor. The new study, according to lead author, Joel Millward-Hopkins of the University of Leeds, “offers a response to the cliched populist objection that environmentalists are proposing that we return to living in caves”. The paper points out that “inequality and especially affluence, are now widely recognised as core drivers of environmental damage”. Consider that in the year since the Covid-19 pandemic began, the collective wealth of the world’s billionaires has ballooned by some $3.9 trillion (€3.2 trillion) while hundreds of millions of the world’s poorest people were plunged deeper into poverty and financial insecurity as a result of the pandemic. Trickle-down economics This further debunks the concept known as trickle-down economics, the notion that tax breaks for the wealthy would somehow flow towards wider society. Resources are instead being rapidly siphoned upwards towards the already wealthy and economically powerful. The paper points out that current levels of energy usage “underpin numerous existential crises, resource scarcity and the geopolitical instabilities these issues can catalyse, especially in a growth-dependent global economy”. While there have been significant improvements in energy efficiency, these have “largely served to boost productivity and enable further growth”. Crucially, beyond a certain point, increases in energy use in a given society deliver little or no additional benefits to that society. The study envisages, with the aid of technologies, radical demand-side transformations that largely eliminate excessive consumption and focuses available resources instead on providing the conditions required for flourishing. These include basic physical health and safety, access to clean air and safe water, good quality (largely plant-based) nutrition, and the opportunity for social and political participation. Resolving the paradox of how to satisfy the needs of all while using far less energy and fewer resources depends on sharp global reductions in meat-eating, down by some 85 per cent in rich countries. A massive expansion of public transport globally would greatly reduce energy and emissions while allowing people to meet their transport needs without the expense of owning and running resource-intensive private cars. Globally, much of the existing housing stock needs to be replaced over time with modern buildings with very low heating and cooling energy requirements. This would be another vital step in achieving decent living conditions with far less energy than at present.

### 2NC---AT: Naval Power

#### Naval power high now---zero challengers.

Easterbrook 18—Author of eleven books, he has been a staff writer, national correspondent or contributing editor of The Atlantic for nearly 40 years, was a fellow in economics, then in government studies, at the Brookings Institution, and a fellow in international affairs at the Fulbright Foundation [Gregg, February 2018, *It's Better Than It Looks: Reasons for Optimism in an Age of Fear*, Chapter 6: Why is Violence in Decline?, pgs 136-9, Google Play] AMarb

FROM BEFORE THE COMMON ERA until Pearl Harbor, great powers competed at sea as much as on land. Carthage, Rome, and Troy fought regularly on the waters of the Mediterranean. Enormous fleets—the 1588 Spanish Armada boasted 130 ships—plied the oceans, fighting other fleets, seizing prizes, and staking claims to territory. Even in the days of sail, warships crossed the world: early in the sixteenth century, the Chinese and Portuguese navies clashed repeatedly near what's now Hong Kong. For millennia, nations sunk into their navies amounts that might have ended want, only to behold the investments literally sink. During the modern era, Argentina, Brazil, Britain, Chile, France, Germany, Japan, Russia, and the United States have expended groaning chests of treasure on warships. Naval rivalries between Britain and Germany helped ignite both world wars. The Pacific Theater fighting of World War Il began in part because of America's 1940 decision to forward-deploy its fleet from California to Hawaii, closer to Tokyo, and in part because Japan placed an existential wager on the maritime theories of Alfred Thayer Mahan, a member of the society of famous persons who proved, following their deaths, to have been wrong about practically everything. Many centuries of an extravagant naval arms race culminated in the October 1944 Battle of Leyte Gulf, where 367 warships and 1,800 aircraft hammered at each other with cannon, bombs, torpedoes, and battleship shells weighing up to 3,000 pounds apiece. Then the naval arms race stopped. So did naval fighting. The seas have been quiet for nearly seventy- five years, perhaps the longest stretch without bloodshed on the waters since first the sail was hoisted. Some Argentine and British ships clashed during the 1982 Falklands conflict, and Iranian and Iraqi vessels scuffled around oil tankers during the mid- 1980s, but big fights at sea have come to a halt, as has the great-power naval competition. The last time a major naval battle occurred, India was not yet an independent nation, the solid-state transistor had not been invented, and the Dodgers played in Brooklyn. Century upon century of great-power competition at sea ended with a final score of 10—0. That's the number of supercarrier strike groups possessed by the United States (ten) versus the number possessed by all other nations combined (zero). World War Il left the warships of the Axis powers in Davy Jones's locker. The Soviet Union tried to step in with bucket-of-bolts vessels that craved return to port; since about 1960, the US Navy has enforced hegemony over the blue water. "Hegemony" has a bad reputation in political science, assumed always to be undesirable. In this case, the size, power, and competence of the US Navy has banished fighting from much of Earth's surface. For a half-century, no nation has even attempted to contest US naval dominion. The all-electric, stealth- hull cruisers the United States builds are so advanced —nicknamed "arsenal ships" for their firepower—that no other nation has even experimented with a vessel of this general type. The supercarrier strike groups that America deploys—full-deck, nuclear-powered carriers bearing long-range jets, protected by guided-missile destroyers and screened by nuclear submarines—are so potent, to say nothing of so expensive ( naval hegemony cost the United States $155 billion in 2017), that no other nation has tried to build one. China and Russia possess no nuclear supercarriers, and have none under construction. The limited-deck, diesel-powered carriers China began laying down in 2015 will be suitable for patrolling coastal areas but not for the open ocean, while everything the US Navy builds is intended to travel beyond the horizon. Because the US Navy operates far from the homes of Americans, many are not attuned to its size and might. Soldiers can march in Fourth of July parades, and Air Force fighters can perform Super Bowl flyovers; the Navy's boats can be observed only on the waves. Most who live in other nations are not attuned to the US Navy either. There's no compelling reason to think about a well-behaved military force stationed on the opposite side of the globe. Under US Navy hegemony, piracy still occurs, but great powers have not seized merchant ships in three generations. That cargo ships whose decks are stacked with containers of valuable goods can steam anywhere without fear of being impounded by a warship is the unseen reason global trade took off, and global trade benefits almost everyone, while reducing war. The reality that the US Navy rules the blue water both reduces a historic cause of conflict and enables the prosperity of the contemporary era. Speaking at West Point as president, Obama said that the United States does not use its might to acquire territory or seize resources. Instead, American might is employed to pursue what US leaders believe is best for the world. Such beliefs may be wrong, even tragically so. But has any other nation that possessed overwhelming military force ever refrained from using force for conquest or pursuit of riches? That is the unseen question of the oceans—unseen because fighting on the water has stopped.

