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Death Cult

#### **Invocation of death impacts is an obsession with body counts that culminates in genocidal violence---rejecting it is a gateway issue**

Bjork 93 [Rebecca Bjork, Former College Debater and Former Associate Professor at the University of Utah, Where She Taught Graduate and Undergraduate Courses in Communication and Women in Debate, Reflections on the Ongoing Struggle, Debater's Research Guide 1992-1993: Wake Forest University, Symposium, <http://groups.wfu.edu/debate/MiscSites/DRGArticles/Oudingetal1992Pollution.htm>]

While reflecting on my experiences as a woman in academic debate in preparation for this essay, I realized that I have been involved in debate for more than half of my life.  I debated for four years in high school, for four years in college, and I have been coaching intercollegiate debate for nine years.  Not surprisingly, much of my identity as an individual has been shaped by these experiences in debate.  I am a person who strongly believes that debate empowers people to be committed and involved individuals in the communities in which they live.  I am a person who thrives on the intellectual stimulation involved in teaching and traveling with the brightest students on my campus.  I am a person who looks forward to the opportunities for active engagement of ideas with debaters and coaches from around the country.  I am also, however, a college professor, a "feminist," and a peace activist who is increasingly frustrated and disturbed by some of the practices I see being perpetuated and rewarded in academic debate.  I find that I can no longer separate my involvement in debate from the rest of who I am as an individual. Northwestern I remember listening to a lecture a few years ago given by Tom Goodnight at the University summer debate camp.  Goodnight lamented what he saw as the debate community's participation in, and unthinking perpetuation of what he termed the "death culture." He argued that the embracing of "big impact" arguments--nuclear war, environmental destruction, genocide, famine, and the like-by debaters and coaches signals a morbid and detached fascination with such events, one that views these real human tragedies as part of a "game" in which so-called "objective and neutral" advocates actively seek to find in their research the "impact to outweigh all other impacts"--the round-winning argument that will carry them to their goal of winning tournament X, Y, or Z. He concluded that our "use" of such events in this way is tantamount to a celebration of them; our detached, rational discussions reinforce a detached, rational viewpoint, when emotional and moral outrage may be a more appropriate response.  In the last few years, my academic research has led me to be persuaded by Goodnight's unspoken assumption; language is not merely some transparent tool used to transmit information, but rather is an incredibly powerful medium, the use of which inevitably has real political and material consequences. Given this assumption, I believe that it is important for us to examine the "discourse of debate practice:" that is, the language, discourses, and meanings that we, as a community of debaters and coaches, unthinkingly employ in academic debate.  If it is the case that the language we use has real implications for how we view the world, how we view others, and how we act in the world, then it is imperative that we critically examine our own discourse practices with an eye to how our language does violence to others.  I am shocked and surprised when I hear myself saying things like, "we killed them," or "take no prisoners," or "let's blow them out of the water."  I am tired of the "ideal" debater being defined as one who has mastered the art of verbal assault to the point where accusing opponents of lying, cheating, or being deliberately misleading is a sign of strength. But what I am most tired of is how women debaters are marginalized and rendered voiceless in such a discourse community.  Women who verbally assault their opponents are labeled "bitches" because it is not socially acceptable for women to be verbally aggressive.  Women who get angry and storm out of a room when a disappointing decision is rendered are labeled "hysterical" because, as we all know, women are more emotional then men.  I am tired of hearing comments like, "those 'girls' from school X aren't really interested in debate; they just want to meet men."  We can all point to examples (although only a few) of women who have succeeded at the top levels of debate.  But I find myself wondering how many more women gave up because they were tired of negotiating the mine field of discrimination, sexual harassment, and isolation they found in the debate community. As members of this community, however, we have great freedom to define it in whatever ways we see fit.  After all, what is debate except a collection of shared understandings and explicit or implicit rules for interaction?  What I am calling for is a critical examination of how we, as individual members of this community, characterize our activity, ourselves, and our interactions with others through language.  We must become aware of the ways in which our mostly hidden and unspoken assumptions about what "good" debate is function to exclude not only women, but ethnic minorities from the amazing intellectual opportunities that training in debate provides.  Our nation and indeed, our planet, faces incredibly difficult challenges in the years ahead.  I believe that it is not acceptable anymore for us to go along as we always have, assuming that things will straighten themselves out. If the rioting in Los Angeles taught us anything, it is that complacency breeds resentment and frustration.  We may not be able to change the world, but we can change our own community, and if we fail to do so, we give up the only real power that we have.

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T Prohibit

#### Business practices are ongoing conduct defined by the behaviors of many market participants

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

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

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Voting issue---key to link uniqueness and preventing bidirectionality on an otherwise virtually unlimited topic

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T Subsets

#### ‘Core antitrust laws’ must be economy wide---the aff only effects a subset

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Substantial’ means in totality of circumstances

U.S. First Circuit Court of Appeals ’98 [United States Circuit Court; August 25; Federal Appeals Court of the First Circuit; Southwestern Learning, “Court Uses ‘Totality of Circumstances’ for Test of Substantial Abuse by Debtor,” http://www.swlearning.com/blaw/cases/court\_uses.html]

Decision Affirmed. The court joins other circuits in adopting the "totality of the circumstances" test as the measure of substantial abuse under the Bankruptcy Code. This is a flexible standard adopted by Congress to allow bankruptcy courts to consider the factors involved in each case and to prevent abuse of Chapter 7 filings. When there is evidence that the consumer can pay their debts, there is likely to be found substantial abuse.

#### Voting issue---creates a moral hazard to rush to small non-controversial tweaks that shreds limits and ground

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Capitalism K

#### The 1AC invests in a form of neoliberal governmentality necessary to sustain global capitalism

Lebow ‘19 [David; Lecturer on Social Studies at Harvard University and lawyer; “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434.]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

#### Capitalism structurally necessitates militarism, ecocide and technological dystopia---each causes extinction

Foster ‘19 [John; Sociology Professor @ Oregon; February 1; “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>]

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is radical democratic organizing around the collective goal of the abolition of capitalism---that necessitates rejecting neoliberal rhetoric in pedagogical spaces like debate

Giroux ’20 [Henry; McMaster University Professor for Scholarship in the Public Interest and The Paulo Freire Distinguished Scholar in Critical Pedagogy; June 9; “Racist Violence Can’t Be Separated from the Violence of Neoliberal Capitalism,” <https://truthout.org/articles/racist-violence-cant-be-separated-from-the-violence-of-neoliberal-capitalism/>]

As educators, it is crucial for us to examine how we talk, teach, and write about inequality as an object of critique in an age of precarity, uncertainty and the current pandemic crisis. This is especially true at a time when a growing number of authoritarian regimes around the globe substitute replace thoughtful dialogue and critical engagement with the suppression of dissent and a culture of forgetting r. How do we situate our analysis of education as part of a broader discourse and mode of analysis that interrogates the promises, ideals, and claims of a substantive democracy? How do we fight against iniquitous relations of power and wealth that empty power of its emancipatory possibilities, and as Hannah Arendt has argued, “makes most people superfluous as human beings”? How might we understand how neoliberal ideology, with its appropriation of market-based values, regressive notions of freedom and agency, uses language to infiltrate daily life? How does a pandemic pedagogy in the service of neoliberalism produce identities defined by market values, and normalize a notion of responsibility and individuality that convinces people that whatever problem they face they have no one to blame but themselves? Repeated endlessly on right-wing media platforms, the underlying conditions that disproportionately produce chronic illness among poor people of color disappear among a public distracted, if not persuaded, by a pandemic pedagogy that celebrates unchecked self-interest, disdains social responsibility, and turns away from the reality of a society with deep-seated institutional rot and unravelling of social connections and the social contract.

Pandemic pedagogy thrives on inequality and becomes a militarized and heartless normalizing tool to convince the broader public that the lives of the elderly, sick, and vulnerable should be valued according to how much they contribute to the economy. And if they are willing to die in order not to be a drain on the economy, all well and good. Nothing escapes the cruel logic of neoliberalism with its arrogance and hubris on full display as it bathes in the glow of right-wing populism, ultra-nationalism, and neofascism. Its accoutrements of dictatorship are everywhere and can be seen in the swagger of militia that storm state capitals, in police who punch and pepper spray protesters and push elderly men to the ground, and in military forces on the streets without badges reinforcing a climate of fear, repression, and unaccountability. There is more at work here than a lack of humanity on the part of the Trump administration. As the Irish journalist Fintan O’Toole observes, there is also the deepening grip of a culture of cruelty and dehumanization. He writes:

“As a society the American people are being habituated into accepting cruelty on a wide scale. Americans are being taught by Trump and his administration not to see other people as human beings whose lives are as important as their own. Once that line has been crossed – and it is not just Trump and the people around him, but many of Trump’s supporters as well – then we know where that all leads, what the ultimate destination is. There is no mystery about it. We know what happens when a government and its leaders dehumanize large numbers of people.”

Depoliticization and the Authoritarian Turn

Neoliberalism is not only an economic system, it is also an ideological apparatus that relentlessly attempts to structure consciousness, values, desires, and modes of identification in ways that align individuals with its governing structures. Central to this pedagogical project is the attempt to prevent individuals from translating private issues and troubles into broader systemic considerations. By doing this, it becomes difficult for individuals to grasp the historical, social, economic, and political forces at work in shaping a social order as a human activity deeply immersed in specific relations of power. Neoliberalism’s attempt to erase or rewrite historical and social forces makes it difficult for individuals to imagine alternative notions of society, with themselves as collective actors, or view their problems as more than the limitations of faulty character, moral failure, or a problem of personal responsibility. Reducing individuals to isolated, discrete, hermetically-sealed human beings whose lives are shaped only by notions of self-reliance and self-sufficiency is a pedagogical strategy that utterly depoliticizes people, leading them to believe that however a society is shaped, it is part of a natural order. President Trump echoed this “no alternative” narrative when asked about celebrities and rich people having special access to being tested for the coronavirus while few others had access. He replied, “Perhaps that’s been the story of life.”

This individualization of the social with its mounting privatization, gated communities, and social atomization undermines collective action, any viable notion of solidarity, and weakens the notion of global connectivity. The philosopher Byung-Chul Han has rightly argued that contemporary neoliberal society is shaped by a dysfunctional notion of solitude and hermitically-sealed notions of agency, all of which undermine the values and social connections vital to a democracy. He writes:

“Those subject to the neoliberal economy do not constitute a we that is capable of collective action. The mounting egoization and atomization of society is making the space for collective action shrink… The general collapse of the collective and the communal has engulfed it. Solidarity is vanishing. Privatization now reaches into the depths of the soul itself. The erosion of the communal is making all collective efforts more and more unlikely.”

This panoptical nature of hyper-individualism is more aligned with shared fears than shared responsibilities. Under such circumstances, trust and the notion that all life is related become difficult to grasp as the myopic language of private self-interest inures individuals to wider social problems such as extreme inequality. There is no understanding in this discourse of the damage fanatical entrepreneurialism does to our embodied collectivity. Nor is there any value attributed to the important responsibilities, social values, and notion of the common good that exceeds who we are as individuals, or how we have been shaped by diverse social forces in particular ways.

It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable.

Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects.

The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.”

Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism and a halt to the spiraling militarism that has resulted in endless wars. This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited. Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics.

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself.

Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.”

Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history.

Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community.

The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy.

Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism.

Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

### 1NC---OFF

Regs CP

#### The United States federal government should utilize sector-specific regulation for developing procompetitive blockchain policies.

#### The CP employs sector specific regulation that enhances blockchain competition without expanding the scope of antitrust law

Weinstein ’21 [Samuel; 2/19/21; Associate Professor of Law, Benjamin N. Cardozo School of Law; Georgia Law Review; “Blockchain Neutrality,” vol. 55, p. 499-592]

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

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

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

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

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

Of these issues, perhaps the most pressing is how to weigh the prospects for increased blockchain-related competition and its many benefits against threats to consumer safety and systemic soundness arising from blockchain networks. In antitrust cases, agencies and courts typically reject safety-related justifications for competition restrictions.37 Sector regulators view this balance differently. Despite statutory mandates to promote competition,38 the SEC and CFTC strongly favor consumer safety and systemic risk prevention over competition concerns.39 These agencies have been active in the blockchain space, especially with regard to ICOs and cryptocurrencies.40 Considering their regulatory priorities, it is unsurprising that the agencies’ focus to date has been on fraud prevention and classification and registration of financial products and entities.41 Less attention is being paid to broader competition issues. This approach is not balanced; it tilts heavily toward harm prevention.

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

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

Nonetheless, because the benefits of decentralization in the financial markets may be significant, this Article argues that regulators should resist the temptation to implement policies that favor incumbent big banks simply because they are already heavily regulated. Instead, the agencies should promote decentralization while developing ways to address the safety and fraud threats it poses. The use of regulatory nodes on private (permissioned) blockchain networks, which grant the agencies direct access to all the information on a blockchain, may be one way to achieve this goal.47

The third key competition policy challenge blockchain technologies raise for regulators is how to handle standardization, open-access, and non-discrimination issues on blockchain networks. These issues might arise in a variety of ways. To the extent that permissioned blockchains become necessary to compete in certain markets, firms controlling those networks might discriminate against rivals and otherwise harm competition. Or public (permissionless) blockchain networks might institute rules favoring execution of certain transactions over other transactions. Intellectual property rights and standard setting also could play a key role in how blockchain-based competition develops. Blockchainrelated patent holders could use their rights strategically to limit competition and establish (or retain) market power. Anticompetitive abuses of the standard-setting process for blockchain technologies is also a risk.

