# 1ac

## 1AC – Balancing Test

### Cartels Adv

#### Glaring inconsistencies and bad decisions interpreting the FTAIA’s limit on the Sherman Act wreck the deterrent effect of US extraterritorial antitrust against global cartels

Murray ‘17 [Sean; 2017; J.D. Candidate and Stein Scholar, Fordham University School of Law; Fordham International Law Journal; “With A Little Help From My Friends: How A Us Judicial International Comity Balancing Test Can Foster Global Antitrust Private Redress.” vol 41, iss. 1 https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj]

IV. SHORTCOMINGS OF THE CURRENT JURISPRUDENCE

Although clarity was one of Congress’ goals in enacting the FTAIA, the statute as drafted is anything but clear, and the FTAIA itself has contributed to the ill-defined boundaries of the effects doctrine. The FTAIA has produced a number of circuit splits, one of which was decided by Empagran.151 Other circuit splits currently exist, including one between the Seventh and Ninth circuits concerning the interpretation of the FTAIA’s requirement that anticompetitive behavior have a “direct, substantial, and reasonably foreseeable effect” on US commerce which the Supreme Court has so far abstained from resolving.152 As explained in Minn-Chem, Inc. v. Agrium Inc., the “substantial” and “reasonably foreseeable” prongs have produced little dispute and are relatively straightforward.153 Rather, what it takes to show “direct” is less clear.154 The Seventh Circuit took the position that, like in tort law, recovery should be cut off for injuries that are too remote from the cause of an injury and held that the term “direct” means only “a reasonably proximate causal nexus.”155

To the contrary, the Ninth Circuit in United States v. LSL Biotechnologies looked to the Supreme Court’s definition of “direct” from a different statute germane to international relations.156 Drawing from dictionary definitions and language in the Foreign Sovereign Immunities Act that is similar to that in the FTAIA, the court held that an effect is “direct” if “it follows the immediate consequence of the defendant’s activity.”157 This definition was subsequently utilized by the Ninth Circuit in its decision in United States v. Hsiung (the criminal prosecution of the defendants in Motorola Mobility), which expressly rejected Minn-Chem’s “reasonably proximate causal nexus” approach and reiterated instead the broader “immediate consequence” test.158

A. Problems Arising from the Circuit Split

Using Minn-Chem’s definition of “direct,” however, has produced a questionable holding in Motorola Mobility.159 In that case, a US company, Motorola, brought a claim under Section 1 of the Sherman Act, alleging that it was the victim of price-fixing among foreign manufacturers of liquid crystal display (“LCD”) panels used as components in the manufacture of cellphones.160 The LCD panel manufacturers had already been found guilty of participating in an illegal cartel, and those convictions were affirmed in Hsiung.161 Motorola was a major purchaser of LCD panels, but had purchased most of the price-fixed products through its majority-owned foreign subsidiaries.162 Only one percent of its purchases were made directly by Motorola in the United States and incorporated into cellphones also sold in the United States.163 The other ninety-nine percent of its purchases were made abroad.164 Of those purchases, forty-two percent were incorporated into phones destined for the United States, while the remainder were used to make phones sold abroad.165

In its first stab at the appeal of the lower court’s decision, the Seventh Circuit following Minn-Chem’s definition of “direct” held that anticompetitive behavior affecting intermediary products, rather than final products, could not have a “direct” effect on US commerce.166 After additional consideration likely influenced by the DOJ’s concern with the initial holding and its implications for international cartel enforcement, the court vacated the first opinion and opted for a different approach to the same conclusion.167 Summarizing that the case involved “components [that] were sold by their manufacturers to their foreign subsidiaries, which incorporated them into the finished product to Motorola for resale in the United States,” Judge Posner branded the wrongful conduct, effect, and injury as entirely extraterritorial because Motorola and its subsidiaries did not function as one enterprise.168 Therefore, the court construed Motorola as an indirect purchaser, barred from bringing a claim under the Sherman Act by virtue of the holding in Illinois Brick Co. v. Illinois,169 and concluded that the entire transaction falls outside of the FTAIA’s exception, though recognizing that the effect on US commerce may, perhaps, be “direct.”170

But, the court’s reliance on Illinois Brick was no better than its initial attempt to characterize the effect of the LCD cartel on US commerce. Several points suggest Motorola Mobility was wrongly decided, including inconsistencies with US precedent and statutes. In holding that Motorola and its subsidiaries did not function as one enterprise because they are governed by the different laws of the countries in which they are incorporated and operated, Judge Posner disregarded the Supreme Court’s central holding in Copperweld Corp. v. Independence Tube Corp.171 Copperweld’s progeny have found a corporation and its wholly owned subsidiaries to be a “single entity” with “complete unity of interest” and, similarly, have also found a lack of relevant differences between a corporation and its wholly owned subsidiary for Sherman Act analysis.172 Additionally, for non-wholly owned subsidiaries, courts relying on Copperweld have treated a parent and its non-wholly owned subsidiary as a single entity for antitrust purposes where the parent held a controlling majority of the subsidiary’s stock.173

In addition to precedent, other US antitrust statutes treat parents and subsidiaries as one entity. The Hart-Scott-Rodino Antitrust Improvement Act (“HSR”) requires a business acquiring another business in a transaction meeting certain thresholds to file a premerger notification with the government.174 If the acquiring business is controlled by a parent corporation, the HSR mandates that the “ultimate parent entity” file the notification regardless of the nationality of the acquired business.175 Furthermore, appearing to be influenced by Copperweld, the HSR does not require filing for the merger of two wholly owned subsidiaries with a common parent.176

Motorola also argued that it was the “target” of the illegal conduct or, alternatively, the direct victim because its subsidiary “passed on” the cartel-inflated portion of the original purchase price to Motorola.177 In Illinois Brick, which also contemplated the offensive use of the illfated pass-on theory in US antitrust jurisprudence, Justice White surmised that a situation in which the pass-on defense “might be permitted” is where the direct purchaser is owned or controlled by its customer.178 Posner, highlighting the semantic difference between “might be” and “is,” brushed this off as meaningless.179

The Motorola Mobility decision has negative consequences for US antitrust law, non-US subsidiaries of American parents relying on US law for potential recovery, US businesses operating internationally with international subsidiaries, and consumers. In essence, the Seventh Circuit announced a broad rule that eliminates private antitrust remedies where the first purchase of a price-fixed component occurs offshore, drastically mitigating the ability of US antitrust law to deter harmful foreign conduct targeting US markets.180 Is Posner really suggesting that American businesses are only protected by US antitrust law when the domestic parent itself engages in such wholly foreign transactions?181

Moreover, the Seventh Circuit’s decision creates a glaring inconsonance with the Ninth Circuit’s in what should be similar outcomes to similar cases. Despite justifying its second decision the Seventh Circuit by warning that “rampant extraterritorial application of U.S. law ‘creates a serious risk of interference with a foreign nation’s ability to independently regulate its own affairs,’” the court did not delve into any meaningful comity analysis.182 Particularly troubling is that while concerned with the prospect of “rampant extraterritoriality,” the court gives no attention to whether Motorola would be able to recover abroad or, more importantly, whether the cartels’ host countries have any incentive to prosecute “when their nationals engage in hardcore cartel conduct directed at a huge U.S. consumer market” that caused harm in that, opposed to its own, market.183

B. Comity Analysis: A Possible Solution to Interpreting the FTAIA?

Ultimately, the Seventh Circuit may have initially reached a more reasonable conclusion in its first decision of Motorola Mobility had the court taken a different interpretational approach, such as one taken by the Supreme Court. Because the FTAIA’s effect test reflects an evaluation of a US jurisdictional claim, a possible method of aiding the courts’ construction of what a “direct” effect entails may be to follow Empagran’s example and in fact employ a comity analysis.184 The two most recent comity principle constructions, as discussed, are in Hartford Fire and Empagran. However, the different comity approaches the Supreme Court undertakes in both cases result in standards that are under-inclusive and over-inclusive, respectively.

The Supreme Court’s approach in Hartford Fire suggested the unhelpfulness, if not irrelevance, of comity if there was no true conflict of laws.185 Hartford Fire’s comity test is under-inclusive in the sense that comity considerations would rarely be triggered, perhaps only in cases where a foreign state established laws mandating anticompetitive behavior.186 Indeed, the First Circuit in Nippon Paper suggested that Hartford Fire had “stunted” the growth of comity in antitrust, and Professor Eleanor Fox proclaimed that “[the decision in Hartford Fire] gives U.S. jurists and enforcers license to disregard the interests of non- Americans.”187

Empagran’s comity analysis, on the other hand, may be rigidly over-inclusive to the point where important US antitrust law objectives, such as deterrence and remedy, may go unserved. Turning its back on the Supreme Court’s previous holdings in Continental Ore and Pfizer, the decision’s use of comity may in fact have created “a handicap going forward [that] would lead to under-deterrence as well as unfairness.”188 As Judge Higginbotham’s dissent in Den Norske v. HeereMac stresses, the FTAIA does not alter Pfizer’s affirmation of foreign plaintiffs’ ability to sue under the Sherman Act, which was expressly approved in the statute’s legislative history.189

#### Unrestrained cartel behavior makes global supply chains unstable and undermines domestic manufacturing

Leonardo ‘16 [Lizl Leonardo; 2016; J.D. Candidate, DePaul University College of Law, 2018; B.S., 2011, De La Salle University-Manila, Philippines; DePaul Law Review; “A Proposal to the Seventh and Ninth Circuit Split: Expand the Reach of the U.S. Antitrust Laws to Extraterritorial Conduct that Impacts U.S. Commerce.” vol. 66, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review]

The FTAIA was enacted to “clarify” the Sherman Act’s application to transactions that affect U.S. commerce, yet the circuit courts have not come to a consensus as to how it must be consistently interpreted.198 Similarly, despite the circuit splits that have overwhelmed the judicial system, the U.S. Supreme Court has only interpreted the FTAIA once, in Empagran. 199 The Court at that time, however, did not answer the critical question embodied in Hui Hsiung and Motorola: whether the FTAIA applies to transactions made outside of the United States but eventually have an impact upon U.S. competition, commerce, and consumers.200

The indistinguishable facts of Hui Hsiung and Motorola and the irreconcilable rulings call for a consistent rule across the circuit courts and intervention by the U.S. Supreme Court.201 Both cases involved the price-fixing of LCD panels by foreign entities, whose manufactured products eventually reached the United States.202 Yet, the Seventh and Ninth Circuits disagreed on what constitutes “import trade” or “import commerce.”203 The Seventh Circuit held that in order to be liable, a defendant must be engaged as an importer, who directly sells goods into the United States.204 Accordingly, it ruled that the one percent of LCDs sold directly to Motorola were too attenuated to become “import trade” under the Sherman Act;205 the remaining forty-two percent of LCDs, which Motorola’s foreign subsidiaries bought from the defendants, were too “remote” under FTAIA.206 In complete contrast, the Ninth Circuit held that any conduct consummated within an import market qualifies as either “import trade” or “import commerce.”207 This meant that the defendants did not have to import any goods themselves, but only needed to have engaged in conduct within the import business to satisfy both the Sherman Act and the FTAIA.208 Accordingly, the Ninth Circuit held that the defendants, although not the per se importers of the LCD panels, were liable under either the Sherman Act or the FTAIA for engaging in business that affected the finished products that were sold into the United States.209

These two contrasting rulings have placed not only the defendants—but also other foreign companies doing business with the United States—in a precarious position.210 These two cases represent the frequently recurring question of how to interpret the FTAIA.211 Foreign companies that do business, directly or indirectly, want clear guidance on how their business practices could be subjected to U.S. antitrust laws.212 No company will want to risk breaking the law in one jurisdiction, yet be absolved in the other.213 A clear ruling across all federal courts will be beneficial to international antitrust enforcement and the domestic economy, especially with the continuous expansion of global supply chains.214

A “supply chain” is defined as “a network between a company and its suppliers to produce and distribute a specific product, and the supply chain represents the steps it takes to get the product or service to the customer.”215 It essentially “encompasses each step from the supplier to the final consumer.”216 Establishing global supply chains across the world has become a strategy of companies in today’s globalized economy.217 Global supply chains have played an important role in the end-to-end production of goods sought by consumers across the world.218 In today’s globalized economy, companies use this practice to source, manufacture, transport, and distribute products internationally.219 For example, televisions are manufactured in China using displays from Taiwan and Korea.220 These televisions eventually find their way into various countries, including the United States.221 Due to this multi-step process, many businesses that utilize global supply chains become victims of anticompetitive activity by foreign cartels.222 In fact, price-fixing conspiracies have cost consumers more than $1 trillion over the last twenty-five years.223 Needless to say, the United States, holding a huge market share of these products, should protect these supply chains to some degree through the enactment and execution of an understandable U.S. antitrust law.224

The manufacturing industry, in particular, contributes more than $1.8 trillion annually to the U.S. economy and “employs nearly twelve million men and women.”225 The goods sold by foreign intermediaries eventually find their way into the United States, some of which may be used to further domestic manufacturing.226 For example, in 2014, approximately $2.8 trillion of goods were imported into the United States.227 This amount has more than doubled in the last fifteen years.228 Most of these imports act as intermediate inputs on productivity used for other businesses in the United States.229 For example, in 2006, over ten percent of intermediate inputs accounted for imported intermediaries used by private industries.230 Without a doubt, the question presented in these two cases is of tremendous economic significance to U.S. manufacturers and the United States as a whole. The harm of the price-fixing conspiracy from these two cases alone has affected well over $23.5 billion in sales of LCD panels imported into the United States, either as raw materials or as components of finished products.231 Manufacturers have had to absorb the artificially high costs of the LCD panels as they incorporate the component LCD panels into finished products, and they ultimately pass those artificially inflated costs on to U.S. consumers.232 Price-sensitive consumers, in return, may have refused to purchase these more expensive products, altering the demand-supply market and impacting the companies’ bottom lines.

#### Integrated and global supply chains solve every hotspot for conflict – material integration prevents war and encourages resolution – untangling risks the future of global stability.

Khanna '16 [Parag; 4/19/16; Senior Research Fellow in the Centre on Asia and Globalisation at the Lee Kuan Yew School of Public Policy at the National University of Singapore; "From War to Tug-of-War: The Global Fight for Connectivity," https://nationalinterest.org/feature/war-tug-war-the-global-fight-connectivity-15831]//GJ

Here is my prediction: Taiwan won’t cause World War III. Nor will Kashmir, nor the Senkaku Islands, nor the nonexistent Iranian nuclear bomb. We aren’t very good at predicting wars. The wars that have broken out in the recent past—the U.S. invasion of Afghanistan and Iraq after 9/11, Russia invading Ukraine, the proxy war under way in Syria—weren’t predicted by anyone.

Furthermore, applying ancient wisdom such as the “Thucydides trap” only gets us so far. In 2015, respected Harvard professor Graham Allison published a study covering five hundred years of geopolitical power transitions and found that war broke out between the “ruling” power and its “rising” challenger in twelve out of sixteen cases. Based on these historical odds, war between the United States and China is likely but not inevitable. The most important strategy to avoid sleepwalking into World War III, Allison’s brilliant paper urged, is a “long pause for reflection.” Let’s take that pause.

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This isn’t 1914. In our haste to make analogies to a century ago, we have neglected the differences. European nations traded heavily across each other prior to World War I, but they did so as vertically integrated mercantile empires drawing on raw materials from their own vast colonies. They traded in finished goods without outsourcing production to each other. We did not have today’s internationally distributed manufacturing networks in 1914. The nineteenth and twentieth centuries brought trade interdependence; in the twenty-first century, we have complex supply chain dispersal as well—including among rival superpowers.

Even more than trade, it is investment that determines the stability of relations. Under a Cold War geopolitical paradigm, rivals wouldn’t invest in each other either; the United States and the Soviet Union certainly didn’t. But today’s robust flows of global investment among friends and enemies—“frenemies”—highlight how we have shifted from a Westphalian world to a supply-chain world. This financial and investment integration comes in the form of the trillions of dollars of assets invested in each other’s currencies and equities, as well as the tangible, productive capital—factories, real estate, banks, agriculture—they have bought and built inside other’s territory to efficiently and profitably access their markets.

If the United States and China were to go to war, the most immediate casualty would be Walmart, America’s largest retailer, 70 percent of whose merchandise is imported from China. Walmart has also been buying e-commerce companies such as Yihaodian.com to boost sales in China. The world’s most valuable company, Apple (also American), would also see its stock plummet, with so much of the market sentiment around its potential linked to growth in China. Two other American technology giants, Google and Facebook, would have to give up their cherished dreams of equal access behind China’s “Great Firewall,” and Hollywood studios, already accused of self-censorship to gain investment such as Dalian Wanda’s recent purchase of Legendary Entertainment for $3.5 billion, would find themselves banned from the world’s fastest-growing film market.

Approximately 60 percent of the Fortune 500’s revenues come from overseas sales, and the recently ratified Trans-Pacific Partnership (TPP) agreement is an American-led effort to nudge Asia’s share of America’s exports up even higher—with the potential for China itself to eventually join the trade area. As of March 2016, China imports American shale oil supplies from Texas. Direct confrontation is thus not in anyone’s interest so long as China needs peace for growth, America needs China for its hardware and everyone relies on shipping through the South China Sea.

Supply chains thus diminish the incentives for conflict. Leaders think twice, and step back from the brink. The growing depth of global cross-border trade and investment make geopolitics much more complex than in previous eras. When Presidents Obama and Xi held a 2013 summit at Sunnylands in California and spoke of aspiring toward “a new kind of great power relationship,” that was a reflection of the current reality—not a future scenario.

The common-sense truth is that while leaders talk about “red lines” for public consumption, and navies come dangerously close to trading direct fire, global market integration churns forward, knowing that there are two kinds of mutually assured destruction at play: military and economic. Military maneuvers don’t tell us enough about what drives leverage among great powers nor what they are willing to fight over. The tangled complexities of today’s system force leaders to think beyond borders and make functional calculations about the cost-benefit utility of their strategies—knowing full well that supply-chain warfare involves not just an enemy “over there” but also one’s own deep interests “over there.”

Waiting for World War III thus recalls Samuel Beckett’s Waiting for Godot, in which Vladimir and Estragon resolve to hang themselves if Godot does not arrive—so they simply sit endlessly. Their would-be savior, of course, never comes, but the protagonists never actually commit suicide either.

It is well documented that the number and frequency of interstate wars has fallen to nearly zero. Equally important, but far less discussed, is our ability to ring-fence conflicts, containing them at the local or regional level rather than allowing them to spillover too widely or escalate too sharply. The one genuine international conflict of the past several years, between Russia and Ukraine, is an example of this. Russia has not invaded the Baltics, marched into Poland, shut off gas to Europe in the winter or otherwise cleaved the European Union. Russia lacks the capacity to do so, and knows the repercussions of overreach.

The Arab world also continues to seize daily headlines. Syria is undeniably a regional proxy war, meaning that chaos there will continue. But it is not likely that Sunni powers such as Turkey and Saudi Arabia will directly escalate against Russia and Iran, whose forces are backing Bashar al-Assad’s Alawite regime. Saudi Arabia and Iran are also jockeying in Iraq, marking yet another chapter in Iraq’s destruction that began with the 1980s Iran-Iraq War, the disastrous invasion of Kuwait in 1990, the U.S. invasion in 2003 and brutal insurgency ever since. But Iraq, too, will not become the flash point that triggers war among great powers. While all of these conflicts are tragic, none of them, civil or international, are of world-historical significance.

A far more important driver of the long-term geopolitical positioning among key powers is not their role in any of these minor wars, but how they play the great supply-chain tug-of-war that is a far more pervasive reality than international warfare. Tug-of-war is an apt metaphor for our times. The world’s oldest team sport, its rituals are recorded in ancient stone etchings from Egypt to Greece to China to Guinea. Often conducted in resplendent royal ceremonies, tug-of-war was used by the soldiers of great armies to build strength in preparation for combat. In the eighth century, the Tang dynasty emperor Xuanzong was known to pit over five hundred warriors on each side of a rope over 150 meters long.

The rope in today’s geopolitical tug-of-war is connectivity. States want to control the transportation, energy and communications infrastructures and markets that enable them to acquire resources, access markets and move up the value chain. We don’t fight over the borders that divide us, but rather pull and yank the supply chains that connect us. While very few societies are at war, all societies are caught in this global tug-of-war, competing over the flows of money, goods, resources, technology, knowledge and talent transpiring between them.

Wars of connectivity are won by economic master planning rather than military doctrine. Think about it: twenty-first-century China is not a superpower because of the size of its military arsenal, but because it has become the central hub for the world’s manufacturing and electronics supply chains, built a sizeable trade surplus and enormous currency reserves, and penetrated most of its neighbors through robust infrastructure networks and become their main foreign investor and export destination. Do you have any clue how many nuclear weapons China has? Exactly: It doesn’t matter. But you probably know a fair bit by now about how China builds special economic zones, buys and steals foreign technology, and capitalizes companies with billions of dollars to ramp up quickly and capture global markets that range from solar panels to mobile handsets.

