# Wiki Doc---Wake R5

# 1NC

## Off

### 1NC – T

#### “Prohibitions” only forbid, do NOT apply legal principles

Channell et al 90 (Channell, J., with Anderson, P. J., and Perley, J., concurring, delivering the Opinion of the **Court of Appeal of California**, First Appellate District, Division Four, City of Redwood City v. Dalton Constr. Co., 221 Cal. App. 3d 1570, 1-30-1990, NexisUni)

[\*\*\*4] We agree with the trial court's conclusion. By its plain language, HN3 section 35704 exempts certain contractors from the application of an ordinance [\*1573] adopted pursuant to section 35701. Section 35701 permits cities to prohibit the use of city streets by heavy trucks. (See § 35701, subd. (a).) However, the portion of the city's hauling ordinance at issue in this case does not prohibit street use; it regulates users by requiring them to obtain a permit and pay a fee in order to lawfully drive their heavy trucks over city streets. (See Redwood City Code, §§ 20.62-20.74.) HN4 To determine the legislative intent behind a statute, courts look first to the words of the statute themselves. In so doing, we must give effect to the statute according to the usual, ordinary import of its language. ( Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].)

[\*\*200] To construe section 35704, which specifically creates an exemption from prohibition of use, to exempt the regulation of that use would violate these cardinal rules of statutory construction. CA(2) (2) The distinction between a regulation and [\*\*\*5] a prohibition is well understood in municipal law. (See San Diego T. Assn. v. East San Diego (1921) 186 Cal. 252, 254 [200 P. 393, 17 A.L.R. 513].) The term "prohibit" means "[t]o forbid by law; to prevent; -- not synonymous with 'regulate.'" (Black's Law Dict. (5th ed. 1979) p. 1091, col. 1.) The term "regulate" means "to adjust by rule, method, or established mode; to direct by rule or restriction; to subject something to governing principles of law. It does not include a power to suppress or prohibit [citation]." ( In re McCoy (1909) 10 Cal.App. 116, 137 [101 P. 419].) CA(1b) (1b) Therefore, we are satisfied that HN5 section 35704 was not intended to apply to ordinances regulating street use, but only to those prohibiting such use.

#### “Scope” refers to statutory authority

Kato et al 99 (Kenneth H. Kato, with John A. Schultheis, and Dennis J. Sweeney, concurring, delivering the Opinion of the **Court of Appeals of Washington**, Division Three, Panel Four, Spokane v. Civil Serv. Comm'n, 98 Wn. App. 574, filed 12-21-1999, NexisUni)

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

#### AND, “antitrust laws” excludes judicial acts beyond statutory interpretation

Wallace et al 92 (J. Clifford Wallace, Chief Judge, Alfred T. Goodwin and Cecil F. Poole, Circuit Judges, delivering the Opinion of the **United States Court of Appeals for the Ninth Circuit**, Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co., 981 F.2d 429, filed 12-7-1992, NexisUni)

The Act's definition of "antitrust laws" "includes the Sherman Antitrust Act, the Clayton Act, the Federal Trade Commission Act, the Wilson Tariff Act, and the Act of June19, 1936, chapter 592." 16 U.S.C. § 2602(1) (citations omitted). The definition's use of the word "includes" suggests that the phrase "antitrust laws" may encompass more than just these statutes. See Highway & City Freight Drivers v. Gordon Transps., Inc., 576 F.2d 1285, 1289 (8th Cir.), cert. denied, 439 U.S. 1002, 58 L. Ed. 2d 678, 99 S. Ct. 612 (1978); American Fed'n of Television & Radio Artists v. NLRB, 149 U.S. App. D.C. 272, 462 F.2d 887, 889-90 (D.C. Cir. 1972); United States v. Gertz, 249 F.2d 662, 666 (9th Cir. 1957). In interpreting another statute, the Supreme Court has held that the term "laws" encompasses both statutes and court decisions. See Illinois v. City of Milwaukee, 406 U.S. 91, 99-100, 31 L. Ed. 2d 712, 92 S. Ct. 1385 (1972). We conclude that the phrase "antitrust laws" embraces not only the text of the Sherman Antitrust Act and the other listed statutes, but also the courts' interpretations of them. [\*\*7] The state action doctrine is an interpretation of the Sherman Antitrust Act, see Parker, 317 U.S. at 350-51, of which Congress was aware, see Director, Office of Workers' Compensation Programs v. Perini North River Assocs., 459 U.S. 297, 319-20, 74 L. Ed. 2d 465, 103 S. Ct. 634 (1983), when it chose the phrase "antitrust laws." HN1 The plain meaning of section 2603(1) thus establishes that the Act is to have no effect on the applicability of the state action doctrine to gas and electric utilities like PG&E.

#### Vote NEG – fiating changes to federal decision-making beyond prohibitions permits infinite unpredictable AFF ground and bidirectional limitations on scope – nullifying antitrust PICs like regulation counterplans and topic disads

### 1NC – T

#### Substantial is certain

Words and Phrases 72 --- Words and Phrases Volume 30, Part 1, 1972, https://www.google.com/books/edition/Words\_and\_Phrases/Xs42AQAAIAAJ?hl=en&gbpv=0&kptab=getbook

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

#### Prohibit requires the activity be clearly and certainly banned – cross apply

#### Violation --- the plan doesn’t mandate any activity be prohibited --- its contingent on the results of international bargaining

#### Voter for limits and ground --- international bargaining is extra topical --- they claim advantages off it --- and allows aff that result in ZERO change to antitrust enforcement

### 1NC – K

#### Attempts to achieve optimal competition subscribe to the notion of *Homo Economicus*---a desire for economic rationality that necessitates dividing society into governable entities---the impact is violent dispossession---vote NEG to forefront an analysis of institutional power relations.

Vicencio 14 (Dr. Eduardo Rivera Vicencio, Professor of the Department of Business and Economics at the Autonomous University of Barcelona; “The Firm and Corporative Governmentality: From the Perspective of Foucault;” International Journal of Economics and Accounting, DOI: 10.1504/IJEA.2014.067421, TM) [language modified]

Foucault explains the change of liberal governmentality to neoliberal governmentality in the 20th century in a detailed description of German neo-liberalism and, in less detail, the North American anarchic capitalism and French neoliberalism. In the case of Germany, the implementation of neoliberalism in the post-war period occurs in 1948, in a non-existent state and within a framework of state reconstruction requirements imposed by the USA and England. However, the theoretical origins lie in the Freiburg School in the late 1930s.

What happens at this stage with the onset of neoliberalism, is the reversal of the analysis performed by ordoliberals, with a state which provides economic freedom, a free market as the organising principle of the state, “ … a state under the supervision of a market rather than a market under the supervision of the state”. Moreover, “For liberals, the exchange is not the essence ... the essence of the market is competition”. This takes on again the classical conception that competition can ensure economic rationality. For this reason, neoliberalism becomes the creator of public law, based on the support and legitimacy of the state governments [Foucault, (2007), p.149 and 151].

Using three examples, Foucault shows the style of a neoliberal government; the first of which is a monopoly. It is referred to as a result of competition of the capitalist system, the product of capital concentration but with the objective of ensuring free competition. The state should intervene but the market itself should also respond to monopoly prices and, facing this possibility, the firm itself should opt for competitive market prices. The second example conforms to economic action which represents ongoing monitoring and activity through regulatory actions and ordering actions. In regulatory actions, price stability (inflation control), tax burden (as a way to influence savings and/or investments) and ordinary actions within the economic political framework are found and referred to as population techniques, learning and education, legal system resource availability, etc. Foucault’s third and final example is social policy which means that the economy ensures that each individual has a sufficient income to live alone or in a group and can be insured against the risks of life, old age and death and, called by the Germans, individual social policy or ‘social market economy’. He comes to the conclusion that the true and essential social politics according to neoliberalism is economic growth [Foucault, (2007), p.163 and 178].

However, the application of this scheme of social policy is not possible in Germany due to the Bismarck Socialist State, the influence of Keynesian economics or security systems that are applied in Europe. From this rejection of the application of neoliberal social policy in Germany, the Chicago School developed the ‘American anarchic capitalism’ along with the privatisation of insurance systems, where each individual, either personally or as a group, could insure against risks. This practice of neoliberal politics, says Foucault (2007, p.179) is what we see today in France (February 14th 1979 class).

Governmentality in the field of economic neoliberal thinking is a company subject to the mechanisms of competition and competitive dynamics; a partnership firm building a social network where the basic units are the way of business, where the objective of neoliberal policies is to spread, multiply and differentiate between firms. “The homo economicus who attempts to reconstruct is not the man of the exchange or the consumer, rather he is the [person] ~~man~~ of the firm and the production man” [Foucault, (2007), pp.182–187].

This subjection of society is not only economic it is vital for competitive play between companies, “... an institutional legal framework guaranteed by the state ...”; in this context, the firm becomes the key operator [Foucault, (2007), pp.209–213].

In the American neoliberalism study, as called by Foucault, anarchic capitalism is a business form based on human capital theory, where income is a capital return and, therefore, a wage is a capital income, inseparable from its holder, where the worker is a business in itself. Homo economicus is an entrepreneur, an economic subject and a legal subject; an interface between the government and the individual, a governable entity, which possesses innate elements and acquired elements. The first is genetic and the latter is the product of investing. In this way, “… the life of the individual – including the relationship, for example, with his private property, his family, his partner, his relationship with his insurance, his retirement – making it a sort of permanent and multipurpose business” [Foucault, (2007), pp.262–277].

Finally, a key element of this analysis is the civil society and its origins in the way to judge this economic subject, which is also the legal subject. “Civil society is the particular set in which it is necessary to relocate these ideal points constituted by homo economicus to manage them conveniently”. This is where the civil society and homo economicus form part of the same set of liberal governmentality technology, bound by the legal and political link [Foucault, (2007), p.336].

What unites individuals in civil society are ‘disinterested interests’ not a whole set of selfish interests and not the maximum profit in the exchange. This civil society groups sets of individuals in a number of nuclei; civil society is communal. Being the link between individuals is itself the principle of decoupling, when the economic loop is installed in society. It also works in reverse, “… the more progress towards economic status ... the more the constitutive bond of civil society and the more [hu]man is isolated is because of the economic loop with one and with everyone” [Foucault, (2007), pp..342–345]. Civil society is the engine of history [Foucault, (2007), p.347].

This paper is developed with the firm as the centre of neoliberal governmentality through the study of power relations of the firm and its discursive developments in this ideology, with reference to Foucault’s (1994, p.238) own recommendation, when he says, “… it should analyse institutions from power relations and not vice versa”

### 1NC – Section 5

#### 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 private sector export cartel practices that produce anticompetitive effects in the markets of countries that agree to a reciprocal framework regarding competition law. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The FTC can utilize current authority without creating new prohibitions.

Khan ‘21

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s congressionally mandated duty to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the Federal Trade Commission Act to reach beyond the Sherman Act and to provide an alternative institutional framework for enforcing the antitrust laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided.15

At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

### 1NC – Politics

#### Biden’s continued PC is key to pass Build Back Better next week – despite inflation concerns

Barrón-López 11-11 (Laura Barrón-López, White House Correspondent for Politico, formerly covered Congress for the Washington Examiner, HuffPost and The Hill, BA political science, California State University, Fullerton, “Dems to White House: The only prescription is more Biden,” Politico, 11-11-2021, <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>)

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again.

Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt.

The clearest solution to avoiding this, they argue, is more Biden.

“All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.”

Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.”

Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate.

But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change.

Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15.

“They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.”

White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days.

“There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said.

The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal.

The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.”

A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass.

But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan.

"They need to sell [physical infrastructure] but also act like it's not enough," said the activist.

"How are they also creating the urgency for BBB to get done, for it to stay on the timeline of getting it done by Thanksgiving? It's a balancing act.”

Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country.

“This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a very profound political imperative for Democrats to get this finished, to end the infighting and sausage-making and shift to creating a narrative about what Democrats have just done for Americans because they've been utterly unable to do that.”

A number of groups plan to amp up pressure next week as Congress returns. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president.

“We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to get Congress to act quickly and get the full back package.”

Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.”

The longer it takes to pass the social spending plan, the harder it becomes to keep the party unified, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced Biden to quickly issue a statement addressing the issue and ever-so-slightly shift his messaging, arguing that passage of the social spending plan would combat inflation.

“Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

#### Plan necessarily drains PC – trading off with unrelated agenda items.

Carstensen ‘21

Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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

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

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

#### PC’s key to global follow-through on climate post-Glasgow summit – impact’s extinction

Chon 11-8 (Gina Chon, Columnist at Reuters Breakingviews, former US Regulatory and Enforcement Correspondent, Financial Times, BS Journalism, Northwestern University, “America’s swing senator can save or scorch planet,” Reuters, 11-8-2021, <https://www.reuters.com/breakingviews/americas-swing-senator-can-save-or-scorch-planet-2021-11-08/>)

The health of the planet hangs somewhere over West Virginia. Joe Manchin, one of the coal state’s senators, is in line to cast the deciding vote on President Joe Biden’s $1.8 trillion “Build Back Better” spending plan. He’ll indirectly be voting on Biden’s ability to influence other countries to fight climate change after the COP26 summit read more.

Biden has faced two main challenges to his spending plan, a companion to the $1 trillion infrastructure legislation Congress approved on Friday. One objection comes from lawmakers worried about the amount of money at stake. After an earlier compromise, climate change initiatives are the biggest chunk of the overall blueprint at $555 billion, more than half of which comes from tax credits for cleaner vehicles and manufacturing. Manchin is already a self-confessed budget worrier.

The other obstacle is unease around specific climate initiatives. Manchin hails from a state with less than 2 million residents, but a heavy reliance on coal. His disapproval helped squash Biden’s proposal for a Clean Electricity Performance Program that would have incentivized utilities to stop using oil, coal and gas. The goal was for 80% of electricity produced in the country to come from clean sources by 2030, compared to the current 40%.

Green-energy tax credits are still on the table and offer a bigger bang for the taxpayer’s buck than the clean electricity program, think tank Resources for the Future estimates. By 2030 they would get the United States to 69% of its electricity coming from clean sources.

Manchin has good reason to keep those tax credits alive. While West Virginia is the second-largest coal producer in the United States and top five in natural gas, according to the U.S. Energy Information Administration, it’s also one of the states most exposed to damage from climate change. More than 60% of its power stations are at risk from a so-called 100-year flood, according to the First Street Foundation.

The senator’s decision will have global repercussions. China, India read more and other countries are only likely to listen to Biden’s pleas to help fight climate change if he looks able to meet such pledges himself. For example, the president wants other countries to help cut methane emissions by 30% this decade, but would still need Manchin’s support to levy fines on U.S. methane-leakers, which is far from guaranteed. For such a small population, West Virginia has a huge responsibility.

### 1NC – Independence

***Next off is FTC independence:***

**FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.**

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

**Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.**

**Nam ‘18**

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

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

**Global free trade reversals will cause *multiple existential impacts*.**

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

**Langan-Riekhof ‘21**

et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

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

### 1NC – ICJ

**The United Nations Security Council should request an advisory opinion with binding force to create an internationally agreed framework of cooperation regarding competition law accelerated by the International Court of Justice and pass a concurrent resolution that non-compliance with the International Court of Justice’s opinion constitutes an enforceable violation of Charter obligations. The United Nations International Court of Justice should convene and, if a dispute is present, issue a binding advisory opinion that failure to enforce the agreed upon competition law is a violation of United Nations Charter obligations.**

**ICJ review better restricts stirkes and spurs U.S. follow-on**

**Shany 12** – Yuval Shany, Hersch Lauterpacht Chair in Public International Law at Hebrew University, Mount Scopus, Rethinking the Law of Armed Conflict in an Age of Terrorism, p. 108-110

In the previous sections of this chapter. I have claimed that the war on terror tends to take place in institutional settings that are unlikely to ensure a proper balance between individual rights and security interests, and that the human rights of the terror suspects might therefore be chronically underprotected by the responding state's legal system. To summarize, certain counterterrorism **measures taken by the executive occur wholly outside the scope of any form of review**; other measures are only reviewed by (deliberately) weak review mechanisms; and **domestic review mechanisms tend to defer to the executive** and operate in ways that under protect the rights of foreign terrorists. How might one prevent such suboptimal decision-making and monitoring processes? One way to break the vicious cycle of weak interbranch supervision which, as we’ve have seen, may lead to new unchecked excesses on the part of the executive—**is to delegate greater monitoring authority to international actors, such as international courts**, committees, international public opinion, international nongovernmental organizations (NOC)s). and the like. Unlike domestic branches of government, external actors do not always share the perception of the terrorists as the ultimate other and as existential threats to society."' Instead, they may sometimes view terrorists with some degree of sympathy, as fighting for a just cause, albeit through unlawful means. International actors also lend, at times, to be skeptical or suspicious of the real motives behind the domestic executive's draconian counterterrorism measures."' In short, external monitoring bodies may be **more inclined** than their domestic counterparts to assert jurisdiction over counterterrorism measures in some cases, and to second-guess executive discretion in the field of counterterrorism. The invocation of international review mechanisms, in parallel lo domestic review, is important because it may partly compensate for the accountability deficit associated with the operation of purely domestic oversight procedures. Moreover, the involvement of international actors may also **embolden national review mechanisms**—such as domestic courts—to assert more robust powers of review, on the grounds that their local review would be more palatable to local constituencies than international review, and may operate to limit the scope of the latter." Indeed, one possible explanation for the fact that the record of l\*K courts in monitoring counterterrorism measures appears more impressive than that of their L".S. counterparts, is the "shadow" cast by the European Court of Human Rights (EQIIR) in its exercise of broad supervision over the UK legal system. The potential for l-CUIR intervention, in other words, legitimizes intrusive exercise of "preemptive" jurisdiction by the local courts—which might not otherwise have occurred.7" {The same dynamics may also explain the degree of IK parliamentary opposition lo some of the government's more expansive counterterrorism initiatives)." In Israel too, one may explain the Supreme Court's increasingly robust exercise of supervisory powers over IDV and secret service counterterrorism measures— especially when comparing judicial responses to allegations of human rights violations during the Second Intifada (2000-05) to those during the First Intifada (1987-91) —at least in part as a result of the growing prominence since the late 1990s of foreign and international courts (especially in the criminal sphere) claiming jurisdiction over Israel and Israelis."

**The CP's key to ICJ cred that solves territorial conflicts -- perm fails**

**Angehr 8 –** Mark, Expert @ the Federalist Society for Law & public policy studies, JD candidate @ Northwestern Law, Engage, Vol 9 Issue 2, June, http://www.fed-soc.org/publications/detail/saying-what-the-law-is-arguments-for-an-icj-that-is-less-deferential-to-security-council-and-general-assembly-resolutions.

Organizational Dynamic of the ICJ’s Advisory Jurisdiction Th e ICJ is largely modeled on its predecessor court, the Permanent Court of International Justice (PCIJ), established by the League of Nations.7 However, unlike the PCIJ, which was not formally part of the League of Nations, the ICJ is a principal organ of the UN as well as the UN’s principal judicial organ.8 Only States may be parties in cases before the fi fteen-member Court, though the State need not be a member of the UN in order to appear.9 Member States may request that the Court exercise jurisdiction over any dispute involving interpretation of a treaty or international law, or the “existence of any fact which, if established, would constitute a breach of an international obligation.”10 Once jurisdiction has been established, the Court must decide disputes in accordance with international law, which is limited to international conventions, custom, and general principles of law.11 Th e Assembly and the Council are authorized to submit advisory opinion requests to the ICJ on “any legal question,” which the Court has broadly construed to include complex factual disputes or political issues.12 Th e advisory opinion request must be “accompanied by all documents likely to throw light upon the question.”13 Th e advisory opinion, while truly a peculiar notion to federal courts in the United States, is permitted in many U.S. courts.14 However, the advisory jurisdiction as exercised in the World Court diff ers from the practice in the United States of a state legislator requesting a court’s opinion on the constitutionality of a proposed law.15 Th e ICJ’s advisory opinions have often involved hotly debated political disputes16 and legal questions embedded in broader bilateral disputes.17 State consent, while required for the exercise of contentious jurisdiction, is not required for the ICJ to exercise advisory jurisdiction over a dispute.18 Th e ICJ’s status as “principal judicial organ” of the UN has been characterized as an “organic link” to the shared goals of the UN system.19 Th e ICJ, like all other principal organs in the UN system, has a **duty** to further the purposes and principles of the UN These purposes are to “**maintain peace** and security,” and “take collective measures for the **prevent**ion and removal of threats to the peace.”20 The advisory function of the ICJ, even more than its contentious jurisdiction, serves as a **vehicle for the Court’s participation** in the “Purposes and Principles” of the UN Charter.21 Proponents of the advisory jurisdiction argue that by rendering advisory opinions, the Court is able to place another organ’s operation upon a firm and secure foundation. Judge Bedjaoui has written that the Court’s advisory function assists the political organs by taking into account “its preoccupations or diffi culties and by selecting, from all possible interpretations of the Charter, the one which best serves the actions and objectives of the political organ concerned.”22 In the Wall Opinion, the Court explained that its obligation to clarify a legal issue for the Assembly outweighed any concerns about the judicial propriety of adjudicating an ongoing political dispute and armed conflict between Israel and Palestine.23 Accordingly, the Court stressed the organizational purpose of the advisory opinion: “Th e Court’s Opinion is given not to the States, but to the organ which is entitled to request it.”24 Th e ICJ characterized the opinion as that which “the General Assembly deems of assistance to it in the proper exercise of its function.”25 Accordingly, the Court placed the matter “in a **much broader frame** of reference than a bilateral dispute,” as it was “of particularly acute concern to the United Nations.”26 Th e Court is strongly inclined to not only answer a request for an advisory opinion, but to facilitate the larger aims of the UN by arriving at a conclusion in line with the preference of the political organ.27 Judge Azevedo has stated that the Court “must do its utmost to co-operate with the other organs with a view to attaining the aims and principles that have been set forth.”28 Th e closer the institutional connection of the ICJ to the requesting organ, he argues, the greater the usefulness of that opinion to the operation of the requesting organ. However, the advisory function threatens the institutional legitimacy of the Court because it often resolves disputes without the consent of the relevant States,29 and the political organ making the request has often already ruled on the issue.30 Organizational theory helps to explain why the ICJ is not **functioning as a check on the actions of the political organs** in its advisory jurisdiction. By examining the benefi ts and drawbacks of coordination among organizations and within organizations, organizational theory predicts the most effi cient modes of cooperation.31 Studies of coordination mechanisms within organizations suggest that the ICJ is likely motivated to undertake advisory opinions out of a fear of institutional isolation and marginalization.32 An organization might “seek[] to forestall or prevent future crisis which may imperil its success or even continuation.”33 Because organizations have incentives to increase their authority and prestige, the Court is unlikely to decline the opportunity to contribute to the progress of international law by rendering an advisory opinion.34 Given the institutional incentives for rendering advisory opinions, the ICJ will continue to do so as long as the perceived benefi ts of cooperation outweigh the loss in judicial autonomy.35 Similarly, the political organ will make the request as long as the perceived advantage to its operations outweighs any loss to its political autonomy. Th e ICJ’s reliance on the political organs to enforce compliance with its decisions incentivizes the Court not only to take on advisory opinions, but to give opinions in accordance with the **political preferences** of the requesting organ. Th e main impediment to coordination between the ICJ and the political organ is the line between cooperation and competition. If the degree of interdependence is high, and the degree of antagonism is high, the result will be competition and confl ict.36 By contrast, if the degree of interdependence is high, and the degree of antagonism is low, the result will be cooperation. The ICJ has an incentive to reduce competition and increase smooth cooperation in order to avoid alienating the requesting organ and risking institutional isolation. If we map the interaction of the ICJ and the Assembly in the Wall Opinion onto this organizational dynamic, we see a high level of interdependence due to their “organic link” and a low level of antagonism due to the Court’s incentive to contribute to the shared goals of the UN as reflected in the stated policy preference of the Assembly. Th e resultant “cooperation” between the two organs reduces the need for information processing and furthers the shared mission of the UN. By systematizing coordination through a process that provides the Court with “an exact statement of the question” as well as a “voluminous dossier”37 of documents “likely to throw light on the question,”38 the Court is unlikely to conduct its own investigation outside of the given universe of documents. From an organizational theory perspective, the Court will not engage in its own extensive review of the background material and facts, because such a duplicative inquiry would bring the Court into competition with the functioning of the requesting organ. In relying on the resolutions and factual studies made by the political organs, the likelihood that the Court will render an opinion in line with the policy preferences of the political organ is thus greater. Th e results of such a model have been borne out in the Court’s case law. In 1949, the Court held in an advisory opinion that South Africa had no legal obligation to place its mandate, South West Africa (now Namibia), under a trusteeship with the UN39 Th e Assembly had advocated for South Africa’s withdrawal from South West Africa, but the Court found in favor of South Africa’s continued occupation. Th e opinion weakened the Court’s credibility, especially among African nations.40 Th e loss of political capital to the Assembly outweighed any potential benefi t of further coordination with the Court on the issue, and, as a result, the Assembly never revisited the issue with the Court. Th en, in 1971, the Council requested an advisory opinion on the “legal consequences” of South Africa’s continued presence in Namibia.41 The request was seen as an opportunity for the Court to “**redeem its impaired image**,” since its advisory jurisdiction had been unused since 1962.42 Th e Council had in fact already passed Resolution 276, which strongly condemned the “illegal” presence of South Africa in Namibia.43 The Court in this iteration of coordination produced an opinion in line with the clear political preference of the Council by **holding that South Africa’s presence** in Namibia **was illegal**.44 Th e Court’s interaction with the Council was thus cooperative, and in rendering an opinion that mirrored the eff ect of the Council’s resolution on the issue, the Court avoided confl ict with the political organ. Th e Court consequently repaired its image and staved off institutional marginalization by indicating its willingness to cooperate with the political organs. Although this coordination effect has positive value as an explanation of the ICJ’s behavior, it should not be seen as normative. Th e ICJ **overestimates the institutional benefits** it receives from such coordination. The fear of institutional isolation motivates the ICJ to defer to the political organ, but there is little evidence that behaving in such a way increases in the long-term the number of advisory requests that the Court receives. If the Court were correct in the assumption that advisory opinions deferent to the preferences of the political organs lessen the court’s marginalization and increase the volume of its advisory jurisdiction caseload, there would be an increase in advisory opinions after the ICJ rendered a deferent advisory opinion. Although advisory requests two and four years later followed the deferent South West Africa opinion, a statistical breakdown of the Court’s advisory docket shows no long-term changes in the number of opinions rendered from its fi rst opinion in 1947 to its last in 2004. Th e Court averages about four advisory opinions a decade. As of 2008, the Court has not received another advisory request since the Wall Opinion, and it would appear that the Court will have a below-average number of advisory opinions this decade, despite the accommodation it provided the Assembly in the cooperative Wall Opinion. While the ICJ is concerned about institutional marginalization and orders its behavior in rendering advisory opinions accordingly, the motivation of the political organs in requesting advisory opinions proves to be more complex. First, the Council or Assembly may refer a dispute to the ICJ’s advisory jurisdiction when the intractability of the dispute does not lend itself to political resolution. Second, a referral to the ICJ’s advisory jurisdiction can take place if the particular dispute is susceptible to judicial resolution, that is, if the ICJ can help the organ overcome a political impasse by settling a question of international law. Th ird, if the political organ doubts the utility of the advisory opinion it will receive, or if it fears an opinion not in line with its political preferences, it can take steps to make known its preferences before the Court composes its opinion. Th erefore, the political organ’s perception of the ICJ’s propensity to render an opinion not in line with the organ’s political preference is just one of three factors that determine when the ICJ will be asked to exercise its advisory jurisdiction. Th e Court’s fear of marginalization is thus overblown; the factors determining when the organs refer a dispute to its advisory jurisdiction depend more on the peculiar nature of the dispute itself than on the Court’s perceived deference to the political will of the Council or Assembly. In other words, the Assembly’s decision to refer to the ICJ the question of the legality of the wall in Palestine depended more on the exigencies of that particular situation—namely, the need for a legal and not political resolution—than on the ICJ’s recent record of deference to the Assembly in its advisory jurisdiction. In light of the cost in **loss of judicial autonomy and reduced institutional benefits**, a new calculation shows that the Court should **defer less** to the requesting organ. Th e Court should thus be **more competitive** by undertaking its own fact- fi nding and by **rendering decisions that may not line up with** the **political preferences** of the requesting organ. The result of such an undertaking is **more independent and legitimate** advisory opinions. As more authoritative statements of the law, the opinions would provide a **better enforcement mechanism** against the political organs to police the behavior of States that have violated their legal obligations. By asserting its jurisdiction over fact-finding and legal interpretation, the ICJ would **signal** to the requesting organ **that the function each organ was to perform had changed**. In the long-term, the functional differentiation of each organ would **shift to accommodate the Court’s new role**, and the organs could ultimately **resume a cooperative interaction**. Th e political organ would continue to request opinions, because the benefit of receiving **truly independent** advisory opinions would outweigh the risk of an opinion not in line with its political preference. A **revitalized** advisory jurisdiction could **aid the political organs in providing another strong enforcement mechanism against States that violate international norms**. This model has the **additional advantage of better serving the shared goals of the UN system**. In reclaiming its judicial autonomy within its advisory jurisdiction, the Court is **aiding the UN’s settlement of international disputes** “in conformity with the principles of justice and international law.”45 **In contrast, an opinion that reproduces the politically-determined legal conclusion** of the requesting organ **does not further this goal, because it abdicates judicial responsibility to a political organ**.