To maximize blockchain-based competition, this Article contends that regulators (or, if necessary, Congress) should require or encourage open blockchain standards and mandate that dominant blockchain networks offer open and non-discriminatory access to users who meet reasonable and fair membership criteria. Like netneutrality rules for the Internet (before they were overturned),48 this approach will increase competition and innovation on blockchain networks and make it more difficult for the big banks that currently dominate financial services to continue to do so.49

### 1NC---OFF

Statute-Independent Common Law CP

#### Without reference to the laws of the United States, the United States federal government should determine that anticompetitive business practices by nucleus participants at the root layer of blockchains constitute an unlawful restraint on trade and commerce. The United States Congress should restrict the scope of its core antitrust laws to exclude increasing prohibitions on private sector anticompetitive business practices by nucleus participants at the root layer of blockchains.

#### The CP creates federally preemptive statute-independent common law with the same effect as the plan.

HLR 20, Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” 133 Harv. L. Rev. 2557, Lexis

None of this is to say that ERISA preemption fails to raise federalism concerns or that the concerns addressed in Part II are unique to anti- trust. In its decision to expressly preempt state law in ERISA, a wise Congress should have considered the difficulties of preemption via judge-made law. Part II’s concerns with preemption via judge-made law could be applied to any delegation to the judiciary that overrides the states’ will. But given the brevity of federal antitrust statutes and the relative lack of executive branch involvement, Congress should be even more wary if it decides to preempt state antitrust law.159 [FOOTNOTE 159 BEGINS] 159 Complaints about brevity and lack of executive branch involvement land an even stronger blow against preemption via statute-independent federal common law. A grant of federal common lawmaking power does not have to be statutory. All that is needed to support the development of federal common law is “some expressed or implied affirmative grant of power to the national government by the Constitution or a statute enacted pursuant to it.” 19 MILLER, supra note 132, § 4514. When courts make law from a constitutional grant, there may not even be a brief statute. See, e.g., Clearfield Tr. Co. v. United States, 318 U.S. 363, 366–67 (1943) (“When the United States disburses its funds . . . it is exercising a constitutional function or power. . . . In absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards.”); see also 19 MILLER, supra note 132, § 4515; Volokh, supra note 94, at 1429 (discussing courts’ “statute-independent federal common-lawmaking powers”). Because statute-independent common law is created completely by the courts, preemption via statute- independent common law will preempt the states while also excluding the federal executive branch.

Part II’s critique then undermines statute-independent common law preemption even more than it undermines a preemptive Sherman Act. But Part II proffers only an argument that weighs against preemption; that argument must be balanced against the various pro-preemption critiques of Part I. When it comes to statute-independent common law, the pro-preemption arguments may simply be greater than they are in the antitrust arena. After all, such statute-independent common-lawmaking power exists only “in suits implicating a sufficiently strong interest of the national government.” 19 MILLER, supra note 132, § 4515. And it makes sense that common law grounded in the Constitution has more sway than does common law grounded in statute. Although antitrust law has sometimes been likened to the Constitution or other founding documents, see United States v. Topco Assocs., Inc., 405 U.S. 596, 610 (1972) (“Antitrust laws . . . are the Magna Carta of free enterprise.”); Thomas B. Nachbar, The Antitrust Constitution, 99 IOWA L. REV. 57, 69 (2013), courts simply give its commands less weight than those of the Constitution. Compare, for example, the (limited) deference given to professionals in the antitrust sphere, see Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 696 (1978) (analyzing agreements by professionals under the rule of reason), to the zero deference given to professionals under the First Amendment, see Nat’l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2371–72 (2018). Even if statute-independent common law’s complete lack of input from the democratic branches increases the power of the federalism critique, that increase is rebutted by an increase in the power of the pro-preemption arguments. [FOOTNOTE 159 ENDS]

CONCLUSION

There is little doubt that Congress could decide to preempt state antitrust law. However, although the merits of avoiding a patchwork antitrust regime are compelling, Congress would trigger federalism pitfalls if it were to reform antitrust law by expressly preempting state antitrust law. A preempting Congress should weigh any benefits against the complications of federalism’s procedural and political safeguards and of the judiciary’s weak policymaking ability.

Of course, there is reason to believe that if Congress were to expressly preempt state antitrust law, it would do so as part of a more major antitrust reform effort. Recently, federal antitrust policy has been the subject of critique. Fed up with the seeming omnipresence of corporate giants, some scholarly160 and journalistic161 discourse has turned on the federal government’s antitrust policies. As things stand, if Congress decides to preempt state antitrust law with current federal antitrust jurisprudence, it would have to decide that the pros of preemption mentioned in Part I outweigh the federalism cons of Part II. But if Congress were to reform antitrust law by creating a new, detailed antitrust regime for courts to interpret, preemption of state antitrust law could avoid the perils of preemption via judge-made law.

#### Revitalizing non-statutory common law as binding spurs quick climate mitigation---extinction

Mark P. Nevitt & Robert V. Percival 19, Mark P. Nevitt is the George Sharswood Fellow at the University of Pennsylvania Law School and a former active duty Navy Judge Advocate General (JAG) officer who served in the rank of commander; Robert V. Percival is the Robert F. Stanton Professor of Law & Director of the Environmental Law Program, University of Maryland Francis King Carey School of Law, “Could Official Climate Denial Revive the Common Law as a Regulatory Backstop?,” Washington University Law Review, Vol. 96, No. 3, pp 441-494

“Global warming may be a ‘crisis,’ even ‘the most pressing environmental problem of our time.’ Indeed, it may ultimately affect nearly everyone on the planet in some potentially adverse way, and it may be that governments have done too little to address it. It is not a problem, however, that has escaped the attention of policymakers in the Executive and Legislative Branches of our Government, who continue to consider regulatory, legislative, and treaty-based means of addressing global climate change.”

— Chief Justice John Roberts, dissenting in Massachusetts v. EPA (2007)1

“The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.”

— Donald J. Trump, Nov. 6, 20122

INTRODUCTION

Prior to the advent of comprehensive regulatory programs to protect the environment, the common law served as the primary vehicle for redressing environmental harm. More than a century ago, states used the common law of interstate nuisance to seek redress for the most serious transboundary pollution problems.3 Exercising its original jurisdiction over disputes between states, the U.S. Supreme Court issued injunctions limiting smelter emissions4 and requiring cities to build sewage treatment plants5 and garbage incinerators.6

Today the common law has been eclipsed by the enactment of federal legislation requiring agencies to regulate sources of pollution. These statutes have been interpreted broadly to give agencies great power to respond to emerging problems. For example, in Massachusetts v. EPA the U.S. Supreme Court held that the Clean Air Act (CAA) gives the U.S. Environmental Protection Agency (EPA) the authority to regulate greenhouse gas (GHG) emissions if they “endanger public health or welfare”7 by contributing to global warming and climate change.8 The Court rejected not only the claim that EPA lacked such authority, but also the agency’s other rationales for refusing to take action. 9 Following the ruling, EPA had to decide “whether sufficient information exist[ed] to make an endangerment finding.”10 It made the endangerment finding two years later.11

In a series of cases beginning in the 1970s, the Court has held that the comprehensive regulatory programs erected by the Clean Water Act (CWA) and the CAA displace federal common law nuisance claims.12 When states sought to use public nuisance law to address the threats posed by climate change, industry groups urged the Court to bar such actions on constitutional grounds. 13 Instead, in June 2011 the Court held in American Electric Power Co., Inc. v. Connecticut (AEP) that the CAA displaced federal common law nuisance claims in the context of regulating GHG emissions. At the time of the ruling, the Obama Administration EPA was moving aggressively to regulate GHG emissions. But, writing for a unanimous Court, Justice Ginsburg warned that a decision by the EPA not to regulate greenhouse gas emissions would invite litigation and would be subject to judicial review.14

With the election of President Trump, federal environmental policy has sharply shifted. The President has announced his intent to withdraw the U.S. from the Paris Agreement that every other country in the world has accepted as a global response to climate change.15 EPA is moving aggressively to repeal the Obama Administration’s Clean Power Plan, 16 roll back Corporate Average Fuel Economy (CAFE) standards, and attempt to preempt state programs to reduce GHG emissions. 17 Many Trump supporters want EPA to reverse its finding that GHG emissions endanger public health and welfare by contributing to climate change.18

If the Trump EPA reverses the 2009 endangerment finding, this would foreclose the EPA’s ability to use the CAA to regulate GHG emissions. This Article considers whether such an action unwittingly could revive the federal common law of nuisance as a regulatory backstop. While the Supreme Court ruled in AEP that the CAA displaces any federal common law right to seek abatement of carbon-dioxide emissions from fossil fuelfired power plants, this was predicated on EPA actually making a reasoned and informed judgment of GHG emission dangers—not jettisoning agency expertise in favor of politics.19 This litigation, particularly if brought by states as quasi-sovereigns against EPA, could serve as a powerful prod to force federal action on climate change. After all, states have the “last word as to whether [their] mountains shall be stripped of their forests and [their] inhabitants shall breathe pure air.”20

In light of the Trump EPA’s current stance on environmental regulations, the Court’s decision in AEP, and other nuisance cases decided by federal appellate courts, 21 this is a propitious time to reconsider the use of public nuisance law to redress environmental problems. This Article focuses on what we call “the common law of interstate nuisance”—a body of law developed when states, acting in a parens patriae capacity, sought to protect their citizens from environmental harm originating in other states through public nuisance actions under either federal or state common law.22

### 1NC---OFF

#### The plan is an abrupt, doctrinal shift that spills over throughout the economy.

Rogerson ’20 [William P. and Howard Shelanski; 2020; Charles E. and Emma H. Morrison Professor of Economics at Northwestern University; Professor of Law at Georgetown University and a member of the firm Davis Polk & Wardwell LLP; University of Pennsylvania Law Review, “Antitrust Enforcement, Regulation, and Digital Platforms,” vol. 168]

I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court- made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies.18 To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision.19 Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of “federal common law” in the U.S. system.20

The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating—whether it be an expert tribunal or a court of general jurisdiction, for example—and focus on three characteristics of antitrust adjudication itself.

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in another.21 The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct’s likely effects on competition.22 The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct’s having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured.23 Such “ex post” mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal.24 Reducing false positives, however, may or may not be a virtue—that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court’s shift in Leegin Creative Leather Products, Inc. v. PSKS. Inc.25 from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise.26

Antitrust adjudication’s stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp.27 required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses.28 No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since.29 That outcome might not be of concern were it the case that the Supreme Court’s test accurately captures the incidence of predatory pricing.30 Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment.31 Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward.32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts.

C. Market-Driven Case Selection

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

D. Generalists versus Industry Experts

Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39

As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges.

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics.

Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42

The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction.

However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement.

The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary.

The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Unpredictable shifts in antitrust decimate confidence and overall recovery.

Mitchell ’21 [Trace; March 3; Research Associate at the Mercatus Center at George Mason University, J.D. from George Mason University; Morning Consult, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea,” https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Extinction.

Skaperdas ’20 [Stergios; June 16; Professor of Economics at the University of California Irvine, former Director of the Center for Global Peace and Conflict Studies; Peace Economics, Peace Science and Public Policy, “The Decline of US Power and the Future of Conflict Management after Covid,” vol. 26]

Whether the pandemic ends soon or is longer-lasting, the global economy and global geopolitics are very likely to have a different shape than they had before its onset. The high likelihood of a world depression and the differential responses across countries – especially those of China and the US – is changing the existing distribution of power across the world.

After going over recent trends in the US’s superpower status, I will discuss the pandemic’s implications for the rise of China as a challenger to the US’s position and a consequent urgent importance for improving global conflict management. Urgency is justified because international institutions have atrophied over the past few decades whereas the possibilities for conflict are expanding.

During the late 90’s when many thought that the end of US dominance was ending, Wohlforth (1999) argued well that unipolarity – with the US as the sole superpower – was likely to last for decades. More recently, Brooks and Wohlforth (2016) noted that “[T]he United States currently has defense pacts with sixty eight countries – a security network that spans five continents, contains a quarter of the Earth’s population, and accounts for nearly three-quarters of global economic output.” Bleckley (2018) even asserts that unipolarity will last for the rest of this century.

I don’t confront the debate on “unipolarity” here. However, with the rapid economic growth of China and the emergence of Russia as a military and diplomatic competitor to the US in Eurasia, the US’s dominance in Eurasia cannot be taken for granted. If anything, as I will argue, the trends over the past two decades have been more negative for the US than is commonly recognized. With Eurasia having nearly 70 percent of the world’s population and about the same in total GDP (at PPP, IMF 2020), it will be no longer possible for a non-Eurasian power to dominate the world’s economics and geopolitics by itself.

1 Trends before the Pandemic

I will discuss recent trends relating China to the US in terms of three dimensions that are often used to assess great power status: the economy, military capabilities, and technology.

1.1 Economy

China has been quickly catching up with the US in its economy. In fact, by the beginning of 2020, China’s GDP at PPP was 37 percent higher than that of the US (IMF 2020). While GDP at nominal exchange rates might be better in projecting economic power, GDP at PPP is better in gauging the actual productive capacity of an economy.

The trend, however, that has been in favor of the US lately, has been the enhanced status of the US dollar as a reserve currency, paradoxically since 2008. The currency swaps between the Fed and other Central Banks – to help primarily the banks of US allied countries – appears to have been the major factor in this trend (Tooze 2018). This financial power has been increasingly used in sanctions against adversaries but even Allies.

1.2 Military

China has been rapidly modernizing and expanding its conventional forces but is very far away from becoming a peer to the US militarily.

The US has maintained its extraordinary predominance to move military resources by sea, land, and air throughout the world. However, the actual ability for the US to force its will on others has been shown to be limited recently. It can barely hold onto its troops in Afghanistan and Iraq and has had limited influence in Syria and in Libya. The fact that, after the assassination of Iranian General Suleimani, Iran was allowed to hit the US Al-Asad military base in Iraq (with apparently pretty accurate missiles) without any reaction shows the limits of US power projection. I suspect this is the first time that the US had one of its bases hit by another sovereign state without retaliating against them. While Iraq could be occupied, Iran is unlikely to be so – it is three times as big and populous as Iraq and its invasion would involve many additional complications.

