# 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.

#### 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.

## Extra cards

#### 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.

#### 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.

# 2ac

## cartels

## Indig dev

### SDGs good

#### SDG progress is key to effective climate action

Liu, 19—Under-Secretary-General for Economic and Social Affairs, United Nations (Zhenmin, “Aligning SDG and climate action,” https://www.sustainablegoals.org.uk/aligning-sdg-and-climate-action/, dml)

Ultimately, it is governments that have the primary responsibility for defining policies and systems that promote the achievement of the SDGs and climate goals in a transparent, accountable and inclusive way. The Global Conference on Strengthening Synergies between the Paris Agreement and the 2030 Agenda for Sustainable Development (held from 1 to 3 April 2019 in Copenhagen) and the 2019 Climate Action Summit of the UN Secretary-General (to be held on 23 September in New York) mark important opportunities to align the climate and SDG processes. They are also key moments in raising ambition and stimulating action from stakeholders at the global, regional and country levels.

The 2030 deadline will determine our pathway to climate change. Now just a decade away, it underlines the urgency of action if we are to stay as close as possible to the 1.5°C target. Both the 2030 Agenda and the Paris Agreement define time-bound and specific global targets, are grounded in scientific knowledge, recognise the importance of multi-stakeholder implementation and acknowledge that there is no one-size-fits-all approach. But, most importantly, both initiatives appreciate that they can be deeply complementary to each other at various levels. We therefore need to plan all our action to advance progress on the SDGs in the context of climate action and concentrate on maximising the co-benefits.

#### Development failures turn every hotspot

ODNI 17

Office of the Director of National Intelligence, National Intelligence Council unclassified strategic assessment of global trends, authored by ODNI personnel including the Chairman of the NIC, THE NEAR FUTURE: TENSIONS ARE RISING, 2017, https://www.dni.gov/index.php/global-trends/near-future

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

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

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

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

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

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

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

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

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

Central and South America. Although state weakness and drug trafficking have and will continue to beset Central America, South America has been more stable than most regions of the world and has had many democratic advances—including recovery from populist waves from the right and the left. However, government efforts to provide greater economic and social stability are running up against budget and debt constraints. Weakened international demand for commodities has slowed growth. The expectations associated with new entrants to the middle class will strain public coffers, fuel political discontent, and possibly jeopardize the region’s significant progress against poverty and inequality

Activist civil society organizations are likely to fuel social tensions by increasing awareness of elite corruption, inadequate infrastructure, and mismanagement. Some incumbents facing possible rejection by their publics are seeking to protect their power, which could lead to a period of intense political competition and democratic backsliding in some countries. Violence is particularly rampant in northern Central America, as gangs and organized criminal groups have undermined basic governance by regimes that lack capacity to provide many basic public goods and services. Outlook: Central and South America are likely to see more frequent changes in governments that are mismanaging the economy and beleaguered by widespread corruption. Leftist administrations already have lost power in places like Argentina, Guatemala, and Peru and are on the defensive in Venezuela, although new leaders will not have much time to show they can improve conditions. The success or failure of Mexico’s high-profile reforms might affect the willingness of other countries in the region to take similar political risks. The OECD accession process may be an opportunity—and incentive— for some countries to improve economic policies in a region with fairly balanced age demographics, significant energy resources, and well-established economic links to Asia, Europe, and the United States. An Inward West? Among the industrial democracies of North America, Europe, Japan, South Korea, and Australia, leaders will search for ways to restore a sense of middle class wellbeing while some attempt to temper populist and nativist impulses. The result could be a more inwardly focused West than we have experienced in decades, which will seek to avoid costly foreign adventures while experimenting with domestic schemes to address fiscal limits, demographic problems, and wealth concentrations. This inward view will be far more pronounced in the European Union, which is absorbed by questions of EU governance and domestic challenges, than elsewhere. The European Union’s internal divisions, demographic woes, and moribund economic performance threaten its own status as a global player. For the coming five years at least, the need to restructure European relations in light of the UK’s decision to leave the EU will undermine the region’s international clout and could weaken transatlantic cooperation, while anti-immigration sentiments among the region’s populations will undermine domestic political support for Europe’s political leaders. Questions about the United States’ role in the world center on what the country can afford and what its public will support in backing allies, managing conflict, and overcoming its own divisions. Foreign publics and governments will be watching Washington for signs of compromise and cooperation, focusing especially on global trade, tax reform, workforce preparedness for advanced technologies, race relations, and its openness to experimentation at the state and local levels. Lack of domestic progress would signal a shift toward retrenchment, a weaker middle class, and potentially further global drift into disorder and regional spheres of influence. Yet, America’s capital, both human and security, is immense. Much of the world’s best talent seeks to live and work in the United States, and domestic and global hope for a competent and constructive foreign policy remain high. China. China faces a daunting test—with its political stability in the balance. After three decades of historic economic growth and social change, Beijing, amid slower growth and the aftereffects of a debt binge, is transitioning from an investment-driven, export-based economy to one fueled by domestic consumption. Satisfying the demands of its new middle classes for clean air, affordable houses, improved services, and continued opportunities will be essential for the government to maintain legitimacy and political order. President Xi’s consolidation of power could threaten an established system of stable succession, while Chinese nationalism—a force Beijing occasionally encourages for support when facing foreign friction—may prove hard to control. Outlook: Beijing probably has ample resources to prop up growth while efforts to spur private consumption take hold. Nonetheless, the more it “doubles down” on state owned enterprises (SOEs) in the economy, the more it will be at greater risk of financial shocks that cast doubt on its ability to manage the economy. Automation and competition from lowcost producers elsewhere in Asia and even Africa will put pressure on wages for unskilled workers. The country’s rapidly shrinking working-age population will act as a strong headwind to growth. Russia. Russia’s aspires to restore its great power status through nationalism, military modernization, nuclear saber rattling, and foreign engagements abroad. Yet, at home, it faces increasing constraints as its stagnant economy heads into a third consecutive year of recession. Moscow prizes stability and order, offering Russians security at the expense of personal freedoms and pluralism. Moscow’s ability to retain a role on the global stage—even through disruption—has also become a source of regime power and popularity at home. Russian nationalism features strongly in this story, with A Chinese man rides a bike among luxurious cars. China’s dramatic economic growth has highlighted greater gaps between rich and poor. President Putin praising Russian culture as the last bulwark of conservative Christian values against the decadence of Europe and the tide of multiculturalism. Putin is personally popular, but approval ratings of 35 percent for the ruling party reflect public impatience with deteriorating quality of life conditions and abuse of power. Outlook: If the Kremlin’s tactics falter, Russia will become vulnerable to domestic instability driven by dissatisfied elites— even as a decline in status suggests more aggressive international action. Russia’s demographic picture has improved somewhat since the 1990s but remains bleak. Life expectancy among males is the lowest of the industrial world, and its population will continue to decline. The longer Moscow delays diversifying its economy, the more the government will stoke nationalism and sacrifice personal freedoms and pluralism to maintain control. An Increasingly Assertive China and Russia. Beijing and Moscow will seek to lock in temporary competitive advantages and to right what they charge are historical wrongs before economic and demographic headwinds further slow their material progress and the West regains its footing. Both China and Russia maintain worldviews in which they are rightfully dominant in their regions and able to shape regional politics and economics to suit their security and material interests. Both have moved aggressively in recent years to exert greater influence in their regions, to contest the US geopolitically, and to force Washington to accept exclusionary regional spheres of influence—a situation that the United States has historically opposed. For example, China views the continuing presence of the US Navy in the Western Pacific, the centrality of US alliances in the region, and US protection of Taiwan as outdated and representative of the continuation of China’s “100 years of humiliation.” Recent Sino-Russian cooperation has been tactical, however, and is likely to return to competition if Beijing jeopardizes Russian interests in Central Asia and as Beijing enjoys more options for cheap energy supply beyond Russia. Moreover, it is not clear whether there is a mutually acceptable border between what China and Russia consider their natural spheres of influence. Meanwhile, India’s growing economic power and profile in the region will further complicate these calculations, as New Delhi navigates relations with Beijing, Moscow, and Washington to protect its own expanding interests. A Chinese development firm—with links to the Chinese Government and People’s Liberation Army— today announced that it recently purchased the uninhabited Cobia Island from the Government of Fiji for $850 million. Western security analysts assess that China plans to use the island to build a permanent military base in the South Pacific, 3,150 miles southwest of Hawaii. Russian assertiveness will harden anti-Russian views in the Baltics and other parts of Europe, escalating the risk of conflict. Russia will seek, and sometimes feign, international cooperation, while openly challenging norms and rules it perceives as counter to its interests and providing support for leaders of fellow “managed democracies” that encourage resistance to American policies and preferences. Moscow has little stake in the rules of the global economy and can be counted on to take actions that weaken US and European institutional advantages. Moscow will test NATO and European resolve, seeking to undermine Western credibility; it will try to exploit splits between Europe’s north and south and east and west, and to drive a wedge between the United States and the EU. Similarly, Moscow will become more active in the Middle East and those parts of the world in which it believes it can check US influence. Finally, Russia will remain committed to nuclear weapons as a deterrent and as a counter to stronger conventional military forces, as well as its ticket to superpower status. Russian military doctrine purportedly includes the limited use of nuclear weapons in a situation where Russia’s vital interests are at stake to “deescalate” a conflict by demonstrating that continued conventional conflict risks escalating the crisis to a large scale nuclear exchange. In Northeast Asia, growing tensions around the Korean Peninsula are likely, with the possibility of serious confrontation in the coming years. Kim Jong Un is consolidating his grip on power through a combination of patronage and terror and is doubling down on his nuclear and missile programs, developing long-range missiles that may soon threaten the continental United States. Beijing, Seoul, Tokyo, and Washington have a common incentive to manage security risks in Northeast Asia, but a history of warfare and occupation along with current mutual distrust makes cooperation difficult. Continued North Korean provocations, including additional nuclear and missile tests, might worsen stability in the region and prompt neighboring countries to take actions, sometimes unilaterally, to protect their security interests. Competing Views on Instability