# 1NR

## OVERVIEW

### Oil Spills---2NC

#### Chevron prevents catastrophic oil spills

Lamb 16 – Jennifer Lamb, Executive Articles Editor, Emory University School of Law, J.D. 2016; M.S. Agricultural and Applied Economics, Virginia Tech, “OPA OR NOPA? RESTORING COOPERATIVE FEDERALISM IN OIL POLLUTION ENFORCEMENT”, Emory Law Journal, 65 Emory L.J. 841, Lexis

Whether it is 1989 or 2015, images of oil covered birds and tarred beaches from catastrophic oil spills underscore the need for improved environmental protection and enforcement. n1 Historically, catastrophe was enough to unite the U.S. Congress to work together on oil pollution reform. n2 After the Exxon Valdez spilled eleven million gallons of crude oil into the Prince William Sound on March 24, 1989, national outcry erupted over the limited ability of the federal government to respond to, and clean up, oil spills. n3 U.S. citizens demanded that the federal government have the ability to prosecute and hold responsible individuals who spilled oil into waters of the United States. n4 Congress responded by enacting comprehensive amendments to the Federal Water Pollution Control Act - or the Clean Water Act (CWA). n5 These amendments, known as the Oil Pollution Act amendments of 1990 (OPA 1990), treated oil pollution as an inherently national issue. They provided the Environmental Protection Agency (EPA) and Coast Guard with primary and comprehensive authority to address oil spills into waters of the United States. n6 One of the most important components of this enforcement regime is the EPA's ability to levy large criminal and civil penalties against violators. n7

Treating oil pollution as a national issue under the CWA creates some tension with the CWA's central mandate of cooperative federalism. Under cooperative federalism, states and the federal government share the responsibility, with states playing the primary role, to restore the physical, chemical, and biological integrity of the nation's waters. n8

[\*843] Not surprisingly, state and federal tensions over proper management of oil pollution remain a pervasive issue in environmental law. In the early years, states were frustrated with slow federal progress in implementing OPA. n9 In the immediate wake of OPA 1990, many coastal states proposed and adopted provisions to prosecute oil pollution violators themselves. n10 Some states clashed with federal agencies over the details of enforcement in the immediate wake of spills. n11

Today, the balance between state and federal enforcement of oil pollution is managed by a single, crudely drafted 1987 Amendment to the CWA that precipitated the modern OPA provisions. Commonly known as the statutory preclusion provision, n12 the original intent of the provision was to prevent violators from paying twice for violations due to duplicative enforcement actions brought by states, citizens, and the federal government. n13 The provision allows an administrative action by the state to preclude pursuit of a federal civil penalty against a violator, regardless of whether the federal action is brought by a citizen plaintiff or the EPA. Federal courts inappropriately applying the statutory preclusion provision when a state prosecutes first now allows violators to entirely avoid liability . n14 For OPA prosecutions, removing civil penalty liability strikes at the heart of effective federal enforcement.

The increasing size and scale of recent catastrophes by repeat offenders demand that federal enforcement against OPA violators be more effective, not less. For example, the EPA collected $ 25 million - the largest OPA civil penalty in history up to that point - from BP for the North Slope Alaska Spill in 2011. n15 Just two years later, the 210 million gallon spill and $ 1 billion civil penalty collected in the Transocean Settlement - again from BP - dwarfed the [\*844] North Slope spill. n16 In 2010, Plains All American Pipeline paid over $ 3 million for spills occurring in five states. n17 This summer, a spill from a Plains pipeline spread oil 100 miles down the Santa Barbara coast. n18 The bottom line is that serious spills keep happening, and too often by the same companies.

In the wake of environmental disasters such as the Deepwater Horizon and other recent spills, scholars have once again called for Congress to pass OPA reforms. n19 However, given the congressional stalemate over most environmental issues, n20 this Comment looks to how OPA litigation might be used to make national OPA enforcement more effective.

Notably, a litigation approach calls for a marked departure from the typical mechanics of EPA enforcement. The EPA prefers to settle OPA cases, as evidenced by the fact that, since 1999, more than ten OPA consent decrees have been filed n21 - and only two cases have gone to litigation under OPA 1990. n22

But recent case law indicates that the EPA may no longer have the discretion to continue its preference for settlement if it wishes to effectively enforce OPA violations. In 2013, defendants first availed themselves of the statutory preclusion provision during litigation of an oil pollution civil penalties prosecution in United States v. CITGO Petroleum Corp. n23 In CITGO, the company's failure to clean its produced water holding tanks resulted in a significant accumulation of oil. n24 When the tanks overflowed due to a large storm event, over two million gallons of oil flowed into a nearby river, [\*845] resulting in a fish kill and covering numerous birds with oil. n25 As the first case to go to trial for civil penalties under OPA n26 and raise the statutory preclusion defense, n27 CITGO was closely followed by environmental counsel, states, and firms around the country. In the popular press, CITGO was discussed as a model for the Deepwater Horizon prosecution. n28 Although the statutory preclusion defense was unsuccessful in CITGO, the case simultaneously raised the profile of the statutory preclusion provision. Consequently, statutory preclusion is an emerging issue in the effectiveness of oil pollution enforcement. n29

In light of the implications of CITGO, this Comment analyzes the impacts of statutory preclusion on OPA enforcement. This Comment proceeds in three Parts. Part I explores the relationship between legislative intent, OPA, and statutory preclusion provisions under the principles of cooperative federalism in the CWA. Part I includes a novel analysis of to the EPA's guidance on the application of statutory preclusion to OPA cases and details the broad expansion of statutory preclusion by the federal courts in a manner that is inconsistent with legislative intent. Part II next demonstrates how, contrary to established legislative intent, the broad application of statutory preclusion to oil cases directly undermines effective oil pollution enforcement and cooperative federalism. Finally, Part III explores how the application of Chevron deference to the EPA's regulatory interpretation of the statutory preclusion provision would make judicial interpretation of the provision more consistent with legislative intent. Further, arguing for Chevron deference places the agency in a position of leadership in oil pollution prosecution and promotes cooperative federalism. Ultimately, this Comment concludes that the application of Chevron deference and a uniform national standard for statutory preclusion will create net benefits for states, citizens, the EPA, industry, and the environment.

#### Extinction

Barrington 10 – Vanessa Barrington, Columnist for The Green Plate, San Francisco State University B.S., “Oil Spills, Ecology, and the Food Chain”, 6-11, http://www.alternet.org/story/147175/how\_oil\_spills\_affect\_the\_food\_chain

The oceans are engines of life for the entire planet. Scientists believe that all life on earth began in the sea about four billion years ago. Our ancestors were the first tiny creatures that crawled onto the land. Today life depends on the ocean. Oceans are where life originated and hold the keys to our survival.

Half of the world’s oxygen is produced in the ocean. The BP oil spill is the largest in history. How far will it go? How much of the world’s oceans will it affect? All of this remains to be seen, but we do know that each tier of the marine food chain is affected by the oil spill. The only thing we don’t know yet is how widespread it will be.

Oiled birds and the closure of the fishery are dramatic and immediate effects of the spill, while vulnerable marshlands and the tiny creatures we cannot see are the engines of the entire ecosystem. According to this article in Nola.com – the online version of The Times Picayune – the thin layer of marsh mud is home to an entire valuable community of nutrients that feed the whole system. If the marsh is covered in oil, it will suffocate, and every creature that depends on it will suffer. According to the article, “half of the all the life created takes place in this slimy zone just seven-hundredths of an inch thick. It’s a world too small for the human eye to detect and involves creatures few people have ever heard of, but one that looms huge for the larger critters in the system.”

Here’s how it works: At the bottom of the chain are the phytoplankton. They live in the vulnerable marshes and near the surface of the water, obtaining their nutrients from organic matter in the marshes, sunlight, and water. In return they convert carbon dioxide to oxygen – oxygen that all of the rest of the food chain needs. In addition, phytoplankton provide direct nourishment to many sea creatures higher on the food chain. And some of those animals actually begin life in the marshlands, too. Shrimp mature in the marshlands, and then migrate to the ocean where they become food for fish. These fish provide nourishment to birds and animals, like us. It’s not hard to see what happens if the base of our food chain collapses. Where will the food for the other fish come from and how will we replace that oxygen?

### Chevron---Turns Case\*

#### Overruling Chevron causes agency chilling and chaos

Shi 16 – Mingli Shi, JD Candidate at George Washington University Law School and Phillip Berenbroick, Counsel for Government Affairs at Public Knowledge, “Separation of Powers Restoration Act Undermines Essential Judicial Procedures”, 6-7, https://www.publicknowledge.org/news-blog/blogs/separation-of-powers-restoration-act-undermines-essential-judicial-procedur

At its core, the intent of SOPRA is to completely invalidate the Chevron and Auer doctrines – two unanimously decided, foundational cases in modern American administrative law. The Chevron doctrine establishes a framework for courts to review government agency decision-making. Under the Chevron doctrine, the courts look to whether Congress has expressly and unambiguously spoken to the precise question at issue. If it has, the agency must follow Congress’ clear direction. If the statute is silent or ambiguous on the issue, courts defer to the agency’s construction when it is reasonable and permissible within the boundary of the statutory authority, even if courts prefer other interpretations. Similarly, under the Auer doctrine, courts permit a government agency’s interpretation of its own rules to stand unless it is “plainly erroneous or inconsistent with the regulation.” Conversely, under SOPRA, these existing judicial review procedures for agency action would be eliminated, and would be replaced by de novo judicial review.