**Goes nuclear**

**Chakraborty 10** – Tuhin Subhro, Research Associate at Rajiv Gandhi Institute for Contemporary Studies (RGICS), his primary area of work is centered on East Asia and International Relations. His recent work includes finding an alternative to the existing security dilemma in East Asia and the Pacific and Geo Political implications of the ‘Rise of China’. Prior to joining RGICS, he was associated with the Centre for Strategic Studies and Simulation, United Service Institution of India (USI) where he examined the role of India in securing Asia Pacific. He has coordinated conferences and workshops on United Nation Peacekeeping Visions and on China’s Quest for Global Dominance. He has written commentaries on issues relating to ASEAN, Asia Pacific Security Dilemma and US China relations. He also contributed in carrying out simulation exercise on the ‘Afghanistan Scenario’ for the Foreign Service Institute (FSI). Tuhin interned at the Indian Council of World Affairs (ICWA), Sapru House, wherein he worked on the Rise of People’s Liberation Army (PLA) military budget and its impact on India. He graduated from St. Stephen’s College, Delhi and thereafter he undertook his masters in East Asian Studies from University of Delhi. His areas of interest include China, India-Japan bilateral relations, ASEAN, Asia Pacific security dynamics and Nuclear Issues, The United States Service Institution of India, 2010, “The Initiation and Outlook of ASEAN Defence Ministers Meeting (ADMM) Plus Eight”, http://www.usiofindia.org/Article/?pub=Strategic%20Perspectiveandpubno=20andano=739

The first ASEAN Defence Ministers Meeting Plus Eight (China, India, Japan, South Korea, Australia, New Zealand, Russia and the USA) was held on the 12th of October. When this frame work of ADMM Plus Eight came into news for the first time it was seen as a development which could be the initiating step to a much needed security architecture in the Asia Pacific. Asia Pacific is fast emerging as the economic center of the world, consequently securing of vulnerable economic assets has becomes mandatory. The source of threat to economic assets is basically unconventional in nature like natural disasters, terrorism and maritime piracy. This coupled with the **conventional security threats** and **flashpoints** based on **territorial disputes** and **political differences** are very much a part of the region posing a **major security challenge**. As mentioned ADMM Plus Eight can be seen as the first initiative on such a large scale where the security concerns of the region can be discussed and areas of cooperation can be explored to keep the threats at bay. The defence ministers of the ten ASEAN nations and the eight extra regional countries (Plus Eight) during the meeting have committed to cooperation and dialogue to counter insecurity in the region. One of the major reasons for initiation of such a framework has been the new face of threat which is non-conventional and transnational which makes it very difficult for an actor to deal with it in isolation. Threats related to violent extremism, maritime security, vulnerability of SLOCs, transnational crimes have a direct and indirect bearing on the path of economic growth. Apart from this the existence of territorial disputes especially on the maritime front plus the issues related to political differences, rise of China and dispute on the Korean Peninsula has aggravated the security dilemma in the region giving rise to areas of potential conflict. This can be seen as a more of a conventional threat to the region. The question here is that how far this ADMM Plus Eight can go to address the conventional security threats or is it an initiative which would be confined to meetings and passing resolution and playing second fiddle to the ASEAN summit. It is very important to realize that when one is talking about effective security architecture for the Asia Pacific one has to talk in terms of addressing the conventional issues like the territorial and political disputes. These issues serve as bigger **flashpoint** which can **snowball** into a **major conflict** which has the possibility of turning into a **nuclear conflict**.

## Trade

### 1NC

#### (1) Aff has zero solvency – the plan has the US agree to an intentional cooperative agreement that **doesn’t exist** – vote neg – the aff is the squo and any attempt to facilitate the cooperation is extra-topical.

**(2) Tons of alt causes.**

**Martin ’21** [Thomas Martin LLB, Queens University Belfast, 2019 A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS in THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES, THE UNIVERSITY OF BRITISH COLUMBIA. "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy." https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Before this thesis further develops the case for maintaining **regulatory divergence** in competition law, it is important to recognise some of the main points in favour of developing a global approach to competition enforcement. The **adoption** of **competition law** by large swathes of jurisdictions has given rise to challenges for global corporations. Damien Geradin notes that the decentralised globalisation of antitrust has had three major implications for global corporations.326 First, it has increased the cost of doing business and the complexity of large-scale competition investigations, which now have a multi-jurisdictional component.327 Second, it has increased the risk of contradictory decisions where a firm’s behaviour is reviewed by different antitrust authorities under different sets of rules.328 And thirdly, it has increased the likelihood that some decisions will be guided by protectionist motives.329 However, competition law is **far** from the **only area of business** regulation that faces the problem of cross-jurisdictional **regulatory inconsistencies**. In fact, these inconsistencies are a **fact of life** for multinational corporations and are present in most areas of law, including **corporation** law, **tax** law, **labour** law, products **liability** law, **securities** regulation, and **environmental law**.330 Yet, as noted by Braithwaite and Drahos, there has been much less clamour for harmonization in these **other areas of law**, with corporation law, for example, relatively free from efforts at harmonization.331 Furthermore, this thesis would argue that for international convergence of competition law to be totally feasible and beneficial, there would have to be an international **consensus** on the objectives of competition law. As this research has demonstrated from the analysis of Japan, South Korea, and China, such a **consensus is lacking**. Indeed, Oliver Budzinski has argued that “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”332

#### (3) Courts mean the US won’t comply

**Crane 21** – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

**(4) Unilateral enforcement still guarantees conflicts over type 3 and 4 cases.**

Michal S. **Gal 09**, Associate Professor and Vice Dean, Haifa University School of Law; Global Hauser Visiting Professor of Law, New York University School of Law. "Antitrust in a Globalized Economy: The Unique Enforcement Challenges Faced by Small and Developing Jurisdictions" Fordham International Law Journal, Volume 33, Issue 1, Article 1. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2175&context=ilj&httpsredir=1&referer=>

B. The Current International Antitrust Regime: Legal Tools The current international antitrust system is largely based on unilateral enforcement whereby each jurisdiction deals, on its own, with antitrust issues surfacing at its borders.2 7 As elaborated in the next section, **the unilateral enforcement regime is** also **the main source of the enforcement problems of small and of developing jurisdictions**.

Efforts to increase **cooperation** and **coordination** of antitrust enforcement also take place at the international level. Current attempts focus mainly on the ICN. The ICN is a **voluntary** body, comprised of almost all the competition authorities in the world, and also non-governmental advisors, for the enhancement of international cooperation and the reduction of trade barriers. 28 **It operates as a mechanism for soft harmonization by creating guiding principles and best practices agreed upon by all members rather than binding agreements**. **Thus, it holds little promise for solving** most type 3 and 4 issues. **Most importantly** for this Article, as will be elaborated below, **it does not solve many of the enforcement challenges faced by small or developing jurisdictions**.

Additional international bodies also take actions which are designed to motivate solutions to international antitrust problems and to enhance unilateral enforcement. The Organization for Economic Co-operation and Development ("OECD"), for example, publishes recommendations for effective action against hard-core cartels and often reviews the suitability of sanctions imposed by jurisdictions in order to deter international cartels. 29 It also regularly publishes country-specific reports on antitrust enforcement and organizes round-table discussions on antitrust issues, designed to create better antitrust enforcement.3 0

Likewise, the United Nations Conference on Trade and Development ("UNCTAD") undertakes projects designed to increase enforcement and cooperation.3 For example, it promotes the creation of regional agreements on antitrust enforcement among developing jurisdictions.32 Additional international organizations, including the World Bank, also sometimes engage in technical assistance programs on competition issues. 33 **Yet these actions, while commendable, are relatively limited in their effect on solving international antitrust problems. This is because** in most cases **unilateral action still remains the main tool for enforcement and the resulting cooperation is limited in the ways suggested in this section**. The World Trade Organization ("WTO") has considered the inclusion of some antitrust prohibitions in its provisions.3 4 However, this option is currently off the table.-5

III. THE ENFORCEMENT CHALLENGES OF SMALL AND OF DEVELOPING JURISDICTIONS How do small and developing jurisdictions deal with antitrust cases with an international dimension that negatively affect their jurisdictions and what drives their enforcement patterns? This is the focus of this Part.

Before practical obstacles are analyzed, let us first say a few words with regard to the legal tools at the disposal of such jurisdictions. The current international antitrust system is largely based on unilateral enforcement and national vision whereby each jurisdiction deals, on its own, with antitrust issues surfacing at its borders through the lens of the effect the conduct will have on its own welfare. 36 The unilateral approach is based on the assumption that extraterritorial conduct that significantly affects one's domestic market can generally be addressed at the national level through national antitrust laws. As this section shows, this proposition does not hold true for small or developing economies, as they face severe challenges to effective prosecution.

These regimes are sometimes combined with bilateral and multilateral cooperation agreements. Such agreements attempt to solve, at least to some degree, issues of mutual concern that generally fall within the first two types of cases described in the typology above. 37 Agreements usually include a wide range of cooperation standards. 38 They often include provisions with regard to the sharing of information. This enables cooperative unilateralism: with cooperative input from other interested jurisdictions, the antitrust authority reviews and, as appropriate, remedies situations that come within its laws. 39

Many agreements also adopt the **positive comity** principle, which is designed to ensure nondiscrimination. 4° Pursuant to this principle, foreign nations and persons adversely affected by anticompetitive activities occurring in the territory of another party, and contrary to the latter's antitrust laws, may request that territory to investigate and, if warranted, to remedy these activities in accordance with its laws. 41 Positive comity is thus met when each nation implements its own national antitrust law in a credible, nondiscriminatory, clear, and understandable way. 42

Such principles create vehicles to root out a common evil where there is a preexisting disposition to cooperate and to overcome the problem of non-enforcement or discriminatory enforcement by foreign jurisdictions. Accordingly, they solve some of the problems in type one and type two cases. **Yet they have limited effect where the antitrust principles adopted by the cooperating jurisdictions differ significantly or where the application of antitrust principles leads to different factual conclusions, resulting from the fact that the effects of the proposed conduct on foreign jurisdictions is not taken into account.**43 Accordingly, **comity principles offer no solution to enforcement problems** **in type 3 and type 4 cases.**

**(5) Absolutely zero chance of a global trade collapse---the multilateral system’s incredibly resilient**

Shiro **Armstrong 14**, economist and Fellow at the Crawford School of Public Policy, Australian National University, Co-Director, Australia-Japan Research Centre, Editor of the East Asia Forum, Director of the East Asian Bureau of Economic Research and Research Associate at the Center on Japanese Economy and Business at the Columbia Business School, September 2014, “Economic Cooperation in the Asia-Pacific and the Global Trading System,” Asia & the Pacific Policy Studies, Vol. 1, No. 3, p. 513-521

The WTO and the global trading system faced a major test during the GFC[global financial crisis]. Although advanced economies went into recession on a scale that matched the Great Depression in terms of output and financial losses, and trade flows collapsed globally (by 12 per cent in 2009), there was no significant rise in tariffs and other trade barriers. 4

In the wake of the GFC, ‘murky’, non-tariff-based protectionist measures were introduced by some governments. Some estimates of these measures suggest that they accounted for more than half of all protectionist measures in the post-crisis period (Aggarwal & Evernett 2013). Policies like local content provisions and industrial policies that restrict global trade were introduced. But after the GFC, most countries actually continued to liberalise tariffs, and changes in trade policy (via raising tariffs or taking anti-dumping action) contributed only about 2 percent of the observed drop in world trade in 2008–2009 (Kee et al. 2013). That is in major contrast to the effects of the Smoot-Hawley tariff wars during the Great Depression.

Of the 4,144 trade measures recorded by Global Trade Alert from the start of the crisis to early 2014, 22.2 per cent have been coded ‘green’ (that is, they represent, in the opinion of GTA, liberalising policy), with 57.4 per cent coded ‘red’ (policy considered protectionist). 5 One reason why some developing countries in fact dropped tariffs and other trade barriers in the aftermath of the GFC may be the rise in global supply chain trade: when it is necessary to import in order to export, the risks of retaliation are larger and there are domestic producers that demand low import barriers (Gawande et al. 2014). But the role of the WTO in this should not be understated. Indeed, the rise of global supply chains is a consequence of the rules-based trading system that GATT/WTO underwrites.

This was a significant achievement given the acute protectionist pressures. Leadership at the G20 had much to do with the ‘standstill’ on protection, but the shock of the GFC did not weaken the WTO or undermine the confidence that countries placed in it. The slow recovery of the advanced economies meant that protectionist forces put significant pressure on governments to close markets, but the global trading system has proved robust to these pressures.

The robustness of the global trading system throughout the GFC and its aftermath has meant that recession and collapsed trade in some countries have not generated conflict between countries.

**(6) No geoengineering impact - Rogue SRM is impossible – too expensive or it’s not geographically feasible**

Florian **Rabitz 16**, Institute for International Relations, University of São Paulo, “Going rogue? Scenarios for unilateral geoengineering,” *Futures*, Volume 84, 2016, pp. 98-107

Cost estimates for SAI vary widely across different studies and delivery vehicles. One study considers the cost for aircraft delivery to amount to US$ 0.2–20 billion annually, with installation costs between US$ 1 and 30 billion; delivery via tethered stratospheric balloons would cost US$ 1–10 billion annually, with US$ 1–60 billion for installation; delivery via artillery shells or rockets will likely result in costs which are significantly higher (EUTRACE, 2015: 42). While aircraft delivery is thus the cheapest option, **the technical requirements are high**, as planes need to be able to carry full payloads into the stratosphere where aerosols will persist for up to two years due to horizontal winds (Hamilton, 2013: 59). Reaching the equatorial stratosphere, which commences at 18 km, is “at or **above the upper end of the operational range of most existing airplanes**” (Aurora, 2011: 22–23). While supersonic aircraft such as the decommissioned Concorde have service ceilings of 18 km and above, **no civilian models** are presently in use.

Several military aircraft possess both sufficient payloads and ceilings to reach the lower stratosphere in the polar region or at middle-latitudes. One study assesses cost projections for two different tanker jets, the KC-10 Extender and the KC-135 Stratotanker. A fleet of 9 and 15 units, respectively, would be sufficient for delivering 1 Mt of sulphur particles annually with operating costs of US$ 225 and 375 million, respectively (Robock et al., 2009). Those costs accordingly scale with the required injection volume, sometimes estimated at up to 10 Mt per year (NAS, 2015a: 79–84) more than twice the global lift capacity of FedEx (Aurora, 2011: 19). While the financial constraints may be overcome even by small states and non-state actors, procurement of military jets is **hampered by arms export legislation**. Cost constraints for modified civilian models are more substantial. With modifications, business jets could reach altitudes of above 18 km, with annual operating costs for the delivery of 1 Mt estimated to be between US$ 2.89 and 5.96 billion, depending on whether aerosols are dispersed only regionally or in transit flights along the Equator (Aurora, 2011: 38). While equatorial injections would achieve global coverage as the aerosols mix horizontally through the entire stratosphere until they reach the polar caps, the financial constraints on rogue actors intending to deploy sufficient amounts over a sustained period of time are thus significant, constituting a sizeable share of, or even **exceeding, the GDP of Small Island Developing States**.

Cost constraints may be overcome by injecting aerosols in the Arctic region where the lower stratosphere commences at about 8 km. Here, temperature changes are above the global average so that aerosols would protect against the loss of ice cover and methane releases. While in the reach of most commercially-available aircraft, this raises the problem of **geographical access**: aircraft would need to operate continuously within, or transit through, the airspace of states with relatively low vulnerabilities to climate change, or even economic stakes in the melting of Arctic ice to free up shipping routes or facilitate resource extraction (Borgerson, 2008). Arctic states thus have strong incentives to interfere with high-risk geoengineering activities in their vicinity. While the same arguably applies to other governments, any type of international response to unilateral action does not have a firm basis in international law as the legal status of SAI is ambiguous and, unlike for OIF, no enforcement measures are explicitly provided for. A robust mandate for interference would likely need to be based on a UN Security Council resolution.

#### 7) Cartels solve themselves quickly

DePaola 14 (Joe DePaola, Managing Partner & President at BizShifts, former VP Worldwide Sales & Business Development, CIC Inc., former PhD student Business/Engineering, Stanford University, MS Engineering, New York University, “Sinister-Side of Cartels, Collusions… For Dominating Markets: Sleeping with the Competition is a Dubious Business Strategy,” BizShifts-Trends, 4-10-2014, https://bizshifts-trends.com/sinister-side-cartels-collusions-dominating-markets-sleeping-competition-dubious-business-strategy/)

Generally cartels contain seeds of their own destruction... cartel members are reducing their output below their existing potential production capacity, and once the market price increases, each member of the cartel has the capacity to raise output relatively easily. The tendency is for cartel members to ‘cheat’ on their quota, increasing supply to meet market demand and lowering their price.

Most cartels agreements are unstable at the slightest incentive they will quickly disband, and returning the market to competitive conditions… Cartels appeared most strongly in those industries defined by scale and scope economies and with high fixed costs… Therefore, they are more common in wealthy countries with big businesses. Cartels also tended to appear among domestic firms first, before going international (except, for example; early– zinc, rail, shipping… cartels)…

#### (8) Many thumpers to supply chain prices and disruption – BUT COVID solves – deglobalization and resilience (to both price volatility and thumpers)

Tsang et al 21 (Raymond Tsang, and Gerry Mattios, both partners and leaders of Bain & Company's Performance Improvement practice based in Shanghai and Singapore respectively; and Sri Rajan, partner based in San Francisco; “Confronting a new era of supply chain volatility,” Bangkok Post, 4-8-2021, https://www.bangkokpost.com/opinion/opinion/2096827/confronting-a-new-era-of-supply-chain-volatility)

As Covid-19 threw fragile global supply chains into disarray, many companies were stunned by their own vulnerability. The risk of depending on a supply base that is concentrated in one geographic region has been increasing over the past 30 years, but the pandemic quickly demonstrated how much chaos and pain one unexpected event could inflict.

It was a powerful wake-up call. The disruption triggered by Covid-19 has prompted leadership teams to confront a new era of supply chain volatility.

Bracing for an era of increased turbulence, leading multinationals are rethinking their supply chain strategies to lower the risk of disruption. In a recent survey of 200 global manufacturers by Bain & Company and the Digital Supply Chain Institute, executives ranked flexibility and resilience as their top supply chain goals. Only 36% of senior executives ranked cost reduction as a top three goal, down from 63% who saw it as a priority over the past three years.

To improve supply chain resilience, 45% of respondents plan to shift production closer to home markets in the coming years. The good news is that automation has reduced the cost of manufacturing, eroding the labour arbitrage advantage that fuelled decades of investment in offshore production.

The cost of humanoid robots is comparatively lower now which means companies with processes capable of being automated such as consumer electronics can opt to move supply chains closer to home without raising costs significantly.

For the last 30 years, manufacturing companies have wrung out supply chain costs by disaggregating the various steps of the value chain, concentrating each step with a limited number of companies and geographies to improve economies of scale.

As a result, most leadership teams lack sufficient supply chain visibility to assess their geopolitical and geographical risks.

Before investing in a new supply chain strategy, successful leadership teams evaluate their supplier and contract manufacturer risk according to two factors: the country where goods are produced and the supplier's headquarters location.

Two key factors that determine geopolitical supply chain risk are the supplier's headquarters and its manufacturing location.

Once leaders understand their risk exposure, they start building resilience into their value chains in a two-step process. First, they quickly add flexibility to the supply of finished goods and high-risk subcomponents where possible, to limit immediate risks and satisfy customers. Second, they take a strategic approach to rethinking the value chain from end to end. That includes deciding the pace of change and periodically reviewing decisions based on external conditions and internal capabilities. Below are three steps to help companies pioneer the shift to supply chain resilience:

1. Boost flexibility

Supply chain flexibility is becoming a more and more important concept for gaining competitive advantages. The first priority in making supply chains shock-proof is increasing flexibility for supplying finished goods and high-risk subcomponents. This would open the possibility for companies to respond to short-term changes in demand and supply situations as well as structural shifts in the environment of the supply chain on an immediate basis.

Not many countries have the capacity and infrastructure to handle all the volume, so manufacturers often have to piece together a solution across multiple neighbouring countries. For many companies, aligning a new production location with demand can deliver significant benefits, particularly in industries where demand is rising even through the downturn, including MedTech and certain consumer products.

2. End-to-end network rethink

For each value chain, leadership teams need to properly balance risk and resilience at the lowest total landed cost. This includes decisions on single vs. multiple sourcing, where to manufacture at each stage of assembly, and proximity to customers. They also need to determine whether to produce in-house or outsource, taking into account variables such as national incentives and declining manufacturing costs. Successful companies revisit their value chain choices regularly, especially in turbulent times.

3. Balancing cost and risk

Resilience does not eclipse every consideration. As leadership teams start to understand where they need flexibility, they face important trade-offs on cost. Investing in too much flexibility can render a company uncompetitive. As they look to reshape supply chains for the future, successful companies determine how much resilience they need, where it matters most, and what they can afford.

Resilient and flexible supply chains can be a powerful defensive hedge, but also a source of competitive advantage. Leaders make the most of options such as capacity buffers, digital infrastructure and nimble teams to react faster and more efficiently than their peers.

The investment to build and maintain these capabilities varies, depending on a company's need for responsiveness and efficiency, as well as the level of industry competition. This is why the roadmap for resilient supply chains must be linked to a company's long-term business strategy. For example, a high-growth business that has high margins and short product life cycles, and is dependent on components coming from widely distributed sources such as high-end cell phones, will require a different type of supply chain resilience than a hypercompetitive low-margin business, such as clothing or toys, which relies on imported finished goods.

Geopolitical volatility and market turbulence will transform supply chain management in the coming decade. Leadership teams that invest in strategies to increase supply resilience will simultaneously create a new source of competitive advantage.

## Harmonization

### 1NC

#### The aff is a paper tiger – no enforcement capability

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

International antitrust cooperation needs a firmer structure. Soft law may be helpful to an extent, inter alia in streamlining investigations regarding potential infringements, or in mergers requiring review by several nations running in parallel. However, non-binding international cooperation has not been able to induce nations to institute more transformative improvements, such as restricting the conduct of export cartels. What is needed in addition to mere soft law, are frameworks that bind nations to action. To the extent that chapters on competition policy are included in TAs, it should be considered whether it would be beneficial for them to be made binding on the contracting parties, with appropriate dispute resolution mechanisms included. Enforcement appears to be a more problematic area than the consistency of substantive competition law, and ways to improve this are worthy of consideration. First, in practice only a handful of national competition authorities have sufficient experience and capacity to effectively enforce compliance with their respective competition laws. Disparities in enforcement practices are, however, likely to become less radical as competition authorities mature. Second, the structure of how national competition authorities operate as a collective is ill-suited to the demands of the ever-increasing cross-border nature of business. This is exacerbated by the challenges presented by the dynamic nature of the digital economy.290 New ways should be considered concerning how to multilaterally support enforcement in order to bridge the current disparity between agencies.

**(2) Aff fails – cost, political difficulties, and selfish agendas**

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The **substantial costs** associated with developing and implementing a global competition policy have not gone unnoticed. For many countries, a cost-benefits analysis needs to take place, especially when a number of factors can increase the **costs**, **time** and **political difficulties** associated with establishing a harmonised agreement.63 The associated costs can also be categorised, with direct costs, out-of-pocket costs, opportunity costs as well as **political costs** all forming part of the general outlay that would be required to implement such a competition policy.64 This begs the question why any developing country would undertake such a commitment, especially with such limited resources and expertise. Ultimately, states will only cooperate when it is both in their respective interests and a benefit can be gained from such cooperation.65 This **inherent selfishness** means a global competition policy is **merely a farfetched misconception**, which is frustrating when one considers the benefits such an agreement could yield. As Noonan succinctly explains, ‘An agreement on core competition law principles could facilitate the acceptance that foreign competition laws are bona fide and not contrary to public policy in the recognising state.’66

**(3) Universal harmonization is impossible but the squo solves through informal cooperation and treaties**

**Murray 19** [Allison Murray, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, p. 117-119]

B. Informal Harmonization and Cooperation

Efforts to informally harmonize international competition laws **have continued** despite the failure of formal international laws. The Organization for Economic Cooperation and Development (“OECD”) and the United Nations Conference on Trade and Development (“UNCTAD”) each adopted codes that outlined negotiations and agreed to competition law principles.135 The codes were completely informal and non-binding.136 Although the OECD’s latest recommendations for antitrust cooperation were revised relatively recently in 1995, the agreement is still a “law . . . of the softest variety.”137 This is in part because Western industrialized nations seek to address anticompetitive behavior, while the burgeoning countries are more concerned with promoting economic development and regulating multinational corporations.138

The International Competition Network (“ICN”) is another institution that encourages cooperative action on antitrust principles.139 However, the ICN, much like other informal networks, does nothing to limit or minimize the protectionist behaviors of countries, which is common in the face of uncertainty and lack of consensus on topics such as antitrust.140

Lack of enforceability aside, these negotiations and cooperative efforts “established a framework that has been **reasonably successful** and has **set the stage for more** binding **commitments** on a bilateral basis.”141 The fact of the matter is that there is no economic model that is globally or unanimously accepted by all nation-states, so there can be no **truly successful** global harmonization.142 To internationalize the law, even in an informal capacity, would require the policy behind the laws to be agreed upon.143 How can one agree to perfect and protect an economic policy that is not itself uniform amongst all nations?144

C. Regional and Bi-lateral Treaties

In addition to informal harmonization efforts, certain regional and bilateral **treaties** have been put in place to encourage cooperation on antitrust enforcement.145 In 1991, the U.S. and E.U. entered into a cooperative antitrust agreement.146 Other nations have also entered into antitrust cooperation agreements.147 These agreements are not harmonized, vary widely, and contain different levels of required cooperation.148 Yet, they are a country’s best bet for **solidify**ing any kind of **binding cooperation** with another country on antitrust laws.