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

One consequence of post-Cold War disengagement by the United States and the then-USSR, was a loss of external support for strongmen politics, militaries, and security forces who are no longer able to bargain for patronage. Also working against coercive governments are increased demands for responsive and participatory governance by citizens no longer poor due to the unprecedented scale and speed of economic development in the nonindustrial world. Where political and economic development occurred roughly in tandem or quick succession, modernization and individual empowerment have reinforced political stability. Where economic development outpaced or occurred without political changes—such as in much of the Arab world and the rest of Africa and South Asia—instability ensued. China has been a notable exception. The provision of public goods there so far has bolstered political order but a campaign against corruption is now generating increasing uncertainty and popular protests have grown during the past 15 years. Russia is the other major exception—economic growth—largely the result of high energy and commodity prices—helped solve the disorder of the Yeltsin years.

US experience in Iraq and Afghanistan has shown that coercion and infusions of money cannot overcome state weakness. Rather, building a stable political order requires inclusiveness, cooperation among elites, and a state administration that can both control the military and provide public services. This has proved more difficult than expected to provide.

## Framework

### Antitrust Research Good

#### Researching and advocating anti-monopoly policy can boost grassroots activism and repurpose government structures for liberation, but we must focus on concrete impacts over abstraction.

Greer and Rice, 21—co-founders and co-executive directors of Liberation in a Generation (Jeremie and Solana, “Anti-Monopoly Activism: Reclaiming Power through Racial Justice,” <https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism_032021.pdf>, dml)

We believe that the movement—within research and advocacy spaces especially—should embolden grassroot leaders of color to deliver antiracist policy solutions aimed specifically to curtail monopoly power. Below, we provide considerations for future action that are not policies or regulations or campaigns in and of themselves, but ideas that could transform the anti-monopoly movement in ways that require it to reimagine itself and approach the work through a racial justice lens.

Develop More In-Depth, Intentional Research

Part of the impetus for writing this document is that Liberation in a Generation believes that the power to change our economic systems rests with the organizers of color who are (re)building the political strength of communities of color. The research and advocacy to limit monopoly power needs to better quantify, center, and reflect the ways that people of color are being harmed. This means conducting research that centers the impact of monopoly power on people of color (as workers, consumers, community members, and participants in our democracy). The research and advocacy need to be relevant to the organizers who are indeed experiencing and fighting many of these forces on the ground, and it should inform solutions that they develop, nurture, and advance through activism. The research and advocacy must use less jargon and abstraction, focusing less on markets, firms, or efficiencies, and it should talk more about the impact of corporate decisions on people, their lives, and their futures. The tent of advocates working on anti-monopoly needs to widen as well. Bringing in the people most impacted is essential to shaping and accomplishing the path forward.

Draw Connections Between Monopoly Power and Current Movement Priorities

As discussed earlier in this paper monopoly power has enormous impact on other movement priorities led by leaders of color, such as environmental justice, worker justice, housing justice, police and prison abolition, closing the racial wealth gap, and democratic disenfranchisement. Anti-monopoly policy can be a powerful tool to accomplish existing movement priorities, including the Green New Deal, a Homes Guarantee, a federal jobs guarantee, and Medicare for All. In order to fully utilize it as a tool, anti-monopoly advocates must support—mainly in the background—grassroots leaders of color in integrating anti-monopoly policy and advocacy strategies into the existing campaigns they are leading. By following their lead, and by working together to curb corporate power, we as a collective progressive movement can accomplish an array of movement priorities and move the US closer to liberation for people of color.

Build Solutions That Are Antiracist and Center People of Color as Beneficiaries

It’s not enough to speak virtuously about racial equity and economic justice; we have to intentionally center people of color in the development of policy change. To the previous point, advocates and researchers who evaluate solutions to corporate concentration should include a measure of impacts on Black, Latinx, Indigenous, Asian, and Pacific Islander people. As consumers, entrepreneurs, and residents, we are the ones most vulnerable to the inequities, the forced scarcity, and price gouging inflicted by corporate concentration, among other problems. History has shown us that race-neutral approaches only exacerbate that vulnerability by entrenching current systems—systems that are inherently racist. We know that “race-neutral” policies assume whiteness as the norm and thus serve and preserve white supremacy. So, advancing anti-monopoly policy that is antiracist and centers people of color must be the standard that we all follow moving forward.

Think Bigger and Bolder Than Existing Regulations and Agencies

Large segments of the current anti-monopoly legal and regulatory infrastructure are corrupted beyond repair. Further, these systems are complicit in the economic oppression of people of color. The goals of the anti-monopoly movement should be to completely dismantle our systems of oppression and replace them with government systems that deliver economic liberation. Our regulatory structure is complicated, spread across many agencies, and lacking enforcement power. The complexity of our nation’s anti-monopoly laws, regulations, and oversight have been designed to advantage monopolists with unlimited resources to navigate the labyrinth of our anti-monopoly laws.

Racial oppression thrives in this environment and the antimonopoly movement must resist the urge to settle for small marginal victories that allow this oppression to continue. Breaking up Amazon or Facebook will be a hollow victory if they are able to reform years later and continue to harm Black and brown workers, consumers, and small businesses. The path forward should be to join grassroots leaders of color to create new, bold and transformative solutions (e.g., new agencies and new authorities) that will ensure that federal and state governments advance the economic well-being of people of color and not that of the monopolists that oppresses them.

Tell a New Visionary Story About the Role of Corporations

We need a story that is visionary and that repositions corporations as beholden to serving the public interest, re-examining the purpose of corporations and developing mechanisms that evaluate, even redefine, that purpose. Currently, companies’ driving purpose is to create wealth for their shareholders, and this ideology is to the detriment of people of color. We must integrate solutions that challenge our current approach to corporate governance, incorporation, and tax policy that reinforce economic systems of oppression that allow monopolies exploit to harm people of color.

Conclusion

Imagine a world where the unemployment rate for people of color is zero. The unhoused rate for people of color is zero. A world in which 100 percent of people of color have quality health care, a livable wage, and a quality education. We at Liberation in a Generation believe that this is possible if we strive to create a Liberation Economy where all people of color have their basic needs met, are safe and secure, are valued, and fully belong, including people of color who are immigrants, formerly incarcerated, LGBTQ+, and have a disability. In order to get to this Liberation Economy, we must dismantle the Oppression Economy that monopoly power has colluded with the government to maintain. There are signs that we are moving in the right direction; we need to deepen the urgency and refine the strategy to advance these opportunities.

The Oppression Economy, which includes financial markets, labor markets, and interstate and international trading companies, was arranged to serve an economy elevated by the theft of labor from Black people. Today, Black people and other people of color are still delivering uncompensated value to monopoly power as minimum wage essential workers, as consumers without choice, as small businesses beholden to tight supply chains, as students trying to pay for a college education, and as residents of modern-day company towns.