Judicial deference to agency decision-making is critical in instances where Congress’ intent is unclear because it balances each branch of government’s appropriate role and acknowledges the realities of the modern regulatory state. First, the current framework places policymaking and political considerations in the hands of Congress, as the framers intended. Congress may provide explicit, unambiguous policy directives for federal agencies to carry out. Government agencies deviate from express congressional intent at their own peril.

Second, the current system acknowledges that Congress often affirmatively chooses to leverage the significant subject-matter expertise of the regulatory agencies. Under Chevron, Congress can choose to rely on agencies to compile a comprehensive record, collect data, and convene stakeholders and experts to make complex policy choices in instances where Congress may be unsuited or unwilling to do this work.

Third, judicial deference to Congress and agencies keeps courts from becoming unelected, unconstrained policymakers who would substitute agency decisions with their own policy choices and political preferences. Under SOPRA, this delicate balance would be upended. Requiring courts to instead apply de novo review to agency actions effectively instructs courts that they are free to replace agency decision-making with their own policy preferences – granting vast, unchecked power to a judiciary that conservatives have long accused of legislating from the bench.

SOPRA’s proponents claim that judicial deference under Chevron and Auer has led to “tyranny” by concentrating executive, legislative, and judicial power in the hands of unelected bureaucrats. They believe regulators have been given carte blanche to create law, enforce the law, and decide, via judicial deference, what the law is. If passed, SOPRA would create unprecedented chaos and uncertainty for administrative agencies, regulated entities, and consumers. The late Justice Antonin Scalia may have best pointed out the dangers of unconstrained de novo judicial review in City of Arlington, Texas v. FCC. De novo review would transfer interpretive decisions regarding how to best construe ambiguous statutory directives “in light of competing policy interests—from the agencies that administer the statutes to federal courts.”

### Chevron---Turns---Environment

#### Overruling Chevron power bombs environment – reverses crucial regulatory safeguards

Goodwin 20 [James Goodwin, J.D., M.P.P., is a Senior Policy Analyst with the Center for Progressive Reform, 10-15-2020 https://blog.ucsusa.org/guest-commentary/will-confirming-judge-barrett-be-the-death-of-chevron-deference/]

So, how would eliminating Chevron deference contribute to the goal of kneecapping our system of regulatory safeguards? Most immediately, it would erect a major barrier to expertise-based, science-driven implementation of federal regulatory laws like the Clean Air Act. It is an inescapable feature of lawmaking that even the best-written laws passed by the most conscientious and virtuous lawmakers could not possibly account for all technical details or possible future contingencies that might arise through sound and faithful implementation. Practical experience of enforcing the law will inevitably uncover gaps and expose ambiguities. This will especially be the case in regulatory statutes that require the application of cutting-edge science and technology for their effective implementation. What constitutes a “source” of air pollution? Or, how should the EPA go about determining the scope of reductions of air pollution one state should achieve so as not to cause problems for downwind states?

The real question is: Who is in the best position to fill these kinds of gaps and stake out a sensible position amidst these kinds of ambiguities? As both a constitutional and a policy matter, and clearly with respect to technical expertise, we should prefer agencies over the courts, and Chevron deference merely reflects this preference. Constitutionally, this approach is superior because Congress, in authorizing agencies to implement statutes, is also delegating authority to them to resolve these questions – and not to the courts. Thus, intrusion by the courts on these matters would be inconsistent with, if not an open defiance of, the clear instructions that Congress has laid out in the statutes. In terms of good policy, agencies – thanks to the vast expertise they have at their disposal (particularly compared to generalist judges) – are better equipped to resolve these details coherently and in a way that best effectuates the laws’ underlying purposes and goals. That is why Congress committed these issues to them in the first place.

But, by repealing Chevron, the Supreme Court would essentially invite judicial policymaking, as activist judges would have freer rein to exploit unavoidable statutory ambiguities in order to substitute their own policy preferences. Or worse, it could halt agency action until Congress could pass legislative changes to resolve all ambiguity. For instance, if construing a term like “source” in a particular way would lead to weaker regulations, then judges might be able to do just that – even if the EPA had sought to adopt a different interpretation that would have promoted stronger public health and environmental safeguards consistent with the Clean Air Act’s protective orientation.

If that’s not bad enough, the importance of Chevron has taken on an extra dimension in recent years – one that not coincidentally traces its origins to the paralyzing dysfunction that has come to define Congress: Many agencies’ authorizing statutes have not been updated, to account for changes in technology or emerging threats implicated by the statutes’ objectives. The good news, though, is that in many cases, Congress had the foresight to design these statutes in ways that would permit agencies to remain responsive even in the face of inevitable, but always unpredictable, change, as long as deference to agency expertise remains the doctrine.

The Clean Air Act offers a good illustration. For years, lawmakers have failed in all efforts at passing legislation to address the climate crisis. Consequently, following the Supreme Court’s 2007 Massachusetts v. EPA decision, which held that the Clean Air Act covered greenhouse gases, the Obama administration set about developing regulations under the statute to address emissions from leading sources, including automobiles and fossil-fueled power plants. Unsurprisingly, the application of the law’s provisions to this novel air pollutant revealed new gaps and ambiguities, which the EPA was required to resolve by drawing upon its technical and scientific expertise. There was nothing illegitimate or inappropriate about any of this. Rather, the law was working exactly as Congress had intended. Just as importantly, had the Trump administration not repealed those rules, the Chevron deference doctrine still would have provided reviewing courts ample power to police any attempts by the Obama EPA to stray beyond the statute’s boundaries.

And this is precisely the scenario that some business interests have in mind as they continue to wage war against Chevron deference. The counter-majoritarian dynamics of Congress are such that they have been able to block new regulatory legislation to address emerging issues like the climate crisis. But they haven’t been able to cobble together the votes to repeal or weaken existing laws. And, thanks to Chevron deference, those laws remain a powerful vehicle for advancing protective safeguards as long as they remain on the books. In contrast, repealing Chevron would effectively “fossilize” them in a state not much different from when they were first enacted. They would be like the Jurassic Park mosquitos trapped in amber – parchment relics perfectly preserved but otherwise incapable of living and responding to present day circumstances. In short, through the repeal of Chevron deference, these interest groups hope to achieve through litigation what they could not achieve through legislation: neutralizing critical public interest laws like the Clean Air Act.

### 2AC 1 – Other Courts

### 2AC 2 – Thumpers

### Thumpers – 2NC

### Thumpers – 2NC – Biden Vaccine Mandate

#### Doesn’t thump – they’ll avoid upholding the regulation despite good legal args

Marimow 11-9 [Ann Marimow writes about legal issues for The Washington Post, 11-9-2021 https://www.washingtonpost.com/national-security/vaccine-mandate-businesses-court-challenge/2021/11/09/9c248950-416d-11ec-a3aa-0255edc02eb7\_story.html]

David Vladeck, an occupational law expert at Georgetown Law School, said OSHA was well within its power to issue the rules. But how the agency will fare in court is another question.

The federal government has a strong case, Vladeck said, because the point of the specific act it invoked is “to ensure that workers are safe in the workplace.”