Britain’s elite Royal Military Academy Sandhurst publishes a manual of strategies for success in tug-of-war, pointing out that a good team “synchronizes its movements to the point that their pull feels like it comes from a single, unified being.” Does America act like this? Do Washington politicians, the Fed, Wall Street bankers, Texas oil companies, Silicon Valley tech companies and the other players on America’s team act like a single, unified being? Or does China do it better? Tug-of-war is won slowly and carefully. Smart teams dig in their heels to hold ground and tire out opponents while collectively taking small steps to ultimately gain control.

Tug-of-war is still war without end, a marathon without a finish line. Winston Churchill once advised that it is always better to “jaw-jaw” than to “war-war,” meaning diplomacy is preferable to conflict. Today’s world is a hybrid of the two: It is an endless tug-tug.

The future of global stability hinges on whether great powers think and act in terms of sovereignty or supply chains—if they learn the benefits of fighting tug-of-war instead of the real thing. It is no doubt unwise to argue that World War III is a passé risk. However, as the French scholar Raymond Aron argued, nuclear deterrence and the benefits of hindsight are crucial in warding against the uncontrolled escalations of the twentieth century or even harrowing episodes such as the Cuban missile crisis. Furthermore, China’s neo-mercantilism today is quite different from the zero-sum European colonial mercantilism of centuries ago: It is the pursuit of catch-up modernization rather than global hegemony. China seeks foreign raw materials and technology, not foreign territory. The smoother the supply chains, the more satisfied China will be.

A hyperconnected, multipolar world is uncharted and dangerous territory, but the paradox of tug-of-war may be that the longer it goes on, the more everyone wins. If we play our cards right, North Korea will become a supply-chain condominium of China and South Korea and other investors variously exploiting its tremendous mineral and agricultural resources while modernizing its nascent manufacturing capacity. India and Pakistan will revive the historic Grand Trunk Road of trade linkages stretching from Afghanistan to Bangladesh, and complete the natural gas pipeline from Iran via Pakistan to India. China and Taiwan will deepen their supply chain linkages and accept the outstanding differences in political systems. And China and Japan will settle their historical grievances through generational change in leadership, and accept with maturity the obvious hierarchy of Asia’s future.

Today’s world is full of tension, strife and hostility: nuclear standoffs, terrorist insurgencies, collapsing states and tragic civil conflicts. It is healthy to remind ourselves that many of our ongoing flash points could potentially escalate through unpredictable chain reactions into global conflagration. But it is even more important to pay attention to what we are doing that prevents the unintended slide into disaster—and do more of it. The future of global stability hinges on whether we continue global supply-chain integration and content ourselves with waging tug-of-war rather than the real thing. The world’s oldest team sport has an admirable track record: almost nobody has ever died playing it.

#### And globalized CRM supply chains are hyper-vulnerable to anticompetitive conduct that shocks global battery markets – the entire market is at risk

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The worldwide electrification of the transport and other industry sectors, the development of a new generation of batteries for electricity storage as well as the digitalization of the industries, including the spread of robotics and artificial intelligence systems in the industry (‘industry 4.0’) will further boost the worldwide demand for CRMs such as lithium, cobalt and others. As a result, it might create new and unprecedented challenges, including bottlenecks and supply shortages, for the global supply chains of the CRMs on each stage ranging from mining to processing, refining and manufacturing.

The production of CRMs is geopolitically - compared with the concentration of conventional oil and gas resources - more challenging and problematic as currently 50% of CRMs are located in fragile states or politically unstable regions. Moreover, security of supply risks are not just constrained to primary natural resources and CRMs but also to the import of semimanufactured and refined goods as well as finished products. Manipulated prices, restricted supplies and attempts at cartelization of CRM markets with wide-ranging negative economic consequences are not restricted just to producing and exporting countries. Powerful states and private companies have also been responsible for non-transparent pricing mechanisms for many precious CRMs. Global supply chains have become ever more complex due to the blurring of boundaries between physical and financial markets and weakly governed market platforms. These market imperfections lead to the manipulation of prices and threaten the stability of the future security of supply of CRMs.

Given China’s status as the world’s largest battery producer, and as the leading nation in the electrification of the national transport sector, it may increase the dependencies of the European and U.S. carmakers on China. The dependence on CRMs such as lithium, cobalt, graphite, rare earth and others will equally rise. Those geopolitical impacts have already been highlighted in 2010–2011, when China in the midst of escalating diplomatic conflict with Japan stopped all exports of Rare Earth Elements (REEs) to the world’s biggest importer and blackmailed Tokyo diplomatically by instrumentalising its status as the world’s largest producer and exporter of REEs. It has sent a troubling message to the world that the new rising Asian economic and military power might not respect international law, the existing global rules of the WTO and that Beijing may not politically be willing to accept the regional and global responsibilities that grow with its emerging superpower status. Over the last months, China has further strengthened its efforts to control the entire global supply chain of lithium, from owning international mines to the production of lithium up to manufacturing of batteries and EVs.

#### Supply chain disruptions cascade across key industries

O'Sullivan et al ‘17 [Meghan O’Sullivan; 2017; Harvard Kennedy School of Government Indra Overland Norwegian Institute of International Affairs—NUPI David Sandalow Columbia Center on Global Energy Policy; "The Geopolitics of Renewable Energy," https://energypolicy.columbia.edu/sites/default/files/CGEPTheGeopoliticsOfRenewables.pdf]

As the transition to renewable energy accelerates, cartels could develop around materials critical to renewable energy technologies. Even if these cartels were unable to generate as much impact as OPEC did with oil in years past, they might be able to exert influence over consumers of these materials. Some materials critical for renewable energy technologies are also critical in other sectors, such as consumer products and weaponry, raising the potential for competition between sectors as well.

Rare earth elements (including dysprosium, neodymium, terbium, europium and yttrium) are often considered to be critical components of renewable energy hardware.7 Ironically, rare earth elements are not rare. They are found in many countries, including China, Russia, Australia, the United States, Brazil, India, Malaysia and Thailand. However, two countries—China and Russia—together hold 57% of global reserves, while the largest remaining country, Australia, holds a mere 2.4% of global reserves.8 Furthermore, rare earths are found in dilute concentrations and are often difficult to separate, making mining, production and processing difficult and capital intensive. Today almost all mining, production and processing of rare earths is in China. Rare earths mined elsewhere generally must be exported to China for processing and then re-imported.9 As demand for renewable energy technologies continues to increase, countries may be inclined to hold rare earth elements in reserve for themselves and compete over these resources.

#### Next gen batteries solve grid stability and blackouts

Beall ‘18 [Abigail Beall; 2018; Journalist writing for Chinadialogue, citing Dr Emma Kendrick, a materials chemist at the University of Warwick; "The race to develop the next generation battery," https://www.chinadialogue.net/article/show/single/en/10808-The-race-to-develop-the-next-generation-battery]

Alongside electric cars, grid storage is another area where large-scale batteries will play an increasingly important role. The amount of renewable power from solar and wind at any given time depends on the weather, which makes it intermittent. Batteries can help stabilise grids by storing energy efficiently.

“Sodium-ion batteries could be an inexpensive alternative to lithium-ion in the grid storage market,” says Ms Cheng. Sodium-ion batteries work in a similar way to lithium-ion but use sodium instead, which is more readily available. Dr Emma Kendrick, a materials chemist at the University of Warwick, is looking into the sodium-ion battery. “This is a low-cost alternative to lithium-ion batteries,” she says. “It is still in its infancy but there are opportunities to perform research into the manufacturability and durability of the technology.” Flow batteries are another alternative.

“Flow batteries are also attractive options since they can be easily scaled up to provide high capacity," says Ms Cheng, adding: "They contain two chemical compounds that are separated by a membrane. The compounds can flow through the membrane, creating chemical energy, but they can also move back to where they started, which recharges the battery."

There are many other options. In February this year, scientists at the University of California Irvine created gold nanowire batteries that can withstand more recharging than ever before, hundreds of times within their lifetime. The team hopes this will one day lead to batteries that can last indefinitely.

Graphene may also be a component of the battery of the future. A Spanish company called Grabat says their graphene batteries can provide power for an electric vehicle to travel 500 miles on a single charge. For comparison, Tesla’s Model 3 can travel 215 miles on one charge.

While nobody can predict exactly what the next generation of batteries is going to look like, there is a huge amount of work going into solving the problem.

#### They insulate the network from attacks and build in resilience that stops collapse

Urry ‘17 [Amelia; 2/22/17; Grist's associate editor of science and technology; "Inside the Race to Build the Battery of Tomorrow," https://www.wired.com/2017/02/researchers-racing-build-battery-future/]

And here’s what a better battery stands to win: a cleaner, more reliable power system, which doesn’t rely on fossil fuels and is more robust to boot.

Every time you flip a light switch, you tap into a gigantic invisible web, the electrical grid. Somewhere, at the other end of the high-voltage transmission lines carrying power to your house, there’s a power plant (likely burning coal or, increasingly, natural gas) churning out electricity to replace the electrons that you and everyone else are draining at that moment.

The amount of power in our grid at any one time is carefully maintained—too much or too little and things start to break. Grid operators make careful observations and predictions to determine how much electricity power plants should produce, minute by minute, hour by hour. But sometimes they’re wrong, and a plant has to power up in a hurry to make up the difference.

Lucky for us, it’s a big, interconnected system, so we rarely notice changes in the quality or quantity of electricity. Imagine the difference between stepping into a bucket of water versus stepping into the ocean. In a small system, any change in the balance between supply and demand is obvious — the bucket overflows. But because the grid is so big—ocean-like—fluctuations are usually imperceptible. Only when something goes very wrong do we notice, because the lights go out.

Renewable energy is less obedient than a coal- or gas-fired power plant—you can’t just fire up a solar farm if demand spikes suddenly. Solar power peaks during the day, varies as clouds move across the sun, and disappears at night, while wind power is even less predictable. Too much of that kind of intermittency on the grid could make it more difficult to balance supply and demand, which could lead to more blackouts. Storing energy is a safety valve. If you could dump extra energy somewhere, then draw from it when supply gets low again, you can power a whole lot more stuff with renewable energy, even when the sun isn’t shining and the wind isn’t blowing. What’s more, the grid itself becomes more stable and efficient, as batteries would allow communities and regions to manage their own power supply. Our aging and overtaxed power infrastructure would go a lot further. Instead of installing new transmission lines in places where existing lines are near capacity, you could draw power during off-peak times and stash it in batteries until you need it.

Just like that, the bucket can behave a lot more like the ocean. That would mean—at least in theory—more distributed power generation and storage, more renewables, and less reliance on giant fossil-fueled power plants.

#### Grid resilience solves extinction – it’s a threat buffer and the impact is understated

Greene ‘19 [Sherrell; 2019; He is a recognized subject matter expert in nuclear reactor safety, nuclear fuel cycle technologies, and advanced reactor concept development. Mr. Greene is widely acclaimed for his systems analysis, team building, innovation, knowledge organization, presentation, and technical communication skills. Mr. Greene worked at the Oak Ridge National Laboratory (ORNL) for over three decades. During his career at ORNL, he served as Director of Research Reactor Development Programs and Director of Nuclear Technology Programs; "Enhancing Electric Grid, Critical Infrastructure, and Societal Resilience with Resilient Nuclear Power Plants (rNPPs)," https://ans.tandfonline.com/doi/pdf/10.1080/00295450.2018.1505357?needAccess=true]

Societies and nations are examples of large-scale, complex social-physical systems. Thus, societal resilience can be defined as the ability of a nation, population, or society to anticipate and prepare for major stressors or calamities and then to absorb, adapt to, recover from, and restore normal functions in the wake of such events when they occur. A nation’s dependence on its Critical Infrastructure systems, and the resilience of those systems, are therefore major components of national and societal resilience.

There are a variety of events that could deal crippling blows to a nation’s Grid, Critical Infrastructure, and social fabric. The types of catastrophes under consideration here are “very bad day” scenarios that might result from severe GMDs induced by solar CMEs, HEMP attacks, cyber attacks, etc.5

As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s.

Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39), a HEMP attack over the Central U.S. could impact virtually the entire North American continent. The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that such an event could “kill up to 90 percent of the national population through starvation, disease, and societal collapse.” 44,45 Most of these consequences are either direct or indirect impacts of the predicted collapse of virtually the entire U.S. Critical Infrastructure system in the wake of the attack.

Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that cyber threats to the U.S. Grid from both state-level and substatelevel entities are likely to grow in number and sophistication in the coming years, posing a growing threat to the U.S. Grid.

These three “very bad day” scenarios are not creations of overzealous science fiction writers. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

#### Solar storms and EMP strikes are inevitable and outweigh nuclear war – distributed power solves

MM ‘15 [Microgrid Media; 9/15/15; “Grid Will Not Survive Inevitable Geomagnetic Storm or EMP Attack,” microgridmedia.com/grid-will-not-survive-geomagnetic-storm-or-emp-attack/]

But as former Director of Central Intelligence James Woolsey warned in his recent congressional testimony, “The EMP threat is as real as the Sun and as inevitable as a solar flare.”

The Congressional EMP Commission, called it “one of a small number of threats that has the potential to hold our society seriously at risk” and “is capable of causing catastrophe for the nation.” These are not one commissions findings, but represent a consensus from studies by the Congressional Strategic Posture Commission, the National Academy of Sciences, the Department of Energy, the National Intelligence Council, a U.S. Federal Energy Regulatory Commission report coordinated with the Department of Defense and Oak Ridge National Laboratory, and numerous other reports.

With such overwhelming political and scientific consensus, it may come as a shock that nothing has been done to protect America from a power outage that could last several years. You may also be surprised that your energy bill could be paying the lobby efforts to keep it that way.

The Hundred Year Geomagnetic Solar Storm The worst disasters are often the result of natural events which occur less than every hundred years. The hundred year earthquake doesn’t remind us to build away from fault lines. The hundred year tsunami doesn’t remind us to build nuclear reactors above the inundation zone. Likewise, the hundred year solar storm did not remind us to build an electric grid capable of surviving it. Solar storms, or Geomagnetic Disturbances (GMD) are the result of a solar wind shock wave or a magnetic cloud interacting with the earth’s magnetic field. While solar storms happen as frequently as northern lights, experts are most concerned about a rare solar super-storm, like the 1921 Railroad Storm. The National Academy of Sciences estimates that if the Railroad Storm were to occur today, there would be a nationwide blackout for 4-10 years. The most powerful geomagnetic storm on record is the 1859 Carrington Event. Estimates are that Carrington was about 10 times more powerful than the 1921 Railroad Storm and 100 times more powerful than anything the modern grid has experienced. The Carrington Event was a worldwide phenomenon, causing forest fires from flaring telegraph lines, burning telegraph stations, and destroying the freshly laid telegraph cable at the bottom of the Atlantic Ocean.

According to Woolsey, a solar super-storm like the Carrington Event today would “collapse electric grids and life-sustaining critical infrastructures worldwide, putting at risk the lives of billions.”

A Close Call

In July 2014, NASA reported that Earth narrowly escaped another Carrington Event. Indeed, a Carrington-class coronal mass ejection crossed the path of the Earth, missing our planet by just three days. NASA assessment is that the resulting storm would have been catastrophic.

We are overdue for a hundred-year solar storm like the Carrington Event. NASA puts the likelihood of such a geomagnetic super-storm at 12 percent per decade, virtually guaranteeing that if we don’t experience a catastrophic geomagnetic super-storm, our children will. In his congressional testimony, Dr. Richard Garwin of the IBM Thomas J. Watson Research Center emphasized that “a once-per-century event could occur next week,” urging action to reduce the impact on the bulk power system.

Weaponized Electromagnetic Pulse (EMP)

If the threat of a natural geomagnetic super-storm wasn’t enough, the electric grid is equally fragile to an electromagnetic pulse attack. There are ways in which an EMP threat is more serious than a conventional nuke threat. Deterrence may not work

at all because we may not know where the pulse came from. If everything goes dark, it could be a solar event or it could be North Korea. It could be launched from a freighter off one of our coasts or from a northern satellite designed to go unnoticed. We may never know.

“An EMP attack is one of a small number of threats that has the potential to hold our society seriously at risk” and “Is capable of causing catastrophe for the nation.” — Congressional EMP Commission

“We talk a lot about a Nuclear Bomb in Manhattan, and we talk about a cyber-security threat to the grid in the Northeast. All these things would probably pale in comparison to the devastation that an EMP attack could put on Americans” — James Woolsey, Former Director of Central Intelligence

How Likely is an Electromagnetic Pulse Attack?

EMP nuclear attacks are an open part of cyber warfare doctrine in several countries.

Russian General Vladimir Slipchenko, in his military textbook ‘No Contact Wars’ describes the combined use of cyber viruses and hacking, physical attacks, non-nuclear EMP weapons, and ultimately nuclear EMP attack against electric grids and critical infrastructures as a new way of warfare that is the greatest Revolution in Military Affairs (RMA) in history. Like Nazi Germany’s Blitzkrieg (“Lightning War”) Strategy that coordinated airpower, armor, and mobile infantry to achieve strategic and technological surprise that nearly defeated the Allies in World War II, the New Blitzkrieg is, literally and figuratively an electronic “Lightning War” so potentially decisive in its effects that an entire civilization could be overthrown in hours. According to Slipchenko, EMP and the new RMA renders obsolete modern armies, navies and air forces. For the first time in history, small nations or even non-state actors can humble the most advanced nations on Earth.

China’s military doctrine sounds an identical theme. According to People’s Liberation Army textbook World War, the Third World War–Total Information Warfare, written by Shen Weiguang (allegedly the inventor of Information Warfare), “Therefore, China should focus on measures to counter computer viruses, nuclear electromagnetic pulse…and quickly achieve breakthroughs in those technologies…”

Iran in a recently translated military textbook endorses the theories of Russian General Slipchenko and the potentially decisive effects of nuclear EMP attack some 20 times. An Iranian political-military journal, in an article entitled “Electronics To Determine Fate Of Future Wars,” states that the key to defeating the United States is EMP attack and that, “If the world’s industrial countries fail to devise effective ways to defend themselves against dangerous electronic assaults, then they will disintegrate within a few years… American soldiers would not be able to find food to eat nor would they be able to fire a single shot.”

North Korea appears to have practiced the military doctrines described above against the United States–including by simulating a nuclear EMP attack against the U.S. mainland. Following North Korea’s third illegal nuclear test in February 2013, North Korean dictator Kim Jong-Un repeatedly threatened to make nuclear missile strikes against the U.S. and its allies. In what was the worst ever nuclear crisis with North Korea, that lasted months, the U.S. responded by beefing-up National Missile Defenses and flying B-2 bombers in exercises just outside the Demilitarized Zone to deter North Korea. On April 9, 2013, North Korea’s KSM-3 satellite orbited over the U.S. from a south polar trajectory, that evades U.S. early warning radars and National Missile Defenses, at the near optimum altitude and location to place an EMP field over all 48 contiguous United States.

Recently, a North Korean vessel was disrupted in Panama carrying missiles that would have been capable of carrying out an EMP attack off the coast of America. When approached out of suspicion of drug smuggling, they resisted and the captain attempted suicide. Why Hasn’t Anything Been Done? At least five US Government studies have concluded that the threat of an EMP attack is real and needs to be acted upon, but alarmingly little has been done. NERC has prevented states from taking action and kept acts bottled up and not able to be passed by congress. Texas State Senator Bob Hall, a former USAF Colonel and himself an EMP expert, has called the lobby efforts of the electric utilities in this matter as “equivalent to treason.” “As a Texas State Senator who tried in the 2015 legislative session to get a bill passed to harden the Texas grid against an EMP attack or nature’s GMD, I learned first hand the strong control the electric power company lobby has on elected officials.” What Can Be Done To Protect Critical Infrastructure?

There is a lot that can be done to harden the grid, ranging from fast warning systems to hardening the trains that deliver coal. The grid may become more secure by trends already happening with distributed renewable energy and microgrids. Long run lines, such as the electric grid are the most vulnerable to an EMP or geomagnetic storm. “Microgrids are an important part of the solution,” said Dr. George H Baker of Resilient Societies. Reminding us that microgrids can be relatively large.

For example, my own city, Harrisonburg, has the capability to isolate itself from the grid and run critical services on local gas-turbine generators.

The bulk power system in the United States is reliable but not resilient. Like most systems, the way to be resilient is by having a robust, decentralized network with built in flexibility. Although it’s not what electric utilities want to hear, Americans will remain at risk until communities can meet all critical loads without the bulk power system.