Moreover, US aircraft carriers and bases are vulnerable to increasingly accurate missiles not just from Russia and China but from Iran as well. Hypersonic missiles are even deadlier, with Russia and China being reportedly ahead of the US in their development. With such vulnerabilities the US’s ability to project military power in Eurasia becomes much more limited. It would be no exaggeration to say that it is “game over” for the US’s projecting military power in Eurasia without the expectation of a challenge.

Finally, the relatively small wars that US have already entered have been extremely costly. The cost of the Iraq and Afghanistan wars to US alone was estimated 10 years ago by Stiglitz and Bilmes (2012) to be between $4-6 trillion, a quarter to 40% of US GDP at the time.

1.3 Technology

While the US was far ahead of China in technology and basic research barely a few years ago, China has been rapidly catching up. For example, one respectable index of current high-quality research is the Nature Index (natureindex.com) which includes articles only in the top natural science journals. In 2012 China’s scientific productivity was at 24% of the US but by 2019 it was 67% of the US’s level. This is likely a much better level than the Soviet Union ever achieved relative to the US. In technological disciplines such as computer science and AI China is likely in even better place.

Furthermore, China has been demonstrating the ability to rapidly learn how to adapt foreign technologies and implement them in production at large scale. Highspeed rail, for instance, expanded from nothing to a 30,000 km network within a decade, while pushing the technology to new limits. The US by contrast seems to have largely divested itself of the necessity of maintaining primacy in engineering and manufacturing. The US’s emphasis on expensive high-tech weaponry is largely driven by military-industrial complex rent-seeking and is, at best, a gamble that would have highly uncertain returns in a hypothetical conventional battlefield.

Overall, China, while still markedly militarily inferior, has become at least an equal to the US economically and has been catching up rapidly in technology, while Russia has been counter-balancing the US militarily and diplomatically in Eurasia.

2 Effects of the Pandemic

The pandemic has brought about Depression levels of unemployment in the US in record time and almost all countries are facing severe contraction.1 Employment is unlikely to reach its pre-pandemic level for a long time and, because this is happening simultaneously around the world, there is no single large country or region that could help lift the rest of the world with its demand.

However, in relative terms China and East Asia have been less affected thus far and will continue to do so as long as they maintain a better health policy response to the pandemic.2 China will likely have to restructure its economy to be less dependent on existing supply chains, rapidly expand the Belt-and-Road initiative, and expand its social welfare so as to rely more on internal demand for continued growth. Nevertheless, although all predictions now can be expected to have high variance, China is likely to come out in the end economically better off relative to the US.

Other widely discussed probable effects include the strengthening of the nation-state and a retreat of globalization in production, trade, and capital movements. We can envision scenarios from a mild retreat of globalization with shorter supply chains to a full blown new Cold War with two or more separate economic blocks.

Regardless of what the medium and long run will look like, the pandemic appears to have accelerated pre-existing trends of US declining power to the extent that we cannot say that there is one superpower dictating the international politics and economics of Eurasia. China and, secondarily, Russia will have much to say about how the global political economy evolves. Under such conditions opportunities for conflict increase and institutions of conflict management become ever more important.

3 The Alarming Future of Conflict Management

US policy until recently was as if the liberal trade hypothesis were true and there was no chance of an adversarial relation with China in the future. That is consistent with a neoclassical economic perspective according to which more trade is always better. However, trade policy cannot be separated from security considerations when there is the possibility of insecurity (Garfinkel et al. 2015; Skaperdas and Syropoulos 2001). Now US policy seems to have been reversed with China being treated, not as trade partner, but effectively as an enemy.

In such a case international institutions of conflict management would be important for reducing the chance of conflict, reducing the costs of arming, and allowing for smoother trade relations; most of all, for minimizing the chance of nuclear war. Those institutions, however, have gradually atrophied or have been intentionally boycotted during the time of US dominance. Over the past two decades, for example, and contrary to previous practices the US entered a number of wars without UN Security Council resolutions (including those that it could have obtained agreement such as the Afghanistan war). The recent withdrawal from the WHO, and the series of withdrawals from arms-control agreements (ABM, INF, Open Skies, and perhaps START) are other examples of the weakening of international institutions. Perhaps this is to be expected of a world hegemon, but the unilateralism appears to have increased while US power has been decreasing and the need for future restraint on all has become more visible. The conditions appear to be leading to a “bad” equilibrium without investments in conflict management and high probability of conflict as opposed to a “good” equilibrium with investments in conflict management and low probability of conflict (Genicot and Skaperdas 2002).

The times we are now have similarities with the pre-WWI period which combined a high degree of globalization with the absence of institutions of conflict management (instead of their atrophy that we now have). At the time, there was a wide-spread belief that economic interdependence, and the break of that interdependence and other costs that war brings about, would by themselves guarantee peace (see, e.g., Angell 1913). Yet war came unexpectedly and with a vengeance.

With the dismantling of previous arms control agreements, without good prospects for their replacement in the future, and the weakening of the UN and other international organizations, the risks and challenges facing the world include the following:

* Multiple-pronged arms races that go beyond hypersonic weapons to cyberweapons, autonomous weapon systems, other AI technology-enabled systems, and deployments in outer space. The costs and, most important, the multiple uncertainties that such arms races can generate are of immense risk. Highly risk averse leaders, perhaps as a result of a mistake or misunderstanding but not only so, could launch wars from which there might be no going back (Mearsheimer 2001; Wong et al. 2020).
* In the absence of nuclear weapons treaties, the only restraint on nuclear war is Mutual Assured Destruction (MAD). With new platforms, such as hypersonic missiles, that make possible delivery of nuclear weapons faster than it ever has been, could there be a greater temptation for a first strike (thinking that retaliation would never come)? Many examples of preconceptions, mishaps, and near-accidents from the 1950s and 60s that were not previously known (reported in Ellsberg 2017) show how the world we are now entering is likely more dangerous than the Cold War ever was.
* A scramble for trading partners and Allies across the world that could go beyond just the offering of carrots. The undermining of governments that are perceived to be unfriendly by one side and their shoring up by the other side often leads to less autonomy, externally-induced political conflicts, increased authoritarianism, and not infrequently to outright civil war. The danger of many countries in Eurasia, Africa, and Latin America becoming battlegrounds for continual proxy conflicts between the superpowers is increasing.

### 1NC---OFF

CIL CP

#### The United States federal government should substantially increase its prohibitions anticompetitive business practices by nucleus participants at the root layer of blockchains by expanding the scope of its interpretive obligations under customary international law.

#### The CP competes and solves the case – it renders the same conduct equally unlawful, but expands CIL rather than antitrust statute – that signals U.S. adherence to norms of international economic law.

Banks ’12 [Ted; 2012; Scharf President, Compliance & Competition Consultants; Denver Journal of International Law & Policy, “40th Anniversary Edition: The International Law of Antitrust Compliance,” 368]

Introduction

It was not so long ago that the concept of international criminal law was an idea with which lawyers struggled. In 1987, Ved Nanda and M. Cherif Bassiouni put together what may have been the first one-volume compendium of information on antitrust, securities, extradition, tax, and other subjects that made up the developing area of international criminal law. Today, it is well-accepted that there are certain standards of behavior that are the norm in practically all nations, and through national laws and multinational treaties, these principles are entering the realm of customary international law.

Developments in the area of competition law, or antitrust as it is known in some countries, have been particularly dramatic. Countries understand that the encouragement of competition is a key to economic development, and national laws have been enacted where they did not exist before, along with enforcement cooperation agreements among increasing numbers of countries. 1 Enforcement of criminal antitrust laws takes place against both individuals and businesses, 2 and while it is clear that there are situations where business entities must be held responsible for actions of their employees, there are other situations where the intent of the corporation may be contrary to the actions of the employee. Throughout the world, in competition law, as well as in other areas of law, there is a consensus that it is appropriate for companies to adopt compliance and ethics programs to utilize management techniques to foster compliance with law. So, as standards of corporate [\*369] conduct become more universal, they reflect adherence to what is essentially an international law - the international law of competition. At the same time, more national authorities recognize that companies are expected to have compliance programs, and that a bona fide compliance program reflects a corporate intent not to violate the law, and therefore should be a positive factor in how authorities treat such companies, including as a mitigating factor for any penalty that might be imposed based on the ultra vires act by an employee.

It is well accepted that compliance and ethics programs are an expected part of corporate activity, and while no program can always guarantee human behavior, these programs do work to mitigate violations of law. Indeed, it can be said that it is now a standard for companies to have compliance programs or at least some elements of such programs such as codes of conduct. We submit that this growing recognition of the purpose of compliance and ethics programs has reached broad-based acceptance and should now be recognized in the competition law field by the United States and other governments as a standard of international law.

The Concept of Organizational Liability

Under many legal regimes, a corporation cannot be criminally punished for the actions of its employees, and until relatively recently (at least if you consider a century relatively recent), under the common law, a corporation was viewed as a legal fiction, 3 which could not be held liable for the criminal conduct of its employees. In the United States, it was not until 1909, in New York Central & Hudson River Railroad v. United States, 4 that the Supreme Court ruled that because the great majority of business transactions were conducted by corporations, it was time to abandon the "old and exploded doctrine" that a corporation was not indictable. 5 The Court reasoned that, as a matter of public policy, because a corporation could be held civilly liable, criminal liability should also follow. 6

This concept of corporate liability has been extended to the point where the business is often held liable for acts of employees even if the [\*370] company was not aware of the violation, 7 prohibited the conduct that led to the violation, 8 or there was no actual benefit to the corporation through the acts of the employee. 9 So even if none of the three justifications for corporate liability are present, i.e., knowledge, benefit, or authority, corporate liability for the acts of an employee - in addition to the liability of the employee - may still be found. A number of reasons have been given for this approach, but a consistent argument is that this type of liability will have an in terrorem effect on the corporation and force the entity to make certain that employees obey the law. 10 As a practical matter, it also reflects the reality that employees working through a corporation, whether or not their actions are authorized, can cause harm far beyond the abilities of one person. Therefore, according to this line of reasoning, it is appropriate that the entity be punished criminally (and pay civil damages).

The usual rule in the United States and other common law countries is that a corporation is liable for acts of agents and employees acting within the scope of their employment and, in most cases, with the intent to benefit the company. 11 This approach derives from the common law doctrine of respondeat superior, which held that a master is generally liable for the actions of servants, but may escape liability if the servant acts outside the scope of employment (i.e., takes action for [\*371] which there is no actual or apparent authority). 12 The concept of apparent authority, the authority that outsiders would normally assume the agent to possess judging from his or her position in the company and the circumstances surrounding previous instances of conduct, is often the foundation for a finding of corporate liability. 13 Employees are assumed to be acting within the scope of their employment 14 if they are doing acts on the corporation's behalf in the performance of their general line of work. 15 An agent must be "performing acts of the kind which he is authorized to perform, and those acts must be motivated - at least in part - by an intent to benefit the corporation." 16 It is not necessary that the acts actually benefited the corporation, only that they were intended to do so.

The court decisions and statutes that led to these multiple bases for finding enterprise liability grew up in an era where there was recognition of the power of the "faceless" corporation and the need to control its activities. Courts would impute knowledge or intent to the corporation, even where there was no benefit to the enterprise by the wrongful acts of the employee and the activities did not benefit the corporation, although some courts are willing to consider whether the violation was foreseeable. 17 In other situations, liability might be imputed to a corporate officer or director for failure to exert their authority to ensure that the corporation (i.e., acting through employees) did not do wrong. 18

But it is also an inescapable fact of our human existence that people are fallible, and that in some cases people will ignore instructions and do things that they were expressly forbidden to do. By holding a corporation liable for virtually anything that any employee does, a situation of strict liability is created that may, in fact, be outside the scope of many laws that require an intent to violate the law. [\*372] Notwithstanding the desire to control the power of the corporation, there are limits to what it can do. The efforts of the corporation to control the actions of employees are a valid consideration in determining whether the corporation should be held liable for the actions of an employee, as was noted in the instructions to the jury after the trial of Arthur Andersen in connection with the Enron debacle:

If an agent was acting within the scope of his or her employment, the fact that the agent's act was illegal, contrary to the partnership's instructions, or against the partnership's policies does not relieve the partnership of responsibility for the agent's acts. A partnership may be held responsible for the acts its agents performed within the scope of their employment even though the agent's conduct may be contrary to the partnership's actual instructions or contrary to the partnership's stated policies. You may, however, consider the existence of Andersen's policies and instructions, and the diligence of its efforts to enforce any such policies and instructions, in determining whether the firm's agents were acting within the scope of their employment. 19

The key here is "diligence." Was a compliance program something that existed only on paper, 20 or were there indicia of sincerity on the part of the corporation that showed that it legitimately tried to enforce its policy of compliance? The diligence of the corporation in enforcing its policy should be a key factor in determining if it is the kind of program that should entitle the corporation to some measure of mitigation from legal penalties imposed as a result of the actions of an employee that disobeyed the policy. 21

[\*373] Competition law imposes certain standards of behavior that are accepted because of an understanding that society benefits from competition. Therefore, in most cases, cartels are prohibited, as is abuse of market power or dominance. There is a recognition in many areas of law that transparency is beneficial, and thus bribes or secret rebates are prohibited for their disruptive impact on competition, as well as their inherent corruptness.

But how do these standards become accepted? It is not sufficient only to implement national laws and multinational agreements. Enforcement authorities recognize that there must also be private action to enforce policies within corporations and to demonstrate that noncompliance with law will not be tolerated. As will be discussed below, there are benchmarks of what is an "effective" compliance and ethics program that have received broad-based acceptance. Standards of international competition law cannot have their desired impact without international standards and efforts for compliance. Companies need to be able to know that what they do to implement compliance standards does matter so that they will make a diligent effort to prevent cartel behavior from happening. If a company has taken serious action to enforce its standards, such as by discharge of employees who violate the law, 22 this level of corporate compliance, which is expected by enforcement authorities, should be recognized when deciding how to treat corporations, including charging and penalty decisions.