“It’s going to be controversial because it’s covid,” he said. “Not because OSHA has somehow overextended its jurisdiction.”

Large survey explores factions between Democratic and Republican parties

The federal safety agency largely avoided issuing emergency standards in recent decades, after a string of court losses in the 1970s and early 1980s on emergency rules related to benzene, asbestos and certain pesticides. But Vladeck said that the vaccinate-or-test standard was on more solid legal ground, based on the unique circumstances of the pandemic that so far has killed more than 750,000 people in the United States.

In the other emergency cases, “there was no proof of the kind that exists here,” he said. “There is a public health emergency that needs an immediate response.”

David Michaels, who headed OSHA under President Barack Obama, said opponents of the requirements are portraying them inaccurately, ignoring the option for those who don’t want to get vaccinated to wear masks and get tested regularly.

He pointed to statements from the Liberty Justice Center, a conservative legal advocacy group, which says on its website that the federal government is “mandating COVID-19 vaccines for all Americans who work for private companies with 100 or more employees.”

Brandon Trosclair, the former political candidate in Louisiana whose businesses also sued the federal government, is quoted on the site as saying the mandate forces workers to get a vaccine or be fired.

“They’re trying to pretend that this is a vaccination mandate, to make people angry,” Michaels said.

A spokeswoman for the Liberty Justice Center, which represents Trosclair, said: “The federal government is telling businesses to impose vaccines or testing on their employees. That is a mandate.”

Since August, the Supreme Court has three times refused to stop vaccination requirements: in Indiana, New York and Maine. Justice Amy Coney Barrett, a conservative, rejected a request from Indiana University students. Justice Sonia Sotomayor, one of the court’s three liberal members, declined to halt a New York City mandate for public school teachers. The justices handled the emergency petitions from the regions of the country in their purview without referring the matters to the other justices.

And the full court turned down a request from Maine health-care workers to block a state mandate that does not include an exception for religious objections. Three conservative justices noted their dissent, with Justice Neil M. Gorsuch writing that there should be a religious exemption.

But the legal questions about the administration’s new rules will center on different questions than those cases. They will involve the scope of OSHA’s regulatory power and whether the rules are consistent with its authority.

In some ways, Biden’s policy is more lenient than those imposed by some private companies and states. Many state regulations that apply to health-care workers, for instance, do not give unvaccinated employees the option of frequent testing.

“Not all of these claims are the same and not all of these mandates are the same,” said Wendy Parmet, a Northeastern University law professor who specializes in public health law.

She noted that for decades, states have required certain vaccines for children to attend school and pointed to the 1905 Supreme Court decision upholding state authority to enforce vaccination laws.

At the same time, Parmet said, the current Supreme Court majority is “far more skeptical of regulatory power, public health protection and especially when it implicates religious liberty claims.”

### 2AC 3 – Not intrinsic

### 2AC 4 and 5 – Other Cases

## 2AC 6 – Link Turn

### Link – 2NC OV\*

#### Capital is finite and spills over---the Court will seek to balance decisions within issues

HLR 11 – Harvard Law Review, “ADVISORY OPINIONS AND THE INFLUENCE OF THE SUPREME COURT OVER AMERICAN POLICYMAKING”, June, 124 Harv. L. Rev. 2064, Lexis

In assessing the Court's power relative to the elected branches, it is first necessary to be clear about what motivates the Supreme Court. When exercising judicial review, the Court seeks to vindicate its constitutional vision by striking down legislation repugnant to that vision. This is true whether one believes that the Court seeks in good faith to divine the true meaning of the Constitution and impose it on the elected branches, attempts to interpret the Constitution faithfully but subconsciously imports its own policy views, or disingenuously strives to implement its policy preferences in the guise of neutral interpretation. For the purposes of the present argument it is irrelevant which view or combination of views is most accurate, and the phrase "constitutional vision" will stand for any and all of these. Yet as suggested above, the Court is not unconstrained when it seeks to effect its constitutional vision through judicial review: if it strays too far from the political mainstream, n55 it will face consequences that undermine its constitutional [\*2076] vision even more than would the upholding of a disfavored statute. n56 The upshot is that the Court operates under conditions of scarcity and must economize on its political capital to go as far in implementing its constitutional vision as political realities allow, which sometimes means upholding (or declining to review) government actions that contravene that vision. n57 And, as a distinct matter, most [\*2077] Justices have displayed a desire to conserve the Court's political capital and maintain its institutional prestige as much as possible even where the Court was not immediately threatened with any hard political constraints. n58 This conservatism is especially understandable given that the Justices are generally not political experts and lack the sophisticated public relations apparatuses of the elected branches, and that the elected branches have substantial capacity to shift public opinion about the Court if they so choose; these factors make it rational for the Court to be parsimonious with its political capital in order to avoid blind overreaching.

[FOOTNOTE]

n57. Thus, the Court's decisionmaking process in a judicial review case incorporates its internal preferences and its view of external constraints as follows: R = B / C, where B equals the benefits to the Court's constitutional vision of invalidating a given piece of legislation, C stands for the cost the Justices expect to incur in terms of political capital, and R gives the trade-off rate between costs and benefits in any given case, such that the Court will expend its political capital in those cases where R is highest, so long as R > 1.

A reasonable objection to the model elaborated in this Part is that although the Court is politically constrained, this "bank account" model in which the Court has finite political capital to "spend" by striking down popular government actions is unrealistic: the Court can also increase its prestige - its institutional capital - by exercising judicial review, which has been the effect of Marbury and Brown, two decisions without which the Court would be much weaker now. Nonetheless, most countermajoritarian decisions do seem to cost the Court rather than increase its capital (Marbury was a refusal to make the countermajoritarian decision, see Friedman, supra note 53, at 60-62, and Brown jeopardized rather than solidified the Court's power over the years immediately following the decision, see Klarman, supra note 53, at 312-43). This is especially true in the short run, while the decision remains countermajoritarian, and it is the short run that counts for the current Justices: the fact that Brown is today sacrosanct did not help the Court when Southern resistance threatened that decision's efficacy in the years immediately after its announcement. Cf. Daryl J. Levinson, Parchment and Politics: The Positive Puzzle of Constitutional Commitment, 124 Harv. L. Rev. 657, 743 (2011) ("Evidently, the Court can build up a savings account of approval that it can then spend down by issuing unpopular decisions without losing public support."). The necessary implication of Levinson's statement is that the "savings account" - and thus the Court's countermajoritarian capacity - is finite. At any rate, the Court's position is no different from that of any other political actor: though the presidency as an institution, for instance, would certainly lose influence as a result of a string of weak, unassertive presidents, and might gain it through the acts of a strong leader, any given President at any given time is undoubtedly limited by political constraints.