Despite the disproportionate and anticompetitive influence these monopolies have on the consumer and labor market, they are, structurally, corporations. They have CEOs who manage the day-to-day of the company. They have boards of directors responsible for maintaining corporate governance. They have shareholders that they are accountable for serving. Finally, they are subject to corporate and tax laws and regulations internationally and in the US.

One of the highpoints of 2020 came in December when the FTC joined 48 states and territories to bring a lawsuit against Google for violating the United State’s antimonopoly laws. This suit has the potential to be the most significant action taken by the federal government since the 1998 suit against Microsoft. Further, earlier in 2020, the House of Representatives Judiciary Subcommittee issued a report urging action by Congress and the administration to rein in the monopoly power of Big Tech. Major democratic presidential candidates, including now-President Biden, prioritized curbing corporate monopoly power as major planks in their presidential campaigns. There appears to be momentum on the side of bold government intervention, and grassroots leaders of color can capitalize on that momentum.

Thankfully, momentum also appears to be on the side of advancing racial justice. The tragic murders of Breonna Taylor, George Floyd, and Elijah McClain—and far too many before them and since—have once again thrust the issue of systemic racism into the public consciousness. We will see if this amplified awareness materializes into sustained progress, but this is clearly a moment to advance ideas that would have previously been dismissed by mainstream institutions—such as activist calls to defund the police. It is incumbent upon us in the racial justice movement to ensure that these tragic deaths vault our fight for justice to the next stage of evolution, and that they inform our approach to curbing the corporate monopoly power that is a contributing factor to our collective pain.

The time is now. It’s time to accelerate grassroots efforts to rein in monopoly power. It’s time to accomplish this by advancing bold transformative policy interventions that rip the power to pilot our economy from corporate monopolies. It’s time to ground our understanding of how monopoly works against the principles of racial and economic justice. Finally, it's time to follow grassroots leaders of color in accomplishing this goal —and in delivering liberation for us all.

## Disclosure

## K

### Theory of Power

#### Racial capitalism doesn’t have causal explanatory power.

Go, 21—Professor of Sociology, University of Chicago (Julian, “Three Tensions in the Theory of Racial Capitalism,” Sociological Theory, Volume 39, Issue 1, 2021, dml)

Despite this emerging literature, the relevance of existing discussions of racial capitalism for sociological theory remains unclear. What might the racial capitalism literature teach us about theories or conceptual frameworks around race and capitalism? The problem is that the term racial capitalism does not refer to a “theory” in the sense of a “singular logically integrated causal explanation” (Calhoun 1995:5). The term refers broadly to relationships between racial inequality and capitalism, but the literature does not specify a single set of causal relations or connections between them. Nor does the literature offer uniform concepts or a shared conceptual apparatus. Given this, does the racial capitalism literature—by which I mean the scholars across different disciplines who centralize the term racial capitalism—have any relevance for theory at all?1

#### Racial hierarchy isn’t metaphysically intrinsic to capitalism, even if the two are empirically connected.

Go, 21—Professor of Sociology, University of Chicago (Julian, “Three Tensions in the Theory of Racial Capitalism,” Sociological Theory, Volume 39, Issue 1, 2021, dml)

The final tension within racial capitalism is whether the interconnectedness of racial difference and capitalism is a logical or contingent necessity.6 If, as the racial capitalism literature suggests, slavery and its associated logics of racism have been crucial for the development of capitalism, and if global capitalism today remains intertwined with racial stratification, to what extent are these relations intrinsic to capitalism or accidental? Put differently, is capitalism necessarily racist (Fraser 2019; Lemann 2020)?7

For some, the relationship is only contingent. Walzer (2020) argued that in some countries, capitalism proceeds along just fine without racial difference, and if there is racial difference on a global scale, it is historically contingent. Although the vast majority of workers are nonwhite, Walzer suggested that this is not due to any intrinsic logic of capitalism but rather the accident of demographics (because most of the world is nonwhite, the majority of the world’s workers will be nonwhite). For this reason, Walzer suggested we disavow the racial capitalism concept. Alternatively, others claim that racism is indeed intrinsic to capitalism.8 There are two versions of this claim. One is that racism is necessary to divide the working class and legitimate the rule of the bourgeoisie. Racism is an ideological necessity of capitalism, justifying its unequal relations (Camp, Heatherton, and Karuka 2019; McCarthy 2016; Taylor 2016). “Capitalism requires inequality,” suggested Gilmore (2015), “and racism enshrines it.” A very different version, coming most predominantly from Fraser (2019), is that capitalism necessarily entails relations of exploitation and expropriation that feed off each other. Exploitation is the extraction of value from “free subjects” through wage labor. But expropriation, which includes slavery and colonialism, extracts value from racialized “dependent subjects” and is what enables exploitation to happen in the first place. Expropriation is “a necessary background condition for the exploitation of ‘workers’” (Fraser 2019) and therefore for capitalism itself. Capitalism is thus logically dependent upon racism.9

So what is the answer? Again, it helps differentiate between a theory of capital and a theory of capitalism. A theory of capitalism might demonstrate that race has been historically necessary for capitalist accumulation by reference to empirical reality: historically, capitalism and race have always been intertwined. But the claim that race is a logical necessity to capitalism would have to derive from a theory of capital, not from empirics alone. One would have to deduce, from the categories of Marx’s theory, the necessity of racism or racial differentiation in society. On this score, the arguments for the logical necessity of capitalism’s entanglements with race fall short.

Consider the argument that racism is necessary for capitalism because capitalism requires racist ideology to divide the working class. This is a functionalist argument that is not functionalist enough, for it effaces the logical possibility of functional substitution. We may find that racism has historically always functioned to divide the working class, but in theory other “isms” could serve the same function. There is nothing inherent to the logic of capital that requires race to be the ideology of division (Lebowitz 2006:39).10 Why not ethnicity? Why not sexuality? Consider Fraser’s argument that expropriation is intrinsic to capitalism and that racial differentiation must be too. It is plausible and indeed persuasive to claim that expropriation is necessary for capitalism, but it is less persuasive to claim that racial difference is logically necessary for expropriation. Gender could easily serve as the main axis of dependent classification (and, to feminist-Marxist thought, it has served that function), as could ethnicity, religion, sexuality, or citizenship. Fraser would have to show that expropriation, and hence capitalism, requires a racial classification as opposed to other social categories. This is a task left unfulfilled.11

#### Racial capitalism oversimplifies.

Walzer, 20—editor emeritus of Dissent Magazine (Michael, “A Note on Racial Capitalism,” <https://www.dissentmagazine.org/online_articles/a-note-on-racial-capitalism>, dml)

I have been puzzled for many months by the appearance of the phrase “racial capitalism” in the left press (see, for example, the article by K. Sabeel Rahman in the Summer 2020 issue of Dissent). What does it mean?

Perhaps the adjective “racial” is simply an ordinary qualifying adjective. Racial capitalism is one kind of capitalism, and then there must be other kinds, requiring other adjectives. Here in the United States we have a kind of capitalism where the majority of exploited workers or a majority of the most exploited workers are people of color. The underclass and the reserve army are defined both racially and economically. Of course, no leftist writer would be indifferent to the exploitation of white workers, who might still make up the majority of the American workforce—and who are certainly the majority of exploited workers in Europe. The point of the adjective, then, is simply to focus our attention, for good reasons, on non-white workers. But is the exploitation of these workers a necessary feature of American capitalism?

The phrase “racial capitalism” leaves us unclear about whether the hierarchical location of non-white workers is determined by race or by capitalism or by the two somehow working together. To begin to answer that question, we need to look at some examples of non-racial capitalism.

The form of capitalism sponsored by the Chinese communists is obviously non-racial. Though the exploited workers are, in Western terminology, people of color, Western terminology is out of place here. If the Chinese imported white workers to take on the most menial jobs, that might make Chinese capitalism “racial,” but no such importations have been reported. The predatory version of capitalism that prevails in Putin’s Russia is also non-racial. It may be that Muslims are among the most exploited workers in Russia, but they are mostly Caucasian (some of them the original Caucasians), so we would have to talk about religious capitalism—where Orthodox Christians, not white people, are the privileged group. But no one is doing that. I have no statistics, but from what I read about China and Russia, I doubt that the rate of exploitation is higher in the United States, in racial capitalism, than it is in those two countries, where capitalism is non-racial. Capitalism “works” with and without a racialized underclass and reserve army.