#### The aff’s balancing test deters anticompetitive behavior while balancing comity and global antitrust development – solves both under- and over-inclusion

Murray ‘17 [Sean; 2017; J.D. Candidate and Stein Scholar, Fordham University School of Law; Fordham International Law Journal; “With A Little Help From My Friends: How A Us Judicial International Comity Balancing Test Can Foster Global Antitrust Private Redress.” vol 41, iss. 1 https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj]

In response to international criticism of the statute’s unbridled transnational application, the United States has curtailed the Sherman Act’s reach both judicially and legislatively.20 Judicially, courts looked to international comity, the practice of taking into account the interests of other nations.21 The Ninth Circuit was the first court to invoke international comity in Timberlane Lumber Co. v. Bank of America, N.T. & S.A., which used an interest-balancing test to determine whether exercising jurisdiction was proper.22 Legislatively, Congress enacted the Foreign Trade Antitrust Improvements Act of 1982 (“FTAIA”), which attempts to delimit and define the cross-border reach of US antitrust laws by introducing an objective test under the effects doctrine.23 Powerful arguments can be advanced in the American interest for applying US antitrust laws beyond US borders, including adequately protecting American competition and consumers, deterring inimical foreign anticompetitive behavior affecting the United States, especially in an increasingly globalized economy, and providing remedial measures to US victims of such conduct.24 However, these interests in providing protection and redress are counterbalanced by equally important rationales for limiting the extraterritorial span of US antitrust law, such as costly overregulation, avoiding international disputes, allowing nascent worldwide antitrust regimes to develop to beget increased antitrust enforcement, and avoiding harmful interference with antitrust regulators’ amnesty programs.25

The aforementioned responses to these competing concerns have been ambiguous, inconsistent, and over-inclusive or under-inclusive.26 In particular, the poorly worded FTAIA has created more problems than it has solved, including inconsistent holdings, wrongly decided cases, and disagreements among the circuit courts over interpreting the statute’s language.27 The most recent interpretational difficulty involves determining what constitutes a “direct” domestic effect under the FTAIA. Some courts have held that “direct” takes on a broader meaning, where conduct causing domestic effect need only be an “immediate consequence.”28 In comparison, other courts have narrowly interpreted the statute’s “direct” domestic effect requirement as calling for “a reasonably proximate causal nexus,” drawing from tort law to exclude an injury that is too remote from the injury’s cause.29 The most recent appellate decision involving the FTAIA, Motorola Mobility LLC v. AU Optronics Corp., has contributed to the statute’s confusion.30 There, the Seventh Circuit held that a US parent company failed to show that it suffered direct injury as a result of foreign anticompetitive conduct, despite the fact that price-fixed component products were purchased by its majority-owned foreign subsidiaries to be incorporated into final products purchased by the US parent and sold to US customers.31

Nevertheless, various delineations already exist that suggest a solution to the inconsistency is attainable and may be designed to enhance global antitrust enforcement through greater availability of worldwide private redress. What is apparent from the succession of decisions from Hartford Fire Insurance Co. v. California32 to F. Hoffman-La Roche Ltd. v. Empagran S.A. (Empagran)33 is that the FTAIA grey area has been sufficiently tapered to allow for the return of a comity balancing test to appropriately reconcile the conflicting interests at hand in the residual universe of cases.34 This Note argues that Hartford Fire, its progeny, and Empagran form confining parameters on the applicability of the FTAIA, namely that cases that do not involve a US party, domestic effect, and domestic injury arising from that effect will fail the FTAIA’s exemption test. Moreover, because the FTAIA’s “direct, substantial, and reasonably foreseeable” effect test can be construed as a proxy for the United States’ prescriptive jurisdiction interest, comity analysis is helpful in its interpretation.35 Thus, claims which are based on exclusively non-US conduct that questionably has a “direct effect” on US commerce resulting in the plaintiff’s injury are more properly decided not by the courts’ current focus on statutory interpretation, but rather by a Timberlane-style ad hoc fact-intensive balancing test that contemplates factors more suitable to the modern global economy and promoting international dialogue.36

In sum, this Note proposes the introduction of a new international comity balancing test into US antitrust jurisprudence with the aim of fostering and strengthening global antitrust enforcement and private redress. It does so in four parts. Following this introduction, Part II briefly summarizes the expansion of US antitrust extraterritorial application. Next, Part III discusses various developments undertaken to limit and demarcate the reach of US antitrust law. Part IV raises issues arising from those efforts that have resulted in inconsistent and questionable holdings. Finally in Part V, by analyzing and synthesizing the existing precedent, this Note contends that a judicial international comity balancing test would most appropriately determine the propriety of US antitrust extraterritoriality for particular types of private recompense cases that are problematic under the current framework.

#### And factoring in consideration of foreign penalties prevents over-enforcement and ensures global anti-cartel cohesion

Huizing ‘18 [Pieter Huizing; 2018; PhD student at Leiden University and a senior associate at the antitrust department of Allen & Overy LLP; "InnoLux v AU Optronics: comparing territorial limits to EU and US public enforcement of the LCD cartel," https://academic.oup.com/antitrust/article-abstract/6/2/231/4964994]

The LCD cases show that in respect of cartel conduct by multinational corporations involving their worldwide sales, the existence of a certain domestic connection to justify the exercise of jurisdiction is almost a given. It is therefore not surprising that a multitude of authorities will generally be able to assert jurisdiction over truly global cartel behaviour. Without any jurisdictional or territorial delineation between authorities on ‘who sanctions what and by how much’, domestic enforcement of international cartel conduct is bound to lead to potential or actual overlapping punishment. It is easy to see how the fining methodologies used by the Commission and the DOJ can result in the same sales being taken into account more than once for the purposes of sanctioning the same overall conduct. Such double-counting increases risks of over-enforcement and disproportionate overall punishment. To ensure that on an international level the overall penalty fits the severity of the crime, it is submitted that authorities targeting the same conduct in parallel should avoid unilaterally aiming for the maximum fine available without having any regard for the level of punishment and deterrence achieved by sanctions imposed elsewhere. This is necessary not only to safeguard overall proportionality of fines, but also with a view to comity considerations. Maintaining an isolated and expansive view on cartel enforcement may have been justifiable when antitrust laws were effectively enforced in only a few countries in the world. But with over 125 jurisdictions with active cartel enforcement, this may be the time for the European and American authorities to start adopting a more modest approach.132 As noted by Connor in the context of his support for the Motorola Mobility judgment: [h]aving invited the world to join the effort to prohibit and prosecute cartels, and that invitation having been enthusiastically accepted, it is good manners/ policy that the competition regimes set up around the globe—which continue to develop—be given due respect and that the views of our partners be given serious consideration.133 The need for international coordination of extraterritorial cartel enforcement is a hot topic in the global antitrust community. It is a recurring theme on antitrust conferences and a key focus of the advocacy efforts of international organizations such as the ICN, the OECD, and the International Bar Association (IBA). The focus of such efforts has often been on cooperation in respect of the investigation stages and less on coordination in respect of the scope and level of punishment.134 But there are more and more calls for authorities to also coordinate their cartel penalties. For example, during the OECD Roundtable on Cartels Involving Intermediate Goods in October 2015, several delegates highlighted ‘the importance of taking into account fines or sanctioning decisions already imposed by other competition agencies to minimise concerns about the fairness and proportionality of fines levied in multijurisdictional cases’.135 In June 2016, the Japanese Ministry of Economy, Trade and Industry (METI) published a report on its research into the enforcement of international cartels, in view of the ‘growing concern about overlapping application of competition laws or imposition of multiple surcharges by several countries’.136 Based on its research, the Ministry proposed increased coordination between authorities to take into account concurrent penalties. In December 2016, both the IBA and the American Bar Association (ABA) in their comments on the proposed new DOJ and FTC Antitrust Guidelines for International Enforcement and Cooperation called upon the US authorities to stress the need for cooperation regarding sanctioning of international cartel cases to avoid over-deterrence or double-jeopardy.137 Furthermore, also in December 2016, in one of the key submissions for the OECD’s 15th Global Forum on Competition, Hwang Lee specifically pressed for increased efforts by competition authorities to coordinate fining decisions in parallel proceedings.138 These examples indicate that—while moving slowly—progress is made in recognizing the need for commonly accepted principles for coordination between authorities in the sanctioning of international cartels.

Since internationally agreed principles on the coordination of cartel fines are yet to be developed, national self-restraint is currently required to limit the risks resulting from parallel enforcement of international cartels. Such self-restraint can be exercised in respect of any of the three elements assessed in this article: asserting jurisdiction, defining the territorial scope of punished conduct, and setting the fine.139 The Japan Fair Trade Commission (JFTC), for example, has explained that it cannot currently take into account sanctions imposed by other authorities in determining its own fine because it lacks the discretion to do so.140 However, in view of international comity, the JFTC does consider enforcement action elsewhere in respect of the same international cartel to decide whether it will also take action. Similarly, in Australia– where cartel fines are set by the court—the authority exercises prosecutorial discretion by considering whether it is more appropriate to leave enforcement activities to jurisdictions where the harm of a cartel was felt most immediately.141 In contrast, the Korean Fair Trade Commission does not consider sanctions imposed elsewhere for the decision whether or not to bring an enforcement action, but it does have the discretion to consider foreign fines in calculating the surcharge it imposes.142 The DOJ has indicated that when a sanction in respect of the same cartel is first imposed outside the USA, it may take this into account if the sanction accounts for the harm to businesses and consumers in the USA and therefore satisfies deterrent interests of the USA.143 Terzaken and Huizing have suggested altering this latter approach by focusing on whether there is any residual deterrence need following penalties already imposed elsewhere, not on whether specific national harm was considered in the fining methodology applied by a foreign authority.144

As an alternative to taking into account penalties imposed elsewhere, Bentley and Henry have proposed that authorities should solely take into account sales for the purposes of fine calculation if such sales meet the applicable jurisdictional tests.145 This seems a sensible proposal. While it is true that the basis for asserting jurisdiction can be separated from the basis for calculating a fine, as explicitly reasoned by the ECJ, it is hard to justify partly relating a penalty to conduct that in itself would not have a sufficient territorial nexus to trigger potential prosecution. In analogy to the Seventh Circuit’s assessment of Motorola’s damages claims, it is difficult to accept that foreign sales without such nexus can still be taken into account as part of domestic enforcement as long as they happened to take place alongside some import commerce. Internationally, it may not even be all that controversial to require authorities to calculate cartel fines on the basis of only those sales that create a sufficient jurisdictional link to their territory. A recent survey by the International Competition Network (ICN) already shows that many jurisdictions maintain the view that only the direct sales of cartelized products should form the basis of a cartel fine in all or most cases.146

Bentley and Henry consider their solution to be simpler than requiring authorities to take into account fines already imposed elsewhere. But it is submitted that this is still needed even if authorities only take into account sales that pass the applicable jurisdictional tests, as this does not avoid situations where more than one authority claims jurisdiction.147 This is especially the case where authorities apply a broad interpretation of a qualified effects test. In such situations, the same sales may still be taken into account more than once. And even if authorities avoid any double counting of sales, international alignment of sanctions may still be required to ensure overall proportionality and an optimal level of deterrence. A truly coordinated approach to international cartel enforcement should therefore more comprehensively focus on the ultimate outcome of the overall enforcement.

It goes beyond the scope of this article to discuss at what level cartel fines must be set to achieve both proportionality and optimal deterrence. And it must be noted that it has not been empirically tested whether overlapping cartel fines imposed in multiple jurisdictions actually create a problem of over-deterrence or whether global cartels are (still) more likely to benefit from under-deterrence.148 But it is clear that an optimal overall penalty for a global cartel is not automatically achieved by the accumulation of several national fines for the same cartel that were considered optimal by the respective authorities. First, such accumulation would likely mean that the overall fine amount increases in a certain proportion to the additional amount of affected sales in the sanctioning jurisdictions. However, proportionality and deterrence are complex principles that not necessarily (directly) related to the level of sales achieved with the cartelized products. Proportionality is typically linked to the elements of culpability of the offender and the harm caused by the offence.149 Optimal deterrence is typically linked to the expected gains from the offence and the probability of detection and punishment.150 So it is not obvious to see why in the pursuit of a proportionate and deterrent penalty, the fine amount should increase in direct proportion to the level of affected sales. It may well be that a proportionate and deterrent fine has already been achieved despite not covering all potentially affected sales. In this context, the Business and Industry Advisory Committee to the OECD reasoned that ‘once any jurisdiction sets a fine at an appropriate and proportionate level, another jurisdiction imposing penalties on top of that needs to strike a proper balance’.151 Second, several authorities may take the same factors into account in increasing a fine for deterrence purposes, such as the size of the undertaking. A single authority may determine that for a cartel fine to actually ‘hurt’, it should amount to at least 3 per cent of an undertaking’s total turnover. But if five authorities use this approach in respect of the same global cartel, the total fine amounting to 15 per cent of the total turnover may hurt much more than what was considered necessary by each individual authority.152 Thirdly, many authorities apply a maximum fine amount that is related to the total turnover of an undertaken (eg the cap of 10 per cent as applied by the Commission). Such a cap serves to ensure fines are not excessive or disproportionate153 and to limit the risks of undue financial difficulties and insolvency (and hence lessened competition) as a result of a fine. But if five authorities were to impose fines for the same global cartel up to a 10 per cent cap, the total fine amounting to 50 per cent of the undertaking’s turnover is still quite likely to jeopardize the viability of the undertaking and quite likely to be (perceived as) disproportionate in relation to the size of its economic activities.154

In AU Optronics, Judge Illston in her discretion decided that USD 500 million was sufficiently deterrent and not excessive, even though the fining guidelines had recommended a fine between USD 936 and 1872 million. Her decision was also based on the penalties and financial impact already incurred by AUO in other proceedings, something explicitly not taken into account in the DOJ sentencing recommendation. Rather than rigidly applying the domestic fining guidelines, she appears to have adopted a comprehensive approach that considered the overall proportionality of punishment for AUO’s cartel conduct and the residual deterrence need. While the EU and US authorities also seem willing to incidentally and on an ad hoc basis take a step back in view of foreign enforcement,155 sound enforcement policies that are aimed to achieving an overall appropriate fine by taking into account the international context of cartel sanctioning are still lacking.156 It is submitted that the development of such policies is necessary not only to ensure consistency in enforcement practices but also to increase legal certainty, predictability of sanctions, and confidence in the proportionality of international cartel enforcement.

#### Plan: The United States federal government should increase prohibitions on anticompetitive business practices by establishing a balancing test that expands the extraterritorial scope of its antitrust laws.

### Indigenous Development Adv

#### Ambiguous unreliable enforcement inhibits anti-cartel cohesion and undermines foreign regulatory institutions

Briggs & Bitton ‘15 [John; Daniel; 2015; Antitrust and litigation counsel of choice for dozens of major companies in the United States, Asia, Europe and Scandinavia. Client demand for his work has focused on antitrust, M&A and complex civil litigation; An attorney who represents clients in the San Francisco, California area; "Heisenberg’s Uncertainty Principle, Extraterritoriality and Comity." https://thesedonaconference.org/sites/default/files/publications/Heisenberg%27s%20Uncertainty%20Principle\_Extraterritorialty%20and%20Comity.16TSCJ327.pdf]

In a variety of settings foreign governments have expressed and are expressing concerns about the extraterritorial application of U.S. law. The United States occupies a unique position in global trade and finance. The United States also has enacted far-reaching legislation involving commerce, banking and finance, business conduct, mergers and acquisitions, foreign corrupt practices, and a variety of other matters. The extraterritorial application of laws in these areas challenges the sovereignty of other nations and is often viewed as offensive. In antitrust, the United States’ influence is the result of its status as the world’s largest importer of goods and services.18 In finance, this influence is the result of the U.S. dollar’s status as the international unit of account: “Pretty much any dollar transaction— even between two non-US entities—will go through New York City at some point, where it comes under the jurisdiction of US authorities.”19

The rampant extraterritorial application of U.S. laws has ruffled the feathers of foreign governments for a long time, beginning essentially with the cluster of private and government actions in the Uranium cartel cases back in the 1970’s and 1980’s. Close American allies, including Australia, Canada, France, South Africa, the UK, and others, reacted with hostility to the extraterritorial activism of the domestic judiciary by enacting “blocking” and “claw back” legislation.20 Such reactions included the enactment of laws by the United Kingdom and Canada that prohibit enforcement of foreign judgments awarding multiple damages21 and laws passed by the United Kingdom, France, Australia, and the Canadian provinces of Quebec and Ontario that limit or prohibit the removal of documents in response to a foreign order.22

More recently, a number of governments have expressed their concerns about the application of U.S. laws abroad through amicus briefs, including Australia, Belgium, Canada, China, France, Germany, Japan, the Netherlands, South Korea, Switzerland, Taiwan, and the United Kingdom:23 most of the United States’ top fifteen trading partners.

These foreign governments have expressed a fairly wide variety of concerns about the potential for extraterritorial application of U.S. laws to interfere with those governments’ policy decisions on such matters as liability, procedure, and damages. While most governments have regulatory regimes in place to police, for example, securities fraud and cartel behavior, these differ in many regards both from the American approach and also from each other, reflecting different cultural, social, and economic factors. These differences include the required showing for liability (e.g., definition of materiality in securities fraud cases),24 procedural protections (e.g., class-action formation and punitive) damages.26 Applying U.S. law to actors, conduct, and effects appropriately considered under a set of foreign laws undermines a foreign government’s ability to govern its own domain and, in the end, becomes an affront to its sovereignty.

Stepping on the toes of foreign governments’ regulatory regimes also risks stymying the international development of policies and regulations beneficial to the United States. Countries without well-developed regulatory apparatuses are less likely to develop them if the behavior is already policed by private plaintiffs in the United States or if the apparatuses would see their policy choices effectively overruled by U.S. policies.27

Foreign governments have also taken the view that extraterritorial application of treble damages threatens to undermine their own enforcement efforts. For example, they claim availability of private treble damages in the United States against their national companies for local conduct may have a detrimental effect on foreign leniency programs. These programs are a key tool for them in rooting out cartel activity, which has traditionally proven difficult to detect and prosecute.28 “These leniency policies seek to balance the interests of disclosure, deterrence, and punishment,” but “disclosure and reform are greatly hindered when a company risks the imposition of treble damages in a U.S. court for confessing to another nation or authority that it has participated in an international conspiracy.”29 When that reach is expanded outside of U.S. consumers in a U.S. court, “the prospect of ruinous civil liability in U.S. courts far outweighs the benefits most companies would receive from participating in an amnesty program.”30 And as Germany and Belgium informed the Supreme Court in Empagran,31 “[h]istorically, other nations have bristled at extraterritorial applications of United States antitrust laws. These concerns have resulted in foreign governments taking a number of measures to counter what they perceive to be an illegitimate encroachment into their sovereignty.”32

#### That cracks sustainable development and poverty relief.

Cheng ‘12 [Thomas; 2012; assistant professor at the Faculty of Law of the University of Hong Kong; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law." <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil>]

SME = small to mid-sized enterprise

Serious poverty and income inequality are prevalent in many developing economies. These phenomena present two main challenges to developing countries as far as competition law enforcement is concerned. One is the need to encourage entrepreneurship to promote inclusive growth; the other is the need to protect impoverished consumers from exploitative practices. A number of commentators, including Fox, have argued that developing countries must pursue inclusive growth that will alleviate poverty and reduce income inequality.162 Inclusive growth requires opportunities for upward economic mobility, an important avenue for which is entrepreneurship.'63 For those who are at the bottom of the economic ladder in a developing country, often the only way to break out of poverty is to start their own businesses, which are going to be, at least initially, SMEs. Therefore, encouragement of entrepreneurship and assistance to SMEs must be a central pillar in every inclusive growth strategy. If competition law is to complement an inclusive growth strategy, it must afford SMEs stronger protection than is customary in established jurisdictions and be particularly vigilant against abuse of dominance. This is especially so because dominant firms in developing countries are often former state monopolies that still benefit from official patronage or informal connections to the state. Their privileged positions make it even harder for new private firm rivals to compete with them.

The poorest in many developing countries live below the poverty line and often scrape by with no more than a dollar or two a day.'64 They are often malnourished, sick, and illiterate, which severely curtails their productivity and ability to improve their economic well-being. Therefore, an inclusive growth strategy must include policies to combat malnourishment, poor health, and illiteracy. While the bulk of the responsibility will fall on government programs that directly confront these problems, competition law has a role to play. Competition law enforcement may focus on goods that have the most direct impact on the nutritional, health, and educational needs of the poorest in developing countries. Anticompetitive conduct in these sectors should be dealt with harshly.

Beyond that, developing country competition authorities may consider taking a tougher stance on exploitative practices by dominant firms. This is despite the fact that most established jurisdictions, especially the US, have largely left exploitative practices out of the purview of competition law."' The usual justification for this stance is two-fold. First, there is a serious implementation problem of distinguishing between very high prices and excessive prices.'6 6 Such distinctions are notoriously difficult to draw. The inability to do so undermines effective enforcement and legal certainty for firms seeking to comply with the law. Second, there is the theoretical objection that the opportunity to reap temporary monopoly profit spurs firms to compete and innovate.'6 1 In the industrialized nations, the general view is that consumers are able to bear momentary high prices, which will be eroded once a new competitor enters the market. Short-run monopolistic prices are the price that consumers pay for the benefit of keener long-run competition and innovation. While consumers in developed nations may be in a position to withstand such high prices, the poorest consumers in developing countries are not. Any extra cost for a basic necessity will have a direct and severe impact on their overall standard of living. For example, 10 percent more spent on foodstuffs may require consumers to remove their children from school."' The plight of these consumers therefore may justify a more assertive stance on exploitative practices in markets for basic necessities.