#### That’s true in the antitrust context – there is a perceived ideology of enforcement that it’s liberal – justices make decisions factoring in those external variables

Ventoruzzo 15 – [Marco Ventoruzzo - Full Professor of Business Law at Bocconi University in Milan and Full Professor of Law at Penn State Law School, 2015, “Do Conservative Justices Favor Wall Street: Ideology and the Supreme Court's Securities Regulation Decisions”, <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1277&context=fac_works>, eph]

C. Ideology in the Supreme Court's Securities Regulation Decisions

Probably the best evidence that political ideology can play a role in the area of securities regulation is the set of rules concerning the composition of the Securities and Exchange Commission (SEC). Section 4(a) of the 1934 Exchange Act sets forth that the SEC should be composed of five members appointed by the President with the "advice and consent" of the Senate, but also requires that "[n]ot more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as may be practicable."8 ° The statutory call for a bipartisan SEC indicates that regulation and enforcement activities concerning the financial markets can be subject to diverging philosophies along political lines.8 1 It is obviously impossible here to fully discuss the general economic tenets of conservative and liberal policies with respect to the regulation of financial markets. General intuition, noted above, is that ''conservative" views of economic policy emphasize the efficacy of markets over government intervention and regulation, while for liberals the position is reversed. The consequence is that conservatives tend toward deregulation based on the conviction that market failures rarely justify protections for perceived weaker parties in a private transaction. Liberals, on the other hand, are more skeptical about the virtues of free markets and believe that regulation should curb the possible inefficient and inequitable outcomes of laissez-faire market operation.8 2 In short, the former tend to be more "pro-business," the latter more "pro-investor." 83 An illustration of this possible political divide is the legislative history of the so-called Private Securities Litigation Reform Act of 1995.84 In the 1990s, there was a growing concern that frivolous securities lawsuits could arise as attorney-driven class actions, in particular invoking section 10(b) and Rule lOb-5 of the Exchange Act, forcing defendants to settle in light of the potential costs of discovery.8 5 Congress created this piece of legislation to curb such a phenomenon through different measures like raising the pleading standards.86 In order to survive a motion to dismiss, a plaintiff had to plead false statements "with particularity," and that pleading had to create a "strong inference" of scienter, one of the elements of a Rule lOb-5 cause of action; in addition, the court granted a "stay of discovery" before the decision on the motion to dismiss. 87 Congress enacted the bill into law over a veto by President Bill Clinton.88 Numerous Democratic representatives voted in favor of the law,89 but the diverging views of President Clinton and Congress evoke the traditional dividing line between liberals and conservatives in this area. This Section briefly addresses the room for policy consideration- politics-in the enforcement of the securities laws. The intent is not to offer a comprehensive account of the degree of freedom that courts have in the interpretation of all the provisions of the securities laws, but more simply to give a flavor of the possible different interpretations of the relevant statutes that a particular set of beliefs concerning the proper scope of the regulation might influence. To begin, note that the U.S. securities laws enacted in the 1930s were among the first modem regulations of the financial industry, and they have served as a model for several foreign jurisdictions.90 These laws, however, apply to one of the most dynamic and innovative industries. Inevitably, enforcing the existing rules to the ever-evolving factual circumstances that characterize this sector leaves wiggle room for different policy considerations. A good starting point is the scope of the securities laws. The definition of "security" that triggers the obligation to register and disclose information, as well as the availability of specific private causes of action designed to protect investors, is broad but also vague. For example, consider the notion of what constitutes an "investment contract" set forth in section 2 of the Securities Act (and section 3 of the Exchange Act) that the Supreme Court had to define on various occasions. 91 Another crucial area concerns the availability of private causes of action to plaintiff-investors allegedly harmed by false, misleading, or incomplete statements in the purchase or sale of securities and the burden of proof that they must satisfy to prevail.92 Furthermore, in several cases, the remedies granted to plaintiffs are based on private causes of action implied by the courts and not explicitly regulated by the legislature, most notably section 10(b) and Rule lOb-5 of the Exchange Act. In these instances, significant interpretative latitude exists. Consider, for example, problems such as the need to prove reliance vis-h-vis the fraud-on-the- market theory, the scienter requirement, or the extension of liability to aiders and abettors.93 The extension of the insider-trading prohibition, a rule largely created by courts, is another area in which different ideological perspectives might affect the decision-making process.94 Conservatives and liberals also often have divergent views about the powers of the government (i.e., the SEC) to enforce the law, particularly the securities laws. For example, some interesting cases in this respect deal with the burden of proof that the SEC must satisfy to establish a violation of the securities laws.95 Rulings on takeover regulation also might indicate different policy preferences of the Justices. These cases, however, show the difficulty of properly coding certain decisions as pro-business or pro-investor, a problem that more generally affects the analysis undertaken later in this Article.96 On one hand, it is possible to argue that takeovers, and more specifically hostile tender offers, favor investors by allowing them to sell their shares at a premium over market prices. On the other hand, some tender offers may not be value-maximizing, and in this case to allow the target corporation, as well as its controlling shareholders and managers, to resist an inadequate or coercive offer could be in the best interest of shareholders. In any case, the proper role of the market for corporate control and how to create a level playing field for bidders and targets in the takeover context are also areas where there is room for competing policy considerations. 97 In addition, litigation concerning the constitutionality of state antitakeover statutes is instructive as to the position of the Supreme Court on issues relating to the relative powers of the federal government and the states in regulating commerce, an area that implicates the politically charged question of the role of the federal government.9" The legislature resolved some of the controversies mentioned above, and the Court unanimously finds this, easy solution. Even assuming that ideological preference might be embedded in their decision-making, judges and, to a lesser but not unsubstantial extent, Supreme Court Justices face several constraints while speaking from the bench: Sometimes statutes and regulations are fairly straightforward and do not leave room for policy considerations; Lower judges might desire not to be reversed on appeal; 99 Fear of "government retaliation" might play a role (in the sense, for example, that striking down a statute might lead the legislature to introduce other measures that the Justice opposes); And public opinion might unconsciously influence them. There are, however, several "hard cases" where the solution does not seem to appear in either the Constitution or in statutory or case law. These hard cases leave room for the different policy approaches of the decision maker, as also indicated by the practice of dissenting opinions. This Article proposes that by examining a significant number of cases, it is possible to detect economic policies preferred by the Justices. In short, there are problems in the area of securities regulation in which ideology can play a role, considering the indeterminacy of the applicable laws.