But is that right? The adjective “racial” sometimes makes a much stronger claim: it isn’t a qualifying but rather a definitional adjective. Capitalism is necessarily, inherently, racist. Forget about China and Russia, which are capitalist latecomers. Western capitalism is the prototypical version, and it has been racist from day one (if we can agree on day one)—always and forever racist. Does this mean that Manchester in 1844, as Engels described it, where all the exploited workers were white, wasn’t capitalist? No, for those workers were producing fabrics from cotton raised and harvested by Black slaves in the American South.

That’s true enough, but I am not sure it is sufficient for an argument about necessity. Consider a counterfactual possibility: had no Black slaves been available, the recruitment of Irish workers would have started much earlier than it did. The rise of capitalism would not have been halted had the slave trade never begun.

But the Manchester/Southern plantation example suggests what we all now know: capitalism is a global economic system, and it depends on the exploitation of people of color around the world. Here, however, it seems clear that the key issue is exploitation, not racism. Given global demography, the majority of workers in any global economy will be people of color. Even in a democratically or social democratically regulated global system, the majority of workers and the majority of managers—the underclass and the overclass—will be non-white. Indeed, it would be the refusal of any transnational corporation to hire people of color that would rightly be called racist. (In the Pennsylvania town where I grew up, the local steel company did not hire, and therefore did not exploit, Jews or Black people. I suppose that this is also an example of racial capitalism.)

All this suggests that capitalism and racism have to be analyzed separately. They overlap sometimes, as they do today in the United States. But the overlap is circumstantial, not necessary. The two phenomena are distinct. They don’t rise and fall together. Each one, for different reasons, requires severe criticism and sustained opposition. Many years ago, socialist writers argued that the triumph of the working class would liberate women, Jews, Black people, and everyone else. Separate political struggles against sexism, anti-Semitism, or racism were unnecessary—indeed they were a distraction from the all-important class war. Today some people on the left seem to believe that the end of racism will bring with it the downfall of capitalism. Both these theories are wrong.

Overthrowing racism will still leave us with capitalism; overthrowing capitalism will still leave us with racism. Putting the adjective and noun together gives us a false sense of the relationship between the two phenomena.

#### This is offense—over-attributing explanatory power to racial capitalism reproduces Eurocentrism.

Go, 21—Professor of Sociology, University of Chicago (Julian, “Three Tensions in the Theory of Racial Capitalism,” Sociological Theory, Volume 39, Issue 1, 2021, dml)

We can now turn to the three tensions in the racial capitalism literature, beginning with the issue of race. This is critical. If the term racial capitalism is to have implications for social theory, it must offer rigorously defined concepts constituting a transposable conceptual apparatus. Surely one of those concepts would have to do with “race.” But what exactly is “race”? The problem is that “race” is not typically defined in the existing literature, so it is unclear whether other categories marking difference, such as ethnicity, are more appropriate than race. Should we be thinking about “ethnic capitalism” rather than racial capitalism?

Robinson’s (2000) work is a prime example. Nearly all scholars claim that one of Robinson’s key contributions is to show that capitalism was forged from precapitalist racial divisions in Europe. Capitalism is “racial,” according to Robinson, “because racialism had already permeated Western feudal society,” and capitalism was built upon that racialism (Kelley 2017; Táíwò and Bright 1996). The problem is that Robinson himself was not entirely clear that precapitalist social differences were actually “racial.” On one hand, he did use the term race in his analysis. “Racism,” Robinson (2000:2; see also pp. 26–27, 66–67) wrote, served to structure “the ‘internal’ relations of European peoples” prior to capitalism, and capitalism seized on racism as it developed. On other hand, when discussing some of the presumably “racial” groups in feudal Europe, Robinson (2000:10–11) referred to linguistic rather than phenotypical differences, thus equating racial groups with linguistic groups. In fact, when discussing how migratory and immigrant labor formed the basis for the armies of the Absolutist states and for the production of value in early agrarian capitalism, he oscillated between calling them “races” and “ethnic” groups. For instance, Robinson (2000:23) used the phrase “ethnic divisions of sixteenth century immigrant labor,” and he referred to “national” differences when presumably speaking about premodern “racial” differences.

Given these ambiguities, Robinson’s argument could be read differently from how it is conventionally taken. It is not that capitalism was built on prior racial differences; rather, capitalism served to racialize the preexisting ethnic division of labor, thereby turning religious, cultural, or linguistic differences into “racial” ones to legitimate its new exploitative structure. In this view, racialization—the process of turning groups into biological entities called “races”—was a part of modern capitalism, not its precursor (cf. Omi and Winant 1986). In some passages, Robinson (2000) said this exactly: “the tendency of European civilization through capitalism was thus not to homogenize but to differentiate—to exaggerate regional, subcultural, and dialectical differences into ‘racial’ ones” (p. 26).

Of course, whether “race” preexisted capitalism does not alter the larger argument of the racial capitalism approach, which is that racial differentiation and capitalism are mutually supportive. Still, the tension in Robinson’s work manifests the deeper issue of whether “racial” capitalism refers to race or other identities. This issue permeates Walzer’s (2020) recent criticism of the racial capitalism concept. Walzer points to examples such as Russia and China, where capitalism does not rely on racial differences but rather on ethnic and religious differentiation. “It may be that Muslims are among the most exploited workers in Russia,” he wrote, “but they are mostly Caucasian (some of them the original Caucasians), so we would have to talk about religious capitalism—where Orthodox Christians, not white people, are the privileged group.” On this basis, Walzer rejected the racial capitalism concept as limited at best and analytically debilitating at worse.

Skeptics of Walzer have offered a rebuke: his argument misses the global dimensions of capitalism. At issue is not whether racial stratification articulates with capitalism within any single country but whether it permeates the world-capitalist system. Proponents of this argument could readily assemble evidence to show that, on a global scale, the vast majority of the world’s proletariat, subproletariat, and dispossessed—whether cultivating grapes or coffee on the farms of the Americas, cleaning up office floors in London, or making clothes in the sweatshops of New Delhi—are, to borrow DuBois’s (1935) phrase, “yellow, brown and black.” Against Walzer, this would retain the main claim of the racial capitalism approach that race and capitalism are intertwined.

Yet this scaling upward of capitalism to a global level brings its own complications. It carries the danger of what Bourdieu and Wacquant (1999) called “the cunning of imperialist [racialist] reason”: an analytic operation by which U.S.-centered scholars impose presumably U.S.-centric classifications (in this case, “race”) onto the rest of the world, thereby imposing racial classifications into contexts where they might not be operative. We would be obliged, for instance, to impose racial classifications onto Latin American contexts such as Brazil, where the salience of racial classifications is debatable (Loveman 1999; Wimmer 2015). In short, if we are to insist on the global character of racial capitalism, we must assume that analysts’ racial classifications are global as well. They may very well be, but racial capitalism’s founding texts, and more recent discussions, have not sufficiently problematized this tension.2

#### The history of organizing against racial capitalism proves the necessity of advocating for pragmatic reform and concrete political gains through liberal institutions—no tradeoff with revolutionary activism.

Mishler, 20—Assistant Professor of History at the University of Toronto (Max, “Thomas G. Young, Black Pragmatism, and the Routes of Social Democracy in New York City,” Social History, Volume 53, Number 108, October 2020, pp. 223-255, dml) [language modifications denoted by brackets]

For nearly 45 years, Young cultivated a pragmatic approach to the trade union and civil rights movements. He coordinated general strikes and occasionally endorsed armed self-defence among workers, but he refused to reify radical tactics and believed passionately in the power of reform-oriented bureaucratic institutions like Local 32B to improve the lives of working people. Indeed, he concluded that trade unions were one of the few organizations capable of sustaining long-term progressive social movements and alleviating the miseries of capitalism. Young’s lifelong, unequivocal loyalty to Local 32B reflected a unique political outlook that was cultivated in response to contingent historical events and an ever-changing balance of forces. The long arc of his career vividly illustrates the dialectical relationship between moral principles and institutional power that animates the history of many social movements.5