So, there is a combination of factors at work here. Competition law standards are virtually universal in their acceptance. 23 To get those standards to actually be implemented by corporations, there need to be corporate compliance and ethics programs in place. Standards of culpability recognize that factors such as intent, knowledge, and benefit are relevant to findings of corporate liability. A number of countries do specifically encourage compliance and ethics programs, including in the antitrust area. 24 Therefore, this growing, worldwide acceptance, combined with universal necessity, has established an international law not just for antitrust, but for antitrust compliance. The countries that do not formally recognize the value of bona fide compliance programs as relevant to corporate liability, perhaps seduced by the possibility of collecting huge fines from a corporate piggy-bank, are out-of-step with the reality of what is necessary to truly promote the principles of competition law.

#### U.S. commitment prevents the disintegration of international economic law – extinction.

Arcuri ’20 [Alessandra; 2020; Full Professor of Inclusive Global Law and Governance at the Erasmus School of Law, Journal of International Economic Law, “International Economic Law and Disintegration: Beware the Schmittean Moment,” vol. 23]

Introduction

There was a time when national sovereignty was out of fashion. In the nineties, international lawyers were engaged in imaging the global order beyond the nation-state. Theories to make this order possible were proliferating: from Global Administrative Law to global constitutionalism.1 International Economic Law (IEL) played an important role in the journey toward the global order. Our markets could be integrated through an almost brand new organization, the World Trade Organization (WTO). The WTO was created and endowed with a powerful set of new agreements, promoting the harmonization of health and safety law—through the Sanitary and Phytosanitary (SPS) Agreement—and technical regulation—Technical Barriers to Trade (TBT) Agreement—and establishing (relatively uniform) Intellectual Property Rights regimes worldwide (the TRIPS Agreement). The WTO also included a brand new dispute settlement system, considered by many as a manifestation of the rule of law at the international level. Similarly, organizations such as the World Bank and the International Monetary Fund (IMF) were indirectly spreading (de-)regulatory policies throughout the developing world.2 Globalization, nudged by a global technocratic elite, was alive and kicking, back then.

Today we face a crisis of the regime of international economic law and, more broadly, global economic governance. The system appears broken for its incapacity to face some of the most daunting challenges of our time: the widespread and dramatic process of environmental degradation and the unacceptable inequalities between poor and rich. On its face, the phenomenon of far-right populists, partly reflected in Brexit and Trump politics, and spreading across the Atlantic is shaking the system of international economic law, by hailing nationalist policies. The idea that the nation-state may be a desirable source of disintegration of the global (legal) order is gaining traction across the political spectrum. It appears clear that the answer to the legitimacy crisis of the system of international economic law and governance offered by progressives3 resorts also to entrusting the nation state with more political space—a space that allegedly has been unduly constrained by the global economic order.

Not only politicians but also progressive academicians, such as Professor Dani Rodrik, have defended the importance of national sovereignty,4 as one of the necessary paradigms to fix our broken world order. The gist of the reasoning is simple: global institutions went too far in eroding national sovereignty, which is the real basis for democratic liberal regimes. Without the nation-state, environmental, industrial, and redistributive policies cannot be realized. As Rodrik put it: ‘So, I accept that nation-states are a source of disintegration for the global economy.’5

This article critically engages with the idea that the nation-state is a legitimate force of disintegration of the international economic order, with particular attention to trade and investment agreements. There are disparate circumstances, from the realm of food safety regulation to the regulation of capital flows,6 in which it is arguably desirable that domestic institutions (re-)gain more power. Most importantly, the nation-state is today an important site of democracy and, only for that reason, it is worth defending. Yet, in times of raising authoritarianism, it is crucial to reflect on some of the limits of the nation-state and on the necessity to develop alternative paradigms for integrating economies and societies.

This article presents a two-fold critique of the idea that an expansion of national sovereignty is going to achieve a better socio-economic world order per se. The first critique is internal, showing that the nation-state does not possess intrinsic characteristics to facilitate democracy, equality, and sustainability. The second is external and focuses on the necessity to look reflexively at the goals of the system of international economic law, to re-imagine it as capable to address questions of inequality and environmental degradation.

In a more pragmatic fashion, this article posits that more nation-state may be a misleading and possibly dangerous response to today’s daunting challenges. It is misleading in so far as it promises solutions that nation-states alone cannot deliver. It is dangerous in so far as the rhetoric of the nation-state paradoxically facilitates the turn toward an expansion of the ‘rule of exception’ and, eventually, authoritarianism. Above all, in advocating for disintegration through the nation-state, we need to reckon with our haunting past where economic autarchy has been deeply intertwined with the ascent of fascism and Nazism. If today the nation-state may appear as a beacon of democracy, the role of nationalism in generating the nemesis of democracy should not be neglected. In short, and at the risk of oversimplification, ‘America first’ echoes too closely fascist slogans.7

I. A PROGRESSIVE DEFENSE OF THE NATION-STATE AND THE RISK OF A ‘SCHMITTEAN MOMENT’

Let me start by rehashing the two interconnected and equally formidable challenges we are facing today: the question of environmental degradation and the unacceptable level of inequalities whereby a large part of the population in the world lives in poverty (both in developing and developed countries, but still overwhelmingly concentrated in so-called developing countries) vis-à-vis a small elite enjoying incredible wealth. Economic integration that does not deal with these challenges is not only doomed to fail; it is a type of economic integration that we should not aspire to.

It is plausible that Brexit and the disintegrationist economic policy of Trump have been partly enabled by the growing inequalities in the Anglophone nations. It is no brainer that a large fraction of Brexiteers and Trump voters are the ‘left behind.’8 In wealthy countries, the working class often felt left behind by thriving globalization, which has benefited only the elites. The—often labelled—‘populist turn’ rests on the idea that the ‘other’, the ‘foreigner’ has stolen ‘our’ welfare and a more nationalistic policy is needed to protect the losers of the current state of affairs. This is evident from Trump’s slogan ‘Buy American, Hire American.’ It is worrying how this type of nationalism is entrenched in racism and in the othering of the non-American.

However, as mentioned earlier, the case for more nation-state has also been made by ‘progressive’ politicians and intellectuals. Among progressive economists, Dani Rodrik stands out for having defended the nation-state with compelling arguments. Let me quote him at length: ‘When it comes to providing the arrangements that markets rely on, the nation-state remains the only effective actor, the only game in town. Our elites’ and technocrats’ obsession with globalism weakens citizenship where it is most needed—at home—and makes it more difficult to achieve economic prosperity, financial stability, social inclusion, and other desirable objectives.’9 Not only is the nation-state the only game in town, when it comes to issues of redistribution, social security and safety, the nation-state is also desirable because it can deliver institutional diversity which is needed to realize the social contract: ‘Developing nations have different institutional requirements than rich nations. There are, in short, strong arguments against global institutional harmonization.’10 The nation-states can meet different preferences, and ‘[i]nsufficient appreciation of the value of nation-states leads to dead ends.’ Rodrik also concedes that international market liberalization is the offspring of well-functioning nation-states rather than international institutions: ‘Domestic political bargains, more than GATT rules, sustained the openness that came to prevail.’11 Against this background, Rodrik defends ‘economic populism’ in so far as it constitutes a form of resistance to ‘liberal technocrats’ imposing undue restraints on domestic economic policy.12 The rigid focus on price stability in low-inflation environments is a clear example of global or EU-driven policies largely insensitive to the effects on employment and paradoxically even growth.13

Many of Rodrik’s arguments are compelling, such as his critique of the economic profession’s misleading analysis of trade and investment agreements. Some of his reform proposals, such as the strengthening of green industrial policy,14 are arguably desirable. Most crucially, the nation-state may be at present one of the most developed sites of democracy, albeit an imperfect one. When global institutions constrain nation-state policies formed following democratic decision-making, this may legitimately be seen as a threat to democracy. Rodrik’s work has had a wide echo in legal circles, as evidenced by the publication of a book with the goal of reimagining trade and investment law, 15 which is opened by several chapters all commenting—in overwhelmingly positive terms—on Rodrik’s Straight Talks on Trade. The nation-state and, more generally, sovereignty is (re-)gaining traction also among progressive political theorists. In times of economic and existential uncertainties, sovereignty is there to offer protection ‘from unfettered markets and from permanently incumbent austerity’ and it constitutes a ‘refusal of a “liquid society” and of its very solid … inequalities.’16 Some of the most lucid analyses of the current international economic order point at the dramatic consequences of an increase of capitalist power that has incapacitated states to act in defense of its own people.17 The attention on sovereignty is also partly reflected in recently negotiated provisions of new trade and investment agreements, where states are explicitly endowed with a ‘right to regulate.’ Despite the unclear practical implications of such jargon, its symbolic value is unambiguously bearing witness to the shared view that states ought to maintain (or regain) political space. Against this background, Trump’s claims to defend the Ohio steel workers by whatever trade measures it takes may appear more acceptable. Could we then read in this reinvigorated faith in sovereignty a ‘Grotian moment’?18

Without indulging on this question, this article posits that we should beware the ‘risk’ of entering a ‘Schmittean moment’.19 This term is here used to refer to a major shift toward an ideal of unfettered national sovereignty as the chief paradigm to re-orient the international (economic) order. Under such ideal, any international normative benchmark is brushed away by an allegedly more intellectually honest ‘political’ dimension, which can find its realization only in the decisionist state.20 To understand the risk of a ‘Schmittean moment’, it is important to recognize that the move toward more nation-state is partly animated by the legitimate concerns over the existing international legal order; legitimate concerns, which have eloquently been articulated by Schmitt himself.

Carl Schmitt’s work offers a lucid critique of the ‘exclusionary character of liberal universalism.’21 His critique exposes the hypocrisy underpinning many universalisms, most prominently the legal canon of ‘just’ war.22 In fact, it is the very core of the contemporary international legal project that gets questioned: ‘The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form, it is a specific vehicle of economic imperialism. Here, one is reminded of a somewhat modified expression of Proudhon’s: whoever invokes humanity wants to cheat.’23 This argument has direct relevance for the domain of international economic law. In an endnote to this claim—discussing the extermination of Indians in North America—Schmitt explains the danger to use certain moral canons as exclusionary devices: ‘As civilization progresses and morality rises, even less harmless things than devouring human flesh could perhaps qualify as deserving to be outlawed in such a manner. Maybe one day, it will be enough if people were unable to pay its debts.’24 This consideration is of extreme actuality in relation to the current international legal order, which seems to have crystallized structures of annihilation of debt states, and their very peoples.25 In decrying how the economical is rescinded by the political, Schmitt unveils the absent ‘presence’ of (mostly American) politics in the economy. In short, Schmitt’s analysis cogently engages with the problem of depoliticization that the international liberal order yields.26 It is at this juncture that the thoughts of Schmitt and Rodrik may intersect. In some sense, Schmitt’s critique resonates with the critique of ‘hyper-globalization’ articulated by Rodrik:27 ‘one type of failure arose from pushing rule making onto supranational domains too far beyond the reach of political debate and control.’28

Before elaborating on this intersection, it is key to rehash some flaws of Schmitt’s analysis. While he has certainly a point in showing how liberal universalism can be used to arbitrarily exert hegemonic power in the name of humanity (and has so been used in such way by the US and other predominantly Western countries), the alternative he implicitly propounds rests on a nostalgia for a mythical past—a golden age based on the jus publicum Europaeum. Regrettably, this age has been golden only for some; the jus publicum Europaeum for all its glory was made of colonial relations, exploitation, and violence. It has also been noted how Schmitt’s historical analysis, which portrays the times of the jus publicum Europaeum as times where war gets domesticated by the modern state eclipses the fact that the ‘development of the modern state apparatus … helped bring about unprecedented capacities for organized state violence, even if such violence was no longer typically unleashed against fellow Europeans.’29 His conception of sovereignty, which finds essential realization only in the ‘unlimited jurisdictional competence’ normalizes the rule of exception. A related trouble with Schmitt’s core normative ideas is the totalizing enemy-friendship antithesis: ‘the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.’30 This is particular fatal to an ideal of nonviolent international law, as it denies even the aspiration of solidarity beyond borders.31 In other words, Schmitt conceptualization of the international legal order crystallizes nation-state borders in deeper existential structures, leaving no hope for common projects of different communities inhabiting the earth. In exposing the violence of allegedly humanitarian projects, Schmitt is de facto hollowing out the concept humanity, reducing its essence to violence in potentia: ‘the entire life of a human being is a struggle and every human being symbolically a combatant. The friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing.’32 In denouncing the hypocrisy of moralism, Schmitt seems to negate the possibility of morality altogether. The Nomos of the earth, starting with the act of appropriation—nehmen (take)—and continuing with dividing the land—nemein (divide)—does not engage with the morality of the first act of appropriation nor with its division. And this is also what Hanna Arendt contests to Schmitt: ‘to remove justice from the content of the law.’33

### 1NC---OFF

Deference CP

#### The Executive and Judical Branch of the United States should

#### interpret antitrust law to cover anticompetitive business practices by nucleus participants at the root layer of blockchains

#### waive any legal defenses of the interpretation other than Chevron deference;

#### announce this interpretation is an administration priority and enforce it; and

#### grant cert to any challenges to anticompetitive business practices by nucleus participants at the root layer of blockchains.