**(4) Multilat fails---it’ll gridlock inevitably**

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The prospects of successfully harmonising a cohesive competition policy does **not appear possible** in the current global competition policy climate. A **lack of organisation, direction and leadership** among the supposed main role players in international competition law has led to an environment whereby each country adheres to its own set of competition laws or policies, and an extraterritorial application of same upon foreign companies or governments where they are deemed to be noncompliant with the home country’s competition laws. This conduct between countries can cause major conflict with regard to sovereign interests.50 The **difficulty** in formulating a **global consensus** on competition policy is by **no means** an **enviable task**, with such **difficulty well demonstrated** in how states endured nearly a **century of negotiations** in order to reach an agreement on how to control the spread of disease,51 a **seemingly necessary** agreement one might think. This **inflexibility** can be **transferred** to a key question in the field of **competition law** which is well postulated by Dabbah who questions how much certain countries would forgo national interests and priorities in favour of a global agreement based on common rules and shared objectives.52 As far back as 19**97**, attitudes towards the efficacy of creating a global competition policy had been questioned. Joel Klein, head of the antitrust division in the US Department of Justice in the late 1990s, set out his thoughts on whether the WTO would succeed in establishing a harmonised regime by stating:

this working group can play an important educational role in demonstrating the important contributions of antitrust to efficient national…we are less persuaded that the time is ripe for the negotiation of global antitrust rules.53

A delusionary perception of the current competition law system is that the current laws are suitable for all relevant parties to some extent. Interestingly however, it has been pointed out that in the majority of cases, the respective competition laws of developing countries has been ‘modelled on the basis of the competition laws found in the developed world.’54 The competition laws that have been created by developed states are arguably not suited to the starkly different needs of their developing counterparts. This is well supported by the fact that many developing countries’ competition laws and policies can be traced to the significant amount of preferential trade agreements that were signed between developed and developing countries in the 1990s.55 This situation, whereby developing states have essentially employed competition policies that are naturally suited to developed countries and their specific interests seems farcical. As has been noted, due to the fact that competition policy is always evolving, specifying overarching and binding rules on every country may be misguided.56

Competition authorities in developing countries are less equipped to effectively tackle anticompetitive conduct on the part of international monopolies, which conduct directly impacts on the lives of that developing state’s citizens. The problems encountered by domestic competition authorities concern a plethora of institutionally engineered barricades. These include areas such as lack of independence and the inability to make binding decisions, a shortage of well qualified personnel which leads to these personnel focusing on areas outside competition law and a general lack of steadiness and persistence on the part of the competition authority which has a potentially adverse effect on the enforcement of a cohesive competition policy.57

**(5) BRICS defections and free-riding make global governance failures inevitable**

Robert J **Lieber 14**, Professor, Department of Government, Georgetown University, 2014, “The Rise of the BRICS and American primacy,” International Politics, Vol. 51, p. 137-154

Other than where clear and unambiguous self-interest is present, the actual record of BRICS cooperation on a wide range of international collective action problems thus provides limited evidence of positive engagement let alone embracing of a ‘stakeholder’ role.7 Whether examined by issue or country, the pattern is clearly identifiable. For example, on global climate change, the BRICS played a major part in the debacle at the November–December 2009 Copenhagen conference that had been convened to develop a follow-on to the Kyoto Protocol in the form of a new and binding agreement, and to which the EU countries and the Obama administration were committed (Rapp et al, 2010). Instead, China, India and others saw the prospect of limits on carbon emissions as harmful to their economic development. By some accounts, they also sought the annual transfer of as much as $100 billion per year from the rich countries to the developing economies. In Copenhagen, the BRICS met separately, shutting out the European backers of a stronger agreement, and the conference ultimately concluded with only a vague statement of objectives.

China, which has gained attention for the massive scale of its production of solar panels and wind turbines, has mainly done so as an export strategy, where it has created a massive surplus of these products and undercut foreign competitors in overseas markets. Meanwhile, wind power represents a mere 0.2 per cent of China’s total energy use, while solar contributes only 0.01 per cent (Lomborg, 2013). The effort of the EU to bring a case to the World Trade Organization based on dumping and export subsidies resulted in China taking retaliatory measures and launching a series of virulent verbal assaults. In response and to mollify Beijing, the EU adopted a much watered down measure. At the same time, China’s primary reliance on coal-fired electricity plants, along with a massive expansion in its domestic auto fleet has made that country the world’s leading source of greenhouse gases. Europe and the United States have been reducing their emissions by a total of 60 million tons per year, whereas China’s are increasing by 500 million tons (The Economist, 2013a). Only in the past year, as the environmental consequences within China’s major cities have become so dire, has the Communist Party leadership embarked on a sweeping new program aimed at reducing domestic air pollution. Not only will this require a long, difficult and gradual period of change and adaptation, but the entire episode reflects the primacy of domestic priorities in shaping state behavior on collective action problems.

Human rights is another important – and troubled – arena. Here too, the BRICS’ record is negative. For the most part, they not only have been wary of providing international support on the issue, but not infrequently they have cooperated with leaders and regimes involved in major human rights abuses. For example, thanks to a vestigial anti-colonial solidarity, South Africa has been reluctant to apply pressure against the brutal and destructive rule of Zimbabwean President Robert Mugabe. As recently as August 2013, President Jacob Zuma of South Africa gave little comfort to the beleaguered democratic opposition movement and congratulated Mugabe on his victory in a rushed and badly conducted election which the opposition had protested was rigged. Brazil, a stable democracy, has nonetheless been unwilling to criticize the Castro dictatorship in Cuba. This was clearly evident in a 2012 visit by President Dilma Rousseff to Havana, in which trade was emphasized to the exclusion of other topics. Additional examples abound: Russian support for the Assad regime in Syria, India’s timber and energy deals with the then dictatorial and corrupt rulers of Burma, and China’s repeated willingness to strike trade and investment deals with oppressive regimes even when their rulers were already the object of international sanctions. Beijing has maintained profitable energy ventures in Sudan, and until recently had a long-standing relationship with the regime in Burma. At the UN, China and Russia have routinely opposed Security Council resolutions aimed at human rights violators, especially countries such as Sudan, Iran and Syria. For example, in October 2011, China and Russia both vetoed an already weakened UN resolution condemning the Syrian regime’s human rights abuses, and the three other BRIC countries (Brazil, India and South Africa) abstained.

On nuclear proliferation, both China and Russia have resisted stronger measures against Iran and North Korea. Brazil and Turkey opposed sanctions on Iran, despite condemnation of Teheran by the International Atomic Energy Agency and several (modest) sanction resolutions adopted by the Security Council. India, for its part and despite international sanctions, took steps to increase its oil exports from Iran and to pay for these by bypassing the financial restrictions meant to hinder payments to the Islamic Republic.8

The list goes on. The BRICS have not been supportive of the ‘Responsibility to Protect’ even though this principle gained international legal standing as the result of the unanimously adopted UN Security Council Resolution 1674 of April 2006. China and Russia routinely ignore a long-standing 1951 UN Convention by returning refugees to countries in which they are likely to be persecuted. Moreover, in the area of intellectual property, China is a notorious violator. To round off the list, most of the BRICS themselves suffer from high levels of corruption. According to an index developed by Transparency International (with number one being least corrupt), Brazil ranks 71st, followed by China in 82nd place, India 100th and Russia 140th (Transparency International, 21 January 2012).

On trade, China has continually acted in a predatory manner, even while benefiting enormously from an open international economic order, especially in its admission to the World Trade Organization in 2001. Brazil, despite possessing the world’s sixth largest economy, has responded to a recent slowing of economic growth and exports by adopting protectionist measures including special tariffs, local preferences, content requirements and the use of special tax rules (Transparency International, 2012).

Even when the international community has been capable of achieving collective action, the BRICS have dragged their feet. Consider the passage of UN Security Council Resolution 1973 in March 2011, for the purpose of protecting civilians and creating a no fly zone in Libya, and which in effect authorized the use of force (all necessary measures) to enforce the resolution against the forces of Colonel Kaddafi. The resolution was 82nd widely praised at the time as an example of humanitarian intervention. In fact, however, it was a very rare instance of Security Council agreement on the use of significant force, and though it passed with the required 10 votes, the list of countries abstaining is revealing: Brazil, Russia, India, China and Germany. All four of the BRIC countries thus chose to abstain, as did Germany, the largest and most important member of the EU and the one most commonly described as a civilian rather than military power.

Not only are the BRICS reluctant to cooperate on global governance issues, but their record of cooperation with each other is also limited. Although they have been meeting as a group annually since 2009, and even agreed in principle to establish a BRIC bank, the differences among them remain considerably greater than their commonalities and little in the way of tangible achievements has resulted. For example, China had sought to have the funding burden for the new bank split equally among the five BRICS, while the others preferred that China take on the greater burden. Despite their shared status as emerging powers, the differences among the BRICS are at least as important as what unites them. Three are democratic (Brazil, India, South Africa), while two are authoritarian or semi-authoritarian (China, Russia). Two are geopolitical rivals with unresolved border and territorial disputes (China, India). One is primarily an energy, raw materials and weapons exporter (Russia). And two (Brazil, South Africa) are showing signs of pushing back against predatory export behavior and foreign influence on the part of China. Moreover, all find themselves distracted by significant regional challenges or disputes. Observing this pattern, Harsh V. Pant of King’s College London rejects the characterization of the BRICS by South Africa’s Jacob Zuma who has claimed the BRICS as ‘a credible and constructive grouping in our quest to forge a new paradigm of global relations and cooperation’. Instead, Pant (2013, pp. 91, 103) concludes that, ‘The narrative surrounding the rise of the BRICS is as exaggerated as that of the decline of the United States’.

**(6) No risk of US – China war –** diplomatic ties, economic interdependence, geography, nuclear postures, balancing powers, no ideological conflict **–** any crisis won’t escalate

**Shifrinson, 19** – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are **overblown**. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the **U**nited **S**tates and China is very different. Since the 1970s, **diplomatic interactions**, **institutional ties** and **economic flows** have all **exploded**. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against **a generally cooperative backdrop**. 2. **Geography** and powers’ **nuclear postures** suggest East Asia is **more stable** than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the **U**nited **S**tates and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are **not nearly as large or threatening**: Arsenals remain far **below the size and scope** witnessed in the Cold War, and are kept at **a lower state of alert**. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively **limited forces** and **without clear territorial boundaries**. This suggests there are **countervailing factors** that may give the two sides **room to negotiate** — and **limit the speed** with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. **Russia**, for example, still benefits from legacy military investments, **India** is developing economically and militarily, and **Japan** is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for **more fluid diplomatic arrangements** and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” **U**nited **S**tates is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the **U**nited **S**tates have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is **not a new cold war** but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for **managing great power politics** — than a Cold War reboot.

**(7) No impact to human rights abuses---doesn’t undermine global stability**

Fareed **Zakaria 20**, host of Fareed Zakaria GPS on CNN, January/February 2020, “The New China Scare: Why America Shouldn’t Panic About Its Latest Challenger,” Foreign Affairs, https://www.foreignaffairs.com/articles/china/2019-12-06/new-china-scare

The rise of a one-party state that continues to reject core concepts of human rights presents a challenge. In certain areas, Beijing’s repressive policies do threaten elements of the liberal international order, such as its efforts to water down global human rights standards and its behavior in the South China Sea and other parts of its “near abroad.” Those cases need to be examined honestly. In the former, little can be said to mitigate the charge. China is keen on defining away its egregious human rights abuses, and that agenda should be exposed and resisted. (The Trump administration’s decision to withdraw from the UN Human Rights Council achieved the exact opposite by ceding the field to Beijing.)

But the liberal international order has been able to accommodate itself to a variety of regimes—from Nigeria to Saudi Arabia to Vietnam—and still provide a rules-based framework that encourages greater peace, stability, and civilized conduct among states. China’s size and policies present a new challenge to the expansion of human rights that has largely taken place since 1990. But that one area of potential regression **should not be viewed as a mortal threat** to the **much larger** project of a rules-based, open, free-trading international system.

#### (8) Resources are abundant – access to them is increasingly economically feasible – BUT the politics DA’s energy incentives accelerate that timeline

Teixeira 17 – PhD in Sociology at the University of Wisconsin-Madison (Ruy, “The Optimistic Leftist: Why the 21st Century Will Be Better Than You Think”, 3-7 Kindle Reader)

Another important reason why the left will be forced to embark on a different, growth-oriented economic path is the necessity of transitioning to a green economy. The left embraces this goal for the very good reason that the future of the planet may depend on it. But the intimate connection of this goal to strong economic growth is frequently missed. For one thing, the amount of infrastructure and scientific investment that will be necessary to facilitate this transition is immense, exactly the sort of investment that can help combat secular stagnation and promote full employment.35 Clean energy investments are particularly effective at creating jobs—and relatively good ones.36 And of course such a program is completely incompatible with austerity economics. So an effective approach to the clean energy transition both needs and should facilitate strong growth. It is odd that the left does not stress this connection more than it does. This may have something to do with prevalence of anti-growth sentiments in some of the greener parts of the left. These sentiments could not be more misguided. The basis for these views has been well summarized31 by technologist Ramez Naam, author of the recent book The Infinite Resource: The Power of Ideas on a Finite Planet. The world is facing incredibly serious natural resource and environmental challenges: Climate change, fresh water depletion, ocean over- fishing, deforestation, air and water pollution, the struggle to feed a planet of billions. All of these challenges are exacerbated by ever rising demand—over the next 40 years estimates are that demand for fresh water will rise 50%, demand for food will rise 70%, and demand for energy will nearly double—all in the same period that we need to tackle climate change, depletion of rivers and aquifers, and deforestation. 3 All of these problems are tied in one way or another to economic growth. So, logically, if we want to stop the problems shouldn't we just stop or even reverse economic growth? Naam rejects this logic despite fully embracing the scale of the problems we face. His first reason is that stopping growth would not work morally or practically. It would not work morally, Naam argues, because most of future growth will benefit people whose living standards are far below those in the developed world. To tell these people to forego the benefits of economic growth, when those in the developed world have already received those benefits, is grossly unfair. As Naam points out: Roughly one billion people alive today on the planet have access to automobiles, air conditioners, and central heat. The other six billion do not. Two billion lack access to a toilet. One billion lack access to electricity. The bulk of the growth to come over the next few decades— in global GDP, in energy consumption, in C02 emissions, in food consumption, in water use— will all come from the developing world. That growth isn't trivial. It isn't about building McMansions or driving SUVs. It is, by and large, growth that reflects the aspirations of billions of people around the world to rise to a level of comfort that nearly everyone in the rich world— even those we consider poor—enjoy. A path forward that doesn't allow room for billions to rise out of poverty and to at least this modicum of comfort is not a very appealing one. 3 And stopping growth would definitely not work practically. Even if we could stop growth in the developed world, how are we to stop those in the developing world who want to consume more from doing so? Short of enforcing austerity in the developing world, we can't do that. Naam's second reason is that stopping growth is not necessary. The resources—water, food, energy, etc.—available to humanity greatly outstrip the potential needs of our population, not only today but in the future. The problem lies in accessing those resources in an economically feasible and environmentally sustainable way. That in turn depends on innovation, both technological and economic. Take energy and, by extension, climate change. The price of solar energy is coming down fast; a watt of solar power today costs only 5 percent of what it cost in 1980. But it's still too expensive to out-compete fossil fuels, even setting aside, for the moment, the storage problem. The solution: massive investment in clean energy R&D (the United States currently invests only $5 billion a year in this, actually less than it invested in the 1980s) and a carbon tax to encourage clean energy use and accelerate innovation. As Naam puts it: The fundamental driver here is economics. Consumers, businesses, and industry want energy. They need energy. That's true everywhere in the world. And they will buy whatever sort of energy is cheapest. Indeed, if a new source of energy is sufficiently cheaper than the old, consumers will switch their energy consumption from the old to the new. If we want to win the race against climate change, one thing matters more than all others: make renewable energy (including storage) cheap. Dirt cheap. And do it fast. Naam makes similar arguments about challenges in the areas of water and food: the solution is not to stop growth but to innovate and to do it fast. In this, he joins such "green growth" advocates as Ralf Fücks, president of the Heinrich Böll Foundation and a leading member of the German Green Party, whose new book Green Growth, Smart Growth lays out a number of ideas similar to Naam's.41 This is indicative of a new attitude toward economic growth among much of the green left in advanced countries.

# 2NC

## K---Foucault

### 2NC---O/V

### 2NC---Framework

#### 1. Subjectivation DA---neither discourse, research, nor education are ideologically neutral, but are embedded with neoliberal ideology, meaning the only endpoint of debate is to create neoliberal subjects.

Vicencio 14 (Dr. Eduardo Rivera Vicencio, Professor of the Department of Business and Economics at the Autonomous University of Barcelona; “The Firm and Corporative Governmentality: From the Perspective of Foucault;” International Journal of Economics and Accounting, DOI: 10.1504/IJEA.2014.067421, TM) [language modified]

5 Discourse

One of the most historically entrenched capitalist manifestations of power is discourse. Prior to Adam Smith’s The Wealth of Nations it must be remembered that trade was considered a sin, unworthy and only for selfish gain. This resulted, in general, to the capitalist class not being given any respect. When The Wealth of Nations by Adam Smith was published

“… its success would not have been so great had it not been addressed to an audience very ready to receive its message. He spoke with the voice of capitalists and industrialists anxious to end the restrictions of the market and supply of labour which were the remains of the old system of commercial capital and the interests of the landowners … Smith offered the industrial class a theory that gave them what was missing … and were delighted to learn that their desire for profit was no longer considered selfish.” [Roll, (2002), p.139]

This represents the classical economic theory which arose from a specific need of a sector that would benefit from the stated theory and, therefore, be in the interest of the capitalist class. In the same way, all further theoretical development, starts from the initial idea of certain definite interests.

From this basis, a dominant discourse on economic issues throughout history was developed which responded to the needs of particular interests with sufficient resources to impose their views economically, as well as in training and research aspects, in everyday life, etc.

Within the field of the firm, as a specific aspect within the economy, the exact same thing occurred. The mainstream of research and professional training, functionalism or positivism, had a clear ideological direction which responded at certain interests in a given time [Rivera Vicencio, (2012), pp.731–732].

A further look at another moment in history can help towards understanding the evolution of the dominant discourse. The world leadership of the USA after World War I, both economic and military, generated significant economic and consumer activity. The stock market also benefited greatly from this increased activity and formed a financial and speculative bubble which burst and led to the Great Depression of 1929. At the same time, the USA maintained an ongoing involvement in European affairs. It should also not be forgotten that the development of Russian Revolution and World War I in the first quarter of the 20th century, drove a strong state intervention in economic matters [Roll, (2002), pp.414–415].

The strong social imbalances from the 19th century and the discredit being given towards the classical economic theory should also not be forgotten. It is certain that there are many aspects that have been forgotten, from the late 19th century to the publication of the General Theory of Employment, Interest and Money by Keynes in 1936. But laissez-faire was not solving the issues of unemployment, internal and external consumption, because global consumption had been affected by the crisis, and how to finance the war. The triumph of Keynesiam was not an ideological triumph but rather a triumph of entrepreneurship. For the machine to start working again and for the appropriation of resources to continue state intervention, either by generating economic activity or the adjudication of public contracts by the private sector, was necessary. This, obviously, does not take merit away from Keynes but it cannot be forgotten that at the same time there were economists who raised doubts about the continuity of the classical model or derivations of it; but their approach did not solve the insatiability of the private firm in the appropriation of resources. Once the war was over and the recovery situation was overcome in the 1960s, both the British, who had given the baton of power to the USA at the beginning of the century, and the USA, as the new world power, began the process of resuming the model of the new classical economy (neoliberalism).

This aspect helps the understanding of how some theoretical elements of the economy were not considered for many years, until it proved necessary by the prevailing economic power to introduce or adopt different theories, according to their convenience. For example, the case of agency theory and transaction cost theory can be addressed to approach the subject of the firm. These theories have their origins in the paper ‘The nature of the firm’, a document written in 1937 by Ronald Coase1 and are the basis of support for what I would call the new micro-economics (new institutional economics), which justifies the need for institutions (firms) as regulatory agents. It is the black box that replaces the invisible hand. In the words of Coase (1937, p.389), “It can, I think, be assumed that the distinguishing mark of the firm is the supersession of the price mechanism”.

The obvious question therefore is why this theory, which was contemporary to Keynes and solved all the problems of the market, was not adopted before. The answer is also obvious; considering the aspects of economic power and appropriation of resources, its adoption in the period after the Great Depression did not solve the needs of firms of appropriation of resources, nor did it finance the war. Ultimately, it did not benefit the entrepreneur because the firms did not have the resources due to the heavy losses in the Great Depression, low activity levels, the result of unemployment and therefore low consumption.

Neither does this aspect take merit away from Coase; one of them is the inter-relationship between his economy and law theories, giving theoretical support to less state intervention in this new stage of capitalism (neoliberalism). Working alongside this theoretical legal platform to justify that the state is a mere facilitator of business operations that take place internally in the firm and external transactions that take place between firms.

This new stage of neoliberalism theory support, from the 1960s in the Chicago School, has its origins in the late 1930s where the general principles of neoliberalism began and were led at the time by Rougier [Foucault, (2007), pp.190–195]. This stage was accompanied by a strong discredit against the state through ongoing discourse; discourse which ultimately was an economic criticism against the general Keynesian model; a criticism of the political and economic decisions of the Soviet Union, a criticism of socialism [Foucault, (2007), pp.218–221].

This permanent criticism of the state after the 1970s, increased with the use of an economic language emanating from the Chicago School and its greatest exponent, Milton Friedman, a staunch advocate of free markets and minimal state intervention. This model of minimal state intervention was implemented in Chile from 1973 onwards, after a bloody civil and military coup d’état, through the reduction of public spending, restructuring of the state, budget control, deregulation of different economic sectors, free investment income and foreign exchange, reduced tariffs, privatisation of strategic companies (including natural monopolies), the reform of social security, which also represented privatisation, etc.

As can be seen, the model applied in post-war Germany was reapplied in Chile; a country which used as its test model extreme neoliberalism and which later on was applied on a worldwide scale with the UK in the 1980s, the first to experience this change in Europe.

This is also possible, thanks to the dominant discourse of an inefficient state, which was measured by their own indicators in the private sector, such as profitability. For this reason, the privatised company increased its prices to the civil society with equal costs and was evidently more profitable. Manipulating the language of economics in relation to efficiency measures, is not measurable by profitability, but by productivity or other indicators. In this field of research2 there are many studies that show that efficiency is not related to the ownership of the firm (public or private) being more or less efficient than the public or private firm.

Another aspect to consider is the objectives of the public firm in comparison to private firms, starting with the objective of profit maximisation which is not, and never will be, the objective of the public company. The purposes of the public firm are – the efficient allocation of resources, stability and full employment, economic growth, income redistribution, universality of service, etc. Replacing the public firm with a private one, therefore, means diluting all these objectives to the detriment of the welfare of civil society. What is more, the private firm only has the objective of maximising profits with no responsibility to the civil society, the only exception being to generate jobs (jobs increasingly precarious) so that all members of the civil society have to handle their problems individually.

The field of privatisation, the regulation of privatised firms and the specific case of natural monopolies should also be taken into consideration. It is the typical case in which the market cannot achieve efficient allocation of resources which clearly require regulation. But this only justifies that they should never have been privatised. Now, if it is assumed that they are already privatised, the agency theory itself poses problems of information asymmetries, understanding the principal regulator (state) and the regulated firm or agent. If the objective is to maximise profits, firms seek to lower their costs to the maximum, above all maintenance costs, but will not allow costs to be monitored, which will make any regulation or control of the agent impossible by the regulator.

Now it is important to look at the regulation from the point of view of the transaction cost theory. This theory would justify the existence of an integrated activity in one firm rather than activities carried out in different firms with increased transaction costs because of increased contracts and their associated costs. Therefore, it is not advisable for new firms to enter into this competitive market, as is usual in these monopoly sectors or firms, incorporating new operations to justify the existence of a competitive market, which is the same theory as recommended.

In this way, it can be seen that the theory constructed also did not help explain the different privatisation measures and all its adopted environments (regulation, competition in the privatised sector, etc.), unless the analysis are addressed in favour of the appropriation of resources.

Independent of these additional explanations, the discredit of the discourse with respect to the state is maintained even today, with the objective of maintaining the appropriation of resources of privatised companies for the purpose of the appropriation of those firms or sectors not yet privatised.

They also play a key role in the discourse, the concentration of ownership of the media and the gradual disappearance of those not absorbed. The same situation occurs with the public media or they are sold to the private sector or disappear. This situation persists until today, depending on how much the neoliberal model has been taken on in each country.

This pressure affects the media in general, where they feel obliged to communicate only the discourse of the model and its firms as they depend mainly on advertising. This is where a different discourse or criticism of the model of appropriation of resources represents the removal of public or private advertising and therefore becomes economically unviable. The model is based on the basis of misinformation, ignorance and lack of criticism.

Another aspect of great importance in sustaining the model of appropriation of resources by the private sector is education and research that is developed in all disciplines and levels, but mainly on economic matters. The mainstream of research, often funded by private firms, greatly influences the type of research being done, and to this we add the ideological trend of scientific journals, censorship or self-censorship to which they are subject, owing to the funding sources, the lack of transparency in the ranking method that these magazines and, in some cases, the absence of a scientific direction of the publication.

Bearing in mind this context, this is how the firm has developed, making changes depending on the powers of a given period, with certain discourses and with certain power relations, which also influence the language and, therefore, the discourse. An example of this can be found in the definition of firm in the 20th edition of the Spanish Language Dictionary (Diccionario de la Lengua Española) in 1984 which defined the firm as “Entity composed of capital and labour as factors of production and activities dedicated to industrial, commercial or service provision for profit and with accountability”. As opposed to the same definition in the 22nd edition in 2001 which defined the firm as “Organisational unit dedicated to industrial activities, commercial activities or service provision for profit”. These changes, which seem to be subtle linguistic changes, contain a deep ideological discourse. The change of ‘Entity composed of capital and labour as factors of production’ for ‘Organisational unit’ allows for the entry of the concept of the activities, belonging to the model. Moreover, the change from ‘for profit and with accountability’ to ‘for profit’, shows how the firm has removed any liability with the civil society, whether it be social, environmental, respect for human rights, etc. This comparison shows the importance of ideological discourse through language; a discourse that helps to endorse a particular economic model so strongly, which is capable of modifying the language, producing this permanent use of discourse in favour of certain interests. It must be remembered though, that a dictionary does nothing else but adapt to a reality, a reality that is constructed according to certain interests.

#### 2. Policy Relevance DA---their model excludes antitrust scholarship unrelated to the ‘efficiency’ of antitrust policy---that cements neoliberal political projects and ensures serial policy failure by excluding structural analysis of the relationships between political and economic power.

Britton-Purdy 20 (Jedediah Britton-Purdy, William S. Beinecke Professor of Law at Columbia Law School; David Singh Grewal, Professor of Law at Berkeley Law School; Amy Kapczynski, Professor of Law at Yale Law School; and K. Sabeel Rahman, Associate Professor of Law at Brooldyn Law School; “Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis;” 2020, Yale Law Journal, <https://www.yalelawjournal.org/pdf/Britton-Purdyetal.Feature_oopjctns.pdf>, TM)

Together, these developments pose a deep challenge to prevailing models of legal thought and scholarship, which have been profoundly shaped by a misconception of the relationship between politics and the economy. That misconception inhibits our ability to address urgent problems of distribution, democracy, and ecology. Indeed, legal discourse has helped consolidate these problems by serving as a powerful authorizing terrain for a set of "neoliberal"21political projects that have fueled these same crises.