II. AN OVERVIEW OF EXISTING LITERATURE ON THE ROLE OF IDEOLOGY IN JUDICIAL DECISION-MAKING

This Part begins by discussing the different ways to measure the elusive concept of ideology. Then, after considering the ideology of the Justices, this Part explores the correlation between that Justices' ideology and the way they vote on different decisions. A. Measures of Justices' Ideology One of the interesting and challenging problems of any study that investigates the correlation between the "ideology" of Supreme Court Justices and their voting patterns is how to precisely code such an ambiguous and elusive concept as the ideology of each Justice. There are three major techniques used in the political and legal literature to attribute a position to Justices (and lower court judges) on the political spectrum: (1) the party of the appointing president; (2) the Segal-Cover scores; and the (3) Martin-Quinn scores. The first two are "ex ante" measures because they classify the Justices based on proxies for their ideology measured before their tenure on the bench, and they remain static for the entire period the Justices work on the Court. The last one is an "ex post" measure, ranking Justices from liberal to conservative based on their actual voting in published opinions. The party of the appointing president is probably the most common measure used to code the political affiliation of Justices. This measure is based on the assumption that Republican presidents will appoint conservative Justices and Democratic ones will appoint liberal Justices. It has several advantages: "it is unambiguous, . . . easy to [apply and] understand."' 00 It also raises a separate issue: to what extent presidents are able to effectively influence the activity of the Court. This measure, however, also has some clear drawbacks. The first drawback is that, as with all ex ante measures, the measure is static and does not take into account the possibility (indeed, the likelihood) that some Justices might change their ideological position during their often long tenure, as mentioned above.' 01 In fact, empirical literature suggests that most Justices "drift" in their position on the ideological spectrum throughout their years on the bench.10 2 This variable is also problematic because it assumes that all Republican presidents are conservative and that all Democratic ones are liberal, or at least that they are all conservative or liberal in the same way, which is clearly not true. An interesting study ranked the U.S. presidents from Franklin Roosevelt to Bill Clinton based on their social and economic liberalism.' 0 3 The ranking is based on a 1995 survey of a random group of political scientists, and the results-used in this Article's empirical analysis-are as follows (100 being extremely liberal and 0 extremely conservative): In addition, not all presidents want or can appoint a Justice who precisely mirrors their views. 10 4 Other considerations might affect the decision, such as the need to take into account the geographical origins of the candidate and-especially in more recent years-the need to create a diverse Court in terms of gender and race to appeal to part of the electorate (consider President Ronald Reagan's appointment of Justice Sandra Day O'Connor or President Barack Obama's appointment of Justice Sonia Sotomayor). Political and party necessities can influence the President: for example, senators can play a role in the selection, especially the senator of the same party as the President from the state of the nominee, though this is more likely to occur in the selection process for the lower federal courts and is probably less relevant in Supreme Court nominations. Finally, the President can make a mistake in assessing the position of the appointee on the political spectrum,' 0 5 or simply may not care so much. Notwithstanding these caveats, this Article uses the party of the appointing president as one proxy for the ideology of the Justices, for the reasons indicated above. A second very common measure for the ideology of Supreme Court Justices is the so-called Segal-Cover index.' 0 6 This is also an ex ante measure that ranks Justices on a conservative-to-liberal spectrum based on a content analysis of editorials published in two liberal and two conservative newspapers about the nominees in the period from their nomination to their confirmation.'0 7 In its original formulation, to determine the Segal-Cover index, each paragraph of an article receives a score: +1 if it indicates a liberal attitude of the candidate, 0 if a moderate one, or -1 if a conservative one. The position of the Justice is measured according to the following formula: In the above formula, "1" is the number of paragraphs indicating a liberal ideology, "c" is the number of paragraphs indicating a conservative ideology, and "total" is the total number of paragraphs. Results can vary between -1 (extremely conservative) and +1 (extremely liberal). In line with other studies, this Article has renormalized the score from 0 (conservative) to 1 (liberal). 10 8 However, the Segal-Cover index is not devoid of shortcomings. Like the Republican/Democratic appointing president variable, the SegalCover index is static and does not consider changes in the Justice's attitudes. A specific bias of this index is that the policies and preferences of the newspaper influence op-ed pieces on prospective Justices. For example, there are certain issues that might receive more emphasis than others, e.g., social issues versus economic ones. In addition, the newspaper can influence the length of the article and therefore affect the balance between paragraphs emphasizing a conservative or a liberal inclination.109 This methodology does not take into account other possible important sources that indicate the ideology of a Justice, from scholarly articles to books published before the nomination. 110 Professors Lee Epstein, William Landes, and Richard Posner have created a more comprehensive index that also considers these elements, but this Article does not use it in this analysis. 11 Another possible bias of the Segal-Cover index is that, in the period between nomination and confirmation, the authors of the editorials might write "strategically"--trying to make a candidate appear more liberal and less self-restrained to enrage Republican Senators, for example. The Segal-Cover index is, however, popular in the literature, and it has the advantage of comporting with general scholarly evaluations of the Justices.112 In addition, unlike the party of the appointing president, the Segal-Cover index ranks the Justices on a continuous scale from -1 to + 1 (or from 0 to +1), offering a more nuanced measure of the position of the Justices and allowing for more precise correlations. The most important ex post proxy of the ideology of the Justices is the Martin-Quinn index. 113 It is based on a classification of the actual votes of the Justices during their terms, adjusted to take into account possible alignments among Justices, and it returns an "ideal point" representing a Justice's ideology in a space ranging from very liberal (-6.656) to very conservative (3.884).114 This proxy is useful because it accurately positions the Justices' ideology in different terms and therefore does not suffer from the static nature of ex ante measures. The major problem with this approach is its circularity or endogeneity. Arguably, this measure only shows that a Justice who usually votes conservative is more likely to vote conservative; it does not provide any information on the cases in which a Justice, perceived as liberal at the time of her appointment, voted more conservatively than expected.115 Removing cases on the particular issue researched and evaluating the correlation between the votes cast in other cases and those the research focuses on can partially mitigate this problem. For example, if one intends to test how Justices vote on First Amendment issues, one can factor in the votes cast in cases not dealing with First Amendment claims and verify if these votes predict how Justices will vote on First Amendment controversies. This Article's analysis of securities regulation decisions uses all these variables (the party of the appointing president, economic liberalism of the appointing president, Segal-Cover scores, and Martin-Quinn scores) to test the existence of a correlation between Justices' ideologies and their voting behavior. Combining the most commonly used measures will offer important and interesting insights on this Article's query. 11 6

B. Studies on the Correlation Between Ideology (and Other Factors) and Decisions

As examined above, the empirical literature of judicial behavior is vast.1 17 It would be difficult to provide here a complete account of the numerous studies published by political scientists and legal scholars in this broad area. This Article therefore limits its overview to some select works, pointing out in particular how the studies generally indicate a correlation between the ideology of Justices and judges and the way they vote. 118 One of the forerunners of empirical legal studies in this area was Professor C. Herman Pritchett, who in the 1940s started to keep track of the votes of the Supreme Court Justices, noting in particular the number of dissents and the allegiances among Justices sharing a political view. 19 The work of Professor Pritchett attracted a lot of interest as well as criticism, while several studies have confirmed his intuition that ideology plays a role in judicial behavior. The work of Professors Jeffrey Segal and Albert Cover offers a good illustration of the major results of this line of research. In their study, they find that ideology explains in a robust way (the correlation coefficient is 0.80) the aggregate voting behavior of the Justices. 120 Many other studies indicate a relationship between the policy preferences of the Justices and their voting. Ideology might play a role in the very selection of cases that the Supreme Court will hear. Studies have found that liberal Justices tend to grant certiorari more often when the lower court rendered a conservative opinion, and vice versa for conservative Justices. 121 This is particularly interesting considering that according to other studies, Justices want to hear cases they intend to reverse, and in fact empirical evidence indicates that between 1953 and 1994 the Supreme Court reversed the majority of the decisions it reviewed (61.3 %).122 Especially since the 1960s, conservative Justices have been proportionately voting to overturn more liberal precedents and strike down more liberal statutes, and the opposite is true for liberal Justices. 1 23 Other studies have shown an inclination of some Justices to vote for the defendants in criminal law cases if the litigation involves either statutory interpretation or Constitutional issues, which suggests coherence with a particular ideological view.124 At least one empirical study has also examined the interpretative techniques employed by the Justices-in particular their use of legislative history. According to its authors, not only are liberal Justices more likely than conservative ones to use this interpretative technique, but Justices are more inclined to refer to legislative history "when it favors their ideologically preferred outcomes.' 125 Another line of research investigates the sensitivity of the Supreme Court to external pressures, whether real or perceived. While these studies do not examine the role of ideology in the Supreme Court's decisions, they are relevant because they seem to confirm that Justices pay attention to extra-legal considerations, which might be a way that politics influence them. For example, one research study shows that when there is an ideological difference between the Court and Congress, the Court is less likely to invalidate a federal statute, which might be a concern for possible "retaliations" from Congress-either enacting a new statute with similar effects or other possible actions such as a reduction of the Court's budget. 126 More generally, other works find that the Justices are responsive to changes in the public opinion.' 27 Even more central to the topic of this Article is the finding that the Supreme Court reacts to the business cycle, for example by siding with the government in times of economic growth and tending to rule against it during economic downturns, but deferring to government efforts in times of crisis. 128 The instant empirical analysis has tested the hypothesis that Court decisions in securities regulation cases have some correlation with economic conditions.129 Scholars have conducted extensive research on lower court decisions, focusing on decisions of the federal courts of appeals. Of course, the institutional context is different in such cases. Federal judges can face more constraints than Supreme Court Justices in their decision-making for reasons that this Article has already mentioned (fear of reversal, hopes of elevation to a higher court, etc.). It is important to note, however, that even with respect to lower federal judges, there are strong indicia that ideology affects judicial decision-making. For example, judges close to the Democratic Party vote more consistently against corporations in antitrust cases and for unions in labor disputes.' 3 ° An article on the Chevron doctrine claims that "panels controlled by Republicans were more likely to defer to conservative agency decisions (that is, to follow the Chevron doctrine) than were the panels controlled by Democrats." ' 31 Similarly, "Democrat-controlled panels were more likely to defer to liberal agency decisions than were those controlled by Republicans."' 3 2 In addition, according to a study of the U.S. Court of Appeals for the Second Circuit, conservative Justices tend to align their votes with conservative judges, and liberal Justices and judges similarly align. 1 There is also evidence of constraints on judicial behavior and of strategic voting. District court judges are adverse to reversal, or at least to a high frequency of reversals, and in their voting they seem to take into account the policy preferences of the court that will hear an appeal. On average, judges appointed by a Democratic president tend to impose lower prison sentences if a mostly liberal court of appeals reviews them and longer ones if the appellate judges are mostly Republican. 134 Also, researchers have tested "panel effects": male judges seem more likely to vote for women in employment discrimination disputes if a woman is on the panel, 135 while white judges more frequently vote in favor of voting rights if a black judge sits on the panel.13 Researchers have also conducted important studies on state judges, especially to investigate the behavior of elected judges. Elected judges rule more frequently in favor of in-state plaintiffs and against out-of-state businesses than appointed judges, especially when the decision transfers wealth to the state. 137 Additionally, sentences in violent criminal cases are more severe if the judge is approaching reelection.' 38 Statistically, state supreme court justices are more likely to confirm death sentences when the electorate supports them. 139 This brief overview of some contributions indicates evidence that ideology informs judicial decisions and that judges take into account external variables like the panel composition, public opinion, Congress's political composition, fear of reversal, and economic cycles. The results of previous research make interesting and relevant the questions that this empirical analysis investigates in the next Part, in particular whether the ideology of the Justices plays a role in securities regulation disputes.