#### Development diffuses multiple existential risks -- d doesn’t assume the changing nature of conflict

UNSC ‘17 [United Nations Security Council; 12/20/17; “Prevention, Development Must Be at Centre of All Efforts Tackling Emerging Complex Threats to International Peace, Secretary-General Tells Security Council,” https://www.un.org/press/en/2017/sc13131.doc.htm]

Prevention and development must be at the centre of all efforts to address both the quantitative and qualitative changes that were emerging in threats around the world, the Secretary‑General of the United Nations told the Security Council today, as some 60 Member States participated in an all‑day debate tackling complex contemporary challenges to international peace and security.

António Guterres said the perils of nuclear weapons were once again front and centre, with tensions higher than those during the Cold War. Climate change was a threat multiplier and technology advances had made it easier for extremists to communicate. Conflicts were longer, with some lasting 20 years on average, and were more complex, with armed and extremist groups linked with each other and with the worldwide threat of terrorism. Transnational drug smugglers and human traffickers were perpetuating the chaos and preying on refugees and migrants.

The changing nature of conflict meant rethinking approaches that included integrated action, he said, stressing that prevention must be at the centre of all efforts. Development was one of the best instruments of prevention. The 2030 Agenda for Sustainable Development would help build peaceful societies. Respect for human rights was also essential and there was a need to invest in social cohesion so that all felt they had a stake in society.

He also emphasized that women’s participation was crucial to success, from conflict prevention to peacemaking and sustaining peace. Where women were in power, societies flourished, he pointed out. Sexual violence against women, therefore, must be addressed and justice pursued for perpetrators.

Prevention also included preventive diplomacy, he said, noting that the newly established High-level Advisory Board on Mediation had met for the first time. The concept of human security was a useful frame of reference for that work, as it was people‑centred and holistic and emphasized the need to act early and prioritize the most vulnerable.

“Let us work together to enhance the Council’s focus on emerging situations, expand the toolbox, increase resources for prevention, and be more systematic in avoiding conflict and sustaining peace,” he said, emphasizing the need for Council unity. Without it, he said, the parties to conflict might take more inflexible and intransigent positions, and the drivers of conflict might push situations to the point of no return.

Japan’s representative, Council President for December, spoke in his national capacity, noting that in the 25 years since the end of the Cold War, there had been a rise in complex contemporary challenges to international peace and security. That included the proliferation of weapons of mass destruction, the expansion of terrorism, and non‑traditional challenges such as non‑State actors and inter‑State criminal organizations.

#### SDGs are leverage points that solve extinction BUT failure causes cascading risks that cumulatively outweigh any single risk, causing extinction

Fenner and Cernev ‘20 [Richard Fenner; Jan. 2020; Director of the MPhil in Engineering for Sustainable Development at Cambridge; Australian National University, Canberra, Australia; “The importance of achieving foundational Sustainable Development Goals in reducing global risk,” Volume 115, https://www.sciencedirect.com/science/article/pii/S0016328719303544]

Fig. 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom, Stoknes, Goluke, Collste, Cornell, Donges et al. (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system"(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse.

The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs (World Economic Forum, 2018). The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause-and-effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises.

These are represented in Fig. 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3)

4.2. Existential and catastrophic risk

The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt, Farquhar, Halstead, Schubert, & Snyder-Beattie, 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b).

Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook, Inayatullah, Burgman, Sutherland, & Wintle, 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009).

Whilst existential threats are unlikely, there is extensive peril in global catastrophic risks. Despite being lesser in severity than existential risks, they increase the likelihood of human extinction (Turchin & Denkenberger, 2018a) through chain reactions (Turchin & Denkenberger, 2018a), and inhibiting humanity’s response to other risks (Farquhar et al., 2017). It is necessary to consider risks that may seem small, as when acting together, they can have extensive consequences (Tonn, 2009). Furthermore, the high adaptability potential of humans, and society, means that for humanity to become extinct, it is most likely that there would be a series of events that culminate in extinction as opposed to one large scale event (Tonn & MacGregor, 2009; Tonn, 2009).

Whilst the prospect of existential risk, or global catastrophic risk can seem distant, the Stern Review on the Economics of Climate Change estimated the risk of extinction for humanity as 0.1 % annually, which accumulates to provide the risk of extinction over the next century as 9.5 % (Cotton-Barratt et al., 2016). With respect to identifying these risks, it is known that in particular, “positive feedback loops… represent the gravest existential risks” (Kareiva & Carranza, 2018), with pollution also having the potential to pose an existential risk.

#### Particularly in Africa – solves famine

Nwuneli ‘18 [Ndidi Okonkwo Nwuneli; 2018; Co-Founder of AACE Food Processing & Distribution, Managing Partner of Sahel Consulting Agriculture & Nutrition, Founder of LEAP Africa, and a 2018 Aspen Institute New Voices fellow; Project Syndicate; "The High Cost of Food Monopolies in Africa," https://www.project-syndicate.org/commentary/africa-monopoly-food-prices-by-ndidi-okonkwo-nwuneli-2018-08]

One reason for the distortion is the price of food relative to income. As Africa urbanizes, people are buying more imported semi- or fully processed foods, which cost more than locally produced foods. And in most countries, wages have not kept pace with inflation.

But the primary cause is poor public policy: African governments have failed to curb the power of agribusinesses and large food producers, a lack of oversight that has made local agriculture less competitive. In turn, prices for most commodities have risen.

The absence of antitrust laws, combined with weak consumer protection, means that in many countries, only two or three major companies control markets for items like salt, sugar, flour, milk, oil, and tea . The impact is most pronounced in African cities, where prices for white rice, frozen chicken, bread, butter, eggs, and even carbonated soft drinks are at least 24% higher than in other cities around the world. These prices hit consumers both directly and indirectly (owing to pass-through of higher input costs by food conglomerates and service providers).

The Food and Agriculture Organization of the United Nations (FAO) has long argued that food security and fair pricing depends on markets that are free from monopolistic tendencies. The OECD concurs, and has frequently called on authorities to address “anti-competitive mergers, abuse of dominance, cartels and price fixing, vertical restraints, and exclusive practices” in the food sector. And yet, in many African countries, this advice has rarely been heeded.

To be sure, this is not a new problem. Between 1997 and 2004, for example, the FAO counted 122 allegations of “anti-competitive practices” in 23 countries in Sub-Saharan Africa. Violations included a “vertical monopoly” in the Malawi sugar sector, price fixing in Kenya’s fertilizer industry, and a “buyer cartel” in the Zimbabwean cotton industry. And, despite the considerable attention such cases have received, the underlying problems persist.

According to the World Bank, more than 70% of African countries rank in the bottom half globally for efforts to protect “market-based competition.” While 27 African countries and five regional blocs do have antitrust laws on the books, enforcement is rare. The remaining countries have no regulations at all and have made little progress in drafting them.

There is one notable exception: South Africa. Since 1998, the country’s Competition Act has prohibited any company controlling at least 45% of the market from excluding other firms or seeking to exercise control over pricing. Violators face penalties of up to 10% of their earnings, and during the last two decades, some of the biggest companies in the country – including Tiger Brands, Pioneer Foods, and Sime Darby – have been penalized. As Tembinkosi Bonakele, head of South Africa’s Competition Commission, noted last year, the government is “determined to root out exploitation of consumers by cartels,” especially in the food industry.

Other countries should follow South Africa’s lead. Companies and special-interest groups will always seek to benefit from the absence of regulation. The need for reform is greatest in countries like Nigeria and Ghana, where food expenditures are high and food-industry pressure is most pronounced. Fortunately, there is growing recognition of the need to address these challenges. Babatunde Irukera, Director General of the Consumer Protection Council in Nigeria, recently asserted that, “In a large vibrant and loyal market such as Nigeria, the absence of broad competition regulation is tragic. Unregulated markets in competition context constitute the otherwise ‘legitimate’ vehicle for both financial and social extortion.”

Reducing the prices of staple food by even a modest 10% (far below the average premium cartels around the world charge) by tackling anticompetitive behavior in these sectors, or by reforming regulations that shield them from competition, could lift 270,000 people in Kenya, 200,000 in South Africa, and 20,000 in Zambia out of poverty. Such a policy would save households in these countries over $700 million (2015 US dollars) a year, with poor households gaining disproportionately more than rich ones.

#### It's existential – state collapse, refugees, terror, and Chinese spheres of influence, only institutional barriers solve

Perez ‘18 [Alexandra; 2018; Pepperdine University, School of Public Policy. Masters in Public Policy at Pepperdine. Project Manager, Health Policy at Cato Institute; "Food Security as U.S. National Security: Why Fragile States in Africa Matter." https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1169&context=ppr]

The United States’ role in foreign affairs is guided by an interest to keep the general peace around the world while protecting national security and economic interests. Stability in regions such as sub-Saharan Africa is crucial to national security, and one way to keep peace is by supplying the basic human need of food. According to the Fund for Peace, the three most fragile states in 2017 were in Africa— the Central African Republic, South Sudan, and Somalia. 1 Several other African countries are fragile, suffering from standard measures of instability, such as widespread corruption, weak institutions, and resource scarcity. Together, these problems create displacement, human-rights violations, and power vacuums where non-state actors can flourish. These issues should concern the United States not only for moral reasons, but also because they negatively affect American interests. Food aid and agricultural systems must be used as a tool to promote peace in Africa to decrease the region’s burden on the United States and to help stabilize a region that is often referred to as a lost continent.

With bipartisan support, the Global Food Security Act became law in July of 2016. It requires the President and appropriate agencies—including USAID, State Department, and the Office of US Trade—to formulate a plan to address food-insecure countries and report on that plan annually.2 The bill cited the Worldwide Threat Assessment of the US Intelligence Community (2014): “[l]ack of adequate food will be a destabilizing factor in countries important to US national security that do not have the financial or technical abilities to solve their internal food security problems.”3 Though it is uncertain whether annual reports will continue under the Trump administration, the US has demonstrated (at least through the Global Food Security Act) that it views food security as a matter of national security. According to the most recent Worldwide Threat Assessment, Africa is among the regions most susceptible to terrorism, especially in Somalia and South Sudan.4 This paper explores the ways in which food insecurity can enable conflict, how the US can improve the ways it offers food aid, and why African food security is in America’s national security interest.

Consequences of Food Insecurity

Enforcing and communicating a universal conception of human rights by any party is difficult. Nevertheless, US national security strategy has placed an emphasis on human rights in recent years. The former Secretary of State under President George W. Bush, Condoleezza Rice, once remarked that: “[f]or the United States, supporting international development is a vital investment in the free, prosperous, and peaceful international order that fundamentally serves our national interest.”5 Fragile regimes in Africa cannot successfully maintain themselves, let alone pose an immediate threat to the United States. However, these regimes are likely to seek alliances with adversaries that may pose a threat, such as China, creating a region of the world adverse to American interests and values.

Secondly, migrant and refugee flows are concerns for the United States due to their economic and social consequences. While many of the most serious cases of refugee crises today are nowhere near the US, they do affect some of the United States’ key allies around the globe. A clear example of this is Syrian migration into NATO member countries. In addition to military conflict, bipartisan research has shown that climate can also contribute to mass migrations by impacting harvest yields in regions still reliant on subsistence agriculture. For example, the famines in Somalia and Yemen have sparked emigration caused by food insecurity. Such crises may not be front page news compared to violent conflicts in surrounding states, but they present just as real a threat.

The third reason why the US should care about weak states is that terrorist organizations thrive in such environments. Since September 11, 2001, US national security policy has been primarily driven by the war on terror. While the fear of a repeat attack on American soil has calmed since 2001, the threat of terrorism is still present, and the United States must be proactive to stay ahead of terrorist threats. Terrorists thrive in weak state environments because either the lack of rule of law inhibits the host state’s ability to act against them, or because corrupt governments refuse to act, such as when Sudan provided refuge to Osama bin Laden in the 1990s.6 As a developing region, Africa is full of potential, and the United States will have to decide whether it will help it stabilize or allow it to become a refuge and breeding ground for terrorism.

Africa can potentially threaten or support American interests. As stated above, food insecurity in Africa creates problems for the US. The potential to politically align with other major powers, the destabilizing effect of refugees on the US and its allies, and the propensity to breed terrorism are all reasons to take Africa seriously as a national security concern. US interests include promoting international market economies that it can easily access, so to increase economic power at home. If the US ignores stability measures in Africa, this could negatively affect both American security interests and global economic growth, 7 which are both American priorities. The US needs a strategy that promotes food security in fragile states to address these concerns.

Food prices in Africa are expected to rise in the next few years due to famine,8 which means there is a risk that instability will grow, heightening the security concern to the United States. Food insecurity, like any social ailment, does not necessarily cause instability, but the two do reinforce each other. Obviously, American food assistance by itself cannot solve every problem in these fragile states. Success will ultimately depend on these countries establishing and enforcing the rule of law and shoring up government legitimacy. That said, nation building is not a viable option in this region, as the US has already committed itself to this in the Middle East and largely failed. The US can, however, provide developmental aid to help promote stability and provide a foundation for future institutional growth. Therefore, it is important that the US not only maintain food security efforts in weak states but also incentivize recipient behavior that will make such aid more effective.

#### A balancing test is goldilocks---harmonizes extraterritorial reach with international comity, generates global antitrust enforcement, AND it link-turns the Trade DA.

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

Chiefly, this balancing test would supplement the FTAIA. The underlying impetus for the FTAIA’s enactment – responding to international criticism of expansive US extraterritorial jurisdiction and to calls for recognizing foreign sovereignty where the basis for US prescriptive jurisdiction is weak – functions as this balancing test’s modus operandi. While the difficulty in interpreting “direct” has instigated its introduction, the balancing test does not attempt to shed any more light on the FTAIA’s contemplation of “direct.” Instead, it provides an alternative framework to properly apply the FTAIA where the statute’s language makes it impossible to do so.

As was the balancing test in Timberlane, a balancing test here may also be criticized as leaving too much discretion over political inquiries (i.e., foreign policy considerations) to the judiciary rather than to the executive and legislative branches, where such decisions may rightly belong.200 Professor William Dodge, while asserting that US courts should engage in judicial unilateralism rather than international comity considerations, points out that the judiciary plays an important complementary role to a country’s political branches by encouraging dialogue and negotiation between sovereigns.201 Though Congress and antitrust agencies may be better suited than courts to take account of the interest of other nations, courts are nonetheless faced with the task of weighing those interests when judging a party’s right to redress in private antitrust litigation.202

Footnote 201:

201. Dodge, supra note 2, at 106-07. American courts are also well-versed in taking into account foreign interests through allowing sovereign representatives to articulate official positions in litigation. See, e.g., Empagran, 542 U.S. at 167-68 (relying on non-US government amicus curiae briefs asserting national interests in considering international comity); In re Vitamin C Antitrust Litig., 837 F.3d at 179 (“When, as in this instance, we receive from a foreign government an official statement explicating its own laws and regulations, we are bound to extend that explication the deference long accorded such proffers received from foreign governments.”); BREYER, supra note 7, at 92 (“Since there is no Supreme Court of the World, national courts must act piecemeal, without direct coordination, in seeking interpretations that can dovetail rather than clash with the working of foreign statutes. And so our Court does, and should, listen to foreign voices, to those who understand and can illuminate relevant foreign laws and practices.” (emphasis added)).

“Judicial unilateralism,” as defined by Professor Dodge, implies that courts should only consider whether or not the forum’s legislature intended to regulate the conduct at issue without regard to foreign interests. See Dodge, supra note 2, at 104-05 (“[A] court should apply a statute extraterritorially whenever doing so appears to advance the purposes of the statute and should not worry about resolving conflicts of jurisdiction with other nations.”); see also supra note 16.

End of footnote 201.

The balancing test should be an exercise in both comity and cooperation, an attempt to harmonize counterpoints in the debate over antitrust extraterritoriality. As Professor Fox posits, the question is not “when should we defer to the inconsistent interests of other nations?” but rather “how can the antitrust jurisdictions of the world work together to maximize their shared interest in competitive markets, to the benefit of consumers and robust or potentially robust business?”203 Indeed, this comports with Supreme Court’s current approach to comity analysis of harmonization rather than avoiding conflict among laws.204 Accordingly, the test will have a slightly different focus than the one constructed by the Ninth Circuit in Timberlane, which reflects an outdated period of international antitrust regulation lacking potent modern enforcement tools such as amnesty programs. It will, however, encourage the growth of overall worldwide antitrust enforcement, both public and private, which ultimately contributes to properly functioning international markets.205

The challenge of achieving proper adjudication of an antitrust claim consisting of conduct and injury in two different jurisdictions is that national laws must conform to a market that ignores national borders.206 With this in mind, the goal should be to promote adjudication in the most efficient locale in an effort to maximize world welfare, foster growth of antitrust jurisdictions, and avoid overregulation.207 There are currently over 120 antitrust jurisdictions, many of which are new antitrust jurisdictions or have enacted fresh laws allowing for greater access to private redress, such as Israel (2006), China (2008), the European Union (2014), the United Kingdom (2015), and Hong Kong (2015).208 Letting the laws of these jurisdictions develop and inculcate international standards for antitrust enforcement strengthens the deterrence of anticompetitive behavior and the ability of injured parties to seek recompense.209 Achieving greater international involvement in turn would ostensibly mitigate some of the need behind extraterritorial application of US antitrust law.210

Footnote 209:

209. See, e.g., First, supra note 16, at 732-34 (arguing that international political consensus is integral to effective international antitrust enforcement and that the case-by-case common law process of law development is the optimal path to that consensus in the absence of a single system of or approach to market place regulation); Org. for Econ. Co-operation & Dev., Recommendation of the Council Concerning Effective Action Against Hard Core Cartels 2 (May 1998), http://www.oecd.org/daf/competition/2350130.pdf [https://perma.cc/35HUTEWZ] (last visited Oct. 26, 2017) (“[C]loser co-operation is necessary to deal effectively with anticompetitive practices in one country that affect other countries and harm international trade.”). As noted above, while national recourse for compensating private loss is currently available in a minority of antitrust jurisdictions, it is increasingly acknowledged as a necessary tool for under-resourced national competition authorities. See Pheasant, supra note 11, at 59 (explaining that the European Commission “decided that it would be appropriate to enhance the role of private enforcement to support and supplement public enforcement of the competition rules” given insufficient resources for governmental competition authorities); Edward Cavanagh, Antitrust Remedies Revisited, 84 OR. L. REV. 147, 153-54 (2005) (“Congress created the private right of action to supplement public enforcement because it was aware that the government would not have the necessary resources to uncover, investigate, and prosecute all violations of antitrust laws.”); see also supra note 25.

End of footnote 209.

#### Food crises and refugees each cause extinction

Cribb ‘19 [Julian; 10/3/19; distinguished science writer with more than thirty awards for journalism; “Food or War.” Cambridge University Press. https://www.cambridge.org/core/books/food-or-war/2D6F728A71C0BFEA0CEC85897066DCAF]

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twenty first century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to nonnuclear nations and potential terrorist organisations. In early 2018 the hands of the ‘ Doomsday Clock ’ , maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world ’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below). 12 In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “ a full range of nuclear-weapon-related activities, such as undertaking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons. ” 13 However, 71 other countries– including all the nuclear states– either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species. In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed– but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk. 14 As things stand, the only entities that can afford to own nuclear weapons are nations– and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or nationalism. The question is what to replace them with. Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twenty first century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying. It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell invasion by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands– but the possibility ought not to be ignored. That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘ it is clear that even nuclear war cannot be excluded as a political consequence of global warming ’ . 15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

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## Cartels

### cartels—ov

#### Seventh circuit interpretation of the direct effects doctrine wrecks extraterritorial antitrust enforcement and spurs cartel formation. Plan is key to deter price fixing

#### Plan saves global supply chains by significantly curtailing price fixing—solves great power war and hotspots

#### Cartels specifically developed in CRM markets, which are key to battery tech. Battery tech builds grid resilience, which solves blackouts, starvation, and disease.

#### The aff solves by ensuring there’s sufficient enforcement mechanisms against foreign cartel behavior through private suits under US law, while also encouraging development of new antitrust regimes to bolster foreign enforcement.