#### The United States Congress should sue the executive for its interpretation of anticompetitive business practices by nucleus participants at the root layer of blockchains

#### The CP competes and solves the aff

Gavil 17 [Andrew I, Jonathan B Baker, William Kovacic, and Joshua D Wright; Professor at the Howard University School of Law and Senior of Counsel at Crowell & Moring LLP; Professor at the George Mason University School of Law, a commissioner of the U.S. Federal Trade Commission from 2006 to 2011; Research Professor of Law at American University, former Director of the Bureau of Economics at the Federal Trade Commission; the Executive Director of the Global Antitrust Institute, professor of law at George Mason University, commissioner of the U.S. Federal Trade Commission from 2013 to 2015; third edition published 2017; Antitrust Law in Perspective: Cases, Concepts, and Problems in Competition Policy, “Defining Competition Policy for a Global Economy,” Ch. 1, p. 60]

One method for designing antitrust standards of conduct is to create general rules and rely chiefly on enforcement officials and courts to articulate the law's specific content. As we have already noted, the Sherman Act assigns a pivotal role to the courts in adapting to changing views of what constitutes sound policy:

\* \* \* "Stare decisis is not an inexorable command." In the area of antitrust law, there is a competing interest, well-represented in this Court's decisions, in recognizing and adapting to changed circumstances and the lessons of accumulated experience. Thus, the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress "expected the courts to give shape to the statute's broad mandate by drawing on common-law tradition." As we have explained, the term "restraint of trade," as used in § 1, also "invokes the common law itself, and not merely the static content that the common law assigned to the term in 1890." Accordingly, this Court has reconsidered its decisions construing the Sherman Act when the theoretical underpinnings of those decisions are called into serious question.

State Oil Co. v. Khan, 522 U.S. 3, 20-21 (1997). As Justice Sandra Day O'Connor suggested, drafting antitrust rules in general terms gives courts and enforcement agencies much discretion to shape policy and makes the law flexible and adaptable. Some legislatures might regard this degree of flexibility suspiciously if they think prosecutors will misuse their discretion or that courts will ignore the legislature's intent in interpreting the law.

#### Chevron will die now---the CP’s durable fiat resurrects the doctrine

Berman 20 [Amanda; 2018; a counsel in the Environment & Natural Resources and Litigation groups; Crowell, “Administrative Law – The Supreme Court and the President Rein in the ‘Administrative State,” [https://www.crowell.com/NewsEvents/Publications/Articles/Administrative-Law-The-Supreme-Court-and-the-President-Rein-in-the-Administrative-State](https://takecareblog.com/blog/the-imminent-demise-of-chevron-deference)]

A conservative Supreme Court and administration have both been working to roll back the administrative state, shifting its center of power to the courts. The shift has been incremental, as demonstrated by two recent Supreme Court rulings and executive orders. Yet the impacts on virtually every agency—and therefore every business subject to regulation—are already substantial. And the pace of change could rapidly increase in 2020 and beyond.

“These trends will make it easier for industry to challenge agency actions they don’t like,” says Amanda Shafer Berman, counsel in the Environment & Natural Resources and Litigation groups at Crowell & Moring and a former senior attorney in the Department of Justice’s Environmental Defense Section. “But it might make it harder for them to get what they want.” In other words, even as challenging agencies becomes easier, agencies could become slower and more cautious in ways that regulated businesses may find frustrating. Furthermore, the rollback in administrative power could ultimately result in greater regulatory uncertainty.

#### Extinction---adapatle regulations filter global catastrophic risks

Bazelon and Posner 17 [Emily and Eric; 2017; Staff writer and Law Professor at the University of Chicago; New York Tunes, “The Government Gorsuch Wants to Undo,” https://www.nytimes.com/2017/04/01/sunday-review/the-government-gorsuch-wants-to-undo.html]

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve “fair competition” standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an “unconstitutional delegation by Congress of a legislative power.” Only Congress can create rules like the poultry code, the justices said. Because Congress did not define “fair competition,” leaving the rule-making to the president, the N.I.R.A. violated the Constitution’s separation of powers.

The court’s ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the “nondelegation doctrine.” Schechter Poultry’s stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can’t wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn’t optional in our complex society. It’s indispensable.

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role for the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His E.P.A. sought to weaken a rule, issued by the Carter administration, which called for regulating “stationary sources” of air pollution — a broad wording that is open to interpretation. When President Reagan’s E.P.A. narrowed the definition of what counted as a “stationary source” to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the E.P.A. (and any agency) could determine the meaning of an ambiguous term in the law. The rule came to be known as Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency’s reasonable interpretation of what the words mean.

Chevron was not viewed as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. “In the long run Chevron will endure,” Justice Scalia wrote in a 1989 article, “because it more accurately reflects the reality of government, and thus more adequately serves its needs.”

## Adv---Blockchain

### 1NC---AT: Inherency/Solvency

#### Decentralized permissionless blockchains are a low risk for anticompetitive behavior and its impossible to enforce antitrust laws against them

Pike and Capobianco ’20 [Chris; Gabriele; 2020; Partner and Managing Director (Head of Digital Markets) at Fideres, an economics firm that focuses on antitrust litigation exclusively from the complainant-side and an associate at the Centre for Competition Policy at the University of East Anglia; Junior Competition Expert at the Competition Division; OECD Blockchain Policy Series; “Antitrust and the trust machine,” https://www.oecd.org/daf/competition/antitrust-and-the-trust-machine-2020.pdf]

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

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

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

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

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

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

### 1NC---AT: Bees

#### Pollinator collapse does not cause extinction

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

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

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

### 1NC---AT: Blockchain

#### No blockchain extinction impact

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

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

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

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

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

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

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

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

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

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

## Adv---FTC

### 1NC---AT: Democracy

#### US human rights pressure on China backfires and bolsters Chinese nationalism

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A common thread in these arguments is that criticism itself is damaging for the regime. This damage may not be great enough to worry about, or may be outweighed by the benefits from being seen to report it, but the assumption is that all else being equal, rulers would rather their population not hear disparaging remarks about their rule. In this view, citizens are rational Bayesian updaters (Gerber & Green, 1999), taking in information from credible sources that human rights are not well respected in their country and downgrading their views about human rights conditions. They will then be more likely to support domestic activism and challenge their government over these conditions.

But citizens are not always rational actors. They bring their own biases and motivations, which may influence how they respond to new information about their country. If we are to fully understand the impacts of international pressure, we need to examine how individuals actually respond to critical information and what this means for their support for their government’s actions. Studies of transnational persuasion have shown that people may not act in a Bayesian manner, but instead rely on their own partisan political identities to cue how they interpret foreign comments (Bush & Jamal, 2014; Dragojlovic, 2015; Hayes & Guardino, 2011). Marinov (n.d.), for example, shows that disparaging foreign comments about democracy in Turkey could downgrade people’s beliefs about freedoms in the country—but only if those comments were supported by their partisan political elites.

However, in autocracies like China with few political parties, partisan political identities are not the clear identity markers that they might be in the United States or Turkey. Pan and Xu (n.d.) argue that there is little clear political polarization in the country due to the lack of political opposition and, as a result, the ideological spectrum in the country “does not delineate a cleavage between those who support regime policies and those who oppose them” (p. 1). Instead, the main source of group identity is the nation: In the 2012 World Values Survey, 98% of Chinese citizens said that they saw themselves as part of the Chinese nation, while 90% said they were proud of their country.9 According to Rosen and Fewsmith (2001), nationalist sentiments are some of the main ways through which citizens express their opinions in public in China.

In countries like China, people’s attachment to their nation is likely to be a major factor in determining their response to foreign pressure. According to social identity theory, part of a person’s self-concept comes from his or her membership in this kind of social group (Tajfel, 1978). The theory argues that people wish to maintain a positive image of their group in relation to other groups to maintain their self-esteem (Abrahms & Hogg, 1988; Rubin & Hewstone, 1998; Tajfel & Turner, 1979, 1986), such that “the better one’s group looks in comparison with other groups, the more status the group gains, and the more self-esteem it can provide for its members” (Morton, Postmes, Haslam, & Hornsey, 2009, p. 661).

People are therefore motivated to defend their group against anything that might threaten that positive comparison (Sherman & Kim, 2005; Steele, 1988). One direct way in which the group’s image (and its members’ self-esteem) may be threatened is through information that frames the group in a bad light. International pressure on one’s nation’s human rights situation may do precisely this, by suggesting that the nation does not respect human rights, and that other countries or organizations disapprove of its actions.

In this case, when citizens hear criticism of their country’s treatment of its minority groups, for example, this may evoke not just concerns about minority rights, but also concerns that the country is being denigrated internationally. To defend their country (and their self-worth) from this kind of threat, group members have a number of options. One way is through defensive biases in how they process the threatening information (Sherman & Cohen, 2002). According to the theory of motivated reasoning, people do not just look to form accurate opinions, but also opinions that fit a particular self-interested goal, such as maintaining a positive self-image (Kunda, 1990; Taber & Lodge, 2006). Extensive scholarship has shown that people undergo “biased assimilation” of new information to fit it to their partisan prior beliefs (Kruglanski & Webster, 1996; Kunda, 1990; Lord, Ross, & Lepper, 1979) and the prevalent beliefs of their social group (Bolsen, Druckman, & Cook, 2014; Druckman, Peterson, & Slothuus, 2013; Taber & Lodge, 2006).

Others have shown how people are “emotionally” motivated to interpret new information in ways that defends their group’s image (Green et al., 2004; Nyhan & Reifler, 2015; Sherman & Cohen, 2002; Steele, 1988). On hearing information that threatens the positive image of their social group, people disregard any desire to form accurate opinions, and instead reject the information (De Hoog, 2013). If the threatening information comes from outsiders, people may be even more likely to reject it (Hornsey, Trembath, & Gunthorpe, 2004). This effect appears to be limited to critical information (people are no more likely to believe praise from ingroups than outgroups), leading Hornsey and colleagues (2004) to argue that group-based criticisms are a “unique subset of persuasive messages in the sense that they directly threaten the (collective) self-concept” (p. 501).

Patriots rejecting out of hand information that criticizes their nation is, perhaps, not surprising. However, importantly, studies have also shown that on encountering information that threatens their preexisting beliefs or group image, people do not merely reject the information, but also spend longer time processing it, taking time to develop counterarguments (De Hoog, 2013; Taber & Lodge, 2006). De Hoog (2013) shows that on reading a passage that criticized their social group, people who identified with that group perceived the information to be more threatening and spent considerably longer time reading the passage. By developing these counterarguments, people may develop stronger opinions in the opposite direction, in what is known as a “boomerang” or “backfire” effect. A number of authors have shown that upon encountering information incongruent with their prior opinions, people may hold their original belief even more strongly (Lodge & Taber, 2000; Nyhan & Reifler, 2010; Nyhan, Reifler, & Udan, 2013; Redlawsk, 2002; Taber & Lodge, 2006). Schaffner and Roche (2016) find, for example, that Republicans surveyed following news of the drop in the unemployment rate in 2012 believed that the level of unemployment was higher than those surveyed before the news.

This backfire effect may be particularly strong when people encounter information that directly threatens their social group. Trevors, Muis, Pekrun, Sinatra, and Winne (2016) find that people feel confusion and frustration when they encounter information that challenges a valued part of their identity, and that the backfire effect in response to this challenging information comes as a direct result of these negative emotions. For human rights pressure, this implies that when citizens hear that their country has been denounced over its human rights conditions, if they feel the need to defend against the threat to their nation’s image, then they may develop counterarguments, thinking through reasons for why human rights are in fact well respected at home, and as a result become more likely to believe that human rights are indeed well respected.

When do people respond to critical information as rational actors, and when does pressure backfire in this manner? Nyhan and Reifler (2015) acknowledge that the backfire effect in response to the correction of misperceptions is itself rare and has only been documented on certain issues, what they call the most “affect-laden” issues. It is only on controversial topics that have come to symbolically represent bipartisan competition in the United States, like the war in Iraq (Nyhan & Reifler, 2010) or the Affordable Care Act (Nyhan, Reifler, & Ubel, 2013)—topics that people see in terms of their partisan disagreements, not the content of the issues themselves—that partisans strengthen their misperceptions. On matters less clearly linked to this competition, people generally act in a Bayesian fashion (Wood & Porter, 2016).

In the same way, I argue that in most cases citizens do indeed interpret human rights pressure in terms of the human rights issue being discussed. They respond as rational Bayesian updaters to the information that human rights are not well respected, becoming more likely to believe that those rights need to be improved. However, when there is a salient link between the pressure and citizens’ sense of their country’s standing in geopolitical competition, citizens consider the issue not just in terms of the content of the human rights issues themselves, the individual injustices or repression, but also in terms of a threat to their nation’s standing. This should be especially likely when the pressure appears to be part of a deliberate attempt to denigrate the nation. If this occurs, then the sense of threat to their own self-worth is activated, and so is the need to fight back. They develop counterarguments against this threat and, as a result, become more positive about their country’s human rights.

One way in which this sense of geopolitical competition will be particularly salient is if human rights pressure comes from a source that is a major geopolitical rival. As Rousseau (1999) shows, people’s attention to relative versus absolute gains increases significantly when they are considering states that are economic or military opponents. Pressure on the Soviet Union from the United States would have been intimately tied to relative standings in Cold War competition, in a way that pressure from Cuba would not. Pressure from a geopolitical rival like the United States would have been more likely to appear hostile, a deliberate attempt to use the pressure to denigrate the Soviet nation and its image, to bring the country down in Cold War competition. The threat to the nation’s image becomes particularly clear and salient, and so does the need to fight back, to defend against this attempt to denigrate the nation. This threat will also vary over time, as the rivalry increases and decreases in intensity. If the Soviet Union were involved in an ongoing conflict or geopolitical dispute with the United States, then international competition would have been even more salient, pressure would have been seen as even more hostile, and should have evoked an even greater backfire effect. If relations were benign, then this sense of hostility (and therefore the backfire effect) should have been lower.

This argument implies that authoritarian rulers have incentives to “internationalize” human rights violations—to make their public interpret information about those violations in terms of defending their nation. Leaders therefore have incentives to use their control of state media to strategically pass on pressure from geopolitical rivals, especially when that rivalry is most hostile, and to censor pressure from other sources.