Although a full defense of these claims will take many pages, any first-year law student can appreciate the problem's basic contours. She may begin her education imagining it as an invitation to ask fundamental questions concerning justice and power. But [they are] she is likely to "learn" quickly that serious legal thought in areas such as contracts and property prizes a certain version of efficiency over all else. Meanwhile, constitutional law advances visions of equality and liberty that leave many forms of unequal power and vulnerability unchallenged or even enshrined as constitutionally fundamental. Upper-level courses such as antitrust and antidiscrimination law extend and consolidate the same lessons. To enter law school today -particularly the elite law schools that send the most students into powerful legal and political positions -is to join a conversation shaped by the depoliticization and naturalization of market-mediated inequalities.22

The sum of these parts is a division of labor among legal fields that we dub the "Twentieth-Century Synthesis."" It rests upon two interrelated developments. First, some legal subfields have been reoriented around versions of economic "efficiency." These are the fields in which law and economics has become dominant and which are generally considered to be "about the market": contracts, property, antitrust, intellectual property, corporate law, and so on. Here, efficiency analysis anchors both the descriptive framing and the normative assessment of law. Efficiency itself is typically defined- in practice if not always in theory - as a kind of "wealth maximization" that works to structurally prioritize the interests of those with more resources.2 4 This methodological approach offers no framework for thinking systematically about the interrelationships between political and economic power. Its commitment to summative conceptions provides it no means to analyze, let alone counter, contemporary concentrations of wealth and power, except insofar as they interfere with overall efficiency.2

The second move has redefined so-called political and public legal fields, centrally constitutional law. Here, questions of coercion and legitimacy remain central but are delimited to exclude economic power and other structural forms of inequality. Scrutiny in these fields tends to be restricted to narrowly defined differential treatment of individuals, especially by the state. As the economy was read out of working conceptions of constitutional equality, it was read back into constitutional law to enshrine certain forms of economic liberty through developments in free-speech law. Meanwhile, more diffusely, pessimism about the possibilities of politics and the effectiveness of the state rippled through our constitutional imaginary and doctrine, shaped by ways of thinking that transposed market logics onto politics and political subjects. The result is a vision of constitutional equality and liberty that enshrines structural inequality and economic power. 26

### 2NC---AT: Fairness !

### 2NC---AT: Util

#### The impact is psychological and social death

Larsen 10 (Lars Bang Larsen, art historian and curator based in Barcelona and Copenhagen, his research is supported by the Ph.D. program at the Department of Arts and Cultural Studies at Copenhagen University, “Zombies of Immaterial Labor: The Modern Monster and the Death of Death,” E-Flux, Journal #15, April 2010, https://www.e-flux.com/journal/15/61295/zombies-of-immaterial-labor-the-modern-monster-and-the-death-of-death/)

I will therefore hypothesize that the zombie’s allegorical (rather than merely metaphorical) potential lies in trying to elaborate and exacerbate the zombie as a cliché of alienation by using it to deliberately “dramatize the strangeness of what has become real,” as anthropologists Jean and John L. Comaroff characterize the zombie’s cultural function. Why would one want to do such a thing? As Deleuze and Guattari had it, the problem with capitalism is not that it breaks up reality; the problem with capitalism is that it isn’t schizophrenic and proliferating enough. In other words, it frees desire from traditional libidinal patterns (of family and religion and so on), but it will always want to recapture these energies through profit. According to this conclusion, one way to circumnavigate capitalism would be to encourage its semiotic excess and its speculation in affect. Capitalism is not a totalitarian or tyrannical form of domination. It primarily spreads its effects through indifference (that can be compared to the zombie’s essential lack of protagonism). It is not what capital does, but what it doesn’t do or have: it does not have a concept of society; it does not counteract the depletion of nature; it has no concept of citizenship or culture; and so on. Thus it is a slave morality that makes us cling to capital as though it were our salvation—capitalism is, in fact, what we bring to it. Dramatization of capital through exacerbation and excess can perhaps help distill this state of affairs. The zombie isn’t just any monster, but one with a pedigree of social critique. As already mentioned, alienation—a Marxian term that has fallen out of use—is central to the zombie. To Marx the loss of control over one’s labor—a kind of viral effect that spreads throughout social space—results in estrangement from oneself, from other people, and from the “species-being” of humanity as such. This disruption of the connection between life and activity has “monstrous effects.” Today, in the era of immaterial labor, whose forms turn affect, creativity, and language into economical offerings, alienation from our productive capacities results in estrangement from these faculties and, by extension, from visual and artistic production—and from our own subjectivity. What is useful about the monster is that it is immediately recognizable as estrangement, and in this respect is non-alienating. Secondly, we may address alienation without a concept of nature; a good thing, since the humanism in the notion of “the natural state of man” (for Marx the positive parameter against which we can measure our alienation) has at this point been irreversibly deconstructed. In other words: the natural state of man is to die, not to end up as undead. Franco “Bifo” Berardi describes how Italian Workerist thought of the 1960s overturned the dominant vision of Marxism. The working class was no longer conceived as “a passive object of alienation, but instead the active subject of a refusal capable of building a community starting out from its estrangement from the interests of capitalistic society.” For the estranged worker, alienation became productive. Deleuze and Guattari were part of the same generation of thinkers and overturned a traditional view of alienation, for example by considering schizophrenia as a multiple and nomadic form of consciousness (and not as a passive clinical effect or loss of self). They put it radically: “The only modern myth is the myth of zombies—mortified schizos, good for work, brought back to reason.” The origin of the zombie in Haitian vodoun has an explicit relationship to labor, as a repetition or reenactment of slavery. The person who receives the zombie spell “dies,” is buried, excavated, and put to work, usually as a field hand. In his book The Serpent and the Rainbow, ethnobotanist Wade Davis tells the story of a man called Narcisse, a former zombie: [Narcisse] remembered being aware of his predicament, of missing his family and friends and his land, of wanting to return. But his life had the quality of a strange dream, with events, objects, and perceptions interacting in slow motion, and with everything completely out of his control. In fact there was no control at all. Decision had no meaning, and conscious action was an impossibility. The zombie can move around and carry out tasks, but does not speak, cannot fend for himself, cannot formulate thoughts, and doesn’t even know its own name: its fate is enslavement. “Given the colonial history”—including occupation by France and the US—Davis continues: the concept of enslavement implies that the peasant fears and the zombie suffers a fate that is literally worse than death—the loss of physical liberty that is slavery, and the sacrifice of personal autonomy implied by the loss of identity. That is, more than inexplicable physiological change, victims of voodoo suffer a social and mental death, in a process initiated by fear. The zombie considered as a subaltern born of colonial encounters is a figure that has arisen then out of a new relationship to death: not the fear of the zombie apocalypse, as in the movies, but the fear of becoming one—the fear of losing control, of becoming a slave.

## CP---Section 5

### 2NC---Condo---Short

### 2NC---AT: Perm Do CP

#### First, expand the scope---regulations don’t.

Lane 92 --- Mills Lane, Judge on the Second District Court of Nevada, “STATE, GAMING COMM'N V. GNLV CORP”, https://www.casemine.com/judgement/us/5914875dadd7b049344e3895

Moreover, an administrative agency is not required to promulgate a regulation where regulatory action is taken to enforce or implement the necessary requirements of an existing statute. K-Mart Corp. v. SIIS, 101 Nev. 12, 17, 693 P.2d 562, 565 (1985). "An administrative construction that is within the language of the statute will not readily be disturbed by the courts." Dep't of Human Res. v. UHS of The Colony, Inc., 103 Nev. 208, 211, 735 P.2d 319, 321 (1987). The Commission did not engage in ad hoc rule-making because the Commission did not expand the scope of the statute, but merely enforced the requirements of NRS 463.3715(2) in accordance with the plain dictates of the statute.

#### Contextual evidence proves---guidance documents interpreting Section 5 don’t expand the scope---merely alter enforcement.

Federal Register: Rules and Regulations - ‘9 (Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf)

b. Examples 7-9 – New Media Several commenters raised questions about, or suggested revisions to, proposed new Examples 7-9 in Section 255.5, in which the obligation to disclose material connections is applied to endorsements made through certain new media.91 Two commenters argued that application of the principles of the Guides to new media would be inconsistent with the Commission’s prior commitment to address word of mouth marketing issues on a case-by-case basis.92 Others urged that they be deleted in their entirety from the final Guides, either because it is premature for the Commission to add them, or because of the potential adverse effect on the growth of these (and other) new media.93 Two commenters said that industry self-regulation is sufficient.94

The Commission’s inclusion of examples using these new media is not inconsistent with the staff’s 2006 statement that it would determine on a case-by-case basis whether law enforcement investigations of ‘‘buzz marketing’’ were appropriate.95 All Commission law enforcement decisions are, and will continue to be, made on a case-by-case basis, evaluating the specific facts at hand. Moreover, as noted above, the Guides do not expand the scope of liability under Section 5; they simply provide guidance as to how the Commission intends to apply governing law to various facts. In other words, the Commission *could* challenge the dissemination of deceptive representations made via these media regardless of whether the Guides contain these examples; thus, not including the new examples would simply deprive advertisers of guidance they otherwise could use in planning their marketing activities.96

#### Comparative evidence also proves---interpretations don’t expand the scope, merely clarify.

CFR ‘76

Code of Federal Regulations - Note: “The Board” – internally referenced – is the “Cost Accounting Standards Board”. The Code of Federal Regulations of the United States of America - Pt. 401, Preamble C - Amendment published 11-30-76 - Preamble C Preamble to the addition of Appendix -- Interpretation No. 1 added on Nov. 30, 1976, at 41 FR 52427. Interpretation No. 1 to Part 401, Cost Accounting Standard, Consistency in Estimating, Accumulating and Reporting Costs, is being published today by the Cost Accounting Standards Board pursuant to Section 719 of the Defense Production Act of 1950, as amended. (Pub.L.91-379, 50 U.S.C.App. 2168 – modified for language that may offend - Pages 255-6

Comments of particular significance with respect to the proposed Interpretation are discussed below.

1. Need for an Interpretation

Several commentators stated that the Interpretation expands the scope and is not consistent with the intent of Part 401, which they say requires only a comparison of actual costs with estimated costs for direct material. They argued that the Defense Contract Audit Agency (DCAA) guidance to its field auditors in October 1973 satisfactorily explained the meaning of Part 401. In general, these commentators felt that an Interpretation to CAS 401 was not needed.

The Board's research indicates that an Interpretation is needed. Numerous and widespread questions have been raised concerning whether application of a percentage factor to a base as a means of estimating the costs of certain additional direct material requirements is in compliance with Part 401 when the contractor accumulates direct material costs in an undifferentiated account. The Board notes that a similar question with respect to direct labor is specifically addressed in Part 401. Section 401.60(b)(5). In that Illustration, the accumulation of total engineering labor in one undifferentiated account is not in compliance with Part 401 where the contractor estimates engineering labor by cost function. Part 401 does not, however, specifically address the consistency requirement for direct materials, nor did the DCAA guidance specifically cover this matter. Accordingly, the Board concludes that this Interpretation is needed.

In ~~view~~ (light) of the fact that the Interpretation clarifies what is already required by Part 401, the Board does not agree that it expands the scope of the Standard.

#### Second, prohibitions must forbid by law.

Brunetti ‘8

Petition before SCOTUS - Kenneth A. Brunetti - Counsel of Record, Miller & Van Eaton, PLLC - BRIEF FOR THE RESPONDENT IN OPPOSITION, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, IN THE SUPREME COURT OF THEUNITED STATES – Filed on December 19th, 2008 - #E&F – continues to footnote - https://www.scotusblog.com/wp-content/uploads/2009/01/08-626\_bio.pdf

The FCC has consistently required evidence that a provision, as applied, has prohibitory effects, and rejected challenges based on the mere possibility that authority might be exercised in a manner that arguably "prohibits or has the effect of prohibiting" the ability of a provider to offer services. Cal. Pay phone, 12 F.C.C.R. at 14209 \ 38 (emphasis added). The FCC accordingly rejected a Section 253 petition because the complainant had failed to show that the challenged regulation made it "impractical and uneconomic" or eliminated any "commercially viable opportunity" to enter the market. 12 F.C.C.R. at 14210 If 41.12 As the FCC's cases demonstrate, this reading of Section 253 provides ample protection against requirements that actually prohibit or "have the effect of prohibiting" market entry - it does not, as Level 3 claims, limit Section 253(a) to protecting against "far-fetched and entirely imaginary5' ordinances.13 As discussed, infra, the FCC test has been adopted in the First, Second, Eighth, Ninth, and Tenth Circuits.

12 This applies the primary and ordinary meaning of the term "prohibit," which is to "forbid by law," and not merely "impede," as Level 3 would have it. Black's Law Dictionary, 8th Ed. 2004.

#### Regulations are NOT law.

P.O.G.O. ’15 (Project On Government Oversight *- Internally quoting Chief Justice Roberts’ Majority Opinion in US Supreme Court’s 7-2 decision in Department of Homeland Security v. MacLean* (2015) - which dealt largely with statutory interpretation. The Project On Government Oversight (POGO). POGO’s investigators are experts in working with whistleblowers and other sources inside the government who come forward with information that we then verify using the Freedom of Information Act, interviews, and other fact-finding strategies. We publish these findings and release them to the media, Members of Congress and their constituents, executive branch agencies and offices, public interest groups, and our supporters. In addition to quoting the Majority Opinion from the Chief Justice, this article was authored by POGO’s Phillip Shaverdian – who is currently a Judicial Law Clerk within the U.S. District Court System and, at the time of the writing, was an intern within and correspondent on behalf of the Project On Government Oversight - “Agency Rules and Regulations Are Not Laws” - FEBRUARY 10, 2015 - #E&F – modified for language that may offend - https://www.pogo.org/analysis/2015/02/agency-rules-and-regulations-are-not-laws/)

Agency Rules and Regulations Are Not Laws

In January, in one of the most riveting cases of the current session, the Supreme Court ruled 7-2 in favor of Transportation Security Administration (TSA) whistleblower Robert MacLean, holding that agency rules and regulations do not equate to laws. Chief Justice John Roberts wrote the majority opinion for the Court. And now that we’ve had time to celebrate the victory for MacLean, it’s time to turn our focus to what Department of Homeland Security v. MacLean may mean for whistleblowers in general.

Current federal whistleblower protection law—the Whistleblower Protection Act (WPA)—protects individuals against backlash from employers for disclosing information about “any violation of any law, rule or regulation” or “a substantial and specific danger to public health or safety” by a federal agency. However, in the same statute there exists an exception for disclosures that are “specifically prohibited by *law*.”

The question the Court sought to answer was whether MacLean’s disclosures were “specifically prohibited by *law*.”

The Homeland Security Act of 2002 states that the TSA’s “Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security” if they decide that the disclosure of that information would “be detrimental to the security of transportation.” The resultant regulations thus prohibit the disclosure of “sensitive security information” (SSI) without the proper authorization. Among the various types of information that could be designated SSI is “information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.”

The government argued that MacLean’s disclosures were “specifically prohibited by law” and that the WPA did not offer protection for two reasons: 1) the disclosure was prohibited by specific TSA regulations on SSI; and 2) the Homeland Security Act authorizes the TSA to promulgate the regulations.

The Court addressed and subsequently rejected both arguments, affirming the judgment in favor of MacLean by the U.S. Court of Appeals for the Federal Circuit.

The Court rejected the government’s argument that a disclosure that is prohibited by regulation is also “specifically prohibited by law,” as prescribed by federal whistleblower statute.

The Court elaborates that in the WPA Congress repeatedly used the phrase “law, rule, or regulation,” but did not use the same phrase in the statutory language at question in this case. Instead, Congress used the word “law” alone, suggesting that it meant to exclude rules and regulations from the specific stipulation. Congress’s omission of “rule, or regulation” must be ~~viewed~~ (considered) as deliberate because of the use of “law” and “law, rule, or regulation” in the same sentence, as well as the frequent use of the latter phrase throughout the statute. These “two aspects of the whistleblower statute make Congress’s choice to use the narrower word “law” seem quite deliberate,” opined the Court.

After creating an exception for disclosures “specifically prohibited by law,” the WPA also creates a second exception for information “specifically required by Executive order to be kept secret.” The second exception is limited to actions taken by the President, and thus suggests that the first exception and the use of “law” is limited to actions by Congress.

The Court also reasons that “If ‘law’ included agency rules and regulations, then an agency could insulate itself from the scope of Section 2302(b)(8)(A) merely by promulgating a regulation that ‘specifically prohibited’ whistleblowing.” Instead, “Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks.” The Court concluded that “it is unlikely that Congress meant to include rules and regulations within the word ‘law’” and that the specificity of the phrase “specifically prohibited by law” was meant to deliberately exclude rules and regulations.

## Adv---Trade

### 2NC---AT: Solvency

#### Judicial nullification wrecks solvency

Crane 20 [Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, 3-1-2020 https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3561870]

Judges and scholars frequently describe antitrust as a common law system predicated on open-textured statutes, but that description fails to capture a **historically persistent** phenomenon; judicial **disregard** of the plain meaning of the statutory texts and manifest purposes of Congress. This pattern of **judicial nullification** is not evenly distributed: When the courts have deviated from the plain meaning or Congressional purpose, they have **uniformly** done so to **limit the reach of antitrust liability** or **curtail the labor exemption** **to the benefit of industrial interests**. This phenomenon cannot be explained solely or even primarily as a tug-of-war between a progressive Congress and conservative courts. The judges responsible for these decisions were far from uniformly conservative, Congress has not mobilized to overturn the judicial precedents, nor, despite opportunities to do so, have the courts constitutionalized their holdings to prevent Congressional overriding. Antitrust antitextualism is best understood as an implicit political arrangement in which Congress writes broad statutes expressing anti-bigness republican idealism, and then the courts **read down the statutes** pragmatically to accommodate competing demands for efficiency and industrial progress.

**Conflicting preferences prove**

Anu Bradford 11. Henry L. Moses Professor of Law and International Organization and director of the European Legal Studies Center at Columbia Law School, Senior Scholar at Columbia Business School’s Jerome A. Chazen Institute for Global Business, a nonresident scholar at Carnegie Endowment for International Peace, heads the Comparative Competition Law Project, was an Assistant Professor at the The University of Chicago Law School, practiced EU and antitrust law in Brussels, served as an adviser on economic policy in the Parliament of Finland, and served as an expert assistant at the European Parliament. “International Antitrust Cooperation and the Preference for Nonbinding Regimes”. COOPERATION, COMITY, AND COMPETITION POLICY, ANDREW T. GUZMAN, ED., OXFORD UNIVERSITY PRESS (2011). https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2966&context=faculty\_scholarship

This article has argued that the pursuit of nonbinding international antitrust cooperation represents an optimal choice for states. It is not merely an opportunity to capture limited gains from cooperation while proceeding towards a binding international agreement, as is commonly perceived. States’ conflicting preferences over the optimal content of international antitrust cooperation is the primary impediment for negotiating binding antitrust rules in the WTO. States have sought to accommodate their divergent preferences by removing controversial issues from the negotiation agenda. However, this has led to proposals for watered-down rules that would confer trivial benefits to WTO member states. Because states expect low net benefits from a prospective WTO antitrust agreement, states have abandoned the negotiations to seek case-by-case cooperation and voluntary international guidelines instead. Nonbinding cooperation has successfully fostered international antitrust convergence. A growing number of states enforce increasingly consistent antitrust rules today without any binding international agreement requiring them to do so. Eventually, successful voluntary convergence could pave the way for binding cooperation. However, this article has argued that nonbinding agreements are likely to persist for three primary reasons. First, as cooperation under nonbinding agreements is largely self-enforcing, the added value of a binding agreement with provisions for monitoring, enforcement, and sanctions is trivial. Second, in the absence of coordinated domestic interest group support for international antitrust cooperation, a binding agreement would not provide states with any domestic political economy rents and therefore will remain a low national priority. Finally, the emerging voluntary convergence will slowly eradicate negative externalities stemming from decentralized antitrust regimes, making the case for a binding international agreement less compelling. By arguing that nonbinding agreements are preferable to binding agreements, even in situations where binding agreements are feasible, this article disputes the view that nonbinding agreements are second-best instruments for fostering international antitrust convergence. States have not chosen nonbinding agreements because their first-best regime choice has been unavailable. Instead, states have viewed binding agreements as unnecessary and undesirable. An optimal institutional design must be consistent with state interests to be effective. By acknowledging both the difficulties involved in the pursuit of binding international antitrust cooperation and the ability of nonbinding agreements to mitigate those difficulties, this article raises two critical questions. First, given the obstacles to international antitrust cooperation, how could a binding agreement emerge? And second, assuming that a binding agreement could emerge, what would it add to the existing nonbinding international antitrust regime? Until the proponents of a binding international antitrust agreement can answer those questions, nonbinding cooperation is, and will likely remain, the preferred solution.

Developing countries will say no

Kretzmer 19 [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

A major negative perception that is held of the ICN is that it represents US interests in the formulation of its policy. The US was always aloof to the idea of a global competition policy being implemented under the auspices of the WTO,43 and thus felt it could better control global competition policy through the ICN. Sweeney writes that: The ICN represented the preferred US path to solving international competition problems. Indeed, the speed with which it was created suggests that it may have been a strategic response by the USA to head off proceedings at the WTO. 44 This western supported ideology can have negative implications when trying to establish a global competition policy. It is trite that developing countries may view the ICN as an institution that only serves western-backed ideologies, and ultimately views the concerns of developing countries as less of a priority, especially when one considers the fact that the majority of contributions to the ICN emanate from wealthier jurisdictions, which may lead to poorer developing countries to question whether the ICN truly serves their best interests.45 A further weakness of the ICN is fundamental, in that its various policy recommendations are merely instructional and non-binding. It is almost impossible to facilitate the creation of a global competition policy when countries are ultimately under no obligation to implement ICN recommendations. The consequences of this soft law approach are well illustrated by Sweeney who writes that ‘the greatest threat to the ICN may be irrelevance, as soft law options are taken as far as they will go.’46 This is exacerbated by the fact that the ICN has no mechanisms to deal with these limitations.47 A further negative perception of the ICN is its susceptibility to the notion of being captured, which weakens its legitimacy.48 This perceived capture, coupled with the assertion that the ICN is financially supported by wealthy developed countries as mentioned above, creates a truly awkward position for the ICN when trying to influence developing countries to implement its competition policy recommendations. The writer asserts that the most glaring [weakness] ~~defect~~ within the framework of the ICN is its lack of a general headquarters or secretariat, which means that the ICN lacks a bureaucracy, legislative powers and an executive,49 which are key elements of any institution deemed worthy of recommending significantly influential policies.

#### 5. Multilat fails---it’ll gridlock inevitably

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The prospects of successfully harmonising a cohesive competition policy does **not appear possible** in the current global competition policy climate. A **lack of organisation, direction and leadership** among the supposed main role players in international competition law has led to an environment whereby each country adheres to its own set of competition laws or policies, and an extraterritorial application of same upon foreign companies or governments where they are deemed to be noncompliant with the home country’s competition laws. This conduct between countries can cause major conflict with regard to sovereign interests.50 The **difficulty** in formulating a **global consensus** on competition policy is by **no means** an **enviable task**, with such **difficulty well demonstrated** in how states endured nearly a **century of negotiations** in order to reach an agreement on how to control the spread of disease,51 a **seemingly necessary** agreement one might think. This **inflexibility** can be **transferred** to a key question in the field of **competition law** which is well postulated by Dabbah who questions how much certain countries would forgo national interests and priorities in favour of a global agreement based on common rules and shared objectives.52 As far back as 19**97**, attitudes towards the efficacy of creating a global competition policy had been questioned. Joel Klein, head of the antitrust division in the US Department of Justice in the late 1990s, set out his thoughts on whether the WTO would succeed in establishing a harmonised regime by stating:

this working group can play an important educational role in demonstrating the important contributions of antitrust to efficient national…we are less persuaded that the time is ripe for the negotiation of global antitrust rules.53

A delusionary perception of the current competition law system is that the current laws are suitable for all relevant parties to some extent. Interestingly however, it has been pointed out that in the majority of cases, the respective competition laws of developing countries has been ‘modelled on the basis of the competition laws found in the developed world.’54 The competition laws that have been created by developed states are arguably not suited to the starkly different needs of their developing counterparts. This is well supported by the fact that many developing countries’ competition laws and policies can be traced to the significant amount of preferential trade agreements that were signed between developed and developing countries in the 1990s.55 This situation, whereby developing states have essentially employed competition policies that are naturally suited to developed countries and their specific interests seems farcical. As has been noted, due to the fact that competition policy is always evolving, specifying overarching and binding rules on every country may be misguided.56

Competition authorities in developing countries are less equipped to effectively tackle anticompetitive conduct on the part of international monopolies, which conduct directly impacts on the lives of that developing state’s citizens. The problems encountered by domestic competition authorities concern a plethora of institutionally engineered barricades. These include areas such as lack of independence and the inability to make binding decisions, a shortage of well qualified personnel which leads to these personnel focusing on areas outside competition law and a general lack of steadiness and persistence on the part of the competition authority which has a potentially adverse effect on the enforcement of a cohesive competition policy.57

Those are uniquely disruptive to trade---***and even if they solve coordination over Type 1 and 2 cases, unilateral enforcement still creates disparate remedies that disrupt trade***

Michal S. Gal 09, Associate Professor and Vice Dean, Haifa University School of Law; Global Hauser Visiting Professor of Law, New York University School of Law. "Antitrust in a Globalized Economy: The Unique Enforcement Challenges Faced by Small and Developing Jurisdictions" Fordham International Law Journal, Volume 33, Issue 1, Article 1. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2175&context=ilj&httpsredir=1&referer=>

In the first type of cases, the conduct of market players enhances or has a neutral effect on the welfare of all the jurisdictions in which they trade. That will be the case, for example, should the merging firms face strong competition in all markets in which they trade. In the second type of cases, the conduct of international market players reduces the welfare of all the jurisdictions in which they trade. To illustrate, the "Vitamins" cartel negatively affected all the countries in which vitamins were sold. 14 If the relevant market is truly global, conduct will generally fall within one of these two categories.

The third type of case creates mixed effects: the conduct creates positive or neutral welfare effects on the domestic jurisdiction (possibly on some foreign jurisdictions also) and negative welfare effects on one or more foreign jurisdictions. 15 This may occur, for example, when parties to ajoint venture face strong competition in some markets, but face limited competition in others due to high entry barriers. This category also includes export cartels and cases in which a domestic firm abuses its power in foreign markets. 16 To concretize this type of cases, consider European and U.S. food producers merger of Unilever and Best Foods. The European Union ("EU") and the United States approved the merger, since it did not raise anticompetitive concerns in their markets. 17 Yet it substantially lessened competition in some Israeli markets, given that each of the merging entities had previously merged with a dominant player in some Israeli food market. 8

The fourth type is characterized by opposite mixed effects: it creates negative welfare effects in the domestic jurisdiction (possibly on some additional jurisdictions as well) and positive effects in one or more foreign jurisdictions. This may be the case when high trade barriers in the home jurisdiction prevent the entry of foreign firms that compete effectively with a domestic one in other markets.

Figure 1 represents the four cases visually, in a two-country setting, which can be extended to a multi-country one.19 The horizontal axis represents the welfare effects on Jurisdiction A, while the vertical axis represents the welfare effects on Jurisdiction B. Accordingly, the right-slanted area represents the cases that are harmful to the Jurisdiction A, while the left-slanted area represents the cases that are harmful to the Jurisdiction B.

As Figure 1 clearly indicates, the first two types are easy cases, in the sense that the interests of all countries involved are aligned. The decision of Jurisdiction A will generally coincide with the interest of Jurisdiction B. Yet even in these cases, issues of coordination and cooperation arise. For one, cooperation may be necessary for gathering the information needed to prosecute anticompetitive conduct, evaluating its effects, or enforcing remedies effectively.20 Coordination is also needed if antitrust regulation requires ex ante clearance of a transaction, as for mergers. If a merger must be approved by multiple agencies and the process is lengthy, costly, or unpredictable, the transaction costs of such a multijurisdictional review might prevent an otherwise welfare-enhancing merger from taking place, even if it would have been approved by all.2 1 Ironically, such governmental barriers to trade are a direct result of the attempt to effectively regulate private barriers.

Additional cooperation issues arise with regard to the effects that limited international enforcement might have on the incentives of firms to engage in anticompetitive conduct. As will be elaborated below, currently a limited number of jurisdictions bring international cartels to trial. Yet the sanctions imposed by the handful of jurisdictions on cartel members might not be sufficient to deter future international cartels, as the fines, private damages, and even jail time imposed by them are generally based on the harm to their domestic consumers and firms. 22 Cartel members may thus still find it profitable to engage in international anticompetitive activity .so long as the benefits from cartelization are larger than the fines and damages they must incur in the few jurisdictions that enforce their laws against them.

The need for coordination also arises from the fact that sanctions against international cartels are not synchronized. This fact reduces the incentives of cartelists to report their cartels through leniency programs, since once the cartel is discovered the party that reported the cartel might still be subject to sanctions in other jurisdictions in which it does not enjoy leniency. In fact, this situation strengthens international cartels relative to domestic ones, as cheating on them by way of reporting produces lower rewards.23 It is thus important to devise ways to solve these incentive problems. 2 4

The third and fourth types of extraterritorial cases raise even more difficult issues for cooperation as different jurisdictions may reach conflicting decisions and have divergent interests. 25 For example, if the firms of one jurisdiction have monopoly power in world markets, that jurisdiction might have limited incentives to stop their anticompetitive activity, thereby increasing national wealth at the expense of foreigners. A good illustration involves the reluctance of the South African government to place limitations on the diamond cartel that operated from within its borders. Moreover, as Figure 1 indicates, such cases may create over-enforcement relative to a worldwide total welfare standard, if the negative welfare effects on all countries affected are smaller than their positive welfare effects.2 6

### 2NC---AT: Trade !

**Absolutely zero chance of a global trade collapse---the multilateral system’s incredibly resilient**

Shiro **Armstrong 14**, economist and Fellow at the Crawford School of Public Policy, Australian National University, Co-Director, Australia-Japan Research Centre, Editor of the East Asia Forum, Director of the East Asian Bureau of Economic Research and Research Associate at the Center on Japanese Economy and Business at the Columbia Business School, September 2014, “Economic Cooperation in the Asia-Pacific and the Global Trading System,” Asia & the Pacific Policy Studies, Vol. 1, No. 3, p. 513-521

The WTO and the global trading system faced a major test during the GFC[global financial crisis]. Although advanced economies went into recession on a scale that matched the Great Depression in terms of output and financial losses, and trade flows collapsed globally (by 12 per cent in 2009), there was no significant rise in tariffs and other trade barriers. 4

In the wake of the GFC, ‘murky’, non-tariff-based protectionist measures were introduced by some governments. Some estimates of these measures suggest that they accounted for more than half of all protectionist measures in the post-crisis period (Aggarwal & Evernett 2013). Policies like local content provisions and industrial policies that restrict global trade were introduced. But after the GFC, most countries actually continued to liberalise tariffs, and changes in trade policy (via raising tariffs or taking anti-dumping action) contributed only about 2 percent of the observed drop in world trade in 2008–2009 (Kee et al. 2013). That is in major contrast to the effects of the Smoot-Hawley tariff wars during the Great Depression.