### 2AC Impact – Grid

#### The grid is vulnerable, climate change makes it worse, and the infrastructure bill doesn’t help

Acovino 21 [Vincent Acovino. “The biggest problem facing the U.S. electric grid isn't demand. It's climate change.” 11/24/21. NPR. <https://www.npr.org/2021/11/24/1040529860/the-biggest-problem-facing-the-u-s-electric-grid-isnt-demand-its-climate-change>] SA

The power grid in the U.S. is aging and already struggling to meet current demand. It faces a future with more people — people who drive more electric cars and heat homes with more electric furnaces. Alice Hill says that's not even the biggest problem the country's electricity infrastructure faces. "Everything that we've built, including the electric grid, assumed a stable climate," she says. "It looked to the extremes of the past — how high the seas got, how high the winds got, the heat." Hill is an energy and environment expert at the Council on Foreign Relations. She served on the National Security Council staff during the Obama administration, where she led the effort to develop climate resilience. She says past weather extremes can no longer safely guide future electricity planning. "It's a little like we're building the plane as we're flying because the climate is changing right now, and it's picking up speed as it changes," Hill says. The newly passed infrastructure package dedicates billions of dollars to updating the energy grid. Hill says utility companies and public planners around the country are already having to adapt. She points to the storm surge of Hurricane Sandy in 2012. “They thought the maximum would be 12 feet," she says. "That storm surge came in close to 14 feet. It overcame the barriers at the tip of Manhattan, and then the electric grid — a substation blew out. The city that never sleeps [was] plunged into darkness." Hill noted that Con Edison, the utility company providing New York City with energy, responded with upgrades to its grid: It buried power lines, introduced artificial intelligence, upgraded software to detect failures. But upgrading the way humans assess risk, she says, is harder. "What happens is that some people tend to think, well, that last storm that we just had, that'll be the worst, right?" Hill says. "No, there is a worse storm ahead. And then, probably, that will be exceeded." In 2021, the U.S. saw electricity outages for millions of people as a result of historic winter storms in Texas, a heatwave in the Pacific Northwest and Hurricane Ida along the Gulf Coast. Climate change will only make extreme weather more likely and more intense. And that has forced utility companies and other entities to grapple with the question: How can we prepare for something we've never experienced before? A modern power station in Maryland is built for the future In the town of Edgemere, Md., the Fitzell substation of Baltimore Gas and Electric delivers electricity to homes and businesses. The facility is only a year or so old, and Laura Wright, the director of transmission and substation engineering, says it's been built with the future in mind. She says the four transformers on site are plenty for now. And to counter the anticipated demand of population growth and a future reliance on electric cars, she says the substation has been designed for an easy upgrade. "They're not projecting to need that additional capacity for a while, but we designed this station to be able to take that transformer out and put in a larger one," Wright says. Slopes were designed to insulate the substation from sea level rise. And should the substation experience something like a catastrophic flooding event or deadly tornado, there's a plan for that too. "If we were to have a failure of a transformer," Wright says, "we can bring one of those mobile transformers into the substation, park it in the substation, connect it up in place of that transformer. And we can do that in two to three days." The Fitzell substation is a new, modern complex. Older sites can be knocked down for weeks. What the infrastructure legislation actually does That raises the question: Can the amount of money dedicated to the power grid in the new infrastructure legislation actually make meaningful changes to the energy system across the country? "The infrastructure bill, unfortunately, only scratches the surface," says Daniel Cohan, an associate professor in civil and environmental engineering at Rice University. Though the White House says $65 billion of the infrastructure legislation is dedicated to power infrastructure, a World Resources Institute analysis noted that only $27 billion would go to the electric grid — a figure that Cohan also used. "If you drill down into how much is there for the power grid, it's only about $27 billion or so, and mainly for research and demonstration projects and some ways to get started," he says. Cohan, who is also author of the forthcoming book Confronting Climate Gridlock, says federal taxpayer dollars can be significant but that most of the needed investment will eventually come from the private sector — from utility companies and other businesses spending "many hundreds of billions of dollars per decade." He also says the infrastructure package "misses some opportunities" to initiate that private-sector action through mandates. "It's better than nothing, but, you know, with such momentous challenges that we face, this isn't really up to the magnitude of that challenge," Cohan says. Cohan argues that thinking big, and not incrementally, can pay off. He believes a complete transition from fossil fuels to clean energy by 2035 is realistic and attainable — a goal the Biden administration holds — and could lead to more than just environmental benefit. "It also can lead to more affordable electricity, more reliable electricity, a power supply that bounces back more quickly when these extreme events come through," he says. "So we're not just doing it to be green or to protect our air and climate, but we can actually have a much better, more reliable energy supply in the future."

## Indigenous development

### indigenous development—ov

#### Unclear and arbitrary extraterritorial application of US antitrust law hinders development of foreign antitrust regimes—the plan’s balancing test allows nascent jurisdictions to develop where necessary

#### Well developed antitrust is key to sustainable development in growing markets—sustainable development promotes growth, alleviates poverty, and mitigates every other risk

#### Antitrust specifically key to solving famine—developed antitrust is key to breaking up ag monopolies contributing to high food prices and famine

#### The aff solves by deferring to international laws and allowing them to develop antitrust regimes which work for their markets while recognizing the interconnectedness of the global market

### 2AC Internal Link – SDGs

#### Cultivates competition in agriculture and healthcare markets – overcomes inequality.

Aydin & Büthe ’16 [Umit and Tim; Associate Professor at the Instituto de Ciencia Política, Pontificia Universidad Católica de Chile and George C. Lamb, Jr. Fellow at the Kenan Institute for Ethics at Duke University; Professor of Political Science and Public Policy at the Hochschule für Politik (Bavarian School of Public Policy) at the Technical University of Munich, Germany, where he holds the Chair in International Relations, as well as a senior fellow of the Kenan Institute for Ethics and a founding member of the Rethinking Regulation Initiative at Duke University; *Law and Contemporary Problems,* “Competition Law & Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits,” <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4801&context=lcp>; KS]

Bhattarcharjea, drawing on the broader notion of human (rather than “just” economic) development, suggests that competition law enforcement and policy in developing countries should focus on “sectors that directly impinge on the well-being of the poor, in particular essential consumer goods, agriculture [and its inputs] and health care.”23 And he argues that developing country agencies should initially focus on disclosing and alleviating concrete local impediments to the operation of competitive markets. Such a strategy is promising because it: allows new agencies to build technical capacity by solving relatively tractable problems; enables them to build popular support for competition policy through actions that yield clear benefits for domestic market participants; and gives the agency time to develop transgovernmental linkages with their counterparts in other countries before going after the transnational cartels that often ruthlessly target developing countries.24 These arguments suggest that the sectoral composition and geographic distribution of implementation and enforcement efforts may serve as initial measures of success, until it becomes possible to assess whether reductions in local distortions and benefits for the poor are indeed materializing.

Fox goes further, both in conceptualizing development as an operational goal of competition policy and in suggesting specific foci for competition policy implementation. Pointing out that severe inequalities in education and access to capital create highly consequential barriers to entry, she suggests that a competition policy that seeks to foster equality of opportunity to partake in the market and share in its benefits must include measures to overcome such inequality or at least its effects.25 From this perspective, competition law and policy are successful if they contribute to actual increases in market participation from previously marginalized or excluded segments of the population, and could be considered at least partly successful to the extent that they measurably reduce the barriers to entry.

### 2AC – AT: Defense – Development

#### SDGs solve numerous existential threats and prevent governance failures

Moyo, 16—Board member of 3M and Chevron, holds a PhD in Economics from Oxford and a Masters from Harvard, was named to the list of Time 100 Most Influential People (Dambisa, “Implementing the Sustainable Development Goals is an imperative,” https://www.oecd.org/development/implementing-sustainable-development-goals-imperative.htm, dml)

On 25 September 2015, the 193 countries of the United Nation’s General Assembly adopted the Sustainable Development Goals (SDGs). This comprehensive set of goals aims to “end poverty, protect the planet, and ensure prosperity for all” as part of a new development agenda. Each goal has specific targets to be achieved by 2030, and by including education, health, poverty, climate change and the gender divide on the list of 17 goals, the SDGs place in stark light some of the seemingly intractable challenges facing the world.

No reasonable person will find any of the SDGs to be inherently objectionable. In our modern, interconnected and global society, we should care about redressing all manner of issues plaguing economic growth and placing continual human progress at risk.

Like their predecessors, the Millennium Development Goals, the SDG framework affirms explicitly the international community’s commitment to attaining societal ideals. But more crucially, the SDGs impose specific, easily measurable and observable targets that can be monitored to gauge progress towards meeting the goals.

This is an imperative, as policy makers have tended to struggle with implementing global policy initiatives in the past. Implementation challenges are partly a manifestation of co-ordination failures among different countries, particularly when individual nation states place their own short-term interests ahead of other countries, and the global good. Protectionist trade policies, such as the US Farm Bills and the EU’s Common Agriculture Policy whereby countries impose tariffs and quotas that favour local farmers but hurt foreign farmers, are just one example of poor global co-ordination. Such failures can cost hundreds of billions of dollars in lost jobs, incomes and deleterious effects on global growth.

Also, shortfalls against globally agreed policy goals may reflect poorly defined objectives that do not adequately take the local context into consideration. Thus inasmuch as the SDGs offer an ever-more refined approach to global objectives that local stakeholders played some role in setting, they enhance the chances of broader success.

The SDGs are all the more critical to framing practical solutions now, at a time when the world’s advanced economies continue to suffer under the weight of high, unsustainable debts and deficits, weak labour markets and declining productivity. And they are critical at a time when emerging economies, in which 90% of the world’s population (most of them under 25) live have seen their growth rates dip below the 7% per year needed to make a real dent in poverty.

Job-eroding technology, worsening income inequality, demographic shifts, depleting natural resources and environmental impacts all contribute to an unsettling backdrop for the world economy.

There is also the rise of radicalised terrorism, disorderly migration across Europe and the serious challenge of accommodating 60 million refugees, the highest number globally since the Second World War. All of this and the resurgence in political and social instability throughout the world (according to the Economist Intelligence Unit, 65 out of 150 countries face high or very high instability) underline the urgency of delivering on the SDGs.

The SDGs should serve as a reference point and a global compass for policy makers as they navigate a complex, dynamic, and difficult economic and political backdrop. After all, unless we meaningfully implement the SDGs, the fundamental macroeconomic trajectory and geopolitical arc of the global community will be in peril.

"Transforming our world" was the tag line of the 2030 agenda for the United Nation’s sustainable development goals. It remains an appropriate rallying cry for governments, the private sector, civil society, and most of the world’s citizens. Ultimately, the UN’s SDGs will be judged by how effectively they address the manifold challenges impacting the world today and threatening the world tomorrow.

## T per se

### 2AC – AT: T-Per Se

#### We meet:

#### 1 – Prohibits price-fixing that affects US commerce indirectly:

a – activities – price-fixing is ongoing by multiple participants.

b – prohibitions – courts allow indirect price-fixing now – post-plan, all activities that don’t meet the balancing test are prohibited.

#### 2 – Plan text in a vacuum – most objective standard – otherwise neg teams generate competition for garbage CPs.

#### ‘Anticompetitive business practices’ refer to actions that harm the competitive process.

Breyer ’88 [Stephen; June 30; Federal Court of Appeals Judge on the First Circuit and later a Supreme Court Justice; Westlaw, Clamp-All Corp. v. Cast Iron Soil Pipe Inst., 851 F.2d 478]

“Anticompetitive”, too, has a special meaning. It refers not to actions that merely injure individual competitors, but rather to actions that harm the competitive process. Brown Shoe Co. v. United States, 370 U.S. 294, 319–20, 328–34, 82 S.Ct. 1502, 1521, 1525–29, 8 L.Ed.2d 510 (1962); see Brunswick Corp. v. Pueblo Bowl–O–Mat, Inc., 429 U.S. 477, 488–89, 97 S.Ct. 690, 697–98, 50 L.Ed.2d 701 (1977). And, the law assesses both harms and benefits in light of the Act's basic objectives, the protection of a competitive process that brings to consumers the benefits of lower prices, better products, and more efficient production methods. See Interface Group, Inc. v. Massachusetts Port Authority, 816 F.2d 9, 11–12 (1st Cir.1987); 7 Areeda & Turner ¶ 1502.

The joint practices and agreements that appellant attacks here are not per se unreasonable. Thus, appellant must show that the likely anticompetitive effects of these practices outweigh their business justifications, or at least that the defendants might achieve any legitimate business objectives in a significantly less restrictive way. 7 Areeda & Turner ¶ 1505b.

A

Clamp–All's major attack concerns CISPI's promulgation of a standard called the 310 Designation. That standard is entitled

Specifications for

CAST IRON SOIL PIPE INSTITUTE'S APPROVED COUPLING FOR USE IN CONNECTION WITH HUBLESS CAST IRON SOIL PIPE AND FITTINGS FOR SANITARY STORM DRAIN, WASTE AND VENT PIPING APPLICATIONS

The specification consists of several pages of detail. It also states,

Several different types of hubless joints or couplings are available for use in hubless cast iron systems.... It is the purpose of this specification ... to furnish \*487 information as to the approved characteristics of one of such type couplings which is approved by the Institute [CISPI].

And, it states on the first page,

Members of the Institute who are licensed to use the Institute's Collective MarkNO –HUB and who sell hubless couplings manufactured by or for them which conform fully to this Specification may indicate their membership in the Institute and their conformance with this Specification by marking such couplings with the Institute's Collective Mark NO–HUB.

CISPI successfully persuaded various private standard-setting bodies, as well as state and local plumbing code authorities, to make reference to the 310 Designation as the kind of coupling that would meet their respective standards.

8 a. Appellants seem to say that CISPI's very promulgation of this standard and its efforts to secure its adoption by certifying authorities amounts to an unreasonable restraint of trade. We do not see how that can be so. The standard, in specifying what counts as a CISPI coupling, provides a relatively cheap and effective way for a manufacturer or a buyer to determine whether a particular coupling is, in fact, (generically considered) a CISPI coupling. The adoption by certifiers helps users quickly and effectively determine that a particular coupling (which meets CISPI standards) also meets state, local, or private certifiers' standards of acceptability. The joint specification development, promulgation, and adoption efforts would seem less expensive than having each member of CISPI make duplicative efforts. On its face, the joint development and promulgation of the specification would seem to save money by providing information to makers and to buyers less expensively and more effectively than without the standard. It may also help to assure product quality. If such activity, in and of itself, were to hurt Clamp–All by making it more difficult for Clamp–All to compete, Clamp–All would suffer injury only as a result of the defendants' joint efforts having lowered information costs or created a better product. See George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc., 508 F.2d 547, 558 & n. 19 (1st Cir.1974). And, that kind of harm is not “unreasonably anticompetitive.” It brings about the very benefits that the antitrust laws seek to promote. That is to say, activity that harms competitors because it lowers production or distribution costs or provides a better product carries with it an overriding justification.

Of course, what we have just written is true of ‘legitimate’ standard-setting activity. See Whitten, 508 F.2d at 558 n. 19. There could be special circumstances, showing, in an individual case, that the standard setting at issue serves no legitimate purpose, or that it is unnecessarily harmful. Id. (antitrust claim stated if market participant who establishes proprietary specifications coerces a standard-setting organization or conspires with it to get the specification officially adopted, or if it prevents competitors from competing for approval). But the plaintiff would have to show the existence of such circumstances; and, the plaintiff has not done so here. The best it can do is point to the word “approved” in the specification (“it is the purpose of this specification ... to furnish information as to the approved characteristics of one of such type couplings which is approved by the Institute.”) and to argue that that single word might mislead users into thinking that CISPI is a disinterested certifying organization, providing “approvals” for all hubless couplings, thereby hurting Clamp–All, unless, as Clamp–All seems to argue, CISPI considered Clamp–All's coupling for “approval” as well, see Radiant Burners, Inc. v. Peoples Gas Light & Coke, 364 U.S. 656, 81 S.Ct. 365, 5 L.Ed.2d 358 (1961); 2 J. von Kalinowski, Antitrust Laws and Trade Regulation, § 6I.01 (1988); Wachtel, “Products Standards and Certification Programs,” 13 Antitrust Bull. 1, 13 (1968).

9 The dispositive answer to this argument is that the record contains no significant evidence that the word “approved” misled anyone. The specification itself makes clear what it is, a specification that applies to CISPI-type hubless couplings, \*488 not to all hubless couplings. It contains no other language that might make one think that CISPI was some kind of general certifying organization. Buyers of hubless couplings are builders, plumbers, or contractors—reasonably sophisticated users—and there is no testimony that any of them was fooled. Plaintiff's best evidence consists of a comment by its expert that “people who normally use these things ... could easily be misled,” but, on cross examination, that same expert conceded that he had not talked to normal coupling users in forming that particular opinion. In our view, that opinion alone, so lacking in foundation, cannot take the issue of “being fooled” to the jury. And, if CISPI was not (or at least was not thought to be) a general certifying organization, why must it develop a specification for, or somehow “certify,” a competitor's quite different product? After all, General Motors need not certify the quality of a Toyota, nor need a group of film producers certify the quality of competing live television programs.

b. Clamp–All argues that CISPI defendants prevented an important “standard-setting and approval-granting” organization, the American Society of Sanitary Engineers (“ASSE”), from approving a hubless coupling performance standard that would have benefitted Clamp–All. In theory, one can understand how joint activity of the kind Clamp–All alleges could be unreasonably anticompetitive. Suppose, for example, the ASSE was about to adopt a performance standard that both CISPI and Clamp–All could have met; suppose further that ASSE's adoption of such a standard would have led to the adoption of a similar standard by hosts of local and state regulatory, and private certifying authorities. Then Clamp–All simply could have pointed to the standard (and its compliance) to show a contractor that its product was approved, just as CISPI does in states that have referenced the 310 Designation. If CISPI prevented the adoption of such a standard, it may have acted unreasonably.

10 The key word here, however, is “may.” Certifiers may reasonably believe that they can do their job properly (a job that benefits consumers) only if all interested parties are allowed to present proposals, frankly present their views, and vote. Thus, we do not see how plaintiff could succeed on its antitrust claim unless (at a minimum) CISPI both prevented ASSE from adopting a national performance standard that would have benefitted Clamp–All and did so through the use of unfair, or improper practices or procedures. See Indian Head, Inc. v. Allied Tube & Conduit Corp., 817 F.2d 938 (2nd Cir.) (antitrust claim stated where defendant conspired with other steel companies to block the approval of plaintiff's product by a national certifying organization; defendant acted within the letter of the organization's rules, but violated their spirit by paying for and packing a meeting with voters who had little to no professional interest in the subject matter), aff'd, 486 U.S. 492, 108 S.Ct. 1931, 100 L.Ed.2d 497 (1988) (affirming denial of Noerr–Pennington immunity for defendant's effort to influence private standard-setting organization; dismissing certiorari in respect to whether defendant's conduct was an unreasonable restraint of trade). In deciding whether this is so, courts must take account of the importance of permitting parties to express their views freely before regulatory authorities. See Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); United Mine Workers of America v. Pennington, 381 U.S. 657, 670, 85 S.Ct. 1585, 1593, 14 L.Ed.2d 626 (1965) (“Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition” (emphasis added)); cf. Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 108 S.Ct. 1931, 100 L.Ed.2d 497 (1988) (efforts to influence private standard-setting organizations may violate antitrust laws).

11 The record here does not contain evidence sufficient to warrant presenting Clamp–All's claim to the jury. It shows that in 1979, at Clamp–All's request, the ASSE formed a subcommittee to write a hubless coupling standard. Clamp-All proposed a four-tier standard (rating couplings by their ability to withstand varying levels \*489 of water pressure). Initially, when only one CISPI representative was present, the subcommittee recommended a three-tier standard (which was also beneficial to Clamp–All). CISPI then decided to offer a single tier standard, which both the CISPI and Clamp–All couplings would have met. It wrote its members and urged them to attend the next meeting. At that next meeting, with six CISPI members attending out of a total of sixteen, the subcommittee changed its mind and voted for CISPI's proposed standard. The ASSE eventually decided not to accept its subcommittee's recommendation, and it took no further action.

We can find no concrete evidence in the record that CISPI acted improperly. The record here is unlike that in Indian Head, where the defendant “packed” the meeting by hiring lay voters in numbers that unfairly gave it overrepresentation. Nor is there concrete evidence that the submission of CISPI's proposal caused (or even influenced) ASSE's decision not to adopt any standard. Clamp–All points to a single statement by CISPI's general counsel that the CISPI one-tier proposal was “not really a performance standard.” We do not see how that statement shows a significant abuse of ASSE's procedural standards or practices. Rather, as far as the record is concerned, CISPI acted within the letter and the spirit of the ASSE rules in presenting its proposal and urging its members to attend the meeting.

B

Clamp–All claims that the defendants have jointly engaged in several unreasonably anticompetitive “business practices.” For the most part these claims amount to charges of state-law business torts, not violations of the federal antitrust laws. Whitten, 508 F.2d 560–62. We assume that point aside, however, for the sake of argument, and because of appellant's later Lanham Act claim, see pp. 491–492 infra. We have examined the evidence in respect to each alleged act, and we conclude that no reasonable jury could find a significant, unreasonably anticompetitive business practice that harmed Clamp–All.

#### Prohibition includes per se and rule of reason.

Anu Bradford and Adam S. Chilton 18. Anu Bradford Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton. Assistant Professor of Law and Walter Mander Research Scholar.