Thomas Young’s “elastic” approach to the class struggle exemplifies an important strain of American pragmatism, a distinct mode of Black politics forged out of quotidian struggles against racial capitalism during the 1930s and 1940s.6 There was, of course, a long tradition of pragmatism in the labour movement associated with Samuel Gompers and Adolph Strasser, who once told a Congressional committee, “We have no ultimate ends ... we fight only for immediate objects, objects that can be realized in a few years.7 ” There was also a vibrant socialist tendency t renounced revolution in favour of using the tools of liberal democracy to rein in the power of capital. Though less developed in the United States, democratic socialism won many converts at the turn of the twentieth century.8 An alternate, Black radical tradition preceded both Gompers and Eugene V. Debs. Since at least the eighteenth century, African Americans developed a range of political practices conducive to survival, self-determination, and social mobility in societies where White supremacy rendered Black insurrection suicidal [untenable].9 Following the Civil War and Reconstruction, Booker T. Washington, Ida B. Wells, and W. E. B. DuBois, among many others, sought practical solutions to the problems of racial terror, poverty, and second-class citizenship.10 A diverse array of African American activists took up the mantle of pragmatism during the twentieth century.11

Gomperism, democratic socialism, and Black realpolitik all informed Young’s political philosophy. His early activism revolved around the Socialist Party and grassroots efforts to organize building service workers into Local 32B. Like other Black socialists, Young believed that Black workers would find deliverance through interracial trade unions because these were the only institutions capable of constraining the power of capital, eroding American racism and delivering human emancipation.12 His experience as an organizer and trade-union leader, however, led him to prioritize short-term, concrete victories over revolutionary transformation. The point of militant collective action, Young concluded, was to build institutions capable of wrenching concessions from wealthy employers at the bargaining table and powerful enough to pressure politicians into supporting workers on the picket line or passing nondiscrimination legislation. A champion of gradual “economic and political advancement” over what he perceived to be radical “rabble rousing,” he was nevertheless in the vanguard of “civil rights unionism.”13

Young’s political evolution corresponded with the rise of a New Deal order that legitimated trade unions and introduced the idea of social citizenship into American politics.14 He was one among many activists who turned to President FranklinD. Roosevelt’s administration and the New Deal state to solve the problems of entrenched economic and racial inequality. By the late 1930s, Young’s pragmatic, state-centered approach to the labour and civil rights movements epitomized what I call Black social democracy.15 This political project offered a trenchant critique of racial capitalism that eschewed both communist internationalism and Black nationalist programs. Black social democrats embraced the New Deal despite its many shortcomings and exclusions because it opened up a new terrain of struggle and established novel institutional mechanisms, such as the National Labor Relations Board (NLRB), that bolstered the power of organized labour. While no social-democratic party similar to those in England or Canada emerged in the United States, the New Deal represented a distinctly American social democratic horizon of possibility for nearly two decades. In this context, “socialism” receded from Young’s political vocabulary amid a new confidence in the redistributive possibilities of American politics. Two signature victories in 1945 cemented his faith in the radical potential of liberal democracy.

The nascent Cold War, however, soon curtailed the expansive vision of social citizenship articulated during the New Deal and blunted the power of organized labour. Both communist and non-communist labour leaders found themselves in the cross-hairs of conservative political opponents, and even those trade unions that purged Communists from their ranks and supported US foreign policy had to adopt to a repressive political context. Young’s metamorphosis into a “militant mediator” during the 1950s reflected a pragmatic response to political repression and an acute awareness of liberalism’s redistributive, progressive possibilities.16 He never abandoned a social-democratic vision rooted in the labour movement, however, and continued to win tangible benefits for thousands of working-class New Yorkers. The scope of his activism even expanded beyond the trade union movement to encompass affordable housing, quality health care, and penal reform. Young’s trajectory in the arena of electoral politics, however, started to diverge sharply from that of fellow Black social democrats such as A. Phillip Randolph or Maida Springer. While many of his comrades remained firmly embedded in the Democratic Party, Young found a political home in the liberal wing of the Republican Party for over two decades.

My aim in this article is to explain how a Black socialist became a Black Republican while remaining a lifelong trade union and civil rights activist. The answer lies in Young’s distinguished career as an organizer dedicated to building 32B into a powerful trade union.17 Rather than tell Young’s story as a declension narrative from socialist militant to reactionary comprador, I show how his lifelong struggle to improve the lives of working people within the confines of racial capitalism produced a pragmatic praxis worthy of a place in the pantheon of Black political strategies. Indeed, institutions that provide material relief and a platform for sustained struggle are an integral part of the Black radical tradition, even if they are not insurrectionary or millenarian.18 Thomas Young’s politics fit squarely within the broader history of twentieth-century Black radicalism.19 Ultimately, the story of Black social democracy in New York City offers instructive lessons for contemporary activists eager to translate protest into power.20

### Perms

#### 1] perm do both—antitrust policy isn’t mutually exclusive with the alt. solves better because big companies price fixing necessarily makes any anticapitalist movements harder

Meagher ‘20 [Michelle; 9/10/20; Senior Policy Fellow at the Centre for Law, Economics and Society at the University College of London, LL.M. in Antitrust Law from Georgetown University; “Stakeholder Antitrust,” in Competition is Killing Us: How Big Business is Harming Our Society and Planet - and What to Do About It, eBook]

With these realities in hand, the primordial blind spot of free market competition can be seen more clearly: competition is a race to power, and companies compete in part by producing social and environmental spillovers they do not have to pay for. Our models of competition minimize or ignore these aspects of competition, and it is on this basis that the antitrust regime does not, after all is said and done, produce markets that could genuinely be called ‘competitive’ or ‘efficient’. Markets are instead highly concentrated and replete with social and environmental harms. Competition by itself will not spread power and make everyone better off; instead, we must actively contain any power that arises from market distortions and share out the residual corporate power that we cannot contain to stakeholders so that they may be empowered to protect their own interests.

But these realities do not yet take up the same space that the myths, with their decades of augmentation, have come to occupy – they need their own accompanying narrative and logic to bind them to the structure of twenty-first-century capitalism.

Corporate capitalism currently operates completely untethered from the state that supports it, almost in an attempt to be as much the opposite of command and control, state-governed socialism as possible. But it turns out that, in order to have the best of both worlds – the progress and industry of capitalism, and the socialization of competition and markets – we can take a middle ground. Private corporations can remain in private hands, guided not by the central arm of the state but by the decentralized will of stakeholders embedded within companies.

The aim is to attempt to reap the benefits of fruitful competition by aligning companies to the public interest whilst avoiding the entropic inequality, injustice and negative spillovers that otherwise suffuse and overwhelm the economic system. The free-flowing flood of money and power could be replaced with a controlled irrigation system, directing the creative ability of capitalism towards the cultivation of desired and desirable projects and enterprises.

This can be achieved through a structural change in corporate capitalism, designed to dissipate power through a much more broadly conceived system of antitrust, striking at both the heart and periphery of corporate power. Whatever power cannot be dispersed should be shared, through participatory mechanisms empowering people to engage actively in the stewarding of the markets.

#### 2] perm do the aff and all non-mutually exclusive parts of the alt. double bind: either a) it’s sufficient to solve the harms or b) the alt can’t resolve the status quo

#### Antitrust isn’t at odds with sustained reform against capitalism---empirics demonstrate radical restructuring of markets.

Berk ‘19 [Gerald; 11/25/19; Professor Emeritus in Political Science at the University of Oregon, Ph.D. in Political Science from MIT; "Antimonopoly and the Democrats," <https://www.dissentmagazine.org/online_articles/antimonopoly-and-the-democrats>]

Democrats are waking up to the realities of economic power. Less than a decade ago, the subject was taboo. Even with the economy in ruins, Democratic leadership saw no option beyond neoliberalism. But since the 2016 primaries, a split has opened up in the party. With it has come a resurgence of antimonopoly politics that neoliberal leaders can no longer ignore.

At first blush, it looks like antimonopoly heightens the conflict between socialists committed to overcoming capitalism and establishment centrists seeking to save it from populist attacks on the left and right. But antimonopoly once contributed to mobilization, coalition building, and sustained reform across the liberal-left spectrum, and it might do so again today.

The Antimonopoly Tradition

Democracy and markets are fragile and demanding systems, easily corrupted by formidable concentrations of power. The antimonopoly tradition recognizes this fragility, and it makes no sharp distinction between economic and political power. Excessive concentrations of political power undermine economic prosperity no less than excessive concentrations of economic power corrupt democracy. The problem for law and public policy in a democracy with markets seems simple: how to check the constant tendency to concentrated power. There’s no clear-cut way to do that, because those who seek to attain power and lock in privilege are endlessly inventive. Under the right conditions, institutions designed to check power can be used to opposite ends. As a result, antimonopoly is far more than an ideology. It is a political project that requires vigilance, action, and constant adaptation.