Of the 4,144 trade measures recorded by Global Trade Alert from the start of the crisis to early 2014, 22.2 per cent have been coded ‘green’ (that is, they represent, in the opinion of GTA, liberalising policy), with 57.4 per cent coded ‘red’ (policy considered protectionist). 5 One reason why some developing countries in fact dropped tariffs and other trade barriers in the aftermath of the GFC may be the rise in global supply chain trade: when it is necessary to import in order to export, the risks of retaliation are larger and there are domestic producers that demand low import barriers (Gawande et al. 2014). But the role of the WTO in this should not be understated. Indeed, the rise of global supply chains is a consequence of the rules-based trading system that GATT/WTO underwrites.

This was a significant achievement given the acute protectionist pressures. Leadership at the G20 had much to do with the ‘standstill’ on protection, but the shock of the GFC did not weaken the WTO or undermine the confidence that countries placed in it. The slow recovery of the advanced economies meant that protectionist forces put significant pressure on governments to close markets, but the global trading system has proved robust to these pressures.

The robustness of the global trading system throughout the GFC and its aftermath has meant that recession and collapsed trade in some countries have not generated conflict between countries.

**Trade doesn’t solve war**

Musgrave 20 --- Paul Musgrave is an assistant professor of political science at the University of Massachusetts Amherst, “The Beautiful, Dumb Dream of McDonald’s Peace Theory”, Foreign Policy, NOVEMBER 26, 2020, https://foreignpolicy.com/2020/11/26/mcdonalds-peace-nagornokarabakh-friedman/

**Of course**, I would explain to my students, war could also proceed from other causes. **Economic integration may be no panacea** to interstate war after all. John Vasquez writes: “War among equals has followed the failure of power politics to settle certain highly salient issues”—none, he writes, more than “issues involving territory, especially territorial contiguity.”

In the former Soviet Union, the wars over Chechnya, Georgia, Ukraine, and now Nagorno-Karabakh have all involved territory as a crucial element, a story much closer to what Vasquez’s theory would predict than to Friedman’s.

Globalization may have increased the costs of these wars, **but they have** obviously **not prevented them**. To be sure, Armenia has no McDonald’s, an issue grave enough to have been raised in the parliament at Yerevan earlier this year. The Azerbaijan franchise’s cheerleading was also slapped down by the Home Office.

Regardless, Friedman’s logic suggests the conflict shouldn’t have begun, or shouldn’t have been so bloody once it did. Both Armenia and Azerbaijan score highly (and almost identically) on the ETH Zurich KOF Globalisation Index. The pace of deaths suggests that the conflict could qualify as a so-called real war by the traditional 1,000 battle-related-deaths criterion. (Indeed, some reports say the death toll blew past that level quickly.)

And if the conflict has knocked the final support from the Golden Arches theory, it has also finally toppled whatever confidence remained in the 1990s belief in the eternal sunshine of the American order.

The resurgent Nagorno-Karabakh conflict provides yet another reason to worry that the world is entering a new phase of more violent conflict—including major wars—and globalization will **no more prevent them** than **burgeoning** trade before Archduke Ferdinand’s assassination prevented World War I.

After all, **wars keep emerging** that challenge the optimistic assessment that war is a relic of the past. The specific ways these conflicts emerge, moreover, point to the possibility that **new wars** could break out that make **even bloody conflicts** like those in Syria and Yemen **seem relatively minor.**

Driven by processes of imperial dysfunction and internal breakdown, today’s wars have causes that are enormously difficult to heal.

The conflicts in the former Soviet Union, from Chechnya in the 1990s to Nagorno-Karabakh today, represent a set of wars in the post-Soviet succession. Russia has attempted to maintain its central role against real and perceived rivals throughout that vast region including transnational Islam, the European Union, the United States, China, and now arguably Turkey.

In the Middle East, revisionist regional powers like Saudi Arabia and Iran contend for power as the United States continues to loudly proclaim that it is unwilling to continue playing its imperial stabilizing role (even if Washington never actually seems to find the exit).

And China, which once preferred to keep its border disputes quiet, seems increasingly willing to saber-rattle from the Taiwan Straits to the Himalayas.

### 2NC---AT: Geo !

## Adv---Harmonization

### 2NC---I/L

### 1NC---Impact D

**BRICS defections and free-riding make global governance failures inevitable**

Robert J **Lieber 14**, Professor, Department of Government, Georgetown University, 2014, “The Rise of the BRICS and American primacy,” International Politics, Vol. 51, p. 137-154

Other than where clear and unambiguous self-interest is present, the actual record of BRICS cooperation on a wide range of international collective action problems thus provides limited evidence of positive engagement let alone embracing of a ‘stakeholder’ role.7 Whether examined by issue or country, the pattern is clearly identifiable. For example, on global climate change, the BRICS played a major part in the debacle at the November–December 2009 Copenhagen conference that had been convened to develop a follow-on to the Kyoto Protocol in the form of a new and binding agreement, and to which the EU countries and the Obama administration were committed (Rapp et al, 2010). Instead, China, India and others saw the prospect of limits on carbon emissions as harmful to their economic development. By some accounts, they also sought the annual transfer of as much as $100 billion per year from the rich countries to the developing economies. In Copenhagen, the BRICS met separately, shutting out the European backers of a stronger agreement, and the conference ultimately concluded with only a vague statement of objectives.

China, which has gained attention for the massive scale of its production of solar panels and wind turbines, has mainly done so as an export strategy, where it has created a massive surplus of these products and undercut foreign competitors in overseas markets. Meanwhile, wind power represents a mere 0.2 per cent of China’s total energy use, while solar contributes only 0.01 per cent (Lomborg, 2013). The effort of the EU to bring a case to the World Trade Organization based on dumping and export subsidies resulted in China taking retaliatory measures and launching a series of virulent verbal assaults. In response and to mollify Beijing, the EU adopted a much watered down measure. At the same time, China’s primary reliance on coal-fired electricity plants, along with a massive expansion in its domestic auto fleet has made that country the world’s leading source of greenhouse gases. Europe and the United States have been reducing their emissions by a total of 60 million tons per year, whereas China’s are increasing by 500 million tons (The Economist, 2013a). Only in the past year, as the environmental consequences within China’s major cities have become so dire, has the Communist Party leadership embarked on a sweeping new program aimed at reducing domestic air pollution. Not only will this require a long, difficult and gradual period of change and adaptation, but the entire episode reflects the primacy of domestic priorities in shaping state behavior on collective action problems.

Human rights is another important – and troubled – arena. Here too, the BRICS’ record is negative. For the most part, they not only have been wary of providing international support on the issue, but not infrequently they have cooperated with leaders and regimes involved in major human rights abuses. For example, thanks to a vestigial anti-colonial solidarity, South Africa has been reluctant to apply pressure against the brutal and destructive rule of Zimbabwean President Robert Mugabe. As recently as August 2013, President Jacob Zuma of South Africa gave little comfort to the beleaguered democratic opposition movement and congratulated Mugabe on his victory in a rushed and badly conducted election which the opposition had protested was rigged. Brazil, a stable democracy, has nonetheless been unwilling to criticize the Castro dictatorship in Cuba. This was clearly evident in a 2012 visit by President Dilma Rousseff to Havana, in which trade was emphasized to the exclusion of other topics. Additional examples abound: Russian support for the Assad regime in Syria, India’s timber and energy deals with the then dictatorial and corrupt rulers of Burma, and China’s repeated willingness to strike trade and investment deals with oppressive regimes even when their rulers were already the object of international sanctions. Beijing has maintained profitable energy ventures in Sudan, and until recently had a long-standing relationship with the regime in Burma. At the UN, China and Russia have routinely opposed Security Council resolutions aimed at human rights violators, especially countries such as Sudan, Iran and Syria. For example, in October 2011, China and Russia both vetoed an already weakened UN resolution condemning the Syrian regime’s human rights abuses, and the three other BRIC countries (Brazil, India and South Africa) abstained.

On nuclear proliferation, both China and Russia have resisted stronger measures against Iran and North Korea. Brazil and Turkey opposed sanctions on Iran, despite condemnation of Teheran by the International Atomic Energy Agency and several (modest) sanction resolutions adopted by the Security Council. India, for its part and despite international sanctions, took steps to increase its oil exports from Iran and to pay for these by bypassing the financial restrictions meant to hinder payments to the Islamic Republic.8

The list goes on. The BRICS have not been supportive of the ‘Responsibility to Protect’ even though this principle gained international legal standing as the result of the unanimously adopted UN Security Council Resolution 1674 of April 2006. China and Russia routinely ignore a long-standing 1951 UN Convention by returning refugees to countries in which they are likely to be persecuted. Moreover, in the area of intellectual property, China is a notorious violator. To round off the list, most of the BRICS themselves suffer from high levels of corruption. According to an index developed by Transparency International (with number one being least corrupt), Brazil ranks 71st, followed by China in 82nd place, India 100th and Russia 140th (Transparency International, 21 January 2012).

On trade, China has continually acted in a predatory manner, even while benefiting enormously from an open international economic order, especially in its admission to the World Trade Organization in 2001. Brazil, despite possessing the world’s sixth largest economy, has responded to a recent slowing of economic growth and exports by adopting protectionist measures including special tariffs, local preferences, content requirements and the use of special tax rules (Transparency International, 2012).

Even when the international community has been capable of achieving collective action, the BRICS have dragged their feet. Consider the passage of UN Security Council Resolution 1973 in March 2011, for the purpose of protecting civilians and creating a no fly zone in Libya, and which in effect authorized the use of force (all necessary measures) to enforce the resolution against the forces of Colonel Kaddafi. The resolution was 82nd widely praised at the time as an example of humanitarian intervention. In fact, however, it was a very rare instance of Security Council agreement on the use of significant force, and though it passed with the required 10 votes, the list of countries abstaining is revealing: Brazil, Russia, India, China and Germany. All four of the BRIC countries thus chose to abstain, as did Germany, the largest and most important member of the EU and the one most commonly described as a civilian rather than military power.

Not only are the BRICS reluctant to cooperate on global governance issues, but their record of cooperation with each other is also limited. Although they have been meeting as a group annually since 2009, and even agreed in principle to establish a BRIC bank, the differences among them remain considerably greater than their commonalities and little in the way of tangible achievements has resulted. For example, China had sought to have the funding burden for the new bank split equally among the five BRICS, while the others preferred that China take on the greater burden. Despite their shared status as emerging powers, the differences among the BRICS are at least as important as what unites them. Three are democratic (Brazil, India, South Africa), while two are authoritarian or semi-authoritarian (China, Russia). Two are geopolitical rivals with unresolved border and territorial disputes (China, India). One is primarily an energy, raw materials and weapons exporter (Russia). And two (Brazil, South Africa) are showing signs of pushing back against predatory export behavior and foreign influence on the part of China. Moreover, all find themselves distracted by significant regional challenges or disputes. Observing this pattern, Harsh V. Pant of King’s College London rejects the characterization of the BRICS by South Africa’s Jacob Zuma who has claimed the BRICS as ‘a credible and constructive grouping in our quest to forge a new paradigm of global relations and cooperation’. Instead, Pant (2013, pp. 91, 103) concludes that, ‘The narrative surrounding the rise of the BRICS is as exaggerated as that of the decline of the United States’.

# 1NR

## DA

### 2NC – Climate ! O/V

#### Prefer scientific consensus – now’s the last chance before countless catastrophic impacts become irreversible – encompasses all other impacts, making it try or die to avoid the disad

Åberg et al 10-5 (Anna Åberg, research analyst in the Environment and Society Programme of Chatham House, formerly served as desk officer at the Swedish Ministry for Foreign Affairs, MSc Development Studies, London School of Economics and Political Science, BSc Business and Economics, and Politics and Economics, Lund University; Antony Froggatt, deputy director and senior research fellow in the Environment and Society Programme of Chatham House; and Rebecca Peters, Queen Elizabeth II Academy Fellow in the Environment and Society Programme of Chatham House, doctoral candidate at the University of Oxford with the UK Foreign, Commonwealth and Development Office REACH Water Security programme, MSc Development Economics, MSc Water Science and Policy, Marshall Scholar; “Raising climate ambition at COP26,” Chatham House (the Royal Institute of International Affairs, London) Research Paper, October 2021, https://www.chathamhouse.org/sites/default/files/2021-10/2021-10-05-raising-climate-ambition-at-cop26-aberg-et-al-pdf.pdf)

01

Introduction

COP26 is the most important climate summit since COP21 in Paris in 2015. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s carbon neutrality target.

Addressing climate change is the defining challenge of our time. Around the globe – and across the suite of UN organizations – there is widespread recognition of the urgency to reduce greenhouse gas (GHG) emissions and to prepare for a world that is, and will continue to be, severely impacted by climate change.

The foundational treaty of the international climate change regime – the United Nations Framework Convention on Climate Change (UNFCCC) – was adopted at the Rio Earth Summit in 1992.1 Its signatories agreed to ‘achieve… stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.2 The states that have ratified the UNFCCC meet annually at the ‘Conference of the Parties’ (COP) to assess and review the implementation of the convention.3 The COP has negotiated two separate treaties since the formation of the UNFCCC: the Kyoto Protocol in 1997, and the Paris Agreement in 2015.4

The Paris Agreement was adopted by 196 parties at COP21 in 2015 and entered into force less than a year later.5 The goals of the treaty are to keep the rise in the global average temperature to ‘well below 2°C above pre-industrial levels’, ideally 1.5°C; enhance the ability to adapt to climate change and build resilience; and make ‘finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’.6 The agreement adopts a ‘bottom-up’ and non-standardized approach, where parties themselves set their national emission reduction targets and communicate these to the UNFCCC in the form of nationally determined contributions (NDCs).7

As things stand, the targets8 that were submitted in the run-up to COP21 are not sufficient, even if fully implemented, to limit global warming to 2°C, much less 1.5°C.9 The Paris Agreement was designed, however, to generate increased ambition over time via two components: a collective ‘global stocktake’ during which progress towards Paris Agreement goals is assessed based on country reporting,10 and the ‘ratchet mechanism’, which encourages countries to communicate new or updated NDCs every five years, with the expectation that ambition will increase over time.11 The results of the stocktake are scheduled to be released two years before NDC revisions are made.12 This sequencing is designed to allow national plans to account for the global context of the climate assessment. The first global stocktake is to be conducted between 2021 and 2023, and will be repeated every five years thereafter.13 The results of the first stocktake are due to be published around COP28.

We really are out of time. We must act now to prevent further irreversible damage. COP26 this November must mark that turning point.14 UN Secretary-General António Guterres, 16 September 2021

The 26th Session of the Conference of the Parties (COP26) to the UNFCCC is to be hosted by the UK, in partnership with Italy. After a year-long delay, the conference is now scheduled to take place in Glasgow, Scotland, between 31 October and 12 November 2021.15 Organizing an in-person event during a pandemic presents a substantial challenge. The UK government is providing vaccines to accredited delegations, but doses only started to be delivered at the beginning of September 2021 and restrictions, such as quarantine requirements,16 pose further obstacles to participation.17 An alliance of 1,500 civil society organizations are among those calling for a second postponement of the COP, citing concerns about a lack of plans to enable safe and inclusive participation of delegates from, not least, the Global South.18 The UK government is, however, adamant that it will proceed with the conference as planned.19

The pandemic has changed understandings of global risks, the interconnected nature of economies and the role of governments in preparing for and responding to existential threats. This may provide impetus for accelerated climate action. The postponement of COP26 itself has been of considerable significance. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s climate neutrality target being particularly important. Moreover, the economic recovery packages that are being rolled out to counter the economic consequences of the pandemic present an opportunity to accelerate the green transition.20 To date, however, the members of the G20 have prioritized investments in fossil fuels above those in clean energy,21 and only 10 per cent of the global expenditure is estimated to have been allocated to projects with a net positive effect on the environment.22

COP26 is the most important climate summit since COP21 in Paris, and it differs from earlier COPs in several ways: it is the first test of the ambition-raising ratchet mechanism and marks a shift from negotiation to implementation. An ambitious outcome at COP26 requires substantial action to be taken before the summit – and outside the remits of the UNFCCC process – as well as at the actual conference.

Human activity has already caused the global average temperature to rise by around 1.1°C above pre-industrial levels, and every additional increase in warming raises the risks for people, communities and ecosystems. To avoid the most catastrophic climate change impacts, it is essential world leaders make every effort to limit warming to 1.5°C. Working group I of the Sixth Assessment Report of the IPCC shows it is still possible to keep warming to this critical threshold, but that unprecedented action must be taken now.23 As John Kerry, special presidential envoy for climate, stated, ‘[t]his test is now as acute and as existential as any previous one’.24

COP26 has a critical role in getting the world on track for a 1.5°C pathway, and in supporting those most affected by climate change impacts. It also constitutes a key test for the credibility of the Paris Agreement and the UNFCCC process overall. But what can and should the Glasgow summit achieve more specifically? The objective of this paper is to discuss what a positive outcome at COP26 would entail, with the dual aims of encouraging increased ambition and contributing to an informed public debate. The main argument put forth is that substantial progress must be made in three main areas, namely on increasing the ambition of NDCs; enhancing support to and addressing concerns of climate-vulnerable developing countries; and advancing the Paris Rulebook to help operationalize the Paris Agreement.

COP26 is undoubtedly hugely significant and national government pledges in the run-up to Glasgow will contribute to shaping the level of future GHG emissions. However, the event is not only critical in terms of reaching an ambitious outcome on climate, it is also an important opportunity to judge the level of confidence in the international process and the UNFCCC.

02

Increasing the ambition of the NDCs

A key element of COP26 will be the level of ambition of the revised NDCs put forward by governments to the UNFCCC and the extent to which these keep the 1.5°C global warming target agreed in Paris within reach.

According to the United Nations Environment Programme (UNEP), greenhouse gases (GHGs) in 2019 totalled 52.4 gigatonnes of CO₂ equivalent (GtCO₂e)25 of which the majority was CO₂ (38 Gt), then methane (9.8 Gt), nitrous oxide (2.8 Gt) and F-gases (1.7 Gt).26 The same year, GHG emissions were approximately 59 per cent higher than in 1990 and 44 per cent higher than in 2000.The six largest emitters – together accounting for 62 per cent of the global total – were China (26.7 per cent), the US (13 per cent), the EU (8 per cent), India (7 per cent), Russia (5 per cent) and Japan (3 per cent) (see Figure 1).27

**[FIGURE 1 OMITTED]**

According to UNEP, the implementation of the first round of NDCs would result in an average global temperature increase of 3°C above pre-industrial levels by the end of the century, with further warming taking place thereafter. If these NDC’s were fully implemented, emission levels are expected to be in the range of 56 GtCO2e (with unconditional NDCs) to 53 GtCO₂e (with conditional NDCs) by 2030.28 To align with a 2°C pathway, the ambition of the second round of NDCs would need to triple relative to the original targets, leading to emissions levels of around 41 GtCO₂e in 2030. Alignment with the 1.5°C target would require a fivefold increase in ambition, leading to emission levels around 25 CO₂e in 2030 (see Figure 2).29

**[FIGURE 2 OMITTED]**

The Paris Agreement states that parties shall communicate an NDC every five years,30 and that each submission shall constitute a progression in terms of ambition.31 Parties conveyed their first round of targets prior to COP21, and were due to submit new or updated plans in 2020.32 COP26, originally scheduled for November 2020, would then take stock of the collective level of ambition of these plans vis-à-vis the temperature targets of the Paris Agreement. The postponement of the COP by one year has in practice (albeit not formally) extended the deadline for submitting NDCs to ‘ahead of COP26’.

Where do we stand?

The delay of COP26 has given countries more time to put forward NDCs and longer-term decarbonization targets. This effort gained significant traction when China pledged to achieve carbon neutrality by 2060 and peak its emissions before 2030, during the general debate of the 75th Session of the UN General Assembly (UNGA) in September 2020.33 Then, in November 2020, the UK submitted its NDC, pledging a 68 per cent reduction in emissions by 2030 (based on 1990 levels)34 and later added a 2035 target of 78 per cent.35 The EU has, moreover, put forward a 55 per cent reduction target relative to 1990 levels,36 with some countries within the bloc going even further, including Germany, which agreed on a 65 per cent reduction target.37

The election of President Biden has fundamentally changed the US’s position on climate change, leading to, among other things, the country re-joining the Paris Agreement.38 At a specially convened Leaders Summit on Climate – hosted by the US – the Biden administration presented an NDC with an emission reduction target of 50–52 per cent39 (based on 2005 levels, which is equivalent to 40–43 per cent below 1990 levels40). During the summit, countries including Canada, Japan and others pledged more ambitious NDC targets.41

While there is more pressure on governments to act on climate change, due to its increasingly devastating impacts, there are also more opportunities for carbon mitigation through available alternative technologies and systems, as well as falling renewable energy costs (see Box 2).

Table 1 details the NDC targets put forward by G20 countries prior to COP21 in Paris and the extent to which these have since been revised. The updated NDCs have been assessed by the independent body, Climate Action Tracker, which has analysed to what extent the NDCs align with the 1.5°C pathway. The analysis also looks at domestic policies and actions, which are important as they provide an indication of whether governments are following through on their promises.

**[TABLE 1 OMITTED]**

As of September 2021, 85 countries and the EU27 had submitted new or updated NDCs, covering around half of global GHG emissions. Some parties, like China and Japan, have proposed new targets but not yet submitted them formally while around 70 parties – including G20 countries like India, Saudi Arabia and Turkey – have neither proposed nor communicated a revised NDC target. Several parties have, moreover, submitted new NDCs without increasing ambition. These include Australia, Brazil, Indonesia, Mexico, New Zealand, Russia, Singapore, Switzerland and Vietnam.42 In some of these cases, adjustments in baselines mean that ambition has de facto decreased (Brazil and Mexico).43 Analysis published by Climate Action Tracker in September 2021 shows that the NDC updates only narrow the gap to 1.5°C by, at best, 15 per cent (4 GtCO₂e). This leaves a large gap of 20–23 GtCO₂e.44

Similar analysis from the UN underscores the need for further NDC enhancements.45 If all current NDCs are implemented, total GHG emissions (not including emissions associated with land use) in 2030 are projected to be 16.3 per cent higher than in 2010, and 5 per cent higher than in 2019. The emissions of the parties that have submitted new or updated NDCs are, however, expected to fall by around 12 per cent by the end of the decade, compared to 2010 levels. The UN report also highlights the importance of providing support to developing countries, as many of these have submitted NDCs that are – at least in part – conditional on the receipt of additional financial resources, capacity-building support, and technology transfer, among other things. If such support is forthcoming, global emissions could peak before 2030, with emission levels at the end of this decade being 1.4 per cent lower than in 2019. However, even the full implementation of both the unconditional and conditional elements of the NDCs would lead to an overshoot of the targets of the Paris Agreement – as alignment with 1.5°C and 2°C require cuts of 45 per cent and 25 per cent, respectively, by 2030 (relative to 2010 levels).46

A large number of countries are also making more long-term net zero emissions or carbon neutrality pledges. As of September 2021, just over 130 countries had made such commitments, but not all of them have formally presented them to the UNFCCC.47 Examples include large economies like China, Japan, Brazil, the US, South Africa, South Korea, and the EU, as well as climate-vulnerable developing countries like the Marshall Islands, Barbados, Kiribati and Bangladesh.48 Climate Action Tracker estimates that if these long-term targets – and the NDCs – are fully implemented, global warming could be limited to 2°C.49 Most of the net zero pledges are, however, formulated in vague terms that are not consistent with good practice. The long-term targets are, moreover, only credible if they are backed up by ambitious and robust 2030 NDCs,50 given that substantial cuts in emissions must occur this decade. An additional concern that has been raised when it comes to net zero pledges is that they may encourage reliance on negative emissions technologies, such as bioenergy with carbon capture and storage (BECCS), which have still to be tested at scale to assess land requirement, efficiency and economic viability.51

**[BOX 1 OMITTED]**

The challenge of closing the gap

Bridging the gap between current NDCs and targets that would keep warming to 1.5°C is a defining challenge for governments ahead of COP26. As mentioned, UNEP estimates that the ambition of 2030 targets would need to be enhanced fivefold vis-à-vis pledges made in 2015 to align with a 1.5°C pathway.53 Several large emitters – including the US and the EU – have now submitted their new or updated NDCs. According to Climate Action Tracker, the UK’s target is considered to be compatible with a 1.5°C pathway, while those of the US, EU, Japan and Canada are classified as ‘almost sufficient’.54

It is critical that all countries that have not yet submitted a new or updated NDC do so, and that these pledges are aligned with 1.5°C. It is equally important that countries that have submitted unambitious NDCs revisit their targets. The Paris Agreement states that parties may revise existing NDCs at any time, if the purpose is to enhance ambition.55 The G20 countries have a particularly important role to play. In July 2021, the Italian G20 presidency hosted the first ever G20 Climate and Energy Ministerial meeting. In the final communique the countries in the G20 stated that they ‘intend to update or communicate ambitious NDCs by COP26’.56 The importance of action from all members of the G20 is clear, as they collectively account for 80 per cent of global emissions and as UN Secretary-General António Guterres said, ‘there is no pathway to this [1.5°C] goal without the leadership of the G20’.57

With only a few weeks to go it is, however, unlikely that the 20–23 GtCO₂e gap in targets will be closed by COP26. At the UK-hosted COP26 ministerial in July, a number of ministers stressed that parties would need to respond to any gap remaining by the Glasgow conference. Some suggested that such a response could include a ‘clear political commitment’ to keep 1.5°C within reach, a recognition of the gap, and a plan to bridge it. More specific proposals of actions that could be taken, as part of the response, to keep the 1.5°C pathway alive were also discussed. Suggestions included, but were not limited to, encouraging countries whose NDCs are not consistent with 1.5°C to bring their 2030 targets in line before 2025 (when the third round of NDCs are due); calling for parties to submit concrete long-term strategies for reaching net zero; and/or sending clear signals to markets through actions like phasing out unabated coal, carbon pricing, fossil fuel subsidy reform, nature-based solutions, and decarbonizing transport.58

Achieving a positive COP26 outcome

The ultimate benchmark for a high ambition outcome at COP26 is whether the new or updated NDCs are ambitious enough to align with a 1.5°C pathway. For many communities and ecosystems, the threat of different climate impacts between 1.5°C and 2°C – not to mention 3°C, 4°C or 5°C – is existential. Each increment of warming is anticipated to drive increasingly devastating and costly impacts, including extreme heatwaves, rising sea levels, biodiversity loss, reductions in crop yields, and widespread ecosystems damage including to coral reefs and fisheries.59

Keeping the goal of 1.5°C within reach will require substantial action this decade. Long-term targets to achieve net zero emissions or carbon neutrality have the potential to be powerful drivers of decarbonization but need to be supported by ambitious NDCs as well as concrete policies and sufficient investment.

Should we reach COP26 without sufficient ambition on NDCs, parties would need to present a plan for how ambition will be raised in the early 2020s. This could include a COP decision or a political statement underscoring the need to keep warming to 1.5°C and inviting parties to revisit their NDCs earlier than the Paris timetable dictates (for instance in 2023 instead of 2025).60 To support more ambitious action, countries should look to expand international collaboration and accelerate decarbonization in key sectors. At COP26, parties can help boost the credibility of their pledges by showcasing policies, measures and sector initiatives that will accelerate decarbonization, including on the phase out of unabated coal and the increased use of electric vehicles (see Box 3).