**Link – 2NC – UQ frames the link**

**Abrupt nature of the plan guarantees the link.**

**Marshall 2** (William Marshall, prof of law @ UNC, Fall 2002, 73 U. Colo. L. Rev. 1217)

It might also be argued that the judicial activism question is misguided because judicial activism is not inherently wrong. Rather, the proper inquiry should simply be whether a case was correctly decided - not whether it was activist. Although I agree that a determination of activism is not the same as a determination of merit (an activist decision is not necessarily wrong, a non-activist decision is not necessarily correct), the activism inquiry can shed light on the merits issue. A decision that overturns a federal law while ignoring precedent, text, history, and jurisdictional limitations would appropriately be subject to an activist critique regardless of result. In addition, one need not be completely in the camps of Alexander Bickel, Robert Nagel, Mark Tushnet, and others to recognize that there is value in judicial restraint. Court overreaching may negatively affect the political capital of the judiciary. Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (1962). **Abrupt judicial action** invalidating politically achieved results may undermine long-term support for the principles the decision was designed to achieve. Robert F. Nagel, Constitutional Cultures: The Mentality and Consequences of Judicial Review (1989). Courts may well be less receptive to progressive social and economic action than are the political branches. Mark Tushnet, Taking the Constitution Away from the Courts (1999). Finally, the activism critique is important in that it sets rhetorical constraints on actions that might otherwise appear unbounded. The legitimacy of a particular decision cannot be completely appraised without evaluating the deciding court's methodology. Activism is a part of that inquiry.

## 2AC 7 – Not Perceived

**Link – 2NC – A2: Not Perceived**

**Antitrust is perceived---it’s in the spot, spot, spotlight**

**Waller 19** (SPENCER WEBER WALLER, John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law, ANTITRUST AND DEMOCRACY, 46 Fla. St. U.L. Rev. 807, y2k)

Another important aspect of an **engaged civil society** is the presence of a **robust** academic sector that teaches and studies **competition law**, economics, and policy. In the United States, the directory of the Association of American Law Schools lists approximately 200 accredited law schools with more than 260 professors who teach, or have taught in the past, antitrust law as full-time faculty members. 298This is in addition to numerous part-time adjunct members who teach antitrust courses in addition to their full-time jobs as practicing attorneys, judges, economists, or enforcers. U.S. law schools also offer masters level programs in antitrust and trade regulation both on [\*852] campus, and on line, for students who are currently working in field, hope to work in the field, and who plan to seek academic careers in this area. 299These subjects also are taught in varying degrees in business schools, economics departments, and public policy schools at both the graduate and undergraduate levels. There are numerous antitrust conferences held throughout the year exploring practice, policy, and theory issues. The result is a **robust debate** about the values, techniques, and results of competition law and policy that continues no matter which party is in office or who runs the enforcement agencies.

The government agencies also play a role in creating an engaged civil society in addition to operating in a transparent manner as discussed above. The agencies post a tremendous amount of material on their respective **web sites**, frequently speak to **legal** and **business groups**, publish guidelines for both professional and lay audiences, hold **press conferences** on high visibility cases, and other enforcement actions. The agencies also testify in front of Congress, hold workshops, post on social media, respond to freedom of information act requests, and maintain libraries and databases for the public. 300

Equally important, the agencies receive input from the public as well as send information out to the public. The Agencies receive complaints and white papers from interested parties and the public. 301They obtain testimony and comments from the public in workshops, review responses to draft guidelines, and communicate on an informal basis with members of the competition community on a daily basis. 302

The ways an agency receives input from the public are limited only by its imagination. The Competition and Consumer Commission of Singapore used to hold a contest for the best animated short submission on the evils of cartels. 303Other agencies have come up equally creative ways to receive feedback and input from the public, in addition to the material they make available to the public. 304

[\*853] The **general** and **business press** plays an equally important role in reporting on competition matters. Major publications such as the Wall Street Journal, New York Times, Washington Post, The Economist, and many business magazines **regularly** feature stories about criminal **cartel cases** and **investigations**, issues involving allegedly **dominant firms,** the flood of **mergers** and **acquisitions** in the United States and abroad, and major private damage cases. 305More analytical stories appear on such topics as the role of big data in antitrust, algorithmic competition, and the pros and cons of the EU's enforcement actions against Google and pending investigations of other high-tech firms. 306

**Social media** increasingly is both supplementing and partially substituting for traditional press coverage of competition law and policy matters. There is a **plethora of forums** for competition law topics and well as numerous individuals who post on **Twitter** and/or link to news stories published elsewhere as well as on other social media platforms. 307There is even a substantial number of twitter posts about the merits of so-called "#hipster" antitrust. 308

The result is a **vigorous debate** about most issues of importance in the competition law world and **very few issues of any kind** that **escape notice** and comment in the antitrust profession. The more important and salient of these issues also receive at least some **general public attention** and comment suggesting that **antitrust policy operates in the spotlight**, at least among lawyers and business people most directly affected by the decisions and policies at issue. While competition policy is an area of specialization, and competes with many other issues of more life and death importance for the time and attention of the public, it is heartening to see the number and resources of the actors in civil society who devote time and resources to the promotion of what they consider sound competition law and policy. 309

## Chevron Fiat

## Patents Debate

### PTO---Internals---Patents Key Innovation

#### Strong patents are key to innovation, tech diffusion, and cross-fertilization---every study is strongly Neg

Kline 14 – David Kline, Pulitzer Prize Winning Journalist and Strategic Communications Strategist, “Do Patents Truly Promote Innovation?”, IP WatchDog, 4-15, http://www.ipwatchdog.com/2014/04/15/do-patents-truly-promote-innovation/id=48768/

In recent years, a great many studies of the real-world impact of patenting on innovation and economic growth (many available for free on ssrn.com) point to its beneficial effects. Arrow (1962), Griliches (1963), Schmookler (1966), Kitch (1977), Reinganum (1981), Tirole (1988), Klemperer (1990), Romer (1990), Giulbert and Shapiro (1990), Grossman and Helpman (1991), Aghion and Howitt (1992), Scotchmer (1999), and Gallini (2002) all found that patents foster ex ante innovation — meaning, they induce people to invent because of the prospect of reward.