Reformers have drawn on the antimonopoly tradition—which is far more wide-ranging than just antitrust, a set of policies designed to prevent predatory competition and break up concentrations of economic power—throughout U.S. history. In the 1830s, Jacksonians used it to authorize privatization, dismantling the Second Bank of the United States because it locked in the privilege of an overweening aristocracy. Abolitionists in the 1840s and 1850s drew on the antimonopoly tradition to dismantle the slave power. In the 1880s, populists enacted state antitrust laws to check the growth of corporate power. In the first decades of the twentieth century, Progressives went further, breaking up corporate power and boosting countervailing forces in government, unions, and proprietary enterprise. In the New Deal, the antimonopoly tradition broke the power of banks and industrial corporations and paved the way for regulation, collective bargaining, and welfare provision. In the 1940s, liberals drew on it to outlaw discriminatory pricing and check the predatory power of chain stores. In the 1950s and 1960s, antitrust administrators broke up patent monopolies, opening the way to high technology.

The antimonopoly tradition, as this sketch demonstrates, has enabled diverse political projects. In the first Gilded Age, it provided a challenge to laissez-faire constitutionalism—the legal doctrine that markets were autonomous from politics, and that property and contracts always protected individual liberty. In today’s Gilded Age, the antimonopoly tradition confronts market fundamentalism: the belief that liberty is best realized in market transactions insulated from democratic interference; that it is possible to organize markets effectively without government supervision; and that we ought not worry about concentrations of economic power, either because they are efficient or temporary.

The turn to market fundamentalism had a major impact on the practice of antitrust, severing it from its roots in the antimonopoly tradition. The University of Chicago–trained lawyer Robert Bork, who published The Antitrust Paradox in 1978, convinced Reagan’s Justice Department that antitrust blocked efficient forms of business organization. Left alone, corporations and capital markets could decide better than government regulators whether mergers, hostile takeovers, outsourcing, or breaking up and selling off corporate assets would serve consumers. If the result was concentrated power, so be it. In time, the Democrats agreed that the only goal of antitrust was to protect consumers. By 1992, antitrust had disappeared from their platform for the first time in a century.

The resurgence of the antimonopoly tradition among Democrats indicates a sea change in how they approach economic governance. Rather than limiting debate to after-the-fact redistribution, they have begun to ask how markets and business organizations can be structured to check concentrations of power. Many Democrats are converging on a platform to rebuild a more democratic economy, even as they disagree in fundamental ways over what that means, who should benefit, and how to achieve it. Still, the antimonopoly tradition’s shared appeal could open new possibilities for party politics and reform. This might seem overly optimistic, but a closer look at how the antimonopoly tradition has informed three ideological factions within the Democratic Party—democratic socialists, (neo)liberals, and antimonopolists proper—illustrates the potential for a broader politics focused on challenging concentrated power and building a more democratic economy.

### Cap Good

#### Only capitalism can solve environmental risk.

Hill ‘20 [Victor; 11/3/20; Financial Economist with the International Finance Corporation at the World Bank, lead writer for Master Investor, holds degrees from the University of Oxford, Institut Européen d'Administration des Affaires, and Canterbury Christ Church University; "Only capitalism will save the planet," https://masterinvestor.co.uk/economics/only-capitalism-will-save-the-planet/]

While the global coronavirus pandemic has diverted attention away from the fraught issue of climate change and what to do about it, the environmental activism of groups such as Extinction Rebellion (XR) has continued to simmer. In fact, this year XR has blended with the Black Lives Matter (BLM) movement such that explicitly anti-capitalist environmental protest and anti-patriarchal, anti-colonial wokery have become intimately entwined. The underlying message is: If you want to save the planet you have to change the system. In practice, all protest movements have many threads – just look at the two-year campaign of the gilets jaunes in France – but the unifying thread is always resentment.

The irony is that both aspects of this counterculture are out-of-date. Rapid advances in technology, facilitated by the free market, have transformed the climate conversation. Whatever Mr Trump’s rhetoric on the issue (and he may well be in the departure lounge by the time you read this), the big energy companies, backed by a raft of environmentally conscious investors, are already transitioning towards renewable and zero-fossil fuel energy precisely because it is now economically viable to do so. And in that process, they are making money. Win-win.

Outright climate change denial was always a marginal school of thought. Thinking people – of which the business and investment community – understand well that manmade carbon emissions increase the concentration of CO2 in the atmosphere and thus precipitate a greenhouse effect by which the Earth’s atmosphere and seas warm up. That said, there is a respectable scientific debate about how quickly that process is taking place and how quickly it will cause irreversible results such as desertification. And it is perfectly legitimate to question the climate models which climate scientists construct to estimate these outcomes, since many have questionable inputs and methodologies. Claims that we have ten years left to save the planet can and should be challenged, though that should not be an argument for further delay in taking action.

The global policy framework has been constructed by the ongoing work of the Intergovernmental Panel on Climate Change (IPCC), an agency of the United Nations (UN). This body laid down two years ago that our target should be to limit the rise in ambient temperature to no more than 1.5 Celsius above pre-industrial levels. That said, there are many climate rebels who believe that this level will itself be disastrous to human and animal life; and still others who claim that even this target is entirely unrealistic given the direction of travel.

Ms Thunberg and her disciples would have us shut down the carbon-based economy forthwith. That would cause unparalleled economic disruption, mass unemployment, poverty, adverse health outcomes and – let us be honest – starvation. No mainstream politician is going to get behind that.

Zion Lights is a writer who has been an environmental campaigner all her adult life. She doesn’t drive, fly or eat meat. In April 2018 she joined XR because she thought it was evidence-based. She soon found that many of its claims were indefensible. She wrote recently:

That is the single biggest problem with most environmental groups: they don’t offer realistic solutions to the very real climate change threat. What they offer, if you follow their arguments to their logical conclusion, is eco-austerity: that we should all use less energy, stop going on holiday, live in colder homes, and so on[i].

In the latest papal encyclical published on 04 October (the feast day of St. Francis of Assisi), Fratelli Tutti (Brothers All), Papa Francisco wrote that the Covid-19 pandemic had proven that the “magical theories” of market capitalism have failed and that the world needs a new type of politics that promotes dialogue and solidarity. (Perhaps the unjustified restrictionism pursued by First Minister Drakeford in Wales?)

In fact, much as I respect Catholic social teaching (having been brought up with it), the best chance we have to solve the immense challenge of climate change and other environmental problems (such as plastic waste in the oceans) is to harness market forces. In this way, the profit motives of finance and technology will re-engineer the global economy completely.

Big money already decided that the fossil fuel economy is doomed and that renewable energy is the future long before Dame Emma Thompson swept in from LA (business class, of course) to gesticulate on Oxford Street, in those languorous pre-Covid days. The billionaire Davos Boys have been preaching climate orthodoxy for years. And the Great Transition is already well underway.

Renewable profitability

The good news is (don’t tell XR) that the United Kingdom has managed to reduce its carbon emissions by over 40 percent since 1990 by all but phasing out coal and investing massively in renewable power generation. As I write this on a blustery day in late October, according to the GB National Grid Status website, coal powered generation is contributing precisely zero to UK power generation. The UK has the world’s largest offshore wind power market with capacity still increasing rapidly. Earlier this year the UK government effectively dropped the ban on onshore wind turbine arrays in the drive to reach net zero carbon emissions by 2050.

As the shift from carbon-heavy sources to carbon-free electricity generation has accelerated so economies of scale have kicked in and new technologies have come online. Recent data from Bloomberg New Energy Finance shows that the latest generation of solar and wind power plants can produce electricity cheaper than the most modern coal plants even without subsidy for two thirds of the global population. The price of solar panels has dropped by almost 90 percent over the past decade. By mid-decade, solar and wind power will outcompete all existing coal plants on price – at which point a swath of coal plants will be deemed uneconomic and closed.

The economics of energy storage – battery technology – are also improving. On 22 September Tesla (NASDAQ:TSLA) unveiled its new battery known as the 4680[ii]. This fuel cell reportedly offers six times the power of Tesla’s previous cells, and five times the energy capacity. The company confirmed that the new cell measures 46 millimetres by 80 millimetres – hence the name. The iconic automaker says that these new fuel cells will be able to increase the range of a vehicle by 16 percent – that could be up to about 500 miles for its latest models. That kind of range makes medium-distance travel without recharging (say, London to Edinburgh in a UK context) quite feasible.