#### Easing off democratic pressure fractures resistance from authoritarian powers and makes it easier to contain---but returning to norm-promotion consolidates resistance and creates an authoritarian alliance

Jennifer Lind 19, Associate Professor of Government at Dartmouth College and an Associate Fellow at Chatham House; and William C. Wohlforth, the Daniel Webster Professor of Government at Dartmouth College, March/April 2019, “The Future of the Liberal Order Is Conservative,” Foreign Affairs, https://www.foreignaffairs.com/articles/2019-02-12/future-liberal-order-conservative

A more conservative order would recognize that both internal and external circumstances have changed and would adjust accordingly. First and most important, this demands a shift to a status quo mindset in Washington and allied capitals. Despite U.S. President Donald Trump’s occasional bluster about withdrawing from the world, his administration has retained all of the United States’ existing commitments while adding ambitious new ones, notably an effort to radically scale back Iran’s influence. And although the Obama administration was often accused of retrenchment, it, too, kept U.S. commitments in place and even tried its hand at regime change in Libya. Under a conservative approach, Washington would set aside such revisionist projects in order to concentrate its attention and resources on managing great-power rivalries.

As part of this, the United States should reduce the expectation that it will take on new allies. At the very least, any prospective ally should bring more capabilities than costs—a litmus test that has not been applied in recent years. Because the liberal order is in dire need of consolidation rather than expansion, it makes no sense to add small and weak states facing internal problems, especially if including them will exacerbate tensions among existing allies or, worse, with great-power rivals. In July 2018, NATO, with U.S. support, formally invited Macedonia to join the alliance (reviving a dispute with Greece over the name of the country), and the Trump administration has backed NATO membership for Bosnia, too (over the objections of the Serbian minority there). These straws may not break the camel’s back, but the principle of limitless expansion might.

The case of Taiwan shows what a successful conservative approach looks like in practice, demonstrating how the United States can deter a rival great power from expanding while preventing a partner from provoking it. For decades, Washington has declared that the island’s future should be resolved peacefully. Leaders on both sides of the Taiwan Strait have sometimes sought to overturn the status quo, as when Taiwanese President Chen Shui-bian began making pro-independence moves after he was elected in 2000. In response, U.S. President George W. Bush publicly warned Chen against unilaterally changing the status quo—a tough stance toward a longtime U.S. partner that helped keep the peace. This policy may be tested again, as demographic and economic trends strengthen the Taiwanese people’s sense of national identity, as China grows more assertive, and as voices in the United States call for an unambiguously pro-Taiwan policy. But Washington should hold fast: for decades, conservatism has served it, and the region, well.

A conservative order would also entail drawing clearer lines between official efforts to promote democracy and those undertaken independently by civil society groups. By example and activism, vibrant civil societies in the United States and other liberal countries can do much to further democracy abroad. When governments get in the game, however, the results tend to backfire. As the political scientists Alexander Downes and Lindsey O’Rourke found in their comprehensive study, foreign-imposed regime change rarely leads to improved relations and frequently has the opposite effect. Liberal states should stand ready to help when a foreign government itself seeks assistance. But when one resists help, it is best to stay out. Meddling will only aggravate that government’s concerns about violations of sovereignty and tar opposition forces with the charge of being foreign pawns.

Far from ceding power to illiberal great powers, a strategy of conservatism would directly address those external threats. Part of the reason those countries contest the order is that it exacerbates their insecurities. Restraining the order’s expansionist impulses would reveal just how much of illiberal states’ current revisionism is defensive in nature and how much is driven by sheer ambition. It could also stymie potential balancing against the order by illiberal states—China, Iran, Russia, and others. Although these revisionists have many divergent geopolitical and economic interests that currently limit their cooperation, the more their rulers worry that their grip on power is under threat from a liberal order, the more they will be inclined to overcome their differences and team up to check liberal powers. Reduce that fear, and there will be more opportunities for the liberal states to divide and rule, or at least divide and deter.

#### Rising states won’t aggressively challenge the international order now because it serves their interest in boosting their status and prestige.

Rohan Mukherjee 19, Assistant Professor of Political Science at Yale-NUS College, Singapore, 2/22/19, “Policy Series: Two Cheers for the Liberal World Order: The International Order and Rising Powers in a Trumpian World,” <https://issforum.org/roundtables/policy/1-5bo-two-cheers>

The empirical evidence since the end of the Cold War suggests that rising powers such as China, India, and Brazil are content not to challenge the liberal order despite their varying levels of dissatisfaction with it.[24] Instead, they have adopted a free-riding strategy, i.e. not fully paying the costs of maintaining the order while benefiting significantly from it. This type of strategy is what underlies China’s exploitation of international trading rules, India’s grandstanding on climate change, and Brazil’s outsized influence relative to its economic power within the World Trade Organization (WTO).[25]

This unwillingness to genuinely contribute to the liberal order may seem puzzling given that it makes these countries diplomatically vulnerable to the charge of free-riding. It is explained, however, by the non-material aspects of the order, or what Gilpin called the “hierarchy of prestige.”[26] Put simply, the distribution of prestige within the liberal order is still skewed in favor of the U.S. and its allies, while the distribution of power is shifting steadily in favor of the rising powers. Voting rights at the International Monetary Fund (IMF), permanent membership of the UNSC, top leadership positions in International Financial Institutions (IFIs), the official designation of nuclear weapons states in the nuclear non-proliferation treaty (NPT), and small-group decision-making within the WTO are some of the more prominent institutional aspects of the liberal order that rising powers to varying extents have contested as exclusionary, discriminatory, and unequal.[27] Wherever possible, they have sought to reform institutions from within. Where these efforts have been repeatedly frustrated, they have established new institutions such as the New Development Bank (NDB) of the Brazil, Russia, India, China, and South Africa (BRICS) group (which, unlike the IMF, operates on the principle of “one country, one vote, and no veto”)[28] and the Asian Infrastructure Investment Bank (AIIB),[29] or bolstered existing forums where they already hold leadership positions, such as the India, Brazil, South Africa (IBSA) group and the Shanghai Cooperation Organization (SCO).

The overarching question is this: who gets to be included in the club of great powers that manage the liberal order alongside the United States? Club membership brings both material and status benefits, but it also comes at a price. Rising powers are unwilling to pay the price unless they are made full and equal members, especially since material benefits already accrue to them in significant measure simply through membership in the order. For its part, the U.S. has been unwilling to admit rising powers into the club, questioning their ability to act as “responsible stakeholders.”[30] These conflicting incentives create a chicken-and-egg problem: rising powers decline full responsibility without elite membership, while the U.S. refuses them elite membership without full responsibility.

The Trump Transformation

The Trump presidency has unsettled this equilibrium. Washington’s newfound willingness to challenge the fundamental tenets of the global order—capitalism, democracy, and multilateralism—and Trump’s undermining of key institutional arrangements in areas such as international trade, climate change, and arms control have opened up space in the upper echelons of the global governance architecture for rising powers (and other countries). In the security realm, as Trump shifts U.S. global strategy to what looks like offshore balancing,[31] China and India have each begun stepping up their strategic presence to the extent of their respective capabilities, especially in the Indo-Pacific region. Across the board, Chinese and Indian leaders are counselling caution and patience with an eye to managing Washington’s illiberal turn toward the liberal international order.[32] In the process, the rising powers have become the guardians of the status quo and the U.S. has finally taken ownership of its post-Cold War role as a revisionist power.[33] There is no better example of the decoupling of the liberal order and U.S. foreign policy. The Trump presidency has in effect been a gift to Xi’s Chinese Dream and Modi’s desire to make India a “leading power”[34] within the parameters of the existing order. As the second-ranked power in the international system, China in particular has perceived an opportunity “to define itself as the representative and spokesperson of forward-looking forces.”[35]

Yet, as Chinese and Indian leaders well know, global leadership is a costly proposition. The cost is only worthwhile if the eclipse of U.S. credibility under Trump can translate into status benefits for their countries. The decoupling of the U.S. from the international order of its own creation becomes significant in this context. In the absence of an engaged Washington, it is unclear whether the institutions that comprise the international order will function on business-as-usual terms, or they will be more open to reform and the inclusion of new aspirants to the great-power club. Despite Trump’s disengagement, the U.S. still retains significant structural power in the international order and may be willing to exert this power in order to prevent rising states from rushing too quickly to fill the temporary leadership void.

A more fundamental challenge faces the rising powers, which is simply the lack of capacity and vision to fundamentally alter the basis of the liberal order. Importantly, none of the rising powers has a credible alternative set of principles or institutional arrangements to offer as the foundation of a new order.[36] China’s influence, while growing, is largely based on a mercantilist approach and is increasingly facing resistance across the vast geography covered by the Belt and Road Initiative.[37] India lacks the capacity to maintain international order and must focus inward on long-term economic development before it can shoulder global responsibilities. Brazil lacks the hard power resources and domestic political consensus necessary to single-handedly underwrite an international order.[38] At a fundamental level, none of these powers has any reason to fundamentally alter an order that has so far handsomely abetted their stellar economic performance, enhanced their diplomatic influence, and ensured their national security.

A contemporary alternative to the liberal order therefore does not exist. This fact should give pause to both those who celebrate the order’s alleged demise and those who mourn it. The current policy and academic debates fail to consider this simple question: relative to what is the liberal order a failure or success? In other words, could the world have done better? The answer is both yes and no. On the one hand, yes, the United States could have set up a ‘truly’ liberal international rules-based order; this is a question of degree. On the other hand, no, there was no other credible alternative that was attractive to as large a number of countries as the U.S.-led liberal order; this is a question of type. At present, the fact that no other major power is in a position to offer an alternative type of global order suggests that the much-maligned liberal order, while it may change in degree, is fundamentally secure. If not Washington, then Beijing, New Delhi, and Brasilia will ensure this outcome.

Looking Forward

Historically, new international orders have emerged in the aftermath of major wars. Major wars are today ruled out by the state of military technology, i.e., nuclear weapons. Barring a change in this dimension, we can expect the politics of power shifts to play out to a great extent in international institutions. The evolution of the liberal international order will depend on the role of the dominant and rising powers within it. If Donald Trump is a one-term aberration, then the U.S. may course-correct after 2020 and reinvest in the liberal order. Outcomes will then hinge on Washington’s ability to accommodate the status demands of an increasingly powerful cabal of rising powers.

If Donald Trump turns out to be a two-term president, or a herald of deeper changes in the United States’ worldview, then the U.S. will likely further disengage from an order that it perceives to be a bad deal (precisely because that order has benefited rising powers to such an extent). Outcomes will then hinge on the ability of rising powers to take leadership of one or more issue areas, or to co-manage the order as its new guardians. The former scenario will lead to a fragmentation of the liberal order as the respective powers impose their own preferences on different pieces of it. The latter scenario may reinvest the order with resilience by aligning the distribution of capabilities with the distribution of prestige. Nonetheless, severe conflicts of interest will remain as the U.S. goes from system insider to outsider.[39]

For decades now, rising powers such as China, India, and Brazil have benefited from the liberal order while criticizing it and even seeking to undermine certain aspects of it. Today, as Washington begins to abdicate leadership and undermine the order itself, these countries will be called upon to match their rhetoric with action and genuinely take leadership of the order so that they can reform it. It will take a great deal of creative thinking and diplomatic energy in these capitals to overcome long histories of reflexive free-riding and sniping at U.S. leadership from the sidelines. It is unclear if the rising powers are even up to the task.

No matter the outcome, one thing is clear. The age of U.S. dominance is over. In whatever form the order evolves, it will be strenuously negotiated, not imposed by a single power.

#### Revisionist states are only dangerous and conflict-prone when they’ve just had their ambitions denied---the plan creates the only scenario for great power war

Hal Brands 18, the Henry Kissinger Distinguished Professor at Johns Hopkins-SAIS, senior fellow at the Center for Strategic and Budgetary Assessments, 10/24/18, “Danger: Falling Powers,” <https://www.the-american-interest.com/2018/10/24/danger-falling-powers/>

There is, then, no disputing that rising powers can have profoundly disruptive effects. Yet such powers might not actually be the most aggressive or risk-prone type of revisionist state. After all, if a country’s position is steadily improving over time, why risk messing it all up through reckless policies that precipitate a premature showdown? Why not lay low until the geopolitical balance has become still more favorable? Why not wait until one has surpassed the reigning hegemon altogether and other countries defer to one’s wishes without a shot being fired? So while a rising revisionist power may be tempted to assert itself, it should also have good reason to avoid going for broke.

Now imagine an alternative scenario. A revisionist power—perhaps an authoritarian power—has been gaining influence and ratcheting its ambitions upward. Its leaders have cultivated intense nationalism as a pillar of their domestic legitimacy; they have promised the populace that past insults will be avenged and sacrifices will be rewarded with geopolitical greatness and global prestige. Yet then the country’s potential peaks, either because it has reached its natural limit or because of some unforeseen development, and the balance of power starts to shift in unfavorable ways. It becomes clear to the country’s leadership that it may not be able to accomplish the goals it has set and fulfill the promises it has made, and that the situation will only further worsen with time. A roll of the iron dice now seems more attractive: It may be the only chance the nation has to claim geopolitical spoils before it is too late.

In this scenario, it is not rising power that makes the revisionist state so dangerous, but the temptation to act before decline sets in. In this sense, the dynamic bears a resemblance to the famous Davies J-Curve theory of revolution, wherein a populace is held to be more inclined to revolt not when it is maximally oppressed but rather when raised expectations are shown to be in vain.

Obviously, rational analysis does not always prevail in world politics. Rising states can become intoxicated with their own strength; they may simply get tired of waiting to attain the status they desire; or some domestic pressure may impel leaders to act dangerously. But revisionists whose power has begun to decline, or who have hit a rogue bump in the road, may not feel that they even have the option of waiting.