Before discussing our data and the coding of the CLI, it is important to recognize that there are limitations to any index that attempts to quantify competition regulation. This is because it is difficult to produce a single metric that tells the comprehensive story of country’s competition regime. For example, if a specific type of conduct is prohibited, is it prohibited always (per se) or sometimes (rule of reason)? This seems like a relevant distinction to code, but it turns out to be difficult to capture systematically in many jurisdictions. For instance, Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) seems to regulate anticompetitive agreements under the rule of reason standard in the European Union, but, in practice, cartels are per se prohibited. This highlights the challenge of coding even just the law in books, let alone accounting for all the nuances of a country’s competition policies.20

#### Increase means to expand the existence of an already existing policy

Buckley ’6 [Jeremiah S, Joseph M. Kolar; November 13; partners at Buckley Kolar LLP; Westlaw, Brief of Amici Curiae for “Mortgage Insurance Companies of America and Consumer Mortgage Coalition,” WL 3309503]

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo's actual premium may be compared, to determine whether an \*26 “increase” occurred. Congress could have provided that “adverse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That definitional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] definition which declares what a term ‘means' … excludes any meaning that is not stated”).

Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions - from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “existing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Reasonability—good is good enough

## T- econ wide

#### We meet—the aff applies to every cartels in every industry. No violation so give us 1ar answers if they make up one in the block

## Cap K

### 2ac—framework

### 2AC – Top

#### Cap’s sustainable thanks to dematerialization and the alt’s transition fails.

McAfee, 20—cofounder and codirector of the MIT Initiative on the Digital Economy at the MIT Sloan School of Management, former professor at Harvard Business School and fellow at Harvard’s Berkman Center for Internet and Society (Andrew, “Why Degrowth Is the Worst Idea on the Planet,” <https://www.wired.com/story/opinion-why-degrowth-is-the-worst-idea-on-the-planet/>, dml)

Over that same span, an unexpected and encouraging pattern has emerged: The world's richest countries have learned how to reduce their footprint on Earth. They're polluting less, using less land and water, consuming smaller amounts of important natural resources, and doing better in many other ways. Some of these trends are also now visible in less affluent countries.

However, many in the degrowth movement seem to have trouble taking yes for an answer. The claims I just made are widely resisted or ignored. Some say they’ve been debunked. Of course, debate over empirical claims like these is normal and healthy. Our impact on our planet is hugely important. But something less healthy is at work here. As Upton Sinclair put it, “It is difficult to get a man to understand something when his salary depends upon his not understanding it.” Some voices in the conversation about the environment seem wedded to the idea that degrowth is necessary, and they are unwilling or unable to walk away from it, no matter the evidence.

But evidence remains a powerful way to persuade the persuadable. The one thing everyone agrees on is that the last 50 years have been a period of growth, not degrowth. In fact, growth has never been faster, except for the 25-year rebuilding period after World War II. The population and economic growth rates of the past half-century are remarkably fast by historical standards. Between 1800 and 1945, for example, the world’s economy grew less than 1.5 percent per year, on average. Between 1970 and 2019, that average increased to almost 3.5 percent.

It's natural to assume that, as this growth continued, every nation’s planetary footprint would only increase. After all, as people become more numerous and prosperous they consume more, and producing all the goods and services they consume uses up resources, takes over ecosystems, and generates pollution. The logic seems ironclad that our gains have to be the environment’s losses.

Easing Pollution, Not Exporting It

In some important areas, however, a very different pattern emerged after 1970: Growth continued, but environmental harm decreased. This decoupling occurred first with pollution, and first in the rich world. In the US, for example, aggregate levels of six common air pollutants have declined by 77 percent, even as gross domestic product increased by 285 percent and population by 60 percent. In the UK, annual tonnage of particulate emissions dropped by more than 75 percent between 1970 and 2016, and of the main polluting chemicals by about 85 percent. Similar gains are common across the highest-income countries.

How were these reductions achieved? The two possibilities are cleanup and offshoring. Either rich countries figured out how to reduce their “air pollution per dollar” so much that overall pollution went down even as their economies grew, or they sent so much of their dirty production overseas that the air at home got cleaner. The first of these paths reduces the total burden of human-caused pollution; the second just rearranges it.

The evidence is overwhelming that rich countries cleaned up their air pollution much more than they outsourced it. For one, a great deal of air pollution comes from highway vehicles and power plants, and rich countries haven’t outsourced driving and generating electricity to low-income ones. In fact, high-income countries haven't even offshored most of their industry. The US and UK both manufacture more than they did 50 years ago (at least until the Covid-19 pandemic sharply reduced output), and Germany has been a net exporter since 2000 while continuing to drive down air pollution. The rest of the world has been exporting its manufacturing pollution to Germany (to use degrowthers’ phrasing), yet Germans are breathing cleaner air than they were 20 years ago.

Rich countries have reduced their air pollution not by embracing degrowth or offshoring, but instead by enacting and enforcing smart regulation. As economists Joseph Shapiro and Reed Walker concluded in a 2018 study about the US, “changes in environmental regulation, rather than changes in productivity and trade, account for most of the emissions reductions.” Research about the cleanup of US waters also concludes that well-designed and enforced regulations have successfully reduced pollution.

It is true that the US and other rich countries now import lots of products from China and other nations with higher pollution levels. But if there were no international trade at all, and rich countries had to rely exclusively on their domestic industries to make everything they consume, they’d still have much cleaner air and water than they did 50 years ago. As a 2004 Advances in Economic Analysis and Policy study summarized: “We find no evidence that domestic production of pollution-intensive goods in the US is being replaced by imports from overseas.”

The rich world’s success at decoupling growth from pollution is an inconvenient fact for degrowthers. Even more inconvenient is China's recent success at doing the same. China’s export-led, manufacturing-heavy economy has been growing at meteoric rates, but between 2013 and 2017 air pollution in densely populated areas declined by more than 30 percent. Here again the government mandated and monitored pollution declines and so decoupled growth from an important category of environmental harm.

Prosperity Bends the Curve

China's progress with air pollution is heartening, but it's not surprising to most economists. It's a clear example of the environmental Kuznets curve (EKC) in action. Named for the economist Simon Kuznets, EKC posits a relationship between a country's affluence and the condition of its environment. As GDP per capita rises from an initial low level, so too does environmental damage; but as affluence continues to increase, the harms level off and then start to decline. The EKC is clearly visible in the pollution histories of today's rich countries, and it's now taking shape in China and elsewhere.

Also consider air pollution death rates around the world. As the invaluable website Our World in Data puts it, “Rates have typically fallen across high-income countries: almost everywhere in Europe, but also in Canada, the United States, Australia, New Zealand, Japan, Israel and South Korea and other countries. But rates have also fallen across upper-middle income countries too, including China and Brazil. In low and lower-middle income countries, rates have increased over this period.”

The EKC is a direct refutation of a core idea of degrowth: that environmental harms must always rise as populations and economies do. It's not surprising that today's degrowth advocates rarely discuss the large reductions in air and water pollution that have accompanied higher prosperity in so many places around the world. Instead, degrowthers now focus heavily on one kind of pollution: greenhouse gas emissions.

The claims made are familiar ones: that any apparent reductions in greenhouse gas emissions in rich countries are due to offshoring rather than actual decarbonization. Thanks to the Global Carbon Project, we can see if this is the case. GCP has calculated “consumption-based emissions” for many countries going back to 1990, taking into account imports and exports, yielding the greenhouse gas emissions embodied in all the goods and services consumed in each country each year.

For several of the world's richest countries, including Germany, Italy, France, the UK, and the US, graphs of consumption-based carbon emissions follow the familiar EKC. The US, for example, has 22reduced its total (not per capita) consumption-based CO2 emissions by more than 13 percent since 2007.

These reductions are not mainly due to enhanced regulation. Instead, they've come about because of a combination of tech progress and market forces. Solar and wind power have become much cheaper in recent years and have displaced coal for electricity generation. Natural gas, which when burned emits fewer greenhouse gases per unit of energy than does coal (even after taking methane leakage into account), has also become much cheaper and more abundant in the US as a result of the fracking revolution.

To ensure that these greenhouse gas declines continue to spread and accelerate, we should apply the lessons we've learned from previous pollution reduction success. In particular, we should make it expensive to emit carbon, then watch the emitters work hard to reduce this expense. The best way to do this is with a carbon dividend, which is a tax on carbon emissions where the revenues are not kept by the government but instead are rebated to people as a dividend. William Nordhaus won the 2018 Nobel Prize in economics in part for his work on the carbon dividend, and an open letter advocating its implementation in the US has been signed by more than 3,500 economists. It's an idea whose time has come.

How We Learned to Lighten Up

Tech progress and price pressure aren't just leading to the demise of coal. They're also causing us to exploit the planet less in many other important ways, even as growth continues. In other words, EKCs are not just about pollution any more.

A good place to start examining this broad phenomenon of getting more from less is US agriculture, where we have decades of data on both outputs—crop tonnage—and the key inputs of cropland, water, and fertilizer. Domestic crop tonnage has risen steadily over the years and in 2015 was more than 55 percent higher than in 1980. Over that same period, though, total water used for irrigation declined by 18 percent, total cropland by more than 7 percent. That is, over that 35-year period, US crop agriculture increased its output by more than half while giving an area of land larger than Indiana back to nature and eventually using a Lake Champlain less water each year. This was not accomplished by increasing fertilizer use; total US fertilizer consumption in 2014 (the most recent year for which data are available) was within 2 percent of its 1980 level.

The three main fertilizers of nitrogen, potassium, and phosphorus (NKP) are an interesting case study. Their total US consumption (once other uses in addition to agriculture are taken into account) has declined by 23 percent since 1980, according to the United States Geological Survey. Yet some within the degrowth movement find ways to argue that these declines are also an illusion. These materials thus serve to clearly illustrate the differences in methodology, evidence, and worldview between ecomodernists like myself and degrowthers.

The USGS tracks annual domestic production, imports, and exports of NKP and uses these figures to calculate “apparent consumption” each year. Consumption of each of the three resources has declined by 16 percent or more from their peaks, which occurred no later than 1998. This seems like a clear and convincing example of dematerialization—getting more output from fewer material inputs.

As I argue in my book More From Less, dematerialization doesn’t happen for any complicated or idiosyncratic reason. It happens because resources cost money that companies would rather not spend, and tech progress keeps opening up new ways to produce more output (like crops) while spending less on material inputs (like fertilizers). Modern digital technologies are so good at helping producers get more from less that they're now allowing the US and other technologically sophisticated countries to use less in total of important materials like NKP.

Forest products provide another clear example of dematerialization in the US. Total annual domestic consumption of paper and paperboard peaked in 1999, and of timber in 2002. Both totals have since declined by more than 20 percent. Could these be mirages caused by offshoring that’s not properly captured? That’s highly unlikely, as the country is now onshoring more than it’s offshoring. The US has been a net exporter of forest products since 2009 and is now the world’s largest exporter of these materials.

Is the US economy also dematerializing its use of metals? Probably, but it’s hard to say for sure. The USGS tallies do show dematerialization in steel, aluminum, copper, and other important metals. But these figures don’t include the metals contained in imports of finished goods like cars and computers. America is a net importer of manufactured goods, so it could be that we’re using more metal year after year, but that much of this consumption is “hidden” from official statistics because of imports of heavy, complex products. However, my estimates indicate that this is extremely unlikely and that the country is in fact now reducing its overall consumption of metals.

Constructing a Weak Argument

Degrowth exponent Jason Hickel responds to this broad evidence of dematerialization by making once again the shopworn argument that there are no real environmental gains; there’s only globalization of harms. Hickel has argued repeatedly that once offshoring is properly taken into account, dematerialization vanishes. How can this be, when tallies take into account imports and exports of raw materials like NKP, timber, and paper? Because, he contends, they don't take into account the true “material footprint” of production around the world.

At this point the degrowth argument departs from reality. I mean literally. As “The Material Footprint of Nations” (the main paper Hickel cites) states, material footprint measures do “not record the actual physical movement of materials within and among countries.” Instead, they’re derived from a “calculation framework [that] … enumerates the link between the beginning of a production chain (where raw materials are extracted from the natural environment) and its end.”

Material footprint models estimate the total weight of all the materials disturbed by humans around the world as they produce the goods they eventually consume. All of the ores mined to make metal, the rock quarried to make gravel, the sand scooped up to make glass and microchips—all of these are estimated by country by year in the material footprint calculation framework.

A nation’s material footprint, then, is always higher than its direct material consumption (DMC). This is straightforward enough. What’s puzzling is that according to “The Material Footprint of Nations,” some rich countries are seeing their footprint go up even as their consumption goes down. The paper shows that many countries are now dematerializing. DMC has been trending downward for some time in the US, UK, and Japan and may recently have peaked for the European Union and OECD as a whole. Yet in all these cases, the material footprint continues to rise.

How can this be? It’s not because the material footprint models do a better job than the USGS of accounting for the metals and other materials in finished goods imports. The technical annex for the global material flows database notes that, as is the case with the USGS tallies, “complex manufactured items are largely excluded.” Instead, the paper notes, “the main reason in most cases was increased indirect use of (dependency on) construction materials.”

This is problematic, because those materials are so poorly tracked. As the appendix states, “Many countries have no data on extraction of non-metallic minerals primarily used for construction … When they are available, they are often unreliable, partial, and underreported.” It’s a poor strategy to use sparse, low-quality data to overturn conclusions based on uniform, high-quality data, yet this is what Hickel is doing when he argues that material footprint calculations show dematerialization is an illusion.

There’s one other serious problem with this argument. It’s based largely on the estimated “raw material equivalents” of Chinese exports of construction minerals, yet China is not at all a big exporter of these minerals. Instead, China’s main exports are electrical and mechanical machinery, plastics, furniture, apparel, and vehicles. None of these contain a lot of sand, gravel, stone, or clay.

So then how do such huge quantities of these and other construction minerals end up somehow being counted among China’s exports? Because China is building a lot of factories, railroads, highways, and other industrial infrastructure each year. The materials footprint calculation framework estimates how much tonnage of construction minerals all this building requires, then allocates about one third of this tonnage to exports. So by this logic, the smartphones and solar panels the US imported from China in, say, 2018 “contain” some of the stone and gravel used to build up China that year. By that same logic, if my neighbors bring me a cake the same year they renovate their house, then my consumption of lumber, drywall, and copper pipe goes up as soon as I have a slice.

Hickel doesn’t stand on any firmer ground when he moves from conclusions to recommendations. He has often claimed that 50 billion tons is the maximum weight of global resource extraction that Earth can sustainably handle and that we’re already well past this limit. In the face of this alleged crisis, he maintains that “the only fail-safe strategy is to impose legally binding caps on resource use and gradually ratchet it back down to safe levels.” However, the paper he cites to support his views contains a frank admission: “There is still no hard scientific evidence of causal relationship between human-induced resource flows and the possible breakdown of life-supporting functions at continental or global scale from which … targets [like a 50 billion ton limit] could directly be derived.” Before taking the unprecedented step of setting up a central resource planning bureaucracy, it doesn’t seem like too much to ask for hard scientific evidence that it’s actually necessary.

Let’s Keep Climbing

Throughout our history, we humans have been climbing a difficult path toward longer, healthier, more prosperous lives. As we climbed that path, we turned the environment around it brown and gray. Our mania for growth was in many ways bad news for the planet we all live on.

Recently, however, we have figured out how to make our path a green one, how to continue to grow while reducing our impact on Earth. The world’s richest countries are also putting more land and water under conservation, reintroducing native species into ecosystems from which they had been hunted into oblivion, and improving Earth in many other ways.

For reasons that I don't understand well, and that I understand less the more evidence I look at, degrowthers want to make us turn around and start walking back down the path, away from higher prosperity. Their vision seems to be one of a centrally planned, ever-deepening recession throughout the rich world for the sake of the environment.

Thanks to Covid-19, we have an inkling of how this would feel. A “degrowth recession” wouldn't have the virus’ deaths and sickness, and it wouldn't require us to practice social distancing. But it would have all the economic contractions’ job losses, business closures, mortgage defaults, and other hardships and uncertainties. And it would have them without end—after all, growth can't be allowed to restart. Corporate and government revenue would decrease permanently, and therefore so would innovation and R&D.

How many of us would be willing to accept all of this in exchange for somewhat less pollution and resource use? To sharpen the question, how many of us would be willing to accept this recession if it wasn’t necessary—if it were clear that we could get environmental improvements while continuing to grow and prosper?

The ecomodernist argument is that that is in fact clear. Unlike the degrowth argument, it's supported by a great deal of evidence. What's at least important is that it will be supported by a great deal of the world's people, who will eagerly sign up to climb our new green path to prosperity.

## States CP

### 2AC/1AR – Preemption

#### CP is certainly preempted

O’Rourke ‘10 [Ken; 3/3/10; Senior Partner, O'Melveny & Myers LLP, an international law firm specializing in antitrust; “United States: The FTAIA In State Court: A Defense Perspective,” https://www.mondaq.com/unitedstates/trade-regulation-practices/95030/the-ftaia-in-state-court-a-defense-perspective?utm\_source=pocket\_mylist]

As federal courts tighten the reins on private antitrust actions, some antitrust plaintiffs are focusing their attention on litigating in state court. And they are being creative about how to avoid removal to federal court.1 Yet, as antitrust plaintiffs turn to state court and state law, they are likely to face some of the same federal doctrines they would prefer to avoid.

One federal doctrine sure to arise in state court antitrust actions when there are allegations or damages based on cross-border conduct is the Foreign Trade Antitrust Improvements Act ("FTAIA").2 The FTAIA defines the limits on the reach of the Sherman Act in cases involving foreign trade and commerce.

The FTAIA's parameters continue to evolve as litigants and the courts wrestle with new variations of the basic allegation that international price-fixing or overseas monopolistic conduct "caused" domestic injury on which a Sherman Act claim is based.

Congress enacted the FTAIA in 1982, some 92 years after the enactment of the Sherman Act. The FTAIA operates by "removing" anticompetitive conduct in foreign trade or commerce (other than import trade or import commerce) "from the Sherman Act's reach," unless that same conduct also causes direct, foreseeable and substantial injury to domestic trade or commerce within the United States, U.S. import commerce, or exporting activities of American exporters.3

A threshold question is whether these limitations similarly restrict the extraterritorial application of state antitrust laws. Defendants will argue that the state antitrust laws cannot permissibly extend to reach conduct or give rise to damages that Congress has placed beyond the reach of federal antitrust law under the FTAIA.

The defendants' argument goes like this. First, under the Supremacy Clause of the U.S. Constitution,4 federal law preempts state law even in the absence of an express preemption provision when, "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."5

Second, the FTAIA's legislative history establishes that Congress had multiple objectives when enacting the statute. One objective was to ensure that the risk of Sherman Act liability did not prevent American exporters and other firms doing business abroad from entering into advantageous "business arrangements (such as joint selling arrangements), however anticompetitive, as long as those arrangements adversely affect only foreign markets."6

Another objective was to eliminate "ambiguity in the precise legal standard to be employed in determining whether American antitrust law is to be applied to a particular transaction."7

Congress sought to adopt a "clear benchmark ... for businessmen, attorneys and judges as well as [U.S.] trading partners"8 with the "ultimate purpose" of "promot[ing] certainty in assessing the applicability of American antitrust law to international business transactions and proposed transactions."9

A third objective was to promote international comity by acknowledging and respecting the prerogatives of other nations to establish and apply their own standards for regulating and remediating alleged restraints of trade in their own markets.10

Congress believed that respecting such foreign sovereign regulatory prerogatives would ultimately best serve U.S. interests by "encourage[ing] our trading partners to take more effective steps to protect competition in their markets."11

Applying state antitrust laws to regulate foreign trade or commerce excluded from federal antitrust jurisdiction by the FTAIA arguably would frustrate every one of these objectives.

American exporters and other businesses engaged in foreign trade or commerce could have no confidence that restraints exempted from federal antitrust attack would not be subject to alternative antitrust attack under the laws of one or more U.S. states. Businesses, therefore, would be deterred from entering into arrangements that Congress intended to enable.

Likewise, ambiguity in the "standard to be employed" for assessing the extraterritorial application of "American antitrust law" would not only persist, but would be multiplied fifty times.

And the imposition of as many as 50 states' antitrust laws on foreign trade or commerce clearly would negate the federal objectives of international comity and respect for foreign regulation of foreign markets.

At every level then, the application of state antitrust laws to foreign trade or commerce exempted by the FTAIA from federal antitrust regulation would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the FTAIA.12

Plaintiffs likely will counter these preemption arguments by pointing out that there is a presumption against preemption and that Congress did not expressly overrule any state antitrust law when enacting the FTAIA.

True, Congress did not address the reach of state antitrust laws, one way or the other, when it enacted the FTAIA. However, the Sherman Act has always extended to "commerce with foreign nations,"13 and was subject to a large body of pre-FTAIA case law addressing the limitations on its extraterritorial reach.14

By contrast, state antitrust laws such as California's Cartwright Act do not expressly reference foreign commerce and have no comparable history of being applied to it.

Congress, therefore, had no cause to be concerned that states would attempt to apply state antitrust laws to foreign trade or commerce exempted from federal regulation by the FTAIA.