**[BOX 2 OMITTED]**

**[FIGURE 3 OMITTED]**

In the run-up to COP26, the UK government is mobilizing its counterparts and non-state actors to drive accelerated action on phasing out the use of unabated coal,65 accelerating the deployment of electric vehicles,66 protecting and restoring nature (nature-based solutions67), and aligning financial flows with the goals of the Paris Agreement.68 The role of the private sector is crucial in the transition to net zero economies and is recognized within the framework of the UNFCCC, as they can deliver funding, innovation and technology deployment at a pace and scale beyond that of most governments (see Box 1). It is hoped that some of these initiatives will lead to plurilateral agreements at or ahead of COP26, which could enhance the credibility of mitigation pledges and help keep the 1.5°C target within reach. Being able to showcase a package consisting of ambitious NDCs, plurilateral deals, and national policies at COP26 could generate positive momentum and create a sense of inevitability around the transition to net zero societies.

**[BOX 3 OMITTED]**

03

Support to climate-vulnerable developing countries

Increased action on climate finance, adaptation, and loss and damage is critical for supporting climate-vulnerable developing countries, strengthening trust and raising ambition on mitigation.

The year 2020 was one of the warmest on record.80 As COVID-19 ravaged the world, extreme weather events continued to cause severe devastation. In Bangladesh, torrential rains submerged a quarter of the country,81 resulting in hundreds of deaths, mass displacement and damage to more than a million homes.82 Record-breaking floods in Sudan83 and Uganda84 also displaced hundreds of thousands, while super cyclone Amphan raged across South Asia.85 Extreme weather events were also a defining feature of the summer of 2021.

An unprecedented heatwave may have killed almost 500 people in British Columbia,86 as well as a billion marine animals along the Canadian coastline.87 In the Chinese province of Henan people drowned in the subway after a year’s worth of rain fell in just three days.88 Germany and Belgium also experienced death and destruction as a result of severe flooding,89 while villages in Greece burned.90

The impacts of climate change are striking even harder than many anticipated,91 and as temperatures continue to rise extreme weather events are increasing in both frequency and intensity. Limiting global warming to 1.5°C is key to avoiding the most catastrophic events, but substantial measures must also be undertaken to adapt to climate change impacts and build resilience. As the summer of 2021 shows, no country is spared. It is, however, those who have emitted the least that are most at risk,92 and in many countries that are disproportionately affected by climate change – such as the least developed countries (LDCs)93 – financial constraints impede their ability to invest in adaptation, build resilience and deal with loss and damage.94 COVID-19 has aggravated this challenge: while industrialized countries have implemented unprecedented stimulus measures to support their economies – and vaccinated large parts of their populations – many developing countries remain in the midst of a health and economic catastrophe.

Scaled up action on climate finance, adaptation and loss and damage are – in addition to increased ambition on mitigation – key priorities for climate-vulnerable nations ahead of COP26. Raised ambition and concrete delivery in these areas are critical for supporting those at the frontline of climate change, key to building trust, and could encourage some parties to raise the ambition of their NDC pledges. The implementation of many NDCs is, in addition, at least partly conditional upon receiving increased levels of finance, as well as other types of support.95

Honouring the $100 billion goal

In 2009, developed countries committed to mobilizing $100 billion per year by 2020 for climate mitigation and adaptation in developing countries.96 This pledge was subsequently formalized in the Cancun Agreements in 201097 and reaffirmed in the Paris Agreement in 2015. The resources provided were to be ‘new and additional’98 and come from a variety of public and private sources.99 The $100 billion goal is a core element of the bargain underpinning the Paris Agreement.100 While achieving the mitigation and adaptation goals of the agreement will require trillions of dollars in investment – of which most will need to come from the private sector – the delivery of the $100 billion is critical to building trust between developed and developing countries,101 and is important for raising ambition on mitigation.102

The OECD estimates that $79.6 billion was mobilized in 2019, which is the most recent year for which official figures are available.103 In 2018, the figure was $78.9 billion, and in 2017 it was $71.2 billion.104 Though the verified figures for 2020 will not be available until 2022, it is clear the target was missed.105

Developed countries have, moreover, not yet been able to show that the pledge will be honoured in 2021, nor demonstrate conclusively how it will be met in the 2022–24 period.106

The pledge by developed nations to mobilize $100 billion to developing nations by 2020 is a commitment made in the UNFCCC process more than a decade ago. It’s time to deliver. How can we expect nations to make more ambitious climate commitments for tomorrow if today’s have not yet been met?107

Patricia Espinosa, 23 July 2021

How the goal is achieved matters. Only around one-fifth of bilateral climate finance is allocated to the LDCs,108 and locally led projects receive low priority.109 There are also concerns related to overreporting and lack of additionality. Oxfam estimates, for instance, that 80 per cent of public climate finance provided over the 2017–18 period took the form of loans or other non-grant instruments, and that the actual grant equivalent only accounted for around half of the total amount of finance reported.110 Furthermore, the Center for Global Development has found that almost half of the climate finance reported between 2009 and 2019 cannot be considered ‘new and additional’.111 There is, finally, an urgent need to close the adaptation finance gap (see next section),112 and facilitate access to finance.113

It is widely recognized that honouring the $100 billion goal is a prerequisite for success at COP26.114 The hitherto failure of developed countries to provide clarity on the issue is creating mistrust between countries,115 with the director of the International Centre for Climate Change and Development (who is also an adviser to the climate-vulnerable countries) conveying that, ‘if the money is not delivered before November, then there is little point in climate-vulnerable nations showing up in Glasgow to do business with governments that break their promises’.116 The chair of the LDC Group has also made it clear that, ‘[t]here will be no COP26 deal without a finance deal’. 117

The G7 countries play a critical role in mobilizing the $100 billion,118 and there was a hope that G7 leaders would increase their bilateral commitments substantially – and provide clarity on the $100 billion119 – when they convened in Cornwall in June 2021. Some new pledges were made. Canada, for instance, committed to doubling its climate finance through to 2025 (to CAD $5.3 billion), and Germany pledged to increase its annual commitments from €4 billion to €6 billion by 2025 at the latest.120 The G7 members collectively also committed to ‘each increase and improve’ their public climate finance contributions, and announced they would develop a new international initiative – ‘Build Back Better for the World’121 – the details of which have yet to be fleshed out. However, many developing country officials – and many observers worldwide – expressed disappointment with the summit outcome, with the climate minister of Pakistan describing the G7 commitments as ‘peanuts’.122

Several announcements on climate finance were also made during the 76th Session of the UNGA in September 2021. Most importantly, President Joe Biden pledged to double US climate finance (again) from the previously committed $5.7 billion to $11.4 billion per year by 2024. Actual delivery is, however, contingent on congressional approval.123 The EU – which already contributes around $25 billion in climate finance per year – also stepped up, announcing an additional €4 billion until 2027,124 while Italian Prime Minister Mario Draghi conveyed that Italy would shortly be announcing a new climate finance commitment.125 Though the US pledge in particular has been described as a critical step forward that ‘puts the $100 billion within reach’,126 more will need to be done.127

$100 billion is a bare minimum. But the agreement has not been kept. A clear plan to fulfil this pledge is not just about the economics of climate change; it is about establishing trust in the multilateral system.128

António Guterres, 9 July 2021

#### AND, expectations of resource conflict alone makes nuclear war inevitable in the short term

Dr. Michael T. Klare 20, Five Colleges Professor of Peace and World Security Studies at Hampshire College, Ph.D. from the Graduate School of the Union Institute, BA and MA from Columbia University, Member of the Board of Director at the Arms Control Association, Defense Correspondent for The Nation, “How Rising Temperatures Increase the Likelihood of Nuclear War”, The Nation, 1/13/2020, https://www.thenation.com/article/archive/nuclear-defense-climate-change/

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

### T/C – Geoengineering

#### Turns and solve rogue geoengineering

Jayaram 20 (Dhanasree Jayaram, Assistant Professor, Department of Geopolitics and International Relations and Co-coordinator, Centre for Climate Studies, Manipal Academy of Higher Education (MAHE), India; and Research Fellow, Earth System Governance, “Without Attention, Geoengineering Could Upend Foreign Policy,” Wilson Center, 9-30-2020, https://www.wilsoncenter.org/article/without-attention-geoengineering-could-upend-foreign-policy)

In the present situation the uncertainties have multiplied, with the COVID-19 pandemic, geopolitical tensions, and climate change complicating existing challenges. With the pandemic, although there are never-ending calls for a “green recovery”—"to build back better”— some speculate that many renewable energy projects are likely to be delayed. In such a scenario, countries will be more ambitious about pushing ahead with geoengineering projects to achieve their climate objectives. Richer countries may set aside ethical concerns with regard to developing countries and pursue a technocratic solution to climate change. In this context, the need for better governance mechanisms and tools, and the role of foreign policy stakeholders, especially those who engage in climate diplomacy, will be paramount, including in regions such as South Asia.

### T/C – Protectionism + Populism

#### Turns the trade wars advantage AND the populism scenario on the other advantage – BBB failure causes hard protectionism to fill-in AND populist backlash

Hubbard 21 (R. Glenn Hubbard, Russell L. Carson Professor of Finance and Economics at Columbia Business School and professor of economics at Columbia University, former chair of the Council of Economic Advisers, “How Do We ‘Build Back Better’?” National Review, Capital Matters, 3-17-2021, https://www.nationalreview.com/2021/03/how-do-we-build-back-better/)

The pandemic has intensified a long-standing divergence in economic outcomes for higher- and lower-skilled workers. Globalization, and especially technological improvements, have made America richer and more dynamic, and have propelled many people forward. But these forces have also inflicted a body blow on our less-educated and less-trained citizens.

A “building” agenda focused on walls to protect these workers — both literally (against immigrants) and metaphorically (against imports) will fail. Yet such an approach is an understandable political response to the lack of action by neoliberal economists and policy-makers over the years. Pieties about the wonders of markets haven’t meant much to struggling communities in, say, Youngstown, Ohio, and elsewhere.

Now that the American Rescue Plan Act has been signed into law, the Biden administration ought to make a push for more Americans to participate in our dynamic economy. We need bridges that prepare and reconnect people to work in the aftermath of those structural forces. Bridges are the counterpart to walls, and they have a long history of success in the United States. From compulsory schooling to land-grant colleges to Social Security to the G.I. Bill, and now to public-private partnerships for economic inclusion: To build a bridge is to “build back better.”

Mass Flourishing as a Moral and Economic Imperative

Policy-makers are often impatient with the extended time it takes for bridges to make a difference. If a community is hurting because of imports or technology, why not just put in temporary tariffs or other protections (e.g., a wall)? Very simply, because to do so would be to postpone the inevitable work that all communities must do in order to participate in a dynamic economy.

More important, walls are almost always inequitable. Tariffs on steel might temporarily help a few steelmaking towns, but they ultimately operate at the cost of many more manufacturing towns with falling revenue because of higher prices for a key input. Protections usually favor well-connected groups at the expense of underprivileged communities trying to make it the usual way.

Adam Smith, the father of modern economics, understood this dynamic as well as anyone did. In his day, mercantilist thinkers thought that the wealth of nations consisted of stocks of gold or silver. They wanted to increase those stocks, the better to fund wars and explorations. They convinced kings to intervene in markets to limit competition at home and abroad for favored activities. Trade surpluses were good, trade deficits bad, and state-sanctioned monopolies generated more revenue for the crown.

For Smith, the wealth of a nation lay in its potential for consumption by the great mass of ordinary people. He wanted to make the economic pie as large as possible. The consumer, not the crown or court, was Smith’s economic king.

To expand this wealth, Smith promoted free markets and competition guided by the invisible hand. These forces reconciled self-interest with the expanding pie for everyone. He wanted everyone, even those without connections, to be able to compete, so he encouraged education and other kinds of preparation. Mass flourishing was his goal.

Today’s economy is more complex and disruptive than that of Smith’s day, but we still need broad participation. That’s the only way to keep raising living standards for more people, and bring economic justice to formerly marginalized groups.

Participation is also good for its own sake. Think of mass flourishing as being “in the groove” of the dynamic economy, akin to psychologists’ concept of flow. Like flow, flourishing requires individuals who can raise their game to keep up with wherever the economy goes. People feel a sense of belonging in the economy when they work in open markets.

They don’t get that sense when we try to protect them with walls. Well-connected workers will get those protected jobs, while other people will remain stuck. It’s far better to let consumers’ tastes and incomes shape the opportunities for firms and the employment patterns that follow. And once you start a bit of tinkering in the economy, everyone wants favors, and pretty soon you’ve smothered the economy’s dynamism inside a series of well-intentioned walls.

What It Takes to Build Bridges

To be fair, the federal government has tried to build bridges. Congress passed the Trade Adjustment Assistance Act back in 1962, to funnel resources to communities dislocated by foreign competition. It provided two-thirds of a worker’s wages for up to a year, along with education and training subsidies. It was positive in theory, but the follow-through was almost nonexistent — few workers actually received aid. We’d see a flurry of activity only when an administration wanted to pass NAFTA or other free-trade programs.

This intended preparation is all the more important as the economy reallocates jobs across economic sectors in the aftermath of the pandemic. The best delivery mechanisms are community colleges, public training programs, and companies themselves. We need public-policy changes to advance all three, set within a flexible skills-training system to meet the diverse situations of adults.

Community colleges are the logical workhorses of skill development, and their presence in local economies makes them attractive partners for employers. Economists have found that associate degrees or even high-quality certification programs are enough to boost wages substantially — no bachelor’s degrees necessary. Community colleges also work with local employers to develop certificate programs for training — companies are the best ones to decide what skills are really needed. Too many federal and state job-training programs have failed to target the needs of local employers. Yet community colleges have seen their state-level public support wither.

Many states are now experimenting with eliminating tuition charges, which does boost the demand for higher learning. But numerous studies show that institutional funding on the supply side is essential for students to actually gain skills and complete a degree. Free tuition means little if your institution lacks the services to support your education.

Accordingly, Amy Ganz, Austan Goolsbee, Melissa Kearney, and I recently proposed a supply-side program of federal grants to strengthen community colleges — contingent on improved degree-completion rates and labor-market outcomes. In contrast to calls for demand-side support (i.e., free tuition), the proposal centers on supply-side resources for community colleges in their skill-development mission.

Inspired by the 1863 Morrill Land-Grant program, we set the ambitious goal by 2030 of raising community-college-completion rates (or transfer to four-year colleges) to 60 percent, which is the current graduation rate for students seeking bachelor’s degrees. It also aims at increasing the share of Americans aged 25–64 with post-secondary credentials from 47 percent to 65 percent, the level projected to meet the economy’s skill needs by 2030.

These grants would cost $20 billion annually. That’s substantial, but still small relative to outlays in Biden’s first go at boosting the economy during the coronavirus pandemic. And these grants are an investment in our future, so they will pay off in a more productive economy for many years to come. As with the land-grant colleges, federal funding would work through a block grant so that states could adjust as needed to the local context.

Another bridge can help dislocated workers: temporary income to encourage them to invest in skills rather than in a desperation chase for whatever work they can find. Current unemployment insurance is aimed at people suffering from cyclical layoffs, not the structural disruptions that can last for years. For the latter, a better approach would be personal reemployment accounts (cash to support training periods), and substantially expanding the earned-income tax credit, particularly for younger, childless workers. For the hardest-hit communities, we should also consider place-based aid with extra subsidies for employment.

These bridges aren’t cheap. Timothy Bartik of the Upjohn Institute calculates that a robust series of training and income programs would cost about $30 billion annually. But he estimates that support for local communities would bring employment rates in the bottom quartile by area to the median. The cost raises the stakes in evaluating the relative desirability of the massive costs of the American Rescue Plan Act.

Bridges Require Intentional Business and Government Action

Companies have essential roles to play in building back better with bridges. Especially for dislocated communities, governments alone can’t lead the way in restoring the economy to dynamism. Historically, both the Massachusetts Miracle (from textiles to electronics) and the Pittsburgh Renaissance (from steel to “meds and eds”) demonstrate that future-oriented local business leadership — supported by local and national government — make the difference in local flourishing.

Companies can help reduce frictions in the economy that discourage workers from moving to areas of greater opportunity. State and local governments across the country have erected many kinds of barriers to mobility, from occupational licensing (which disproportionately hurts minority groups) to zoning restrictions (which can legislate existing privileges) to various other regulations and subsidies that favor established businesses. Collectively, the business community must offer its strong voice in defense of competition — just as Adam Smith did in railing against the cronyism of 18th-century Britain.

Indeed, business’s role in bridge building has another, more macro objective: to bolster public support for the dynamic market economy. Corporate indifference to the damage from dynamism will only increase populist rage against capitalism and support for walls. One helpful step here would involve companies devoting a section of each annual report to what they’ve done to build bridges for less-skilled workers.

Returning to Team Biden, the policy process matters in addition to ideas, leadership, and framing. A cabinet-level U.S. task force on economic engagement could deliver all-of-government advice and coordination for the White House. An annual report along with regular congressional testimony would engage the public broadly. Building from local experiences across the United States, business and university leaders could be called upon to serve on an advisory council with the task force.

### T/C – Protectionism + Populism – AT: BBB No Solve

#### BBB does solve – directly expands trade adjustment assistance through retaining programs

Galeano 21 (Sergio Galeano, Economic Policy Advisor at Third Way, “7 Ways the House Build Back Better Act Gets Workforce Development Right,” Third Way, 9-22-2021, https://www.thirdway.org/blog/7-ways-the-house-build-back-better-act-gets-workforce-development-right)

Upon closer examination of the House bill, there are seven reasons to applaud this investment:

Provides critical resources to expand apprenticeships. In allocating $6 billion to expand the registered apprenticeships system, the committee placed financial muscle behind President Biden’s proposals to significantly improve and bolster a proven earn-and-learn model that provides workers with strong pathways to sustainable, livable occupations. Further, funding will go to support the use of intermediaries which bring workers, educators, and employers together to expand and strengthen the apprenticeship system.

Helps adults retrain. While an increasing number of jobs and skills are becoming obsolete due to structural trends including automation, new skills will be necessary to fill the more than 11.9 million jobs projected to be created in the coming decade.2 And across many industries, the pandemic has accelerated the pace by which certain skills become obsolete by more than 70%.3 To face these kinds of challenges, lawmakers allocated $15 billion towards adult worker employment and training activities and $16 billion for dislocated worker employment and training activities.

Strengthens the link between industry, workers, and educators. The $12 billion investment in industry and sector partnerships will support not only the registered apprenticeship system, but also broader workforce development efforts among employers in the same industry, including expanding opportunities for high-skill, high-wage, and in-demand occupations.4

Brings justice-involved individuals back into the workforce. The committee appropriated $3.6 billion for re-entry employment opportunities to help the more than 6.7 million justice-involved individuals across the country increase their economic outcomes and gain a stronger foothold in their local communities.

Provides support for workers in the care industry. Along with accelerating the erosion of many low-income jobs and industries, the pandemic highlighted the economic plight of our country’s care workers. In recognition of this vital sector’s role in our economy, the committee appropriated $1.48 billion in grants for the direct care workforce.

Prioritizes equity. In the American Jobs Plan, President Biden called for much-needed investments to advance racial and gender equity in the workforce. Whether to diversify the registered apprenticeship system, or to equip intermediaries with funding to increase equity in the workforce, the committee included provisions throughout the workforce markup intended to create a more diverse labor force across both existing and emerging industries. For example, half of the funds appropriated for registered apprenticeships will be dedicated to entities serving a high number of individuals with historical barriers to employment.

Includes wrap-around support. Research and field evidence continually show that wrap-around services, including subsidized social services, child care, and transportation, are among several ways the federal government can effectively support workers while completing training programs. In recognition of these vital resources, House lawmakers have reserved $10.9 billion from the Dislocated Worker and Adult Training categories for career and supportive services.

As negotiations continue on the Build Back Better Act reconciliation bill, policymakers must remember that our workforce and economic indicators point towards an urgent need for a robust workforce development investment. We hope the final bill can arrive at the same consensus as the House and President Biden on the importance of prioritizing skills, increasing post-secondary opportunities, boosting economic outcomes, and bolstering our country’s workforce at such a critical juncture.

#### Employment effects and community college funding also solve

DNC 11-4 (Democratic National Committee; **internally quoting Moody’s Investors Service**; “NEW REPORTS: President Biden’s Build Back Better Framework Will Boost The Economy, Cut Deficits,” 11-4-2021, https://democrats.org/news/new-reports-president-bidens-build-back-better-framework-will-boost-the-economy-cut-deficits/)

Today, a new Moody’s report revealed that President Biden’s Build Back Better Framework and Bipartisan Infrastructure Deal will create jobs, boost economic growth, support businesses, and build a stronger middle class. Not only that, a new report from the nonpartisan Joint Committee on Taxation confirms the Build Back Better Framework is not only paid for, but will have a net reduction on the deficit.

President Biden ran on the promise to build an economy that works for everyone, not just those at the top, and today’s reports demonstrate how his economic agenda will deliver for the American people.

President Biden’s Build Back Better agenda would strengthen economic growth and primarily benefit working Americans:

Moody’s: “It will strengthen long-term economic growth, the benefits of which would mostly accrue to lower- and middle-income Americans.”

Moody’s: “Real GDP growth would average 3.2% per annum during Biden’s term and 2.2% over the next decade, compared with less than 2.8% and 2.1% per annum if the legislation fails to become law.”

President Biden’s Build Back Better agenda would create millions of new jobs, lower unemployment, and increase labor productivity:

Moody’s: “In terms of employment, under the infrastructure deal and reconciliation package, there are 2.4 million more jobs at the peak of the employment impact by mid-decade, and unemployment is a full percentage point lower. Labor force participation is also higher, although the full boost to participation occurs after the 10-year budget horizon.”

Moody’s: “Accessible childcare facilitated by federal support to childcare providers has especially strong employment effects for single mothers, mothers with young children, and lower-income moms.”

Moody’s: “A second important macroeconomic impact of the reconciliation package is that it would increase labor productivity by raising the educational attainment of the workforce via universal pre-K, expanded funding for higher education. Increased funding for workforce development would also lift the skill level of the workforce.”

It would address the income and wealth gap by providing benefits to working Americans and making the wealthy and corporations pay their fair share:

Moody’s: “The reconciliation package also helps address the wide and growing disparity in the nation’s income and wealth distribution. It targets most of the social investments to lower- and middle-income households and taxes multinational corporations and the well-to-do to help pay for these benefits.”

And President Biden’s Build Back Better Framework is fully paid for and would actually reduce deficits over the long term:

The Hill: “Tax-increase provisions in House Democrats’ latest version of their social spending package would raise nearly $1.5 trillion over 10 years, Congress’s tax scorekeeper said Thursday… House Ways and Means Committee Chairman Richard Neal (D-Mass.) told reporters that the JCT score indicates that the bill will be fully paid for when the tax increase, IRS and drug pricing provisions are all taken into account.”

The Hill: “The Treasury Department said that after taking into account the IRS and drug-pricing provisions, the bill would include about $2.2 trillion in revenue-raisers. Treasury estimated that the IRS investments would raise $400 billion, and said that the prescription drug provisions would produce about $250 billion in savings. ’The investments and revenue provisions of the Build Back Better package would raise over $2 trillion in offsets, making the entire package paid for over ten years and would reduce deficits over the long term,’ Treasury Secretary Janet Yellen said in a statement.”

## Uq

### AT: Won’t Pass – T/L

### AT: Won’t Pass – PC Swings

#### Biden’s focused PC will swing holdouts – insiders are confident

Deese et al 11-9 (Brian Deese, director of the National Economic Council, former senior advisor to President Barack Obama, JD Yale Law School; interviewed by Yamiche Alcindor, White House correspondent for the PBS NewsHour, MA broadcast news and documentary filmmaking, New York University; “White House ‘confident’ Congress will pass Build Back Better bill,” PBS NewsHour, 11-9-2021, <https://www.pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill>)

President Joe Biden is expected to sign the bipartisan infrastructure deal into law, securing a major legislative victory. But his larger economic and social spending package still remains a subject of concern as members of Congress mull its provisions. Yamiche Alcindor talks to Brian Deese, director of the National Economic Council for the Biden administration, about those negotiations.

Read the Full Transcript

Judy Woodruff:

President Biden will soon sign into law one major piece of his agenda, the bipartisan infrastructure deal, securing a major legislative victory.

But there is still work to be done to get his larger economic and social spending package over the finish line.

Yamiche Alcindor talks to one of the White House's key negotiators on where it all stands.

Yamiche Alcindor:

Since the infrastructure vote on Friday night, the Biden administration has directed its focus to the Build Back Better package. That's the $1.75 trillion bill with money for child care, health care, and climate change.

It needs nearly every House Democrat and all 50 Senate Democrats on board to pass.

Brian Deese is the director of the National Economic Council for the Biden administration. He's been a central figure in these negotiations. And he joins me now from the White House.

Brian, thank you so much for being here.

President Biden will soon pass the bipartisan infrastructure plan, but there were many lawmakers who wanted it tied to the Build Back Better act. What assurances can you give Americans that that Build Back Better act is going to become law? And how soon do you expect that to happen?

Brian Deese, Director, National Economic Council:

Well, for starters, what I can assure folks is that signing this historic infrastructure bill is going to do a lot of good for the country.

We have waited decades to actually do something about infrastructure. And, in that period, the United States has fallen behind. We're 13th in the world in infrastructure.

And with this piece of legislation that the president will sign soon, we're going to make historic investments in rebuilding both our physical infrastructure ports, and airports, roads, and bridges, transit, but also provide high-speed Internet to all Americans, clean water by replacing lead service lines across the country. So this is a big set of investments, a capital investment in America that we have waited way too long to do, and we're now finally going to make happen.

And I think that's going to build real momentum for getting the second half of the president's economic agenda, the Build Back Better plan, into law. That will start next week, where we anticipate a vote in the House, and then onto the Senate as well.

Yamiche Alcindor:

Now, the Congressional Budget Office said today that it's releasing estimates for individual titles on this bill, but that it's not clear when it will have a final cost for the final bill.

There are some moderates who say they want to see a CBO score before they vote for this. House Speaker Nancy Pelosi has said that she wants to vote on this Build Back Better Act on the week, next week, the week of November 15.

How sure are you — how sure are you that this CBO score will be available by then? But also how worried is the president and yourself that there won't be the score needed to pass this bill in the House?

Brian Deese:

Well, we're very confident that this bill is fiscally responsible and fully paid for.

We saw last week the Joint Committee on Taxation, which is the gold standard for the revenue provisions in this bill, reinforce that there is more than enough revenue, more than enough offsets to offset all of the new investment in this package.

And this is the typical process. Both chambers of Congress typically vote on bills when they have enough information. So, we anticipate that there will be more information provided to lawmakers this week, and, consistent with the commitments that lawmakers and leadership made, that there will be a vote next week, based on that additional information, in the House.

This is a process. The bill will pass the House and then will go to the Senate. But, at the end of the day, the most important bottom line is, these are high-value, targeted investments in the American people and the American economy that are fully paid for.

Yamiche Alcindor:

How confident are you that you have the votes to get this Build Back Better Act passed?

And I also wonder what — you're in the room. What are you telling lawmakers as you try to close this deal?

Brian Deese:

We are confident that this framework will pass the House and will pass the Senate. And what we're telling lawmakers is, this is an easy vote.

The American people are looking to lower the cost of prescription drugs. They're looking to lower the cost of child care and to provide a tax cut to middle-class families, so they finally can have some breathing room. People who are anxious about their economic circumstance, are seeing higher prices, what we — this bill will do is actually lower prices, lower inflationary pressure by getting more people to work.

And it is fully paid for, and paid for in a responsible way, by asking the largest companies to pay a bit more, as well as the wealthiest Americans. So this is a straightforward plan to deliver where the American people need it most. We're making that case. And we're confident that we can get it through both houses of Congress.

Yamiche Alcindor:

I want to also ask you about paid family leave. It was added back into the Build Back Better Act.

But senators, including Senator Manchin, they have been opposed to this. I wonder, do you expect paid family leave to be in the final bill?

Brian Deese:

Well, we're going to work on this issue, and we will see. There's some twists and turns ahead.