#### Democracy promotion great power nuclear war – backsliding solves

Muller, director of the Peace Research Institute in Frankfurt, professor of International Relations at Goethe University, 15

(Harald, Democracy, Peace, and Security, Lexington Books pp. 44-49)

My own proposal for solving the problem. developed together with my colleague Jonas Wolff (Müllcr 2004. Muller/Wolff 2006). turns the issue upside down: We do not start with explaining mutual democratic peacefulness, but its opposite. the proven capability of democracies to act aggressively against non-democracies. We note that—apart from self-defense where there is no difference between democracies and non-democracies——democratic states go to war—in contrast to non-democracies—to uphold international law (or their own interpretation thereof), to prevent anarchy through state failure, to “save strangers” when dictatorships massacre their own people, and to promote democracy. None of these acts is likely to find its target in a democracy. Since the use of force by democracies is hardly possible without public justification, even the rhetorical use of the said reasons will not stand public scrutiny when uttered against a democracy—people will not believe it, War other than for self-defense thus can only be fought by democracies against non-democracies because against a fellow democracy justification would fail. Because whether this is the case or not to a degree that justifies war as the ‘ultimate means” must rely on practical judgments. and practical judgments can differ among even reasonable people. democracies might disagree whether or not the judgment applies in specific cases. Democracies also show variance in that regard due (o a systematic. political-culturally rooted different propensity to judge situations as justifing war or not, and to participate in such wars (Gels et al, 2013). It should also be noted that, given the continuum between autocracy, anocracy and democracy, whether a given state is a democracy or not can be subject to interpretation. and this interpretation may even change over time (Oren 1995, Hayes 2013). The fact is that there are a couple of fairly warlike democracies, and that the democracies participating most frequently in military disputes (apart from the special case of Israel) are, by and large. major powers such as the United States, the United Kingdom. France. or India. This pattern is important to keep in mind when the question of the utility of democratic peace for today ‘s world problems is to be answered. Transnational terrorism, failed states, civil wars and the like dominate the international agenda on war and peace. At the classical level of international relations, in the relationships among major powers. developments arc undcr way which potentially pose an even greater threat than this diverse collection of non-interstate problems presently does. We are living in an era of rather rapid and disturbing power change (Tammcn et al. 2000). The United States are still the leading power of the world with unprecedented militany and economic poer. But others are coming closer: China. India. Braiil and Indonesia, China is at the top of this cohort, All major power changes chal lenge existing structures and thus contain the potential for great disturbance. The leading power may start to fear for its dominant position and take measures to ensure its position at the lop. These actions may frustrate emerging powers and even lead to the perception that their security is endangered. which would motivate counter-measures that further propel a political escala tion spiral. An increasingly focused competition in which a true power change appears increasingly possible. that is. a change of position at the top of the international hierarchy, has an even greater risk potential. If the inherent dangers are not contained—which remains always a possibility major power war may ensue defying all propositions that major war has become obsolete or that nuclear deterrence will prevent this calamity once and for all. Of course, states can grow peacefully into roles of higher responsibility. status and influence on the world stage. There arc no natural laws saving that changes in the world’s power structure must end in war, despite all distur bances and ensuing risks (Rauch 2014). The less conflict an emerging power experiences with established ones, and with peer challengers that emerge simultaneously, the better the chances that the rise will travel a peaceful trajectory. Looking through this lens. thc relations of only one emerging power with the present hegemon appear to be partially conflict-pronc. and seriously so: it concerns the pair China/United States. The Iwo great powers are rivals for preponderance in East and South East Asia and eventually for being the number one at the global level. There is also Chinese resentment stemming from the US role in China’s past as a victim of Western imperialism. On the other hand. China’s authoritarian system of rule and ensuing violations of human and political rights trigger the liberal resentment discussed in the first part of this chapter. which is rooted particularly strongly in US political culture. The Chinese—US relationship is thus thc key to a peaceful. tense or even violent future at the world stage. A small group of major powers. Including the United States and China, is interconnected today by a complex conflict system. China has territorial claims against Japan, South Korea, Vietnam. the Philippines. Brunci. and India which it pursues by a variety of means, not shying away from the limited, small scale usc of militan force in some cases, notably against obviously weaker counterparts (Ellcman ci al. 2012). China’s relation (o wards Japan is the one most burdened by China’s past as a victim of Japanese oppression and related cruelties, and the propcnsit of the conservative part of Japan’s elite to display cavalier attitudes towards this past or even sort of celebrate it (as through visits to the notorious Yasukuni shrine hosting the remnants of war criminals) only adds to anti-Japanese feelings in China (Russia. another great power. also openly pursues a revisionist agenda. as vividly shown in the recent Crimean move, but these territorial ambitions are not part of the most virulent conflict complex in Asia). Territorial claims are always emotionalized and dangerous. Territorial claims by a major power bear particular risks, because threatened countries look for protective allies which are, by necessity, major powers with the capability to project power into the region of concern. The great power claimant and the great power protector then position themselves on the opposite sides of the conflict. A classical constellation of great power conflict results that looks far more traditional than all the talk about post-modern global relations in which state power struggles fade into oblivion would suggest. In the Asian conflict complex that structures the shape of the US—Chinese contest (Foot/Walter 201 1). Japan. South Korea and the Philippines arc for mall allied ith the United Slates. India and Vietnam today entertain rda (ions ith the United States that can be depicted as cordial entente, already include military cooperation, and might move further towards an alliance. depending on deelopmens in Asia. The United States is also a protector of Taiwan. officially a Chinese province, factualh an independent political entity. and the main object of Chinese interest because of the unfinished agenda of national re-unification. Given the enormous asymmetries between China and Taiwan. the latter’s independence depends fully and unambiguously on the US guarantee. Russia and China have a fairly ambivalent relation with each other that is officially called a strategic partnership. Ambiguous as this relationship is, it is predictable that the more the West and Russia are at loggerheads, the closer the Russian—Chinese relations might become. On the other hand. Chi na is the stronger partner and harbors not completely friendly feelings to wards Moscow. as Russia took part in China’s humiliation during the imperi alist period no less than the United States did. Russian fears concerning covert immigration into Eastern Siberia and demographic repercussions and political consequences that might result therefrom add to the uneasiness. China and India arc natural rivals for regional preponderance in Asia (Gilbov/Hcginbotham 2012). Both arc developing rapidly. with China still ahead. Territorial disputes. India’s liospitalit Lo TibeLan exiles including the Dalai Lama. China’s close relation to Pakistan and a growing naval rivalry spanning the Indian Ocean from the Strait of Malacca to Iranian shores (Garofano/Dew 2013) run parallel to rapidly growing economic relations and ostensible efforts lo present the relationship if not as amiable then at least as partner-like. The United States, China, Russia and India even today conduct a multi- pronged nuclear arms race (Fingar 2011: Gangul /Thompson 2011: O’Neill 2013. Müllcr 2014). In this race, conventional components like missile de fense. Intercontinental strike options, space-based assets and the specter of cbcr war play their role, as does the issue of extended dcterrcncc The general US militar’ superiority induces Russia and China to improve their nuclear arsenals, while India tries not to be left too far behind the Chinese in terms of nuclear capability. Pakistan and North Korea ork as potential spoilers at the fringe of this arms race. They are not powerful but thc arc capable of stirring up trouble, whenever they move. In tems of the military constellation, the most disquieting development is the drafting of pre-emptive strategies of a first (most likely conventional) strike by the United States and China, on either side motivated by the per ceived need to keep the upper hand early in a potential clash close to Chinese shores (such as in the context of a Taiwan conflict). China is building up middle-range ballistic capabilities to pre-empt US aircraft carrier groups from coming into striking distance and to desiroy US Air Force assets in Okinawa. while the United States is developing means to neutralize exactly these Chinese capabilities. They are steering towards a hair-trigger security dilemma in which the mutual postures cry out for being used first before the enemy might destroy them (Goldstein 2013: Le Miôre 2012). It cannot be excluded that this whole conflict system might collapse into two opposing blocks one da the spark for a major violent cataclysm could even be lighted by uncontrolled non-state actors inside some of the powers. or—in analogy to the role of Serbia in 1914— a ‘spoiler” state with a particularly idios ncralic agenda. Pakistan. North Korea or Tai an arc con ceivable in this role. Even Japan might be considered, if nationalism in Nippon grows further and seeks confrontation with the old rival China. If anything. this constellation does not look much better than the one which drove Europe into World War I a century ago. and it contains a nuclear component. To trust in the infallibility of nuclear deterrence in this mufti- pronged constellation needs quite a lot of optimism Can democratic peace be helpful in this constellation? Our conflict system includes democracies—the United States, India, Japan. Indonesia and non- democracies such as China. Russia, and Vietnam, but not necessarily on the same side. Should the European theater become connected to the Asian one through continuous US—Russian disputes and a Russian—Chinese entente. defective democracies like Ukraine and Georgia may feature rather importantly as potential triggers for a worsening of relationships. While democracy is useful in excluding certain conflict dyads in the whole complex, such as India and the United States. Japan and the United States. Japan and India. from the risk that they might escalate into a violent conflict, and as democratic peace is pacifying parts of the world. such as South America or Europe. it helps little in disputes between democracies and non-democracies. To the contrary: as discussed above, democracies have a more or less moral-emotional inclination to demonize non-democracies once they dis agree, and to feel a missionary drive to turn them democratic. This might exacerbate the existing, more interest-based conflicts between democracies and non-democracies, and it creates fears in the hearts of autocratic leaders that they might be up for democratization sooner or later. The close inter- democratic relations which democratic peace tends to produce, in turn, only exacerbate these fears as democracies tend to be rich, well organized, and powerful and dispose together of much more potent military capabilities than their potential non-dcnwcratic counterparts. Rather than helping with peace. the inter-democratic consequences of the democratic peace tend to exacerbate the security dilemma which exists between democracies and non-democracics an way. This non-peaceful dark side of democratic peace has escaped the attention of most academic writings on this subject and certainly all political utterances about democratic peace in our political systems. But democratic militancy is the Siamese twin of democratic peace as the Bush Administration unambiguously taught us (Gels et al. 2013: Müllcr 2014b).

#### The public is an idiocracy. ‘Pressure’ cannot be productive.

Dr. Stuart Parker 20, Philosopher and Former Teacher who Lectured on Philosophy and Education at London's Institute of Education, South Bank University, Author of Reflective Teaching in the Postmodern World, “The Problem With Democracy — It's You”, The Article, 10/5/2020, https://www.thearticle.com/the-problem-with-democracy-its-you

So why is our democracy so unfit for purpose? Why is it that we can elect leaders who are little more than self-serving schemers, whose contempt for the electorate renders them incapable of giving straight, honest answers to even the most straightforward, reasonable questions? It’s not as if any of these qualities have been smuggled in under our noses. They are paraded before our eyes every single day. Nobody voting for Johnson or Trump could ~~be blind to the fact~~ [ignore] that they are serial liars. And yet they voted all the same. Why?

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Mencken was on to something when suggesting that the leaders we get, the leaders we deserve, closely represent something dark in the inner soul of the people. There’s no easy way to put this — the problem with democracy is the voters. The voters simply aren’t good enough to support a healthy democracy. They’re not up to the job. Now I know some will think: a snowflake-remainer-lefty-loser will always blame the voters just as a bad workman always blames his tools. But these tools are shot.

Consider this: a poll in 2005 found that 21 per cent of Americans believe in witches and 9 per cent that spirits can take control of a person. In 1999, 18 per cent believed the sun revolves around the earth — so much for “the science” — and in 2000, 31 per cent believed in ghosts, and increase of 20 percentage points since 1978.

By 2019, the year before Trump’s re-election attempt, significant numbers believed in the illuminati, Big-foot and a flat earth. Ghost-belief had risen to 45 per cent, as had the belief in demons. Belief in vampires stood at a fangtastic 13 per cent.

Britain has nothing to be proud of. While 33 per cent of us believe in ghosts and 18 per cent in demonic possession, a whopping 52 per cent of us believe that you can magically make a false claim true simply by writing it on the side of a bus.

In elective dictatorships where small margins have huge consequences we’d better get used to the fact that (possibly small) groups with stupid ideas and a lack of relevant knowledge and skills can have a disproportionate effect on the lives of the rest of us.

### 1NC---AT: AI

#### No AI agreements from the FTC.

Stokes ’21 [Jon; April 20; CPU Editor Emeritus and a co-founder of Ars Technica; Jon Stokes, “No, the FTC is not about to wade into the AI bias wars,” https://www.jonstokes.com/p/no-the-ftc-is-not-about-to-wade-into]

So the jig is up, right? Companies are about to start getting hauled into court and eating big fines over things like face recognition software that doesn’t work well on black faces or healthcare algorithms that reinforce racial disparities in care? No, no such thing is likely to happen. Here’s the short version of why:

* The FTC can indeed probably regulate a lot of the AI issues it mentions in this post, at least theoretically. It can also block mega-mergers, cut monopolies down to size, and do a whole bunch of other stuff that it hasn’t actually done for decades.
* The FTC is understaffed and underfunded, and for 20 years has had no real political will to even carry out its core trust-busting mission. So the idea that this atrophied agency will suddenly wade into the fraught, murky waters of the fast-moving AI algo wars and bust some heads... it just seems really unlikely.
* We don’t have basic standards, benchmarks, and measurement tools for evaluating AI/ML systems for “bias,” nor do we even have agreed-upon notions of “fairness” to work with in most of the applicable areas.

The blog post itself is confused in some important ways, particularly around transparency and auditing.

On the point that some of the issues covered in the post do fall under the FTC’s purview, see, How Artificial Intelligence Can Comply with the Federal Trade Commission Act, which was recommended to me by a source who follows this area of law.