Even if there had been such a concern, Congress would have been amply justified in anticipating that the doctrine of implied obstacle preemption — well established when the FTAIA was enacted in 198215 — would resolve any conflict.16

### 2AC/1AR – Comity

#### State action wrecks international comity

Swaine ‘01 [Edward; Dec. 2001; Assistant Professor, Legal Studies Department, The Wharton School, University of Pennsylvania. A.B., Harvard; J.D., Yale; William & Mary Law Review; “The Local Law of Global Antitrust,” vol. 43, iss 2. https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1438&context=wmlr]

Apart from these cumulative and incremental concerns, the distinctive nature of state enforcement policies also makes heeding legitimate foreign interests more difficult. The states' sharpest critics accuse them of being motivated by treble damages" 5 or even craven political opportunism.1 6 Viewed more benignly, states are certainly attuned to public policy considerations other than consumer welfare, such as local employment and local competitors." 11 Even where this happens to coincide with foreign enforcement philosophies, state promotion of such values is unlikely to spill over to foreign jurisdictions, and neither are any innovations state-based experimentation may generate in the administration of U.S. antitrust law; foreign parties, for their part, may feel particularly vulnerable to the more subjective elements of state antitrust analysis.51 s Finally, even where state and foreign enforcers agree that particular conduct or a particular transaction poses antitrust concerns, conflicts may arise over state cherrypicking. 19

The Hartford Fire case hints at some of the problems. The lawsuit arose after local governments, experiencing difficulties in obtaining liability coverage, complained to their state attorneys general, who filed suit when the federal government declined to take action.520 According to the states, the federal government's inaction was due to its flawed analysis of the prospects for collusion in the insurance industry.21 To the foreign insurers and their governments, on the other hand, the states' intervention was politically tinged, and observers considered the lawsuit as one part of the tort reform movement.5 22 The result, in any event, was that the domestic and foreign insurers paid the states $36 million to settle the claims after the Supreme Court decision, including the costs of the states' legal action.5"

Particularly in the wake of Hartford Fire, state authority seems likely to make national compliance with antitrust comity more difficult. Cooperative investigations and information sharing may pose some difficulties.5 2' Conflicts seem more likely regarding enforcement and remedial matters. Because states have different visions of the public interest and different constituencies, they may find it difficult to coordinate with the federal government and its foreign counterparts-even assuming that they can cooperate among themselves. The conflict is inherent. States tend to enhance the total stability of U.S. enforcement policy over time, thus making it more predictable for foreign firms and antitrust authorities alike.52 But this is of diminished benefit in international matters, as the proliferation of foreign antitrust authorities, and expanded notions of foreign antitrust jurisdiction, make it likely that global practices and transactions will be caught by more than one national authority. More to the point, this internal complementarity, which tends to ensure a constant level of American antitrust enforcement, diminishes the ability of the U.S. government to ensure external complementarity, such as by suspending antitrust enforcement in deference to foreign authorities tendering a request for traditional comity. 27 Even if that has not measurably slowed bilateral agreements and the development of a comity principle, it may retard deeper efforts at cooperation, 2 ' and even endanger continued observance of already precarious norms.

## ConCon CP

## ICN CP

### Top

### 2ac

#### Biden’s trade nationalism will block international approaches

**Bose 2020** - associate professor at Jindal Global Law School   
Avirup and James J Nedumpara, "Under Joe Biden, status quo on trade policy?," Dec 29, <https://www.msn.com/en-in/news/world/under-joe-biden-status-quo-on-trade-policy/ar-BB1ciTfN>

Tariff protections and grey area measures surged during Trump's administration. Biden might drop tariffs against allies like the European Union, but to what extent Biden will push forward an EU trade deal is hard to predict. Given the Biden campaign's protectionist rhetoric around 'Buy American’, one might safely conclude that his administration will not be as pro-free trade as the EU would prefer. Additionally, the two powers would have a major disagreement on how best to deal with China or to address some of the emerging trade issues such as e-commerce and trade facilitation, where the EU and China are part of the plurilateral group.

The US trade policy under Biden will continue to be increasingly influenced by China. The US was able to stem, albeit temporarily, the increasing trade deficit with China. Yet, the Phase-one trade deal between China and the US, signed in the midst of the pandemic, remains a piece of paper without real implementation. In his recent interview with the Times, Biden said he would not immediately scupper the trade agreement Trump reached with China in January. Further, Biden seems comfortable with decisions of the Trump administration, with experts predicting that Biden will not lift the tariffs against China. Another area where Biden's USTR will benefit from Trump's policy will be reforms in the areas of subsidies, forced technology transfer, notification requirements, and judicial overreach in trade adjudication.

#### Does not solve indigenous regimes – no expertise.

**Jung ’0** [Youngjin; Deputy Director, Ministry of Foreign Affairs and Trade, Republic of Korea; Member of the Korean Bar; LL.M. candidate, Yale Law School; LL.M. (1996), LL.B. (1991), Seoul National University; *Kluwer Law International,* “Modelling a WTO Dispute Settlement Mechanism in an International Antitrust Agreement,” <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.195.9171&rep=rep1&type=pdf>; KS]

C. MINIMAL APPROACH62

Professor Fox has proposed another framework agreement, the **minimal approach**. The minimal approach assumes a **broad discretion** of each country to **formulate** its own **antitrust regime** and **enforcement system**. It is an attempt to introduce general substantive provisions into an international antitrust regime, and thus is the approach that **most nations** could probably **reach an agreement on**. Unlike the building approach, it does not pursue as a future and long-term objective a detailed international antitrust regime. The minimal approach places emphasis on the unique features of the antitrust sector that are **distinct** from the traditional trade sector.

Professor Fox starts her analysis by identifying the current and possible **friction** existing among countries, and states that the **major tension** between **trade** and **antitrust sectors** arises from the **non-enforcement** of the **antitrust law**. She believes that the non- enforcement of the antitrust law on such areas as **cartels** with boycott, vertical agreements or collaborations that tend to exclude market actors, and monopolistic discrimination and exclusion is likely to create market access problems.63 Her suggestion does not focus on making detailed market access rules, but, rather, contains general obligations, e.g. that there should be no substantial unjustified market blockage by public or private action.64 In this respect, this approach has a **strong edge** over other approaches in that this approach actually does not attempt to codify specific criteria for alleged anticompetitive behaviour such as dominant position, vertical restraints, and merger. Rather, it focuses on **improvement** of **enforcement system** of **individual countries** through the **incorporation** of **WTO principles** such as **non-discrimination** and **transparency**.

Professor Fox has **no special preference** for the WTO in formulating her suggestion. In fact, as far as the function of a dispute settlement panel is concerned, she seems to prefer a **separate chamber** equipped with various enforcement tools. She suggests that the panel could be entrusted with the authority to issue an order to a nation to enforce its national law; when a nation’s enforcement interferes unduly with competition, the panel could then issue an order of noninterference.65 It is true that this **special competence** reflects a **practical experience** with the **antitrust** case, but it is **hardly anticipated** that the **current WTO Dispute Settlement Body** is able to **accommodate** such a function as in a national court.

At this juncture, it needs to be examined whether an international panel could perform adequately under the market access rule suggested by Professor Fox. She envisages her market access rule as a kind of trade policy code. Henceforth, an international panel also is supposed to decide a case before it from the perspective of trade policy. However, it is **debatable** whether the suggested criterion for the **operation** of the **WTO dispute settlement** could **truly break down market access barriers**.66 Basically, even if WTO member countries should agree to shoulder a general market access obligation, it is **not easy** to **identify legal criteria** for a **market access rule**. Though the WTO panel may be advised to adopt as a test “world efficiency” rather than “total national welfare”,67 it is hardly anticipated that the WTO panel will manage to measure the former. This is all the more true in light of the fact that so far even domestic courts have been unable to establish a clear economic and legal test. More fundamentally, WTO panels are **not accustomed** to **using a welfare test**, like for a economic efficiency, for which measurement should be carried out under a **traditional antitrust mechanism**. As mentioned earlier, the WTO panels have been **very hesitant** to **adopt** an **antitrust market analysis**.



#### Comity produces convergence – increases business certainty, investments, and innovation.

Ginsburg & Taladay ’18 [Douglas and John; September 28; Senior Judge, United States Court of Appeals for the District of Columbia Circuit, Chairman of the Global Antitrust Institute’s International Board of Advisors, and a former Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice; Partner and Co-Chair of the Antitrust and Competition Law Practice at Baker Botts LLP, Chair of the Business and Industry Advisory Committee to the OECD’s Competition Com- mittee, Chair of the United States Council for International Business Competition Committee, and Co- Chair of the ABA Section of Antitrust Law’s Procedural Transparency Task Force; *George Mason Law Review,* “THE ENDURING VITALITY OF COMITY IN A GLOBALIZED WORLD,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3257019>; KS]

Without comity as an effective tool to avoid tensions, divergent reme- dies by different competition agencies are likely to lead to poor enforcement outcomes. Not only will they give rise to increased costs and inefficiencies for agencies and businesses, they ultimately will impede business certainty, and result in diminished investments and reduced innovation. This means everyone loses—businesses, antitrust enforcement agencies, and consumers.

## BBB DA

### Won’t Pass---2AC

#### BBB’s dead---no formal negotiations.

**Fram ’2-2-22** [Alan; AP NEWS, “Manchin, key Dem, says Build Back Better bill is 'dead',” https://apnews.com/article/joe-biden-business-environment-and-nature-environment-joe-manchin-c2e743dbb3978a9e780779fa4fec09b7?utm\_medium=AP&utm\_campaign=SocialFlow&utm\_source=Twitter]

WASHINGTON (AP) — Sen. Joe Manchin declared Tuesday that President Joe Biden’s vast social and environment bill is “dead,” using his strongest language to date to underscore that any revival of Democrats’ top domestic priorities would have to arise from fresh negotiations.

Manchin, D-W.Va., said in December that he couldn’t support the version of the legislation as written. That essentially doomed the 10-year, roughly $2 trillion measure that had already passed the House because his party must have Manchin’s vote in the 50-50 Senate.

“What Build Back Better bill?” Manchin said Tuesday, using the legislation’s name, when reporters asked about it. “There is no, I mean, I don’t know what you’re all talking about.” Asked if he’d had any talks about it, he added, “No, no, no no. It’s dead.”

As he has in the past, Manchin said he remains open to talks. On Monday, he told reporters there hadn’t been any formal negotiations yet.

### Link---PC Fails---2AC

#### Political context, not capital explains passage. True for Biden---empirics and polarization prove.

Telingator '21 [Ryan; 5/20/21; B.A. in Political Science and Government from Bowdoin University; "When is Change Possible? Presidential Power as Shaped by Political Context, Constitutional Tools, and Legislative Skills," https://digitalcommons.bowdoin.edu/honorsprojects/258/]

My research does not support Greenstein’s theory. Instead, my findings align more closely with those of George Edwards in At the Margins, where he argues that the “national preoccupation with the chief executive is misplaced,” and that presidential power is, in fact, limited in the Constitution’s “purposefully inefficient system in which the founding fathers’ handiwork in decentralizing power defeats even the most capable leaders.”50

Instead of focusing on legislative skills as a source of presidential influence, Edwards argues that party support and public support are more important. Legislative skills are only critical for “members of Congress who remain open to change after other influences have had their impact.”51 In a time as polarized as today, where very few members of Congress are “open to chang[ing]” their vote, these skills play a minor role in legislative negotiations. Similar assertions are made in another book by Edwards, Predicting the Presidency. He argues that exploiting existing opportunities (consolidating existing party and public support) is much more important for presidential success than creating opportunities (convincing legislators to change their vote vis a vis legislative skills).52

Both Lyndon Johnson and Ronald Reagan are remembered for their exemplary political skills. The Johnson Treatment, a legislating strategy in which Johnson used his imposing 6’4”, 240-pound figure – literally physically and verbally bullying, cajoling, lobbying, and threatening – to get what he wanted out of people,53 remains infamous in presidential political literature. Similarly, Ronald Reagan, “The Great Communicator,” is still revered for his oratorial prestige. Although these legislative skills were useful in passing the pieces of legislation outlined in the case studies – Johnson gaining support from southern Democrats on the EOA and Reagan compellingly speaking in favor of the ERTA – they proved impotent in political contexts not conducive to change. After Vietnam for Johnson and after the passage of the ERTA for Reagan (in conjunction with the recession in 1982), the presidents’ policy windows closed. Their renowned legislative skills could not overcome an inopportune political context.

The case studies thus demonstrate the value of skills at the margins, but also exemplify their unsubstantial influence as the major factor driving policy. Again, the research suggests that political context is the most important factor in legislative change.

5.4 Applying Lessons to the Present: Predicting Biden’s Success

With an understanding that the political context largely drives a president’s potential for change, with skills helping on the margins, it is important to assess the 2021 political climate in order make an informed prediction about Biden’s prospects.

The COVID-19 pandemic opened a significant policy window for Biden. With a U.S. death toll nearing 580,000, massive unemployment, and a severe economic contraction, the pandemic was an all-encompassing problem that the entire country wanted addressed. Thus, the three streams of problem, policy, and politics converged to open the opportunity for the Biden administration to pass the American Rescue Plan. The Rescue Plan was signed into law in March and has received bipartisan support from the American public.54

President Biden claimed a mandate from his election, arguing that “millions of Americans” “voted for [his] vision,” giving “a clear victory” and tasking him to make his “vision real.”55 However, based on the extreme polarization in D.C., it is unlikely to become a quantifiable mandate that changes Congressional voting behavior.56 Polarization has made it impossible to win cross-party support, or, in Edwardsian terms, create new opportunities. There is deep political antagonism between parties, and even within parties,57 making any sort of bipartisanship near impossible.

## Clog DA

### UQ

#### Courts perma clogged.

Solomon '21 [Aron; 6/4/21; head of digital strategy for Esquire Digital and an adjunct professor of business management at the Desautels Faculty of Management at McGill University; "The Viral Court Backlog and How to Dig Out Post-Pandemic," https://www.law.com/thelegalintelligencer/2021/06/04/the-viral-court-backlog-and-how-to-dig-out-post-pandemic//]

Just over a year ago, if you would have asked an experienced judge or lawyer to imagine the litigation and jury trial backlog if a global pandemic were to sweep through the nation, they first would have probably told you that your morbid scenario wasn’t funny and that the courts would never be able to dig out.

This is precisely where we find ourselves today. Throughout state and federal courts, for both civil and criminal cases, we are in an infinitely worse position than we were when the pandemic began. The threshold issue today is how we dig ourselves out before the system implodes.

In New Jersey, the court system has a massive backlog that isn’t going to be cleared anytime soon. Michael J. Epstein, founder of New Jersey-based The Epstein Law Firm, has seen the dramatic effect the pandemic has had on the New Jersey court system.

“Earlier this year, the backlog in New Jersey courts was twice what it was before the pandemic. There is a better chance that the backlog will double once again before it improves, yet there is really no easy answer to get our courts out of the current situation. It’s not just civil cases— there is also a backlog in New Jersey for criminal cases as well.”

Part of the problem is that jurisdictions such as New Jersey that have already relaxed restrictions on court appearances are now dealing with an aggressive third wave of the virus, with a fourth wave has begun to take hold in some parts of the world. When its effects are felt in the court system, it could again grind things to a complete halt and make the backlog exponential.

There are ways technology can play an expanded role this time around, compared to the slow start we had in 2020. But, especially in criminal matters, technology is limited by what it can’t replicate—the guarantees afforded people to appear in person at a trial. Many jurisdictions (including parts of Texas and California) are neither technologically equipped to handle remote jury trials nor can make them happen without the consent of defendants.

While courts and judicial systems have improved over the past year at planning, training their staff, and even investing in the right technologies to keep things moving when and where possible, no courts are equipped with functional crystal balls. Yet the power of accurate foresight is what is needed most to get things back on track in our national system of functional and fair trials.

Perhaps there is no better national example of how the gears powering the court systems have ground to a halt than in the city of New York. The New York Times reported in December that there have been only nine criminal trials in nine months. If that seems like a very small number, it is—the norm would be around 800 trials.

The direct cost of this is obviously much more severe in criminal proceedings. As highlighted in the New York Times piece, there is a profound human cost to these delays:

“Is it fair for people to be languishing in pretrial detention and presumed innocent with no prospect of a trial in the future for them?” said New York’s chief administrative judge, Lawrence K. Marks. “A criminal justice system cannot be, in any sense of the word, fully functioning, if it is not conducting jury trials.”

The logistical nightmares aren’t going away soon and they are going to take the daily hard yards that attorney Epstein describes. “I know that New Jersey lawyers are able and willing to help in any way that we can and I would expect my colleagues in other states to feel exactly the same way. Our clients can’t afford further delays, as this deeply impacts justice.”

This is the case throughout the nation, as the same factors that have created the backlog persist. In both civil and criminal trials, the absence of critically important participants in the case because of lockdown and illness may get worse before it gets better.

### Antitrust Litigation/Rulings Now

#### Antitrust litigation in federal courts increasing now – Epic v Apple ruling

Robertson 9/12/21 (Adi, staff @ The Verge, "A COMPREHENSIVE BREAKDOWN OF THE EPIC V. APPLE RULING," https://www.theverge.com/2021/9/12/22667694/epic-v-apple-trial-fortnite-judge-yvonne-gonzalez-rogers-final-ruling-injunction-breakdown)

Mobile games are a huge part of Apple’s App Store revenue — approximately 70 percent, according to the ruling — and Apple has outsized power in mobile gaming. Gonzalez Rogers concludes iOS and Android hold a near-duopoly, although she considers the Nintendo Switch and cloud gaming services potential near-future competitors. The ruling estimates that Apple has a share of around 55 percent in the mobile game transactions market, alongside “extraordinarily high profit margins,” which can be a sign of monopoly power.

But despite Apple’s “considerable” power and profit margins, “these factors alone do not show antitrust conduct. Success is not illegal,” Gonzalez Rogers concludes. While Epic argued that iMessage and other factors deliberately lock users into iOS, Gonzalez Rogers wasn’t convinced by this line of reasoning.

The ruling leaves the door open for future antitrust complaints. “The evidence does suggest that Apple is near the precipice of substantial market power, or monopoly power, with its considerable market share,” Gonzalez Rogers writes. “Apple is only saved by the fact that its share is not higher, that competitors from related submarkets are making inroads into the mobile gaming submarket, and, perhaps, because [Epic] did not focus on this topic.”

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### Wave of Litigation = Fallacy

#### Wave of litigation arguments are fallacious and aren’t supported by data

Stern 3 (Toby, JD Candidate @ Univ of Pennsylvania, "FEDERAL JUDGES AND FEARING THE "FLOODGATES OF LITIGATION"," https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1346&context=jcl)

My nonconstitutional argument (which I refer to as my "prudential" case against the floodgates) points out the argumentative holes that exist in common usages of the floodgates argument. First, I criticize floodgates arguments because they are not accompanied by an analysis tending to demonstrate that a certain judicial decision would, in fact, lead to a high amount of new federal court litigation. Second, I observe that the floodgates argument is almost never the central component of its proponent's legal argument. I question the necessity of this seemingly ancillary argument (especially considered alongside the argument's other flaws). My third prudential criticism is that use of this flawed argument is often seen as pretext for other considerations. One concern is that the argument might simply be pretext for reducing the burden of the high federal caseload on a judge arguing against opening the floodgates. As such, it calls into question, as Judge Posner puts it, the "perceived legitimacy" of that judge's role. Finally, I note the problem of consistency: even if judges were to carefully explain why they believed that a certain decision would lead to a rash of litigation, there is no touchstone for what constitutes a mere acceptable rise in caseload and what constitutes a flood of litigation so heavy that it should alter the outcome of a case.

## China

### Defense---AT: China Tech---2AC

#### No China tech threat---standard setting’s too competitive for China to dominate.

Swaine '21 [Michael; 4/21/21; PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute; "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/]

Some observers claim that Beijing could somehow set standards in critical technology areas and install tech hardware around the world, to the extent that China would be able to relegate the United States to a permanently inferior status in both the commercial and military realms, thus threatening the very existence of the country. This is also highly unlikely.

Chinese companies are certainly participating in standard-setting in key areas, including 5G. But this process is highly competitive globally, and U.S., Asian, and European companies all hold major portions of the standards and the standard-essential patents that undergird the global technology ecosystem. There is little if any chance that Chinese companies could come to dominate this process. Many tech experts state that the most likely worst-case outcome of Chinese gains regarding standards and hardware would be a fragmented technology ecosystem that would impoverish all countries, not give China a level of power that would enable it to vanquish the United States.

### Defense---AT: China Rise---2AC

#### No China rise or war.

Swaine '21 [Michael; 4/21/21; PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute; "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/]

There is no doubt that Beijing’s behavior in many areas challenges existing U.S. and allied interests and democratic values. Particularly under Xi Jinping, China has used its greater economic and military power to intimidate rival claimants in territorial disputes and punish nations that make statements or take what Beijing views as threatening or insulting actions. It has engaged in extensive commercial hacking and theft of technologies and favors military intimidation over dialogue in dealing with Taiwan. And it has employed draconian, repressive policies in Tibet and Xinjiang and suppressed democratic freedoms in Hong Kong.

This deeply troubling behavior certainly requires a strong, concerted response from the United States and other nations. But to be effective, such a response also requires an accurate assessment of China’s future impact on the United States and the world.