Paid family leave is certainly something that the president has always and consistently been supportive of. There's been concerns raised by members of Congress. So we're going to work that through.

But I think, at the core, the question is not what is not going to be in this package, but what this package will actually deliver for the American people. We have been talking about something like universal preschool for years and decades. Again, economists of all stripes have identified that as the one of the highest investments we could make in terms of value for the American economy, getting all our 3- and 4-year-olds educated at an early age.

We have the potential to get that done and, again, get it done in a way that is fiscally responsible, fully paid for, doesn't raise taxes for anyone making less than $400,000 a year. That's the plan.

Yamiche Alcindor:

And, Brian, in the last administration that you worked for — that would be former President Obama — you were also a key expert on climate change.

I want to ask you about climate change in this bill. Are you worried that there are critics who think that you gave up too much on climate and that this bill is too watered down as it relates to those issues?

Brian Deese:

This bill, as it's structured, would be the largest and most significant investment in climate change in our nation's history by a significant factor.

It would, if enacted, reduce one gigaton of emissions from our economy. And, most importantly, it would spark new economic engines in our economy, from the electric vehicle industry, to the clean power industry, not only putting people to work in good-paying jobs around the country, but creating new export opportunities, so that the United States is actually exporting the next generation of, for example, American-made vehicles, electric clean vehicles all around the world.

It's an enormous economic opportunity and a very significant investment. We feel good about what we can get done on climate change, in the same way that we feel good about what we can do to get more people to work by providing child care and eldercare and preschool.

Yamiche Alcindor:

And, right now, Americans are facing some real economic struggles. Gas prices are at a record high, the highest, some experts say, that they have been in seven years. There are people that are paying more for the meat that they want to put on the Thanksgiving table.

What do you say that to some critics who think that the White House is too focused on long-term investments and are not focused enough on sort of short-term right now relief for Americans?

Brian Deese:

Look, President Biden understands deeply the impact that higher prices can have on a typical family, whether that's the price at the pump or the price at the grocery store.

And he is focused like a laser on those issues. In fact, just today, he was making calls to CEOs of some of the biggest companies, our biggest retailers, as well as freight movers, like FedEx and UPS, to talk about how we can unstick the bottlenecks, some of these bottlenecks that are keeping goods from moving as quickly as they can throughout the economy.

So he is on this case. But I would also underscore the economic momentum and progress that we are making is real. We have seen 5.6 million jobs created. The unemployment rate is down to 5.6 — to 4.6. That's two years faster than most experts created.

And a lot of these supply chain challenges are actually a reflection of the fact that we are moving more goods, more products through the American economy now than at any time in history, significantly higher than before the pandemic. That's a good thing. It reflects the fact that Americans are out there unable to buy goods again.

We're going to work through those challenges. And we are on that every day in the short term. But we think we can focus on both the short term and the medium and longer-term challenges. Part of why we're in this problem is, we haven't invested in building our infrastructure, so that we have more resilient ports, more resilient roads and bridges around America.

We can do both of these things. That certainly is what we're focused on.

Yamiche Alcindor:

Well, thank you so much for joining us, Brian Deese, the director of the National Economic Council.

Brian Deese:

Thank you.

#### Manchin and Sinema are tentatively on board – sustaining pressure will flip them

Kapur 11-8 (Sahil Kapur, national political reporter for NBC News; **internally quoting Jonathan Kott, a Democratic consultant and former aide to Sen. Joe Manchin**; “Centrist Democrats now hold the cards as infrastructure bill heads to Biden's desk,” NBC News, 11-8-2021, https://www.nbcnews.com/politics/congress/centrist-democrats-now-hold-cards-infrastructure-bill-heads-biden-s-n1283485)

A power shift

Progressive activists are organizing to keep the pressure on House centrists to follow through and vote for the bill, with some feeling anxious that the left gave up its main leverage by passing the infrastructure measure before a vote on the larger spending package.

"I do think it shifted a little bit of the power away from the progressives and toward the moderates," said Bill Hoagland, a senior vice president at the Washington-based Bipartisan Policy Center.

Rep. Pramila Jayapal, D-Wash., the chair of the Congressional Progressive Caucus, said on MSNBC: "They needed some time to look at the numbers, but they would vote on it, and that is a commitment they made to me. It's a commitment they made to the president. And it's a commitment they put into writing."

Jonathan Kott, a Democratic consultant and former aide to Sen. Joe Manchin, D-W.Va., said moderates "will continue to negotiate in good faith as they have been" but simply want the CBO score. "If the CBO is not as expected, I think negotiations will continue but definitely make this a longer process," he said.

If the bill passes the House, it still needs to clear the Senate, where two key obstacles remain.

The first is Manchin. He has objected to some of the provisions in the House bill, particularly four weeks of paid family and medical leave. That and other policies may need to be removed to win his vote, without which Democrats cannot advance the bill.

The second is the so-called Byrd rule, which limits the budget process that Democrats are using to matters of spending and taxes. Republicans can challenge any provision as "extraneous," and the Senate parliamentarian would decide whether it can be included.

Kott said he expects the Senate to pass the bill "in mid- to late December."

"I think moderates want to make sure they get the bill right, not fast," he said.

Competing deadlines

Other hard deadlines could complicate the December timeline. Congress must pass legislation to fund the government by Dec. 3 or face a shutdown. Lawmakers also need to raise the debt limit to avert an economic meltdown. And Congress plans to pass a massive defense policy bill before the end of the year.

The infrastructure legislation provides around $550 billion in new spending, for a total of more than $1 trillion, in projects from roads to public transit to rural broadband. It was co-authored by Manchin and Sen. Kyrsten Sinema, D-Ariz., and it became a top legislative priority of House centrists who had battled with liberals for months over the timeline to pass it.

The legislation is projected to add $256 billion to the debt over a decade, according to the CBO.

Despite progressives' biggest fears, centrist Democrats have plenty to like in the Build Back Better bill. Manchin has lavished praise on universal pre-K and child care funding, Sinema has championed the climate change measures, and Gottheimer has made an increase of the state and local tax deduction a priority.

The White House is counting on those incentives to help push the package across the finish line.

### AT: Thumper – T/L

#### NO thumpers – they’re all priced in – Biden has enough PC despite other must-pass votes like avoiding shutdown and debt default

Romm 11-6 (Tony Romm, congressional economic policy reporter at The Washington Post, “With infrastructure victory in hand, Democrats brace for next battle over $2 trillion spending bill,” The Washington Post, 11-6-2021, https://www.washingtonpost.com/us-policy/2021/11/06/congress-biden-spending-deal/)

With a roughly $1.2 trillion bill to improve the nation’s infrastructure now behind them, Democrats must prepare to turn to their next, perhaps tougher task: Shepherding the rest of President Biden’s economic agenda through Congress.

The successful vote in the House late Friday marked only the first of two spending initiatives that Biden has called on Congress to adopt for months. Still another roughly $2 trillion in new tax and spending investments are awaiting action in the House and Senate, where party lawmakers harbor grand ambitions to overhaul the nation’s health care, education, climate, immigration and tax laws.

Beginning in the spring, many Democrats had hoped to move these two bills in tandem, a strategy meant to satisfy liberals and moderates who were warring with each other over the size and scope of their spending priorities. But the House this week essentially opted to divorce them, adopting an infrastructure bill that had been stalled since August while voting to open debate on the remainder of their plans.

That tees up for Congress an eleventh-hour sprint in the waning moments of the year through treacherous political terrain. The $2 trillion tax-and-spending proposal is still unsettled policy in the eyes of moderates, including Sen. Joe Manchin III (D-W.Va.), who long has sought to whittle down its price tag. And the debate is set to arrive just as Congress is preparing to take on a host of additional challenges, including a renewed need to fund the government in December, that could distract Democrats in the end.

For all the hurdles they face, however, Democrats this week sounded an upbeat note — emboldened anew after achieving a fresh political victory.

“Let me be clear: We will pass this in the House. And we will pass it in the Senate,” Biden said during a speech Saturday heralding the passage of the infrastructure bill.

The $2 trillion measure — called the “Build Back Better Act,” which bears the name of the president’s 2020 campaign slogan — aims to expand the footprint of government to deliver more robust services to American workers and families, especially those in greatest need.

### Link Debate

#### 1. International harmonization – cross apply 1NC Kretzmer – they didn’t answer the political unpopularity warrants

For reference, 1NC Kretzmer 19 [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The substantial costs associated with developing and implementing a global competition policy have not gone unnoticed. For many countries, a cost-benefits analysis needs to take place, especially when a number of factors can increase the costs, time and political difficulties associated with establishing a harmonised agreement.63 The associated costs can also be categorised, with direct costs, out-of-pocket costs, opportunity costs as well as political costs all forming part of the general outlay that would be required to implement such a competition policy.64 This begs the question why any developing country would undertake such a commitment, especially with such limited resources and expertise. Ultimately, states will only cooperate when it is both in their respective interests and a benefit can be gained from such cooperation.65 This inherent selfishness means a global competition policy is merely a farfetched misconception, which is frustrating when one considers the benefits such an agreement could yield. As Noonan succinctly explains, ‘An agreement on core competition law principles could facilitate the acceptance that foreign competition laws are bona fide and not contrary to public policy in the recognising state.’66

#### 2. Follow-on legislation provokes additional backlash.

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; 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; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

The discussion in this section identifies likely impediments to the implementation of ambitious reforms, either through litigation (under the present-day regime) or legislation. These include judicial resistance to broader applications of the Sherman, Clayton, and FTC Acts, the complexities of designing effective remedies, the uncertainty of long-term political support for ambitious reforms and the possibilities for political backlash once agencies begin prosecuting major new cases, and the complications, and resistance, that confronts any effort in the United States to make legislative change.

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

As noted in Section II.A, judicial decisions since the mid-1970s have reshaped antitrust law; created more permissive substantive standards governing dominant firm conduct, mergers, and vertical restraints; and raised the bar to antitrust claims in a number of ways. This remolding has been facilitated by the Court’s conclusion that the Sherman Act constitutes “a special kind of common law offense,”81 so that Congress “expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.”82 This has allowed the statutory commands to be interpreted flexibly and the law to evolve with new circumstances and new wisdom;83 for example, where there is widespread agreement that the previous position is inappropriate or where the theoretical underpinnings of those decisions have been called into question.84

The proposed solutions will depend, in the short term at least, on the ability of enforcement agencies to navigate the described jurisprudence to find an antitrust infringement and, in some instances, a further rethinking, refinement, and/or development of doctrine, through softening, modification, or even a reversal of current case law. Although such an evolution could, in theory, result, as it did over the last forty years, from a steady stream of antitrust cases, judicial appointments since 2017 have arguably made such a change in direction unlikely. Rather, it seems more probable that successful prosecution of major antitrust, and especially Section 2 Sherman Act monopolization cases, will remain challenging and may even become more difficult. Cases will be litigated before judges who are ordinarily predisposed to accept the current framework, either by personal preference or by a felt compulsion to abide by forty years of jurisprudence that tells them to do so.85 A new president could gradually change the philosophy of the federal courts by appointing judges sympathetic to the aims of the proposed transformation.86 The reorientation of the courts through judicial appointments is, however, likely to take a long time.87

Until then, trial judges and the Court of Appeals will be compelled to abide by the existing jurisprudence and will only be at liberty to develop a more flexible approach in the “gaps” or spaces left by Supreme Court opinions—for example, in relation to mergers and rebates—and through creative interpretations of the law. Such cases are, however, likely to be hard fought. Indeed, Judge Lucy Koh’s finding in Federal Trade Commission v. Qualcomm, Inc. 88 that Qualcomm’s licensing practices constituted unlawful monopolization of the market for certain telecommunications chips has provoked hostile attacks, not only from practitioners and academics but also from the DOJ, the U.S. Departments of Defense and Energy, and even one of the FTC’s own members. In a scathing op-ed in the Wall Street Journal,89 Commissioner Christine Wilson attacked Judge Koh’s “startling new creation” of legal obligations that may trigger a new wave of enforcement actions and undermine intellectual property rights. Commissioner Wilson condemned the judge’s “judicial innovations,” and “alchemy,” through reviving and expanding the Supreme Court’s 1985 opinion in Aspen Skiing Co v. Aspen Highlands Skiing Corp 90 (which she stresses was described by the Supreme Court in Trinko 91 as “at or near the outer boundary” of U.S. antitrust law), turning contractual obligations into antitrust claims, and for departing from current federal agency practice, by imposing remedies requiring Qualcomm to negotiate or renegotiate contracts with customers and competitors worldwide. She has thus urged the Ninth Circuit (on appeal), and if necessary the Supreme Court, to assess the wisdom of these sweeping changes and to stay the ruling.92

It seems likely therefore that, at the same time as bringing cases seeking to develop procedural, evidential, and substantive antitrust standards under the existing regime, additional antidotes to the stringencies of existing jurisprudence will be required, including more extensive, and expansive, use of Section 5 FTC Act to plug the gaps created by the narrowing of the scope of Section 2 Sherman Act; and/or the adoption of legislation that directs courts to apply a wider goals framework.

#### 3. enforcement---Section 5 proves.

#### 4. antitrust - Reform efforts face fierce opposition that requires political capital.

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; 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; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

### A2: Link Turn

#### Devils in the details---conservatives want deregulation (NOT antitrust), progressives want reform based in consumer welfare, and antitrust populists want varied, comprehensive reforms.

Melamed 20 (A. Douglas Melamed, Professor of the practice of Law @ Stanford Law School; “ANTITRUST LAW AND ITS CRITICS;” 01-14-20, 83 Antitrust L.J., Forthcoming, <https://dx.doi.org/10.2139/ssrn.3519523>, TM)

Antitrust law is the tool that comes first to mind as a means of addressing concerns about private economic power. On the surface, there appears to be a conversation about the future of antitrust law between three groups. The first group might be called the conservatives. They argue that antitrust law is basically fine as it is4 and that market concentration is transitory and, when enduring or not a reflection of superior efficiency, is largely “the result of heavy regulation rather than a natural development from the nature of business.”5 To the extent they advocate revisions to antitrust doctrine, they generally support modifying doctrinal provisions, such as market share presumptions in horizontal merger cases, that make enforcement easier, 6 and extending doctrinal provisions that restrict enforcement, such as the price-cost test for predatory pricing, to more complex forms of conduct, such as loyalty discounts.7 The second group might be called mainstream progressives. They argue that antitrust enforcement has been too lax and that antitrust law should be adjusted but within the prevailing consumer welfare paradigm.8 The third group might be called the populist critics. They include the self-described “New Brandeis” proponents9 and some who have more far-reaching and eccentric proposals.10

In fact, however, there are really two very separate conversations. One, between conservatives and progressives, concerns how antitrust law might best promote economic welfare. The other, pushed largely by the populists, concerns how to replace what is now known as antitrust law with alternatives that will serve other objectives, in addition to economic welfare, such as promoting an equitable distribution of wealth and of economic and political power. The two conversations seldom intersect in any meaningful way.

Part I sets the table by briefly summarizing the core principles and institutional context of antitrust law as it now exists. Part II addresses the conversation between the conservatives and the mainstream progressives about antitrust law and economic welfare. Part III explains why the concerns raised by the populist critics, although often couched in terms of economic welfare, are not really about economic welfare and why antitrust law cannot prudently address both economic welfare and the other objectives with which these critics are concerned. Part IV gazes through a hazy crystal ball and suggests possible ways to bring the conversations closer together.

I. ANTITRUST LAW AND THE CONSUMER WELFARE STANDARD

U.S. antitrust law prohibits private, anticompetitive conduct that results in more market power than would otherwise exist.11 There are three basic elements to any antitrust offense: anticompetitive conduct, an actual or likely increase in market power compared to the but-for world as a result of the creation or maintenance of market power, and a causal connection between them. Anticompetitive conduct is conduct that is not efficiency-based competition on the merits—conduct that does not, in other words, shift the supply curve to the right by innovation or other forms of cost reduction, shift the demand curve to the right by innovation or other forms of product improvement, or reduce above-cost prices. For this purpose, increased market power means the ability profitably to increase price or otherwise disadvantage trading partners because of a reduction in the competitive efficacy of actual and potential rivals. The competitive efficacy of rivals can be reduced both by collusion among rivals that would otherwise compete and by conduct that weakens or excludes rivals.

Anticompetitive conduct can increase the actor’s market power only by impairing the competitive process. By definition, market power reflects harm to the competitive process. Market power diminishes economic welfare when it is used to increase price, reduce output, or harm rivals and when it reduces incentives for product improvement, cost reduction, or innovation. Antitrust law is thus about protecting the competitive process in order to promote economic welfare.12 This is commonly known as “the consumer welfare standard.”13

Antitrust law is more complicated than that, of course. For example, single firm conduct can violate the antitrust laws only if the defendant winds up with, or with a dangerous probability of obtaining, an amount of market power sufficient to be called monopoly power.14 Also, there are per se rules and other “quick look” decision tools, in which an increase in market power is presumed and need not be proven. It is often said that exclusionary conduct can be illegal, even if it has some efficiency benefits, if those benefits are outweighed by the resulting harm to competition,15 but few if any cases have so held. Perhaps most important, antitrust law embraces simplified principles and rules even though they sometimes permit the creation of market power by conduct that does not promote efficiency.

These principles and rules are largely made by judges. The key statutory provisions are brief and imprecise. In effect, Congress “delegated much of its lawmaking power to the judicial branch.”16 Legal doctrine thus evolves in a common law-like process that “permits the law to adapt to new learning” from business and judicial experience, economic theory and analysis, and market developments.17 The principles and rules of antitrust law are heavily influenced by error-cost analysis. The basic idea is that antitrust cases almost always involve uncertainty and that antitrust principles should therefore be shaped, not to reflect the theoretically optimal outcome that an all-knowing fact finder might reach, but rather to reduce likely error costs. These error costs include the costs of false positives (i.e., false convictions, such as blocking a procompetitive merger or condemning efficient conduct) and false negatives (i.e., false acquittals, such as permitting an anticompetitive merger or conduct that excludes rivals and does not generate substantial efficiencies). Error-cost analysis teaches that antitrust law should be designed to minimize the sum of the costs of false positives and false negatives. The theory makes good sense.18

Error-cost analysis figured prominently in so-called Chicago School thinking. In a very influential article, then-Professor and now-Judge Frank Easterbrook argued that false positives are a more serious problem than false negatives.19 Easterbrook reasoned that a false positive—blocking a merger or prohibiting conduct—is manifest in a final and enduring government order. By contrast, Easterbrook argued, new entry, innovation, and other changed circumstances are likely to dissipate the harm to competition enabled by a false negative.20

Courts have adopted some aspects of antitrust doctrine for the explicit purpose of avoiding false positives, even acknowledging that they would permit some anticompetitive conduct.21 Perhaps more important, antitrust courts have often imposed almost impossibly high burdens of proof on plaintiffs for the explicit or implicit purpose of avoiding false positives. For example, the majority in Ohio v. American Express held that direct proof of harm to competition is insufficient and the relevant market must be defined and proved in all cases involving vertical restraints, on the ground that such restraints can serve procompetitive purposes; that harm to competition cannot be inferred absent proof of reduced output or supra-competitive prices; and that efficiencies from vertical restraints can be presumed even if they are not supported by evidence.22

The inherent nature of antitrust law makes it fertile soil for a cautious error-cost approach. Antitrust law is a law of general application that applies to almost all industries. Antitrust enforcers and tribunals will thus not have deep industry expertise, comparable to that of a sectoral regulator, except perhaps in the tiny portion of industries that have been subject to repeated antitrust scrutiny. Because antitrust principles must be applicable to all industries, they cannot be fashioned to fit the idiosyncrasies of particular industries. Fact-finding, or more precisely application of general principles to very diverse facts, thus does the heavy lifting in antitrust enforcement. And those facts often involve the unknowable, e.g., future innovation, and the unobservable, e.g., incremental costs. Uncertainty is inevitable.

Perhaps more important, enforcement of U.S. antitrust law, unlike competition law in most other nations, is decentralized. In addition to the Justice Department and the Federal Trade Commission, fifty states23 and any person injured by a violation of the antitrust law can bring an enforcement action.24 It is likely, therefore, that a much higher percentage of suspected antitrust violations are subject to scrutiny in the United States than elsewhere and that deterrence of anticompetitive business conduct in general is a more important component of the impact of antitrust law on the economy. Antitrust principles thus need to be fashioned with careful attention to whether they will send clear signals to the business community about the line between permissible and impermissible conduct and whether they will be administrable by hundreds of generalist district courts.

II. ANTITRUST LAW AND ECONOMIC WELFARE

A number of the most prominent names in mainstream antitrust thinking have in recent months expressed the view that antitrust enforcement has been too lax and that antitrust law is too permissive. They are motivated at least in part by recent scholarship showing increases in industrial concentration, 25 share of GDP going to capital rather than labor,26 and price/cost margins27 and that mergers over the past 20 years or so have often resulted in higher prices.28 These studies do not prove that antitrust enforcement has been too lax or even that market power has been increasing throughout the economy, but they are suggestive of those inferences.

The proposals of these mainstream progressives are varied. For example, some propose modifying standards applicable to vertical mergers29 or challenging more often mergers that might harm sellers.30 Others propose challenging most favored nation agreements used by digital platforms31 or socalled horizontal shareholding.32 Carl Shapiro and I have suggested antitrust enforcement against standard-setting organizations that fail to take reasonable steps to ameliorate the welfare-reducing effects of technology market monopolies created by the multi-company agreements they orchestrate.33

The most comprehensive expression of mainstream progressive views is set forth in Jon Baker’s excellent book The Antitrust Paradigm, 34 the title of which is of course a play on Robert Bork’s The Antitrust Paradox. The Antitrust Paradigm consists of three parts. Part I addresses fundamental antitrust issues. Baker describes a “political consensus” supporting antitrust law, a compromise between regulation and laissez faire—between deterring anticompetitive conduct and chilling efficiencies—that can be expected to endure only if courts “maintain the efficiency gains that flow from competition.”35 He argues persuasively that the inclusion of noneconomic goals in mid-twentieth century antitrust law chilled efficient conduct and inherently leads to excessive judicial discretion and, ultimately, political corruption of antitrust law. But, Baker argues, the antitrust consensus is in jeopardy because of the failures of antitrust law even when measured solely by its impact on economic welfare. Baker sets forth several reasons to believe that market power has been generally increasing in the United States and now presents a “serious public policy problem.”36 The problem, Baker argues, is that antitrust law has gone too far in the direction of laissez-faire or antitrust minimalism. Part II consists of a more concrete discussion of antitrust rules for the information economy. Baker insightfully discusses, among other things, inferring agreement from algorithmic coordination, exclusionary conduct by dominant platforms, ways in which mergers can reduce innovation, anticompetitive conduct involving patents, and market definition when platforms are involved. Baker looks forward in Part III. He describes three factors that he believes “point in the direction of strengthened antitrust”—changes in business practices, political realignments, and developments in economic analysis.37 He ends with a call to action that will no doubt appeal to mainstream progressives.

Chapters 4 and 5 of Part I of The Antitrust Paradigm are a reprise of Baker’s earlier criticism of the approach to error costs manifest in current antitrust law.38 “While the error cost framework is a neutral economic tool, antitrust conservatives” have used it to advocate against antitrust intervention by overstating “the incidence and significance of false positives and understat[ing] the incidence and significance of false negatives.”39 They have based their advocacy on numerous “erroneous arguments” about markets and institutions, arguments that Baker addresses and refutes.40

The issues raised in these chapters are critical to current controversies about antitrust policy. For present purposes, it does not matter whether Easterbrook and other antitrust conservatives were right about error costs in the past. The question now is whether changed circumstances warrant reassessing the relative tolerance for the risks of false positives and false negatives that antitrust law now embodies. The indications of under-enforcement summarized above and the failure in court of economically sound cases suggest that the likelihood of false negatives might be greater than previously thought and perhaps that current antitrust law has gone too far in its quest to avoid false positives. Those indications, together with the size, seemingly boundless scale and scope economies, and apparently durable market power of some of the global mega-firms and new learning about entry barriers and contestable markets, suggest that the duration and costs of false negatives might be greater than previously thought. Similarly, new empirical tools for assessing mergers and improved understanding of the economic effects of vertical agreements suggest that the likelihood of false positives might be lower than previously thought. And studies showing that mergers rarely achieve anticipated efficiencies suggest that the costs of false positives might be lower than previously thought.41

Recalibrating the law’s relative tolerance for the risks of false positives and false negatives could change antitrust law in numerous ways. It could, for example, lead to doctrinal changes, such as eliminating the recoupment requirement in predatory pricing cases, which has been criticized as being incoherent and a needless obstacle to proving anticompetitive pricing.42 It could encourage courts to clarify the law regarding unlawful refusals to deal. In Aspen Skiing, the Court emphasized that the defendant had demonstrated a willingness to forego profitable dealing with a competitor in order to increase its market power.43 Dicta in the Court’s subsequent decision in Trinko have been read by some to mean that a plaintiff must show a prior course of dealing between the defendant and the excluded party to establish an unlawful refusal to deal. 44 The law might be clarified to make clear that evidence other than a prior course of dealing might in appropriate circumstances suffice to prove a profit sacrifice, or it might find certain refusals to deal unlawful even absent a profit sacrifice.45

More broadly, antitrust law could be more willing to find violations on the basis of circumstantial evidence or predictions of future developments that are necessarily uncertain. The demanding proof required in some recent cases might be reexamined if the law were more willing to risk false positives and less willing to risk false negatives.46

Merger law might be most suited to recalibration, for three reasons. First, there is reason to suspect underenforcement, i.e., an excessive number of false negatives, in the past.47 Second, studies showing that parties often fail to realize anticipated efficiencies from mergers suggest that the cost of false positives might be less than previously thought.48 Third, merger enforcement is largely a matter for the expert enforcement agencies. Adjusting the legal standards for merger enforcement is therefore less likely to lead to abuse by private litigants. Such concerns appear to have been responsible, at least in part, for driving some aspects of current antitrust doctrine.

The law applicable to acquisitions by dominant firms of small, nascent competitors, for example, might be revised. Current law implicitly presumes that mergers are efficient and, thus, that false positives would be costly. Plaintiffs are therefore required to prove that increased market power is a likely result of the merger. That is an almost impossible task when the harm to competition is both uncertain and likely to occur, if at all, only in future years. One could imagine a regime in which an acquisition by a dominant firm, defined by size and duration of market share or some other indicia, of a much smaller or nascent firm is presumed to be unlawful if the acquired firm is shown to have a realistic possibility of developing into a competitive threat to the dominant firm. In that event, the defendant would have the burden of proving that harm to competition is very unlikely or that the merger will create substantial, merger-specific efficiencies. In other words, instead of requiring the plaintiff to justify running the risk of a false positive, the defendant could be required in specified circumstances to justify incurring the risk of a false negative.49

Such changes will not come easily, and careful analysis might show that they should not be made. The progressives are not the only ones talking about antitrust law and economic welfare. More conservative mainstream scholars argue that no major adjustments to antitrust law are called for or, as noted above, that antitrust law should in some instances be revised to reduce the risk of false positives. They argue, among other things, that there is no convincing evidence of widespread increases in market power,50 that increased market concentration reflects superior productivity and the forces of competition,51 that the law should not be changed on the basis of theoretical possibilities that have not been shown to be likely or frequent in fact, 52 that presumptions that have been urged as a means to shift to defendants a burden of justification are based on unsound economics, 53 and that the costs of false negatives emphasized by the progressives are lower than would be the costs of false positives if the law were revised to permit more aggressive enforcement.54

These two groups, the mainstream progressives and the conservatives, are engaged in a serious conversation about whether, and if so how, antitrust law should be adjusted to better achieve the ultimate objective of promoting economic welfare. It’s the kind of conversation that policy wonks and technocrats love.55

III. ANTITRUST LAW AND THE POPULIST CRITICS

Conversations that policy wonks and technocrats love do not often get wide public attention. The antitrust conversation that has gotten attention is that initiated by those who might be called antitrust’s populist critics. They include both legal scholars and others with more eclectic backgrounds. Three recent books illustrate the critics’ concerns. Tim Wu’s The Curse of Bigness focuses most directly on antitrust law. To oversimplify, Wu argues that antitrust law needs to be “updated to face the challenges of our time” posed by “extreme levels of industrial concentration” and “concentrated private power . . . with too much influence over government.”56 For this, Wu argues, antitrust law needs to return to the broader noneconomic goals originally intended by Congress. Wu’s short book is imprecise in important respects, perhaps because Wu appears to claim the mantle of “public advocate” fighting about matters of principle against powerful vested interests,57 and misstates contemporary antitrust law in places. 58 Wu does, though, make clear that he longs for a robust antitrust law that will both restore the “big case tradition” to challenge the “tech trusts” in particular and deal aggressively with problems that arise in the “age of oligopoly.”