Invention, it has been shown, is driven primarily not by genius or happenstance but rather by markets and the expectation of the profit that can be gained by securing the patent rights to new technologies. Zorina Khan of Bowdoin College and the late Kenneth Sokoloff at UCLA found that among the “great inventors” of the 19th century, “their patterns of patenting were procyclical [and] responded to expected profit opportunities.” And as Khan noted elsewhere, “Ordinary people [are] stimulated by higher perceived returns or demand-side incentives to make long-term commitments to inventive activity.”

By contrast, in countries without patent rights, Barro (1995) found that people have an “excessive incentive to copy” and insufficient incentive to invent for themselves. Moser (2004), meanwhile, reported that “inventors in countries without patent laws focus on a small set of industries … while innovation in countries with patent laws [is] much more diversified.”

The evidence that patents foster innovation is not confined solely to the U.S. or even to developed countries. In 2008, a study by the Organization for Economic Co-operation and Development (OECD) found that “stronger levels of patent protection are positively and significantly associated with inflows of high-tech product [and] expenditures on R&D.”

And in a study that attracted wide attention, Shih-Tse Lo of Concordia University in Montreal reported that the reforms strengthening the Taiwanese patent system in 1986 “stimulated additional inventive activity, especially in industries where patent protection is generally regarded as an effective strategy for extracting returns, and in industries which are more R&D intensive. The reforms also seemed to induce additional foreign direct investment in Taiwan.” But such benefits did not accrue across all sectors of the economy. “For industries that chiefly use other mechanisms to extract returns from their innovations, such as [trade] secrecy, the strengthening of patent rights had little effect on their inventive activity.”

In addition to encouraging ex ante innovation, Acemoglu, Bimpikis, and Ozdaglar (2008) discovered that “patents [also] improve the allocation of resources by encouraging rapid experimentation and efficient ex post transfer of knowledge across firms.”

Given that patents grant exclusionary rights, some will be surprised to learn that the patent system is actually one of the most effective tools for knowledge-sharing and technology transfer ever devised. A 2006 study by French economists Francois Leveque and Yann Meniere found that 88 percent of U.S., European, and Japanese businesses rely upon the information disclosed in patents to keep up with technology advances and direct their own R&D efforts.

This is hardly a new phenomenon. The inventor Elias E. Reis reported that when he read in the Official Gazette in 1886 about a patent issued to Elihu Thomson for a new method of electric welding, “there immediately opened up to my mind a field of new applications to which I saw I could apply my system of producing heat in large quantities.” And Thomas Edison was known to frequent the patent office to study other inventors’ patents and spark ideas of his own.

Indeed, new research published last year found that rather than blocking development, Thomas Edison’s seminal 1880 incandescent lamp patent (No. 223,898) actually “stimulated downstream development work” that resulted in “new technologies of commercial significance [including] the Tesla coil, hermetically sealed connectors, chemical vapor deposition process, tungsten lamp filaments and phosphorescent lighting that led to today’s fluorescent lamps.”

As Sokoloff and Naomi Lamoreaux at Yale (1997) observe, “The very act of establishing exclusive property rights in invention not only protected patentees but also promoted the diffusion of information about technology. To see why, imagine a world in which there was no patent system to guarantee inventors property rights to their discoveries. In such a world, inventors would have every incentive to be secretive and to guard jealously their discoveries from competitors [because those discoveries] could, of course, be copied with impunity.

“By contrast,” they noted, “in a world where property rights in invention were protected, the situation would be very different. Inventors would now feel free to promote their discoveries as widely as possible so as to maximize returns either from commercializing their ideas themselves or from [licensing] rights to the idea to others. The protections offered by the patent system would thus be an important stimulus to the exchange of technological information in and of themselves. Moreover, it is likely that the cross-fertilization that resulted from these information flows would be a potent stimulus to technological change.”

## Last - IL

**IL – 2NC – Yes PC**

**Interpretations require use of limited pc**

**Graber 17** MARK A. GRABER Regents Professor, University of Maryland Carey School of Law. (April, 2017). “JUDUCIAL SUPREMACY V. DEPARTMENTALISM SYMPOSIUM: JUDICIAL SUPREMACY REVISITED: INDEPENDENT CONSTITUTIONAL AUTHORITY IN AMERICAN CONSTITUTIONAL LAW AND PRACTICE.” William & Mary Law Review, 58, 1549. <https://advance-lexis-com.proxy2.cl.msu.edu/api/document?collection=analytical-materials&id=urn:contentItem:5P5N-7SJ0-00CW-G21Y-00000-00&context=1516831>. {DK}

Supreme Court Justices would face insuperable legal, institutional, and political barriers should they actually attempt to secure a "monopoly on constitutional interpretation." 26Link to the text of the note The constitutional text interpreted in light of long-standing precedents often mandates judicial decisions allocating constitutional authority elsewhere. The Justices have no legal power to punish jurors who disregard judicial statements of the law. Printz v. United States forbids the Supreme Court from correcting state governors who refuse to allow state police to implement federal laws they believe are unconstitutional. 27Link to the text of the note The Supreme Court is incapable of learning about the vast majority of constitutional decisions that are made every day in the United States. Police officers patrolling the streets make numerous constitutional decisions about when searches are appropriate that are rarely reviewed by their superiors, much less appellate judges. 28Link to the text of the note [\*1556] State and lower federal courts have various means for keeping constitutional decisions beneath the Supreme Court's radar. Furthermore, the **Justices have limited political capital**. 29Link to the text of the note The Supreme Court during the Civil War found various jurisdictional exercises for avoiding decisions on the constitutional status of legal tender and presidential suspensions of habeas corpus. 30Link to the text of the note The Justices of the Ellsworth and Marshall Courts made a strategic decision when ruling that the Supreme Court could exercise appellate jurisdiction only when doing so was consistent with both Article III and a federal statute. 31Link to the text of the note

**IL – 2NC – A2: Compartmentalization**

**Their evidence indicts the theory, but doesn’t dispute its belief---justices think this way, even if false---prevents repeat conflicts with Congress**

**Yoo 4**

(John C. Yoo, Professor of Law at the University of Texas, Texas Law Review, November, 83 Tex. L. Rev. 1)

n443. This last point is quite controversial. Jesse Choper has argued, for example, that "the people's reverence and tolerance is not infinite and the Court's public prestige and institutional capital is **exhaustible**." The judiciary's ability to **strike down laws** without incurring severe institutional costs, therefore, "is determined by the number and **frequency** of its attempts to do so, the felt importance of the policies it disapproves, and the perceived substantive correctness of its decisions." Choper, supra note 35, at 139. Others, by contrast, have asserted that the Court may - at least in some circumstances - actually enhance its legitimacy by actively confronting the political branches. See, e.g., Peter M. Shane, Rights, Remedies and Restraint, [64 Chi.-Kent L. Rev. 531, 546 (1988)](http://www.lexis.com/research/buttonTFLink?_m=11cba94a2e0463ed82e517fc38fdbd65&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b83%20Tex.%20L.%20Rev.%201%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=1258&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Chi.-Kent.%20L.%20Rev.%20531%2cat%20546%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=68&_startdoc=51&wchp=dGLbVzb-zSkAl&_md5=0f60d59f3a3132dcd480986426f03eed) (suggesting that, in some cases, the Court may enhance its legitimacy through opposing the political branches). It would be exceptionally difficult to verify either proposition empirically; about all that can be said with confidence is that the Court sometimes seems to **behave** as if **it thinks** its "institutional capital" is **limited** in this way, and the notion may at least **constrain judicial behavior** in this sense. See Young, State Sovereign Immunity, supra note 92, at 58-60.