And in this regard, it is extremely counterproductive to U.S. interests to assert or even imply, as many now do, that the above Chinese actions constitute an all-of-society, existential threat to the United States, the West, and ultimately the entire world, thereby justifying a Cold War-style, zero-sum containment stance toward Beijing. Such an extreme stance stifles debate and the search for more positive-sum policy outcomes while leading to the usual calls for major increases in defense spending.

In fact, there isn’t much actual evidence to support the notion of China as an existential threat. That does not mean that China is not a threat in some areas, but Washington needs to approach this issue based on the facts, not dangerous rhetoric. Unfortunately, right-sizing the challenges that China poses seems to be an impossible task for Washington.

In the most basic, literal sense, an existential threat means a threat to the physical existence of the nation through the possession of an ability and intent to exterminate the U.S. population, presumably via the use of highly lethal nuclear, chemical, or biological weapons. A less conventional understanding of the term posits the radical erosion or ending of U.S. prosperity and freedoms through economic, political, ideational, and military pressure, thereby in essence destroying the basis for the American way of life. Any threats that fall below these two definitions do not convey what is meant by the word “existential.”

As a military power, China has no ability to destroy the United States without destroying itself. China’s nuclear capabilities are far below those of the United States, and its conventional military, while regionally potentially powerful, has a fraction of the budget of that of the United States.

Some argue that China could militarily push the United States out of Asia and dominate that region, denying the country air and naval access and hence support for critical allies. This would presumably have an existential impact by virtue of the supposedly critical importance of that region to the stability and prosperity of the United States. Yet there are no signs that Washington is losing either the will or the capacity

to remain a major military actor in the region and one closely connected to major Asian allies, which are themselves opposed to China dominating the region. In reality, the greater danger in Asia is that Washington could so militarize its response to China that its actions and policies become repugnant even to U.S. allies.

This leaves the unconventional threats. Here they are presumably twofold: economic and technological, and in the realm of ideas and influence operations within the United States and other Western countries, including the export of China’s so-called “model” of authoritarian rule to the rest of the world.

The former threats would presumably consist of China attaining a level of total superiority over both economic and technological levers of influence globally and with regard to the United States (perhaps combined with a successful military blocking of U.S. sea lines of communication) that would so impoverish the country as to threaten its existence as a stable and prosperous democracy and bring it under Chinese control. Presumably, the specific basis of such leverage would consist of near-absolute global Chinese dominance over both trade and investment relations and supply chains with the United States and other countries and over all the key technologies driving future growth and military capabilities.

It is virtually inconceivable that China could achieve such a level of dominance over the United States. The United States possesses abundant energy, human, technological, and other resources; a huge and dynamic domestic market; enormous levels of accumulated wealth and capital stocks; and the globe’s financial reserve currency.

In contrast, while China boasts a highly entrepreneurial and dynamic workforce, it labors under major structural and political constraints such as insufficient arable land, a rapidly aging society, a heavy reliance on energy imports, and stifling ideological and state-centered controls across society.

Beijing has certainly used its economic leverage (such as market access) to pressure foreign companies and governments to support Chinese policies or stop what it regards as unacceptable behavior, e.g., regarding Taiwan. While such economic coercion is by no means unique to China, it certainly can erode freedom of speech, thus threatening one of democracy’s core principles. But this hardly rises to the level of an existential threat to American values, given both the limited reach of Chinese economic power and the countervailing global economic power and political influence of democratic states.

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### Cap good

#### The spread of liberal capitalist economies is the best explanation for current levels of unprecedented global peace.

**Gat, 19**—professor of national security and international politics at the University of Tel Aviv (Azar, “Is War Declining: Why and Where?,” Anali 16 (1) 201-208 (2019), dml)

Most people are very surprised by the claim that we live in the **most peaceful period** in history. Are we not flooded with media reports and images of conflicts around the world today, some of them very active and bloody, and others seemingly waiting to happen? Have the United States and its allies not been involved in a series of **messy wars** over the past few decades? Scholars, for their part, ask themselves, if there has indeed been a **decline** in belligerency, when exactly did it **begin**: with the end of the Cold War, in 1945, or perhaps earlier? And what exactly caused it?1

Again, most people are surprised to learn that the occurrence of war and overall mortality rate in war sharply decreased from as early as **1815** onward, especially in the developed world. The so-called **Long Peace** among the great powers after 1945 is **more recognized**, and is widely attributed to the **nuclear factor**, a decisive factor to be sure, which concentrated the minds of all the protagonists wonderfully, as they say about the hanging rope. The (inter-)**democratic peace** has been equally recognized. However, the decrease in war had been very marked even **before** the nuclear era, and has encompassed **nondemocracies** as well as democracies. In the century after 1815, wars among industrializing countries **declined** in their frequency to about a **third** of what they had been in the previous centuries, an **unprecedented** change. Compared to their record during the eighteenth century, Austria and Prussia, for example – neither of them a democracy – fought about a third to a quarter as much during the century after 1815.

Indeed, the Long Peace after 1945, more than 70 years to date and counting, was preceded by the **second longest** peace ever among the modern great powers, between 1871 and 1914, **43** years in all; and by the **third** longest peace, between 1815 and 1854, **39** years. Thus, the **three longest periods of peace by far** in the modern great powers system have all occurred **after 1815**, with the first two taking place **before** the nuclear age. This striking phenomenon **cannot** be accidental. A decline in belligerency began from 1815, not 1945 or 1989. Clearly, one needs to explain the entire period of reduced belligerency since 1815, while also accounting for the glaring divergence from the trend: the two world wars.

There is a tendency to assume that wars have declined in frequency during the past two centuries because they have become **too lethal**, **destructive** and **expensive** – **fewer** but **more ruinous** wars. This hypothesis **barely holds**, however, because relative to population and wealth wars have **not** become more lethal and costly than earlier in history. The wars of the nineteenth century, from 1815 to 1914 – the most peaceful century in European history – were in fact particularly light, in comparative terms. Prussia won the German Wars of Unification in short and decisive campaigns and at a remarkably low price, and yet Germany did not fight again for 43 years. True, the world wars, especially World War II, were certainly on the upper scale of the range in terms of casualties. Yet, contrary to widespread assumptions, they were **far** from being exceptional in history. We need to look at relative casualties, general mortality rates in wars, rather than at the aggregate created by the fact that many states participated in the world wars.

For example, in the Peloponnesian War (431-403 BC) Athens is estimated to have lost between a quarter and a third of its population, more than Germany in the two world wars combined. In the first three years of the Second Punic War (218-216 BC), Rome lost some 50,000 male citizens of the ages of 17-46, out of a total of about 200,000 in these ages. This was roughly 25 percent of the military age cohorts in only three years, the same range as the Russian military casualties and higher than the German rates in World War II. Similarly, in the thirteen century the Mongol conquests inflicted on the societies of China and Russia casualties and destruction that were among the highest ever suffered during historical times. Even by the lowest estimates casualties were at least as high as, and in China almost definitely far higher than, the Soviet Union's horrific rate in World War II of about 15 percent of its population. A final example: during the Thirty Years War (1618- 1648) population loss in Germany is estimated at between a fifth and a third – either way again higher than the German casualties in the First and Second World Wars combined.

People often assume that more developed military technology during modernity **must** mean greater lethality and destructiveness, but in fact it also means **greater protective power**, as with mechanized armour, mechanized speed and agility, and defensive electronic measures. Offensive and defensive advances generally rise in **tandem** and tend to **offset** each other. In addition, it is all too often forgotten that the vast majority of the many millions of non-combatants killed by Germany during World War II – Jews, Soviet prisoners of war, Soviet civilians – fell victim to intentional starvation, exposure to the elements, and mass executions rather than to any sophisticated military technology. Instances of genocide in general during the twentieth century, much as earlier in history, were carried out with the **simplest** of technologies, as the Rwanda genocide horrifically reminded us.

**Nor** is it true that wars during the past two centuries have become **economically more costly** than they were earlier in history, again relative to overall wealth. War **always** involved massive economic exertion and was the single most expensive item of state spending. Both sixteenth and seventeenth centuries Spain and eighteenth century France, for example, were economically ruined by war and staggering war debts, which in the French case brought about the Revolution. Furthermore, death by starvation in premodern wars was widespread.

Another strand of interpretation of the perceived decrease in warfare during recent times has posited voluntary and ideaic factors, has attributed the decline of warfare during recent times to a social 'attitude change'. Why this attitude change should have occurred at this point in history rather than any time earlier is not explained. After all, most powerful moral doctrines such as Buddhism and Christianity decried war for millennia without this having any noticeable effect.

It is suggested that people have suddenly become aware that war is senseless if not crazy, devoid of any rationale. Such a view of war is widespread in today's modern and affluent world. In the discipline of international relations so-called realists, especially ‘defensive realists’, even claim with a straight face that countries have never gained from war because of the balancing effect that contain rising powers. Try this strange idea on Rome, the Aztecs or Inca, the Ottomans, the Mughals or eighteenth century Britain, to name but a few out of many examples. Or on Chinggis Khan, whose descendants constitute, according to genetic studies, 8 percent of all males in Eastern and Central Asia, evidence of staggering sexual opportunities enjoyed by his sons and grandsons whose houses ruled over that part of the world for centuries.

And you should not think that only autocrats and military aristocracies profited from war, while the people were its unwilling victims. This idea was advanced during the Enlightenment and is very popular today. However, it ought to be remembered that the two most successful war-making states of classical antiquity were democratic Athens and republican Rome. And they were so successful precisely because the people of these polities benefited from war and imperial expansion, championed them, and enlisted in their cause. Half of the Athenian budget at the time of Pericles came from the tribute of the Empire which was used to build the Acropolis and pay for the huge navy, in both of which the demos was employed.

We said before that in pursuit of their aims people may resort to cooperation, peaceful competition, or violent conflict. Each of these behavioral strategies is a well-designed tool interchangeably employed, depending on the particular circumstances and prospects of success. Thus, to understand the gravitation of human choices – and norms – from violent conflict towards the non-violent options of cooperation and peaceful competition one needs to understand the changing circumstances and calculus of cost-effectiveness during the past two centuries and in recent decades.

So if modern war has not become more lethal and expensive, why the decline? Two main theories dominate the scene: the democratic peace and the capitalist/trade peace. But, in and of themselves they cannot be the complete answer because of the following, contradicting historical evidence: premodern democracies and republics actually did fight each other; nondemocratic great powers also shared in the general reduction in belligerency during modern times, from 1815 on, including communist powers that largely opted out of the global trade system; until the nineteenth century states tried to monopolize trade by force and bar all others out rather than share with them – think ancient Athens, medieval Venice, early modern Holland, France and Britain, and many others.

What then is the **cause** of the decline in belligerency? Even before the middle of the nineteenth century, thinkers such as Saint-Simon, Auguste Comte, and John Stuart Mill, who were quick to note the change, realized that it was caused by the advent of the **industrial-commercial revolution**, the most profound transformation of human society since the Neolithic adoption of agriculture. In the first place, given **explosive growth** in per capita wealth, about 30 to 50-fold from the onset of the revolution to the present, the Malthusian trap has been **broken**. Wealth no longer constitutes a **fundamentally finite** quantity, when the only question is how it is divided, so wealth acquisition progressively shifted **away** from a zero-sum game.

Secondly, the significance of **trade** in the economy has **ballooned** to entirely new dimensions precisely because of the new process of industrial growth. Greater freedom of trade has become all the more attractive in the industrial age for the simple reason that the overwhelming share of fast-growing and diversifying production has now been intended for sale in the marketplace rather than for direct consumption by the family producers themselves. During industrialization, advanced powers' foreign trade increased twice as quickly as their fast growing GDPs, so that by the beginning of the twentieth century, exports plus imports grew to around half of GDP in Britain and France, more than onethird in Germany, and around one-third in Italy and Japan. Consequently, economies are **no longer** overwhelmingly autarkic, having become **increasingly interconnected** by specialization, scale and exchange. Foreign devastation potentially depresses the **entire system** and is **detrimental** to a state's own wellbeing. What Mill discerned in the abstract in the 1840s, was repeated by Norman Angel during the first global age before World War I, and formed the cornerstone of John Maynard Keynes' criticism of the harsh reparations imposed on Germany after that war.

Greater economic openness has **decreased the likelihood of war** also by disassociating economic access from the confines of political borders and sovereignty. It is **no longer necessary** to politically possess a territory in order to benefit from it. Of all these factors, commercial interdependence has attracted most of the attention in the scholarly literature. But both the escape from Malthus with rapid industrial growth and open access have been no less significant aspects of what I call the Modernization Peace.

Thus, the **greater the yield** of competitive economic cooperation, the **more counterproductive** and **less attractive** conflict becomes. Rather than war becoming more costly, as is widely believed, it is in fact **peace** that has been growing **more profitable**.

If so, why have wars continued to occur during the past two centuries, albeit at a much lower frequency? In the first place, ethnic and nationalist tensions often **overrode** the logic of the new economic realities, accounting for most wars in Europe between 1815 and 1945. They continue to do so today, especially in the less developed parts of the globe. Moreover, the logic of the new economic realities **receded** during the late nineteenth and early twentieth centuries, as the great powers resumed **protectionist policies** and expanded them to the undeveloped parts of the world with the New **Imperialism**. This development signalled that the emergent global economy might become **partitioned** rather than **open**, with each imperial domain becoming closed to everybody else, as, indeed, they eventually did in the 1930s, with the Great Depression. A **snowball effect** ensued, generating a **runaway grab for imperial territories**. For the territorially confined Germany and Japan the need to break away into imperial Lebensraum or 'co-prosperity sphere' seemed particularly pressing. Here lay the seeds of the **two world wars**. Furthermore, the retreat from **economic liberalism** in the first decades of the twentieth century spurred, and was spurred by, the rise to power of **anti-liberal** and **anti-democratic political ideologies** and **regimes**, incorporating a creed of violence: **communism** and **fascism**.

Since 1945 the decline of major war has **deepened further**. Nuclear weapons have been a **crucial factor** in this process, but **no less significant** have been the institutionalization of **free trade** and the closely related process of **rapid** and **sustained economic growth**. The spread of liberal democracy has been **equally potent**. Indeed, although nonliberal and nondemocratic states also became much less belligerent during the industrial age, it is the liberal democracies that have been the **most attuned** to its pacifying aspects.

Relying on **arbitrary coercive force** at home, nondemocratic countries have found it **more natural** to use force abroad. By contrast, liberal democratic societies are socialized to **peaceful**, **law-mediated relations** at home, and their citizens have grown to **expect** that the same norms be applied internationally. Living in increasingly tolerant societies, they have grown more receptive to the Other's point of view. Promoting freedom, legal equality, and political participation domestically, liberal democratic powers – though **initially** in possession of **vast empires** – have found it **increasingly difficult** to justify ruling over foreign peoples without their consent. And sanctifying life, liberty and human rights, they have proven to be **failures** in forceful repression. Furthermore, with the individual’s life and pursuit of happiness elevated above group values, sacrifice of life in war has **increasingly lost legitimacy** in liberal democratic societies. War retains legitimacy only under narrow and narrowing formal and practical conditions, and is generally viewed as extremely abhorrent and undesirable.

Thus, modernization, most notably its liberal path, has **sharply reduced** the prevalence of war, as the violent option for fulfilling human desires has become **much less rewarding** than the peaceful option of competitive cooperation. For instance, with the much increased sexual opportunity within society, young men now are more reluctant to leave behind the pleasures of life for the rigors and chastity of the field. 'Make love, not war' was the slogan of the powerful anti-war youth campaign of the 1960s, which not accidentally coincided with a far-reaching liberalization of sexual norms. Furthermore, is societies of plenty people naturally become risk-averse. Ingelhart’s World Values Survey reflects this, as does, only a bit less seriously, Thomas Friedman’s concept of a Macdonald Peace. All these are interrelated aspects of the Modernization Peace.

The fruits of these deepening trends and sensibilities have been nothing short of miraculous. The probability of war between affluent democracies has declined to a **vanishing point**, where they no longer even see the need to prepare for the **possibility** of a militarized dispute with one another. The security dilemma between neighbours – that **seemingly intrinsic** feature of international anarchy – **no longer exists** among them. This is most conspicuously the case in **North America** and **Western Europe**, the world's most modernized and liberal-democratic regions.

Realists in international relations theory have **never been able to explain** why Holland and Belgium **no longer fear** in the slightest a German (or French) invasion, a historically unprecedented situation. Similarly, Canada is **not at all concerned** about the prospect of conquest by the United States, though people find it difficult to explain why exactly this is so. In East Asia, the most developed countries, such as Japan, South Korea, and Taiwan, **do not fear** war among themselves or with any of the other developed countries, though they are **deeply apprehensive** of being attacked by **less developed** neighbors, such as China or North Korea.

With the collapse of the Soviet Empire and **rapid economic growth** coupled with **democratization** in Eastern Europe, East and South Asia and Latin America, the prospect of a major war within the developed world seems to have become **very remote**. Thus, war's geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world have become a '**zone of peace**'. War now appears to be confined to the **less developed** parts of the globe, the world's '**zone of war**', where countries that have lagged behind in modernization and its pacifying spin-off effects occasionally still fight among themselves, as well as with developed countries.

#### Capitalism is good for the environment!

**Zitelmann, 21**—Ph.D.s in history and in sociology, former lecturer in history at Freie Universität Berlin (Rainer, “Capitalism is good for the environment,” <https://iea.org.uk/capitalism-is-good-for-the-environment/>, dml)

Most people believe that **capitalism** is to blame for **climate change** and **environmental degradation**. But **numerous scientific studies** have arrived at a surprising conclusion.

Every year, the Heritage Foundation ranks countries around the world based on economic freedom in a kind of capitalism index. Analysis has shown that the world’s most economically “**free**” countries also registered the **highest scores** on Yale University’s **EPI** environmental index, averaging 76.1 (on a scale from 0 to 100), while the “mostly free” countries averaged 70.2. These two groups have a significant lead over the “moderately free” countries, which received much lower ratings (59.6 points) for their environmental performance. The countries rated by the Heritage Foundation as either “mostly unfree” or “repressed” received by far the worst Environmental Performance Index scores (46.7 and 50.3, respectively).

Researchers at Yale University found that there is not only a **correlation** between the Heritage Foundation’s index and their own EPI, but also between the EPI and the “Ease of Doing Business Index” which is published each year as part of the World Bank’s Doing Business Report and is generally regarded as the world’s **most comprehensive** and **reliable gauge** of the ease of doing business, with higher ratings indicating better, usually simpler, regulations for businesses and stronger protections of property rights. According to the researchers at Yale University, the correlation between the “Ease of Doing Business Index,” which they refer to as a measure of “economic liberalism” (i.e., an indicator of **how capitalist** an economy is), and the EPI is 0.72.

In 2016, researchers published a study in the journal Sustainability that included an evaluation of the correlation between the EPI and the “Open Market Index” (OMI) compiled by the International Chamber of Commerce (ICC). The OMI measures a country’s openness to free trade and is thus an important indicator of economic freedom. The researchers found a **high degree of overlap** between the OMI index and the EPI: 19 of the OMI’s 27 highest-scoring countries also appear in the top 27 of the EPI. The survey covered a total of 75 countries, including all G20 and EU members. Together, these countries accoun t for **more than 90 percent** of international trade and investment. The researchers conclude: “It is evident that there is a strong connection between OMI and EPI scores, supporting our hypothesis that countries with an open economy score **higher** in environmental performance. Overall, our evidence shows that the level of the **openness of an economy** is associated with a country’s **environmental protection**.”

Another **study**, “Is Free Trade Good for the Environment?” by Antweiler, Copeland and Taylor, uses sophisticated mathematical modeling to explore the correlation between free trade – a key feature of capitalism – and environmental pollution. The study finds: “Our estimates of the scale and technique elasticities indicate that if **openness to international markets** raises both output and income by **1%**, pollution concentrations **fall** by approximately **1%**. Putting this calculation together with our earlier evidence on composition effects yields a somewhat surprising conclusion: freer trade is **good** for the environment.”

Of course, it can be argued that capitalism leads to stronger economic growth, which in turn leads to an increase in **resource consumption**. However, the **analyses** show that, at an early stage of a country’s economic growth, a high level of environmental degradation is observed, while, after a **critical point** of economic growth, a **gradual decline** in environmental degradation is reported.

In addition, there are two **real-world observations** that also **disprove** the argument that stronger economic growth **automatically** leads to greater environmental pollution:

In **non-capitalist** countries, environmental degradation has been a **far more serious** problem than in capitalist countries.

The correlation between economic growth and increasing resource consumption is becoming **ever weaker** in the age of **dematerialization**.

On the basis of **numerous data series**, Andrew McAfee has shown how economic growth has **decoupled** from the consumption of raw materials. Data for the USA show that of **72** raw materials, only **six** have not yet reached their consumption maximum. Although the US economy has grown strongly in recent years, consumption of many commodities is actually in **decline**. And the results of **all** these studies point in the **same direction**: capitalism is **not the problem**, it is the **solution** – both economically and environmentally.