Red China goes green

China currently has new coal plants under construction which will have a capacity of another 94 Gigawatts of electricity per annum. China already emits more CO2 than all of Europe and America combined. But China now has a target of going carbon neutral by 2060, and by so aspiring has upped the moral ante with Mr Trump’s America. Now, some analysts predict that China may abandon its programme of building coal-fired power stations as much on economic grounds as on environmental ones.

China might yet gain a strategic advantage from global warming. Last month the UK First Sea Lord, Admiral Tony Radakin (the military head of the Royal Navy), warned that the melting of ice in the Arctic would create new maritime trade routes across the top of the world – the Arctic Ocean – which would halve the transit time between East Asia and Western Europe. China already has, according to the Pentagon, the world’s largest navy with 350 warships and submarines. That opens the prospect of Chinese naval vessels being able to penetrate the North Atlantic rapidly, and possibly threatening the European and American undersea cable network.

Hydrogen in three colours

The downside with the current generation of electric vehicles is that they require batteries which use expensive rare earth minerals of which lithium, and which are costly and messy to recycle at the end of their economic life. The extraction of these rare earth minerals in countries such as the Democratic Republic of Congo (DRC) is itself a cause of environmental degradation and carbon emissions. That is why there is renewed focus of attention on hydrogen.

Hydrogen comes in three colours. Gray hydrogen is made using fossil fuels like oil and coal, which emit CO2 into the air as they combust. The blue variety is made in the same way, but carbon capture prevents CO2 being released, enabling the captured carbon to be safely stored deep underground or utilised in industry. BP (LON:BP.) is working on that. As its name suggests, green hydrogen is the cleanest variety, producing zero carbon emissions. It is produced by electrolysis powered by renewable energy i.e. offshore wind.

The holy grail in energy now is to extract hydrogen cheaply and cleanly from water by electrolysis (i.e. separating the hydrogen and carbon atoms). Hitherto the energy required to perform the electrolysis has been unequal to the energy value of the hydrogen thus produced. That could be about to change.

Bill Brown, founder of NET Power has claimed that his firm’s techniques can produce clean hydrogen at 0.57 cents a kilo. This is a developmental technology based on the Allam Cycle which has been around in theory for some time.

Hydrogen can power vehicles, trains, ships and even aeroplanes. When hydrogen is ignited the only by-product is water. Hydrogen could also be used to facilitate the manufacture of steel, cement, glass, chemicals and fertilisers. Goldman Sachs reckons that, if the efficiency of hydrogen electrolysis could be sufficiently improved, then about 45 percent of all global carbon emissions could be eliminated.

Electric cars

Some estimates suggest that electric battery-powered cars could compete on price with conventional cars powered by internal combustion engines (ICEs) as soon as 2024. That is one reason why Tesla shares have rocketed this year. But even if you are not a true believer in Tesla, consider that established automotive giants such as Volkswagen and Daimler-Benz are fully committed to the phase-out of ICEs. In Germany, sales of electric and hybrid cars overtook diesel cars for the first time last month.

I’ll have a lot more to say about the outlook for electric cars soon.

From coal to wind

Dalmellington in Ayrshire, Scotland, was once known as a coal-mining town. But in future it is likely to be known as the location of a 50-turbine wind farm. The new 240 Megawatt facility will be built and run by Vattenfall (owned by the Kingdom of Sweden). But the array will be owned by the infrastructure fund, Greencoat UK Wind PLC(LON:UKW), which has acquired the project for £320 million.

Greencoat has emerged as a growing renewables fund which is now included in the FTSE-250 index and which has a market capitalisation of around £2.5 billion – that’s more than the better-known UK energy company Centrica PLC (LON:CAN), the owner of British Gas. The fund has acquired 36 wind power sites which collectively produce enough electricity to power about one million homes – that’s about five percent of all wind power generated in the UK. Some of those arrays were acquired from Scottish & Southern Energy (LON:SSE). Wind power now accounts for about 20 percent of Britain’s total electricity consumption.

Greencoat’s strategy is to encourage energy giants to green up their portfolios by taking all the development risk. It then buys the asset from the generator and pockets the cash flow arising. Greencoat UK Wind is run by Greencoat Capital, a specialist investor in renewable energy which has £5 billion of assets under management across both wind and solar energy. Greencoat raised £375 million from investors in May 2019.

A report last year by the research firm, Hardman & Co. found that returns for listed renewable energy funds over five years approached 10 percent. Such funds often carry a share price premium over their net asset value. At a moment when the share prices of the oil majors are under pressure and when BP and Shell have slashed their dividends, Greencoat’s 4.8 percent dividend yield is pleasing.

Nuclear

The latest thinking is that carbon-free energy capacity could be ramped up quickly by means of a cluster of British designed and manufactured small modular reactors (SMRs) which have a footprint smaller than two football pitches. A consortium of Rolls Royce (LON:RR), WS Atkins (LON:ATK), Laing O’Rourke (LON:JLG) and the National Nuclear Laboratory is in the vanguard of this technology. Rolls-Royce has experience and expertise in building nuclear reactors to power Britain’s fleet of nuclear submarines, so this is not new technology. Reportedly, the UK government is considering the injection of up to £2 billion of state funds to invigorate the concept – assuming it is permitted to do so by the EU (if there is an agreement).

The idea is that by 2050 more than 12 of these SMRs will be operational in the UK, each with a capacity of about 440 Megawatts – so about one seventh of the conventional nuclear plant currently under construction at Hinkley Point, Somerset. Hinkley Point C is a project led by France’s EDF (EPA:EDF), the costs of which have spiralled up to an estimated £22.5 billion. Cost considerations have caused Toshiba (TYO:6502) and Hitachi (TYO:6501) to pull out of projects to build nuclear plants in Wales and Cumbria. In contrast, SMRs might have a price tag of around £2 billion each.

SMRs are easier to switch on and off than conventional large-scale reactors; thus, they can be held on standby for when wind and solar power wanes. Thereafter, the remaining gas turbine plants that are currently used for that purpose can be phased out. But it does not follow that the new roll-out of SMRs would entail the closure of Britain’s conventional large-scale nuclear reactors which, as I write, are supplying 17.2 percent of total power to the national grid.

A US consortium, NuScale, is also looking at SMRs with a capacity of 60 Megawatts.

The fate of the oil majors

I wrote in the February 2020 edition of the MI magazine that the oil majors are here to stay. I meant by that that there would still be continued demand for oil, if much attenuated, after the transition to a net-zero carbon economy, not least because of the need for oil in petroleum derivatives (of which plastic). I did not foresee even then that the economic case for renewables would advance quite as rapidly as it has done this year; nor was it then apparent how the coronavirus pandemic would reduce the global demand for oil, at least in the short-term.

Another reason why the oil majors may not go extinct quite yet is that they have embraced carbon capture and storage (CCS). Indeed, they have become advocates of high carbon pricing, calculating that it will mobilise technology to accelerate CCS. Under US legislation enacted under the auspices of the US Department for Energy, operators can claim $50 for each tonne of CO2 sequestered underground and $35 per tonne if pumped back into declining wells.

A number of large players, including Saudi Aramco (TADAWUL:2222), ExxonMobil (NYSE:XOM), BP (LON:BP.), Shell (LON:RDSA), Total (LON:TTA) and others, have jointly formed the Oil and Gas Climate Initiative(OGCI) to drive CCS projects. The OGCI is a consortium that aims to accelerate the industry response to climate change. OGCI member companies explicitly support the Paris Agreement and its goals.

Just as with wind power and solar, the costs of CCS are in free fall. ExxonMobil has teamed up with FuelCell Energy to extract CO2 using carbonate fuel cells. Total, Shell and Equinor (NYSE:EQNR) are part of the Longship project in Norway which is planning to take CO2 captured in Europe’s industrial heartlands and pipe it to storage caverns beneath the North Sea. It hopes to lock in eight million tonnes of CO2 per year by the middle of this decade, for which they will charge around €60 per tonne. Memoranda have already been signed with ArcelorMittal and Heidelberg Cement.

Cement is responsible for an estimated eight percent of global carbon emissions. Under the auspices of the OGCI, a venture with LafargeHolcim, the materials giant, uses CO2 rather than water to cure concrete at much lower temperatures than in conventional manufacture, thereby breaking down the CO2 molecules and turning carbon into a form of glue. This enables a 70 percent reduction in CO2 emissions and an 80 percent reduction in water use.