In The Myth of Capitalism, Jonathan Tepper and Denise Hearn argue more broadly that competition is essential for capitalism but “remains an ideal that is receding further from our reach.”59 The government, they argue, “has not enforced rules that would increase competition, and through regulatory capture has created rules that limit competition.”60 Their book collects a diverse range of high-level data from which the authors draw broad conclusions about the failures of capitalism, which the data do not always support. As to antitrust law in particular, which the authors misstate in important respects, they argue that, since the election of President Reagan in 1980, “no president has enforced the spirit and letter of the Sherman and Clayton Acts.”61

Radical Markets is, well, more radical, and more imaginative. To authors Eric Posner and Glenn Weyl, the “most significant problem in our time is rising inequality within wealthy countries.”62 They argue that markets must be “strengthened, expanded and purified” but that the solution lies neither in “Market Fundamentalism,” which “is little more than a nostalgic commitment to an idealized version of markets as they existed in the Anglo-Saxon world in the nineteenth century,” nor “reliance on the discretion of bureaucratic elites to fix social ills.”63 Instead, they propose a variety of broad rules. These include, to ameliorate the “monopoly” power inherent in all property, requiring property owners to state the value of their property, which would provide both the basis for determining the amount of property tax owed and the price at which anyone else could buy the property;64 prohibiting institutional investors in almost all circumstances from diversifying their holdings within industries;65 and blocking mergers that increase political influence by concentrating lobbying capacity.66

On the surface, the populist critics, like the conservatives and mainstream progressives, are talking at least in part about whether antitrust law is well suited to promote its economic-welfare objective. They argue, in particular, that the “consumer-welfare standard” that has defined contemporary antitrust law is much narrower than suggested above and that it prevents antitrust law from effectively promoting economic welfare. They say, for example, that the consumer-welfare standard requires courts to pursue outcomes, a task for which they are not well-suited, instead of calling balls and strikes;67 confines antitrust law to a singular focus on consumer prices;68 is not able to address conduct that reduces innovation;69 and focuses solely on consumers and ignores harm to suppliers.70 Nicolas Petit and I have argued elsewhere that each of these criticisms is incorrect.71 In brief, antitrust is about proscribing anticompetitive conduct and does not call upon courts to measure or regulate welfare outcomes. Antitrust law has in the past effectively addressed harms to innovation; harms to suppliers, including in labor markets; and anticompetitive conduct that had nothing to do with prices and involved products sold for a zero monetary price. The common focus on pricing data and other perceived problems reflect limitations on available data and difficult problems of proof, not any conceptual restrictions arising from the consumer-welfare standard. These limitations and problems have been, and no doubt will continue to be, ameliorated by advances in economists’ toolkit and legal doctrine.

The important point for present purposes, however, is not whether the criticisms are correct or incorrect. It is that the criticisms are largely unrelated to what the critics are really saying. The critics do not respond to arguments that their criticisms of the consumer-welfare standard are incorrect or otherwise explain how antitrust law should be changed in order to better promote economic welfare. To the contrary, they think that antitrust law focuses too narrowly on economic welfare and unduly privileges efficiency at the expense of other objectives. Their criticisms of the consumer-welfare standard are not the criticisms of technocrats with a shared objective but rather are a rhetorical device in aid of an argument for replacing economically focused antitrust law with a law aimed more broadly at attacking concentrations of economic and resulting political power. As Tepper and Hearn put it, “antimonopoly is more than antitrust.”72

While the populist critics broadly share a concern about concentrations of power, they have various and potentially conflicting objectives. Many are concerned about the political power of big corporations.73 Some want to protect liberty and autonomy.74 Fewer are concerned about economic inequality.75 Tim Wu wants to protect competition and rivalry and to protect consumers from deception and manipulation.76

The critics point to a variety of indicia of what they regard as undesirable concentrations of power and inequality, but the various indicia have quite different implications. Critics complain about what they see as evidence of increased market concentration; that is most relevant to economic welfare. They complain about evidence of economic power more broadly;77 that is most relevant to issues of economic inequality. They point to indications of increasing industry concentration, which they argue makes industry-wide lobbying more likely and effective and thus increases inequality in political power.78 The mainstream progressives have also pointed to a variety of indicia that do not directly show increases in the market power with which they are concerned, but they explain how those indicia are suggestive of increased market power. The populist critics paint with a broader brush.

Not surprisingly, the policy proposals of the populist critics are less specific that those of Jon Baker and other mainstream progressives, and the populists’ proposals are not consistent with one another. Tim Wu, for example argues that the law should simply prohibit anticompetitive conduct without requiring that it be shown to create market power in an antitrust market.79 Senator Warren and others, by contrast, seem to favor structural intervention to reduce the size of big companies or to restrict the scope of their dealings even without proof that they engaged in anticompetitive conduct.80 Posner and Weyl would block mergers likely to increase the lobbying clout of the merged firm.81

It seems reasonable to assume that substantial and increasing inequality of wealth and economic and political power is a serious problem. 82 Some might object to such inequality on moral grounds, but the case against the current inequality does not depend on moral concerns. Even if the wealthy and powerful can be said to have earned their rewards by some theory of just deserts, substantial and increasing inequality erodes community and political stability. This is especially so if, as evidence suggests, wealth and power, and their absence, are passed on to progeny.83 Government policies that are likely to reduce such inequality would thus seem to warrant careful consideration.

### Intrinsicness and fiat solves

Boo

Political education and il proves yes tradeoff

### AT: PC Fails

#### Biden’s PC is working – his personal involvement passing infrastructure proves – that’s Barron-Lopez – AND…

Brodey 11-6 (Sam Brodey, Congressional Reporter at Daily Beast, and Scott Bixby, White House Reporter at Daily Beast, “Democrats Hand Joe Biden His Long-Awaited Infrastructure Win,” The Daily Beast, 11-5-2021, updated 11-6-2021, https://www.thedailybeast.com/democrats-hand-joe-biden-his-long-awaited-infrastructure-win)

After a torturous series of never-ending Infrastructure Weeks, President Joe Biden and congressional Democrats took the largest step yet toward ending the political Groundhog Day.

On Friday night, House Democrats passed a $1.2 trillion bipartisan infrastructure bill, 228-206, with 215 Democrats and 13 Republicans voting for the bill, and six Democrats and 200 Republicans voting no.

Since the legislation has already passed the Senate, the so-called Infrastructure Investment and Jobs Act now heads to Biden’s desk for his signature, allowing the president to claim a major win as his approval ratings sag.

That victory only arrived after Biden and Democratic leaders strong-armed progressive lawmakers enough to get them to relent on what had previously been the party’s official position: that the infrastructure bill travel alongside a $1.75 trillion social spending bill titled the Build Back Better Act.

Progressives had successfully kept the two bills together for months, fearing that moderates wouldn’t vote for the latter without holding the former as leverage.

But with pressure growing from Biden and Speaker Nancy Pelosi (D-CA) to pass the infrastructure bill, progressives had little choice on Friday but to take a legislative leap of faith.

While Biden and moderates got their win, liberals left the Capitol with a successful procedural vote to advance Build Back Better to the House floor—and with a written promise from moderates to vote for the legislation if it gets a positive fiscal analysis from Congress’ independent budget watchdog.

For progressives, the trade was not ideal. But lawmakers acknowledged it was about all they had.

“It erases a lot of the doubt,” Rep. Dan Kildee (D-MI), a member of Democratic leadership, told The Daily Beast. He admitted there was always doubt with these arrangements. "But I feel fairly confident," he said.

After a day that former Congressional Progressive Caucus chairman Mark Pocan (D-WI) dubbed “a clusterfuck,” the vast majority of the CPC decided the commitments from a few moderates to vote for the Build Back Better Act—as long as the Congressional Budget Office came back with a score in line with the White House’s—was enough.

After hours of suspense, at 11:25 p.m. Friday night, the bill passed the House, with Republicans providing the last crucial votes to get the legislation over the finish line.

Clearing the House is not the Build Back Better Act’s main issue, however. That claim to fame belongs to Sen. Joe Manchin (D-WV).

The centrist Democrat's opposition to key planks of the Build Back Better Act has already forced Democrats to cut the size of the bill in half. And he is still not committed to passing the legislation. He said this week it would take some time for him to consider it, but his tone during a Monday press conference seemed to solidify in the minds of progressives that Manchin may never get to yes.

On top of a tenuous path to becoming law, there are immigration provisions in the social spending bill—crucial for some House Democrats—that are likely to get stripped out because they don't conform to the Senate’s special rules for a bill that passes with just 51 votes in the 100-member chamber.

So, for those Democrats who support getting some kind of legislation enacted to fulfill the party’s promises on climate, health care, and the economy, their ability to keep the infrastructure bill tied to the Build Back Better Act has been critical for passing the entirety of Biden’s agenda. Now, they must hope House moderates keep their word—and trust that Biden can somehow get Manchin to embrace a package he has called a “recipe for economic disaster.”

It’s a gamble progressives very reluctantly took. And it’s one that could easily backfire. There’s no guarantee the Senate will pass the social welfare bill, which would include an expansion of universal preschool, investments in affordable housing, an expansion of Medicaid and Medicare benefits, and provisions to lower prescription drug prices for seniors, as well as tax credits for parents, low-income workers, and clean energy.

But faced with the prospect of continued Democratic inaction—and progressives catching the blame for blocking a bipartisan infrastructure bill—Progressive Caucus Chairwoman Pramila Jayapal (D-WA) moved off her earlier demand that the two bills pass both chambers to a new demand: both bills pass the House.

That would allow the infrastructure bill to become law while the president and other Democratic leaders try to win over Manchin on the Build Back Better Act. And that shift prompted new optimism that Democrats could close compromises to please their ideologically diverse and paper-thin majorities.

The problem with this plan, to pass both the bills in the House, was that a half-dozen moderates insisted on seeing a CBO score for the Build Back Better Act. That led Pelosi to develop a new plan, demanding even more concessions from progressives. The speaker wanted to pass the infrastructure bill, and then instead of passing the social spending bill, just set up debate for it.

Initially, the adapted plan was just too much for Jayapal and other progressives. They swore they would vote down the infrastructure bill if the Build Back Better Act wouldn’t pass the House too.

Nevertheless, Pelosi pressed ahead with a vote. She surprised Democrats by announcing votes on the infrastructure bill and the procedural vehicle for the Build Back Better Act for Friday night, and the Progressive Caucus had a marathon session to mull their response.

Members were under immense pressure; Jayapal, who had been open and talkative with the press throughout the process, left at one point without saying a word to journalists. CNN later reported that she was taking a call from Biden, and whereas Biden didn't explicitly ask for Democrats to pass the infrastructure bill last week—when a vote fell apart—he repeatedly pressured progressives to relent this time.

Progressives fumed that the handful of moderates who withheld their support for the Build Back Better Act were not subject to similar pressure. Aides vented publicly and privately about the narrative that progressives are the problem children of the party, when moderates hardly ever face the same criticism. And progressives can credibly claim they are trying to ensure that both planks of Biden’s agenda become law, while moderates leave ample room for doubt over whether they support anything beyond the infrastructure bill.

Still, progressives reluctantly coalesced around a plan to accept the word of a moderate faction that they have openly distrusted—and which has openly distrusted them.

Biden, who cancelled a planned trip to his Delaware vacation home at the last minute Friday, instead spent the evening in the residence alongside his legislative affairs team, “making calls and staying in close touch with leadership and members,” according to a White House official. Vice President Kamala Harris also joined in making calls.

“I am urging all members to vote for both the rule for consideration of the Build Back Better Act and final passage of the Bipartisan Infrastructure bill tonight,” Biden said in a statement released as he joined those calls. “I am confident that during the week of November 15, the House will pass the Build Back Better Act.”

The president, whose frequent calls for congressional Democrats to pass both measures in one go had become increasingly desperate, urged the Congressional Progressive Caucus earlier on Friday to vote on the BIF immediately, according to a White House official, with no mention of the massive social spending measure.

“The president is speaking with House leadership, progressives, and moderates in an effort to come to a solution,” the official said, “and he has been urging a vote tonight.”

Earlier on Friday, principal deputy White House press secretary Karine Jean-Pierre told reporters that the president had been “in close touch” with House members as he advocated for a “yes” vote on a bill that the caucus already supports.

“I can’t speak for the mechanism” on voting Friday, Jean-Pierre said when asked about timing, but “if it’s today, that’s wonderful, that’s great.”

Jean-Pierre was straightforward about the potential electoral effect that the months-long delay in passing the spending packages had on Democrats in elections this week, telling reporters that the loss of the Virginia governor’s mansion was evidence that “the American people felt we hadn’t moved quickly enough.”

“We just have to act—we cannot not deliver for the American public,” Jean-Pierre said, adding that the shortened patience of the American public had become clear to the administration. “The time is now to get this down—that’s how his assessment is.”

Ultimately, Biden got what he wanted. And as the House finished the infrastructure vote, Democrats cheered at a legislative accomplishment that has eluded multiple presidents.

### AT: US Not Key

#### US is key to Glasgow follow-through

Milman 21 (Oliver Milman, environment reporter for Guardian US, BA Media Writing, Solent University; **internally citing Linda Mearns, IPCC report co-author, and Leah Stokes, a climate policy expert at the University of California, Santa Barbara**; “UN climate report raises pressure on Biden to seize a rare moment,” The Guardian, 8-10-2021, https://www.theguardian.com/us-news/2021/aug/10/un-climate-report-joe-biden-us-response)

A stark UN report on how humanity has caused unprecedented, and in some cases “irreversible”, changes to the world’s climate has heaped further pressure on Joe Biden to deliver upon what may be his sole chance to pass significant legislation to confront the climate crisis and break a decade of American political inertia.

The US president said the release on Monday of the Intergovernmental Panel on Climate Change report showed that “we can’t wait to tackle the climate crisis. The signs are unmistakable. The science is undeniable. And the cost of inaction keeps mounting.”

The IPCC report, developed over the past eight years by scientists who combed over more than 14,000 studies, shows that the US, like the rest of the world, is running out of time to avoid disastrous climate impacts, with a critical global heating threshold of 1.5C to be breached far earlier than previously expected, potentially within a decade.

“This is not a future problem, it’s a problem now. I’m literally seeing climate change out of my window, climate change is in my lungs,” said Linda Mearns, an IPCC report co-author located in Boulder, Colorado, which has been baked in extreme heat and wildfire smoke in recent weeks.

Mearns, who has been involved in IPCC reports since 1990, said the latest iteration was “very through and disturbing” and demanded a strong response. “I’m not sure what will be required for people to get it, but my hope is that it will galvanize everyone in Glasgow to meet their agreements,” she added in reference to UN climate talks between world leaders in October.

Much of that global action will hinge upon the response mustered by the US, the world’s second-largest carbon emitter. Biden’s narrow window of opportunity to drastically cut emissions is dependent upon the contents of a $3.5tn bill that Democrats hope to pass before midterm elections next year, when the party may well lose control of Congress.

“Congress didn’t pass a climate bill in 2009 and it’s taken over a decade to get us back to serious climate legislation,” said Leah Stokes, a climate policy expert at the University of California, Santa Barbara. “This summer is the best chance we have ever had to pass a big climate bill. This is it. President Biden is poised to become the climate president we need. But there are no more decades left to waste.”

Stokes said she was “very optimistic” the reconciliation bill would include two critical climate measures to help the US slash its emissions in half this decade – a scheme to help utilities to phase out fossil fuels from the electricity grid and tax credits to encourage renewable energy and electric cars.

The measures will need the support of all Senate Democrats, including Joe Manchin and Kyrsten Sinema, who have expressed doubts over the scope of the bill. Republicans, who have long allied with the fossil fuel industry to oppose any significant action to avert the climate emergency, are uniformly opposed to the bill.

### Climate

#### Biden’s climate financing is key to Glasgow and global mitigation – developing countries’ emissions are key

Dalton 10-18 (Matthew Dalton, Reporter at The Wall Street Journal, “To Strike a Climate Deal, Poor Nations Say They Need Trillions From Rich Ones,” WSJ, 10-18-2021, https://www.wsj.com/articles/to-strike-a-climate-deal-poor-nations-say-they-need-trillions-from-rich-ones-11634568010)

At the end of the month, negotiators from nearly every country will meet in Glasgow, Scotland, for a two-week climate summit, the first major gathering since governments signed the Paris accord in 2015. The goal is to strike a deal to keep the climate targets of the Paris agreement within reach.

Without poorer countries on board, the world stands little chance of preventing catastrophic climate change, say many climate scientists. Emissions in the U.S. and Europe are falling as both regions push to adopt renewable energy and phase out coal-fired electricity. But emissions in the developing world are expected to rise sharply in the coming decades as billions rise out of poverty—unless those economies can shift onto a lower-carbon path.

Before signing on, poorer countries are demanding a big increase in funding from the developed world to adopt cleaner technologies and adapt to the effects of climate change such as rising sea levels and more powerful storms.

Bangladesh says it needs cyclone-resistant housing. Kenya wants its countryside dotted with solar farms instead of coal or natural gas-fired plants. India says its climate-change plan alone will cost more than $2.5 trillion through 2030.

“We cannot be talking about ambition on the one hand, and yet you show no ambition on finance,” said Mr. Fakir who is coordinating climate finance policies for the Group of 77, a coalition of developing nations.

Developed nations say it is unrealistic to put them on the hook for such a large sum without also getting middle-income countries—China in particular—to provide funds. In Paris in 2015, the U.S., Europe and a few other wealthy nations committed to funding poorer countries to the tune of $100 billion a year from 2020 through 2025. They have so far fallen short.

Developing-world negotiators say the money isn’t financial aid. Rather, they say wealthy countries have a responsibility to pay under the U.N. climate treaties because most of the Earth’s warming since the industrial era is the result of emissions from the rich world. Moreover, poor nations now face the task of raising living standards without burning fossil fuels unchecked as the U.S. and other rich nations did for almost two centuries.

“If you’re going to ask a much poorer country to forgo that option, then there is a moral claim that they need support to go on a lower emissions development pathway,” said Joe Thwaites, a climate-finance expert at the World Resources Institute, an environmental think tank.

Even developed countries are struggling with the transition to renewables. A surge in demand for power from nations recovering from the pandemic has forced governments to lean on fossil fuels; though investment in renewables has increased, it accounts for only about a quarter of the world’s power.

Western officials say the Glasgow negotiations need to focus first on how to raise enough money to meet the Paris goal. Then they are planning to begin talks on a finance goal for after 2025. That sum is expected to be too large to pay from the government budgets of rich nations alone, officials say. Instead they are counting on private investors to pick up most of the bill.

“There isn’t enough official development funds in the system to close the gap of climate finance,” said Gustavo Alberto Fonseca, director of programs at the U.N.’s Global Environment Facility, which funds climate infrastructure in the developing world. “There has to be a market-based solution.”

Developing nations want a big portion of the money to come as government grants, not loans from private investors that would saddle them with debt. They’re demanding control over how the money is spent, wary of dictates from wealthy governments and financiers in the U.S. and Europe.

The developing world also questions whether the U.S. is committed to delivering its portion of the funds over the long haul. The Biden administration has pledged to double climate funding to developing countries to $11.4 billion annually by 2024, which would make the U.S. by far the biggest single benefactor. President Donald Trump reneged on previous promises the Obama administration made to finance the Green Climate Fund, the U.N.’s main vehicle for delivering money to the developing world, saying the fund “was costing the United States a vast fortune.”

#### Climate’s existential – prefer the IPCC’s global scientific consensus – that’s Aberg

#### AND, cumulative disjunctive existential risk across a litany of direct and indirect impacts mathematically outweighs any other X-risk

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change

Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7

A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including:

• the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming;

• the drying of forests from warming increases forest fires and the release of more carbon; and

• higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming.

Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared

**[[marked]**

to envisage, and even less deal with, the consequences of CCC’.The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low.

While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

# 2NR

### 2NR---AT: House

#### Sinema, House centrists and progressives are on board – PC will swing Manchin

Raju 11-12 (Manu Raju, CNN Chief Congressional Correspondent, “As Biden agenda hinges on Manchin, House progressives look to 'deescalate' tension,” CNN Politics, 11-12-2021, https://www.cnn.com/2021/11/12/politics/joe-manchin-relationship-progressives/index.html)

The episode illustrated the efforts by a group of House and Senate progressives to work behind the scenes to build goodwill with the Senate's most unpredictable moderate, who has the power to sink President Joe Biden's expansive agenda -- and many progressive priorities -- simply by pointing his thumb down. Manchin has made clear he won't be jammed, even holding a press conference last week balking at the demands made by progressives that he publicly endorse Biden's $1.75 trillion framework.

In private, Manchin has had cordial conversations with the House's progressive caucus chair, Rep. Pramila Jayapal of Washington state, but he has also informed her that she doesn't have leverage over him, according to sources familiar with the matter. And he's shown little willingness to bend as he's been grilled by Senate progressives, such as New York Sen. Kirsten Gillibrand, in tense discussions over including paid family leave in the larger plan, which he continues to oppose, according to people who have spoken with him.

After months of intense scrutiny on his positions, Manchin now stands poised to have the final word on Biden's agenda, assuming House Democratic leaders can muscle through their version of the Build Back Better plan, which stands at roughly $1.9 trillion, as soon as next week.

Then the focus will shift squarely to what Manchin will accept, an open question as he has for months called on his party to hit the brakes. He raised concerns that a multi-trillion bill could add to the country's inflation woes, pushed back on provisions to reduce methane emissions, opposed a Medicare expansion, demanded changes to the tax provisions in the House proposal and resisted measures aimed at helping undocumented immigrants.

And if he cuts a deal, House progressives almost certainly will be forced to swallow it.

So rather than publicly berating him and demanding he agree to their priorities, many Democrats say the way to win him over is to give him space, avoid the personal attacks, engage in an open dialogue with him and let him ultimately come to a conclusion that passing the bill is crucial not just for the President's political future but his deep-red state as well.

"I have always had a cordial relationship with Sen. Manchin and just wanted to keep the dialogue open so he doesn't feel in any way disrespected," Khanna told CNN. "So he knows there is an exchange of ideas. And I think that will make it marginally easier for the White House to build consensus."

Added Sen. Tom Carper of Delaware, a more centrist Democrat who has been in talks with Manchin over the environmental proposals: "One of the early lessons I've learned in politics, all politics is local. And there's so much at stake here for West Virginia."

In private, Speaker Nancy Pelosi has counseled her House colleagues not to insult Manchin, Democrats say. And she has spoken positively about her relationship with the West Virginia Democrat, who gave her a statue of a coal miner this year in a gesture toward their efforts to help those workers with their pension problems, according to a person who heard her remarks.

While Democrats are uncertain where Manchin will come down, they are far more reassured that Arizona Sen. Kyrsten Sinema -- the other leading moderate -- will ultimately back the sweeping expansion of the social safety net. Many of Sinema's concerns -- namely opposing raising corporate and individual tax rates and slicing down the initial $3.5 trillion price tag -- have already been addressed.

A closed-door meeting of House and Senate Democrats late last month in the Senate, between Jayapal, Colorado Rep. Joe Neguse along with Sen. Brian Schatz of Hawaii, went a long way toward reassuring progressives that Sinema will ultimately vote for the package, according to multiple Democrats.

Democrats say that the distrust between the two wings -- which stalled action on the President's agenda for months -- is slowly starting to ease. Indeed, it was a late-night deal-making session between a handful of House moderates and progressives that paved the way for passage of the $1.2 trillion infrastructure bill that Biden plans to sign into law Monday.

"The last few weeks have been eventful," said Neguse, a progressive Democrat who also attended the meeting with Manchin along with Khanna, Cuellar and two centrist House Democrats, and has spoken repeatedly with Sinema as well.

"It's important to de-escalate the situation," another Democrat said, referring to progressives' war of words with Manchin.

A late-night deal and Biden's warning

To get Manchin ultimately on board, Democrats are mostly leaving it up to Biden, who has been in direct conversations with the senator for months. And they say the President should use the same kind of persuasiveness he employed in getting liberals to support final passage of the infrastructure bill, which they had held up for more than a month as they demanded the larger proposal be approved at the same time.

As he addressed the Congressional Progressive Caucus on speakerphone last Friday night and urged the House liberals to separate the two bills and support the infrastructure package, Biden urged the caucus to trust his ability to deliver the needed 50 Democratic votes in the Senate -- including Manchin's -- to get the Build Back Better plan through.

And at one point, the President suggested that if they couldn't trust him and wouldn't get behind the infrastructure bill last Friday, then they should just abandon the entire agenda, according to four sources familiar with his remarks.

"That really woke people up," one source said.

Biden faced a flurry of questions from a range of progressives, from Bush to Rep. Lloyd Doggett of Texas, but he sought to reassure all of them that the moderates in both chambers would ultimately fall in line.

Asked about the President's pitch after the late-night Friday vote, Jayapal told CNN that if the progressives didn't back the infrastructure bill, the entire agenda may have collapsed.

"The Build Back Better Act would have also probably gone down," said Jayapal, who initially told the President that evening she wasn't ready to support the infrastructure bill on its own. "So it was really like: How it was really how do we turn this into a win"

The President's desire to get the infrastructure bill to his desk immediately was a message that was also delivered in a closed-door leadership meeting earlier in Pelosi's office, multiple sources said. South Carolina Rep. Jim Clyburn, the House majority whip, told his colleagues about the difficult political position that Biden was in and that he "needs a victory" and the House wouldn't leave without giving him one, according to sources familiar with the matter.

And to get there, they needed to bridge the trust deficit between moderates -- who refused to back the $1.9 trillion bill without estimates from the Congressional Budget Office -- and progressives, who wouldn't support the infrastructure bill without assurances from moderates that they'd back the larger plan.

After a suggestion made by Rep. Ted Lieu of California that a statement be drafted from moderates laying out some assurances, New York Rep. Hakeem Jeffries, a member of the party leadership, and New Jersey Rep. Donald Norcross, a vice chair of the progressive caucus, began trying to piece together a statement with the moderates, led by Rep. Josh Gottheimer of New Jersey.

After back-and-forth within the progressive caucus, Neguse along with progressive Reps. Jimmy Gomez of California, Mark Pocan of Wisconsin and Mondaire Jones of New York went to hash out a deal with moderate Democrats in the Longworth office of another Blue Dog Democrat, Florida Rep. Stephanie Murphy.

After hours of negotiating, it ultimately came down to Jayapal and Gottheimer. The two agreed to a deal initially floated by the Congressional Black Caucus: there would be two votes that night: One to pass the infrastructure bill, which moderates had been demanding, and the other to approve the rule governing floor debate for the $1.9 trillion bill, a key progressive demand. But the $1.9 trillion plan would not get a final vote until after the CBO reported on its costs.

Yet progressives wanted the vote on the rule first, not trusting the moderates to support the procedural vote once the infrastructure bill was passed. But moderates were fearful that even more Republicans would defect on the infrastructure bill if the rule on the social safety net package were approved first.

Ultimately, the moderates' request won out -- but not before Jayapal looked each of the four moderates in the eyes to get their commitments that they would stick to their statement that they would back the Build Back Better bill by next week assuming the CBO provides "fiscal information" reassuring them that its costs would be completely offset.

Asked if he trusted the moderates, Jones paused for several seconds and sighed then said: "When we sign statements like that, and when we do press conferences together to that effect, then people are deserving of our trust."

With the House on the cusp of approving the $1.9 trillion bill, Democrats say Biden will have to employ similar tactics with Manchin. And they say that recent comments that Manchin has made that he plans to work with the President, gives them some hope.

"He wants to move forward, and we owe it to the President to move forward," Manchin told CNN recently.

### 2NR---AT: CBO

#### The CBO numbers are NOT a threat – PC will overcome

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

DUELING NUMBERS

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

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

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

BUT REMEMBER, THIS IS CONGRESS

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

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

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

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

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