In terms of their market capitalisations, ExxonMobil, BP and Shell combined are now worth less than Tesla alone. Exxon was once the world’s largest company by market cap. As I write it is worth just $136 billion against Tesla’s $390 billion.

The oil price is down from around $53 a barrel 12 months ago to around $37 today. That is partly a function of reduced global demand arising from the lockdowns across the world; but one should not assume that it will rebound even if the pandemic is behind us one year from now. That means that a lot of new exploration and drilling activity will be regarded as uneconomic – and a lot of known reserves will remain beneath the Earth for evermore. But if the oil majors can really crack the challenge of CCS and prospectively begin to reduce the volume of CO2 in the atmosphere, they will succeed in reinventing themselves.

#### The environment is resilient---‘existential’ threats are false.

Bailey ’20 [Ronald; August 1; Science Correspondent at Reason, Member of the Society of Environmental Journalists and the American Society for Bioethics and Humanities; Reason Magazine, “The Global Environmental Apocalypse Has Been Canceled,” <https://reason.com/2020/08/01/the-global-environmental-apocalypse-has-been-canceled/>]

According to these activists and politicians, humanity is beset on all sides by catastrophes that could kill off civilization, and maybe even our species. Are they right?

Absolutely not, answers the longtime environmental activist Michael Shellenberger in an engaging new book, Apocalypse Never: Why Environmental Alarmism Hurts Us All. "Much of what people are being told about the environment, including the climate, is wrong, and we desperately need to get it right," he writes. "I decided to write Apocalypse Never after getting fed up with the exaggeration, alarmism, and extremism that are the enemy of positive, humanistic, and rational environmentalism." While fully acknowledging that significant global environmental problems exist, Shellenberger argues that they do not constitute inexorable existential threats. Economic growth and technological progress, he says, can ameliorate them.

Shellenberger's analysis relies on largely uncontroversial mainstream science, including reports from the Intergovernmental Panel on Climate Change (IPCC) and the Food and Agriculture Organization. And as a longstanding activist, Shellenberger is in a good position to parse the motives behind the purveyors of doom.

Shellenberger's activism is the real deal. To raise a donation to the Rainforest Action Network, he charged his friends $5 to attend his 16th birthday party. At 17 he went to Nicaragua to experience the Sandinista revolution. In the 1990s he worked with the Landless Workers' Movement in Brazil.

In 2003, Shellenberger and allies launched the New Apollo Project to jumpstart a no-carbon energy revolution over the next 10 years. In 2008, Time named him "A Hero of the Environment." He co-founded the ecomodernist Breakthrough Institute, which advocates the use of advanced technologies such as nuclear power and agricultural biotechnology to decouple the economy from the ecology, allowing both humanity and the natural world to flourish. More recently, he founded Environmental Progress, which campaigns for, among other things, the deployment of clean modern nuclear power. He is an invited expert reviewer of the Intergovernmental Panel on Climate Change's next assessment report.

Ohio Passes Controversial Conscience Clause for Doctors

So what does he say about climate change? "On behalf of environmentalists everywhere, I would like to formally apologize for the climate scare we created over the last 30 years," he wrote in an essay to promote his new book. "Climate change is happening. It's just not the end of the world. It's not even our most serious environmental problem." Needless to say, there are environmentalists everywhere who do not believe they have anything to apologize for. A group of six researchers assembled by the widely respected Climate Feedback fact-checking consortium rated his article as having low scientific credibility.

Shellenberger doesn't devote much of Apocalypse Never to the science behind man-made climate change. He basically accepts the consensus that it's a significant problem and instead focuses on various claims about the harms it is supposedly already causing. In that promotional essay, he argues that (1) human[s] being are not causing a "sixth mass extinction," (2) the Amazon rainforests are not the "lungs of the world," (3) climate change is not making natural disasters worse, and (4) fires have declined 25 percent around the world since 2003.

Shellenberger isn't denying the reality of man-made climate change. He's arguing that humanity is already adapting to the ways climate change has been making weather patterns evolve, and that we will continue to adapt successfully in the future. His book is ultimately a sustained argument that poverty is world's most important environmental problem, and that rising prosperity and increasing technological prowess will ameliorate or reverse most deleterious environmental trends.

#### Growth outruns recurrent blackball risks and shifts public preference to optimal existential risk mitigation---unlocks infinite future value.

Aschenbrenner ’20 [Leopold; September 6; Research Fellow in Economics at the Forethought Foundation and Global Priorities Institute at the University of Oxford, B.A. from Columbia University; Global Priorities Institute, “Existential risk and growth,” no. 6]

Secondly, note that this existential risk Kuznets curve appears in the transition dynamics of the optimal allocation. Considering that existential risk mitigation is a global public good, it is unlikely resources are allocated to safety optimally in the real world. As such, this should not be taken to be a prediction of what a particular country with a particular set of institutions will do with regard to existential risk.

Nevertheless, there are a number of reasons why we might still be interested in the transition dynamics under the (impatient) optimal allocation. For one, since there are very long timescales involved here, it is very hard to know (and thus model) what government and societal institutions will evolve to deal with existential risk. However, the ideal these institutions will likely aim at is the optimal allocation. The optimal allocation might thus be a rough proxy for the real-world allocation.

Moreover, the (impatient) optimal allocation represents what I would call the “democratic possibilities frontier” or the “impatient public possibilities frontier.” Those who are principally concerned about the long-run future of humanity and advocate for a zero rate of pure time preference might want us to spend as much as possible on safety in order to avoid existential catastrophe and enable human flourishing millions of years into the future. Indeed, even in the Hamiltonian of the optimal allocation, the relative value of life ˜vt is a discounted term; the lower your discount rate ρ, the more you would want to spend on safety. However, the broader public is not so patient. As the empirical evidence cited earlier shows, people tend to have a (relatively large) positive rate of pure time preference; the public is impatient. Even perfectly designed institutions that take into account existential risk externalities will ultimately be constrained by the degree to which society actually cares about the future—they will be constrained by an impatient public. The existential risk Kuznets curve illustrates the implications of this impatience. On the one hand, this impatience results in a period of initially rising levels of risk. For example, this might mean that the arguably rising level of existential risk of the past century is not necessarily a market failure, but may well be part of the optimal path given positive pure time preference. On the other hand, rising standards of living lead even the most impatient public to start caring more about safety and averting an existential catastrophe. This leads workers and scientists to be shifted to the safety sector, eventually causing the hazard rate δ to exponentially decline. Even if people are impatient, if you make them well off enough, they will start caring about existential risk.

Seeing the arguably rising levels of existential risk in the past century, some might call for an end to economic growth. Yet this existential risk Kuznets curve indicates that stopping economic growth would be deleterious: it would simply freeze the hazard rate at a high level, leading to a fatal catastrophe sooner or later. Economic growth enables even an impatient public with a high rate of pure time preference to start caring about life, thus ultimately reducing risk and even leading to positive M ∞.

Some prominent thinkers have previously posited that humanity is passing through a unique period with an elevated risk of technological catastrophe. Sagan (1994) calls this the “time of perils.” Parfit (2011, p. 616), concurs:

We live during the hinge of history. Given the scientific and technological discoveries of the last two centuries, the world has never changed as fast. We shall soon have even greater powers to transform, not only our surroundings, but ourselves and our successors. If we act wisely in the next few centuries, humanity will survive its most dangerous and decisive period. Our descendants could, if necessary, go elsewhere, spreading through this galaxy.

This existential risk Kuznets curve provides theoretical evidence that grounds the intuition that we are living in a “time of perils.” We may be economically advanced enough to have created the means for our permanent destruction, but not economically advanced enough to care enough about decreasing this existential risk.

This “time of perils” has profound implications. For instance, those alive today who care about preserving the long-term future of humanity may have extraordinary altruistic leverage. By working to reduce existential risk now (increasing the resources dedicated to safety), they can reduce the area under the “hump” of the hazard rate δ. This in turn increases M∞, unlocking tremendous value. Moreover, since so few resources are dedicated to safety at the moment, there are likely very high marginal value opportunities available to work on safety. This is a unique situation. Suppose existential risk did not decline to zero exponentially: then M∞ = 0 regardless—the existential risk curve would never bend—so reducing risk now would not change the probability of a long and flourishing future of humanity. And if existential risk did not initially increase, it would never be such a substantial challenge and there wouldn’t be such high marginal value opportunities to work on reducing it.