* There is general agreement that the authority of the Federal Trade Commission Act (the “Act”) is broad enough to govern algorithmic decision-making and other forms of artificial intelligence (“AI”).[1] Section 5(a) the Act prohibits “unfair or deceptive acts or practices in or affecting commerce” as unlawful.[2] The Federal Trade Commission (the “FTC”) is authorized to challenge such acts or practices through administrative adjudication and to promulgate regulations to address unfair or deceptive practices that occur widely by multiple parties in the market.[3]
* The FTC has a department that focuses on algorithmic transparency, the Office of Technology Research and Investigation, and has requested public comment on and scheduled hearings about algorithmic decision-making and AI.[4]
* The article goes on to give advice about complying with the FTC Act, but take-home here is that the agency has a pretty broad purview in this area, especially around the issues of advertising claims and credit availability that the blog post focuses on.

As for whether the agency will actually jump in and do a bunch of rule-making in this area, this seems pretty unlikely. I corresponded with one lawyer who didn’t wish to be named and who practices in the area of consumer product regulation, and he pointed me to a number of resources on this topic.

He also said, “Most federal regulatory bodies are so badly underfunded that overzealous enforcement on novel areas of law is not particularly likely,” and suggested that this blog post is extremely unlikely to be a prelude to a string of AI-related enforcement actions.

#### AI Impact is wrong

Pinker 18 (Stephen, professor of psychology at Harvard, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress, EM)

Prominent among the existential risks that supposedly threaten the future of humanity is a 21st-century version of the Y2K bug. This is the danger that we will be subjugated, intentionally or accidentally, by artificial intelligence (AI), a disaster sometimes called the Robopocalypse and commonly illustrated with stills from the Terminator movies. As with Y2K, some smart people take it seriously. Elon Musk, whose company makes artificially intelligent self-driving cars, called the technology “more dangerous than nukes.” Stephen Hawking, speaking through his artificially intelligent synthesizer, warned that it could “spell the end of the human race.”19 But among the smart people who aren’t losing sleep are most experts in artificial intelligence and most experts in human intelligence. The Robopocalypse is based on a muzzy conception of intelligence that owes more to the Great Chain of Being and a Nietzschean will to power than to a modern scientific understanding.21 In this conception, intelligence is an all-powerful, wish-granting potion that agents possess in different amounts. Humans have more of it than animals, and an artificially intelligent computer or robot of the future (“an AI,” in the new count-noun usage) will have more of it than humans. Since we humans have used our moderate endowment to domesticate or exterminate less well-endowed animals (and since technologically advanced societies have enslaved or annihilated technologically primitive ones), it follows that a supersmart AI would do the same to us. Since an AI will think millions of times faster than we do, and use its superintelligence to recursively improve its superintelligence (a scenario sometimes called “foom,” after the comic-book sound effect), from the instant it is turned on we will be powerless to stop it.22 But the scenario makes about as much sense as the worry that since jet planes have surpassed the flying ability of eagles, someday they will swoop out of the sky and seize our cattle. The first fallacy is a confusion of intelligence with motivation—of beliefs with desires, inferences with goals, thinking with wanting. Even if we did invent superhumanly intelligent robots, why would they want to enslave their masters or take over the world? Intelligence is the ability to deploy novel means to attain a goal. But the goals are extraneous to the intelligence: being smart is not the same as wanting something. It just so happens that the intelligence in one system, Homo sapiens, is a product of Darwinian natural selection, an inherently competitive process. In the brains of that species, reasoning comes bundled (to varying degrees in different specimens) with goals such as dominating rivals and amassing resources. But it’s a mistake to confuse a circuit in the limbic brain of a certain species of primate with the very nature of intelligence. An artificially intelligent system that was designed rather than evolved could just as easily think like shmoos, the blobby altruists in Al Capp’s comic strip Li’l Abner, who deploy their considerable ingenuity to barbecue themselves for the benefit of human eaters. There is no law of complex systems that says that intelligent agents must turn into ruthless conquistadors. Indeed, we know of one highly advanced form of intelligence that evolved without this defect. They’re called women. The second fallacy is to think of intelligence as a boundless continuum of potency, a miraculous elixir with the power to solve any problem, attain any goal.23 The fallacy leads to nonsensical questions like when an AI will “exceed human-level intelligence,” and to the image of an ultimate “Artificial General Intelligence” (AGI) with God-like omniscience and omnipotence. Intelligence is a contraption of gadgets: software modules that acquire, or are programmed with, knowledge of how to pursue various goals in various domains.24 People are equipped to find food, win friends and influence people, charm prospective mates, bring up children, move around in the world, and pursue other human obsessions and pastimes. Computers may be programmed to take on some of these problems (like recognizing faces), not to bother with others (like charming mates), and to take on still other problems that humans can’t solve (like simulating the climate or sorting millions of accounting records). The problems are different, and the kinds of knowledge needed to solve them are different. Unlike Laplace’s demon, the mythical being that knows the location and momentum of every particle in the universe and feeds them into equations for physical laws to calculate the state of everything at any time in the future, a real-life knower has to acquire information about the messy world of objects and people by engaging with it one domain at a time. Understanding does not obey Moore’s Law: knowledge is acquired by formulating explanations and testing them against reality, not by running an algorithm faster and faster.25 Devouring the information on the Internet will not confer omniscience either: big data is still finite data, and the universe of knowledge is infinite. For these reasons, many AI researchers are annoyed by the latest round of hype (the perennial bane of AI) which has misled observers into thinking that Artificial General Intelligence is just around the corner.26 As far as I know, there are no projects to build an AGI, not just because it would be commercially dubious but because the concept is barely coherent. The 2010s have, to be sure, brought us systems that can drive cars, caption photographs, recognize speech, and beat humans at Jeopardy!, Go, and Atari computer games. But the advances have not come from a better understanding of the workings of intelligence but from the brute-force power of faster chips and bigger data, which allow the programs to be trained on millions of examples and generalize to similar new ones. Each system is an idiot savant, with little ability to leap to problems it was not set up to solve, and a brittle mastery of those it was. A photo-captioning program labels an impending plane crash “An airplane is parked on the tarmac”; a game-playing program is flummoxed by the slightest change in the scoring rules.27 Though the programs will surely get better, there are no signs of foom. Nor have any of these programs made a move toward taking over the lab or enslaving their programmers. Even if an AGI tried to exercise a will to power, without the cooperation of humans it would remain an impotent brain in a vat. The computer scientist Ramez Naam deflates the bubbles surrounding foom, a technological Singularity, and exponential self-improvement: Imagine that you are a superintelligent AI running on some sort of microprocessor (or perhaps, millions of such microprocessors). In an instant, you come up with a design for an even faster, more powerful microprocessor you can run on. Now . . . drat! You have to actually manufacture those microprocessors. And those fabs [fabrication plants] take tremendous energy, they take the input of materials imported from all around the world, they take highly controlled internal environments which require airlocks, filters, and all sorts of specialized equipment to maintain, and so on. All of this takes time and energy to acquire, transport, integrate, build housing for, build power plants for, test, and manufacture. The real world has gotten in the way of your upward spiral of self-transcendence.28 The real world gets in the way of many digital apocalypses. When HAL gets uppity, Dave disables it with a screwdriver, leaving it pathetically singing “A Bicycle Built for Two” to itself. Of course, one can always imagine a Doomsday Computer that is malevolent, universally empowered, always on, and tamperproof. The way to deal with this threat is straightforward: don’t build one. As the prospect of evil robots started to seem too kitschy to take seriously, a new digital apocalypse was spotted by the existential guardians. This storyline is based not on Frankenstein or the Golem but on the Genie granting us three wishes, the third of which is needed to undo the first two, and on King Midas ruing his ability to turn everything he touched into gold, including his food and his family. The danger, sometimes called the Value Alignment Problem, is that we might give an AI a goal and then helplessly stand by as it relentlessly and literal-mindedly implemented its interpretation of that goal, the rest of our interests be damned. If we gave an AI the goal of maintaining the water level behind a dam, it might flood a town, not caring about the people who drowned. If we gave it the goal of making paper clips, it might turn all the matter in the reachable universe into paper clips, including our possessions and bodies. If we asked it to maximize human happiness, it might implant us all with intravenous dopamine drips, or rewire our brains so we were happiest sitting in jars, or, if it had been trained on the concept of happiness with pictures of smiling faces, tile the galaxy with trillions of nanoscopic pictures of smiley-faces.29 I am not making these up. These are the scenarios that supposedly illustrate the existential threat to the human species of advanced artificial intelligence. They are, fortunately, self-refuting.30 They depend on the premises that (1) humans are so gifted that they can design an omniscient and omnipotent AI, yet so moronic that they would give it control of the universe without testing how it works, and (2) the AI would be so brilliant that it could figure out how to transmute elements and rewire brains, yet so imbecilic that it would wreak havoc based on elementary blunders of misunderstanding. The ability to choose an action that best satisfies conflicting goals is not an add-on to intelligence that engineers might slap themselves in the forehead for forgetting to install; it is intelligence. So is the ability to interpret the intentions of a language user in context. Only in a television comedy like Get Smart does a robot respond to “Grab the waiter” by hefting the maître d’ over his head, or “Kill the light” by pulling out a pistol and shooting it. When we put aside fantasies like foom, digital megalomania, instant omniscience, and perfect control of every molecule in the universe, artificial intelligence is like any other technology. It is developed incrementally, designed to satisfy multiple conditions, tested before it is implemented, and constantly tweaked for efficacy and safety (chapter 12). As the AI expert Stuart Russell puts it, “No one in civil engineering talks about ‘building bridges that don’t fall down.’ They just call it ‘building bridges.’” Likewise, he notes, AI that is beneficial rather than dangerous is simply AI.

# 2NC

## Adv---FTC

### 2NC---OV

#### Nationalist backlash escalates

McKnight 13 (Tyler, M.A. student in International Relations at the University of San Diego, B.A. in Political Science from Villanova University, “Regime Legitimacy and the CCP,” Fall 2013, http://www.sandiego.edu/cas/documents/polisci/TylerMcKnightPaper.pdf)

Perhaps the most reasonable and likely path the CCP will pursue to shore up its legitimacy is by embracing nationalism. There is a lot for the Chinese to be proud of these days. They are a country that has risen from the ashes of the Cultural Revolution to become the second largest economy in the world. Most of the people of China no longer live a life of subsistence, but one of material wealth. Many Chinese can now afford things that were once considered luxury items such as televisions and cars. China has firmly established itself as an economic power. China is now not only economically strong, but also politically and militarily strong on the international stage. After many years of subjugation, exploitation, and humiliation at the hands of foreign powers China is now a strong nation. China is powerful enough now to defend its borders against any potential threat. Increasingly, China is also able to flex its muscles beyond its own borders and territorial waters as exemplified by China’s recent establishment of an Air Defense Identification Zone (ADIZ) over the disputed Senkaku/Diaoyu islands in the East China Sea. China’s ability to project power is quickly catching up with potential rivals such as Japan and the United States.¶ The use of nationalism to support regime legitimacy is not a new concept for the CCP. Since the late 1970s the CCP have been cultivating nationalism as a way to compensate for the weaknesses of communist ideology. After the turmoil of the Cultural Revolution and the “sanxin weiji” (three spiritual crises) the CCP started using nationalism as a way to establish a hegemonic order of political values and as a way to rally popular support behind a less popular regime and its policies by creating a sense of community. The CCP double downed on using nationalism as a way to unite the country and reinforce its legitimacy after the Tiananmen Square protests in the spring of 1989. Nationalism was viewed as a way to counter Western liberal ideas and calls for democracy. As the CCP did after the protest of 1989 and continues to do today, the party continues to sell itself as the protector of the Chinese people against foreign aggression. If the CCP were to allow weakness, disunity, and disorder at home it would open a Pandora’s box. Such chaos would weaken China and give foreign aggressors the chance to reassert themselves. With China’s history of foreign exploitation, such an argument can carry a lot of weight in China. China is once again a strong country and it does not want to fall back into a role of subjugation.xxiii¶ The problem with nationalism is it is a fickle beast. If the CCP were to strongly embrace and stoke nationalism, it would be hard to contain it. If the CCP were to define itself as the guardians of Chinese nationalism it would have to work hard to ensure it appeases the concerns of nationalist. China continues to have a number of festering territory disputes with its neighbors: the continued de facto independence of Taiwan, its border with India, and the Senkaku/Diaoyu islands in the East China Sea to name a few. With its history of foreign exploitation, China is acutely sensitive to any territory dispute. The CCP would have a very hard time maintaining its nationalist credentials if it were to allow other countries to assert control over any of the disputed areas. The Chinese leaders ran into this problem in the late 1990s when there was a distinct rise in nationalism in China. The authors of the popular nationalist book The China That Can Say No were openly critical of the Chinese government for taking a stance they viewed as too soft towards the United States and Japan. They endorsed taking action to annex Taiwan at any cost and open confrontation with Japan and the United States. A move such as this would at best be risky considering China was, and still is, dependent on Japan and the United States to ensure its continued economic growth.xxiv¶ As a result of China’s history of humiliation and the CCP’s need to strengthen its nationalist credentials, China is more likely than other countries to use strong-arm tactics or force to assert itself. Such moves are a double-edged sword for the CCP. They could help the CCP to maintain its credentials as the guardians of the Chinese people, but this would be at the expense of hurting its standing in the international community, or worse, sending China on path towards armed conflict. When military units of opposing countries are in close proximity to each other and tensions run high, it can be very difficult to prevent acts of aggression from spilling over into armed conflict. Posturing on one side can be viewed as an imminent intent to attack on the other. China will have to balance a fine line to ensure their actions are not viewed as too soft at home or overly aggressive by the international community. If the CCP relies heavily on nationalism to strengthen its legitimacy and it is viewed too soft at home, it will hurt the staying power of the regime. If China is viewed as too aggressive by its neighbors, it could face reduced foreign investment, sanctions, or worse, armed conflict. All of which would also hurt the economic growth of China and as a result damage the legitimacy of the regime.

#### US human rights pressure backfires actively protects governments human rights abuses

Gruffydd-Jones 18 (Jamie Gruffydd-Jones will be a lecturer (assistant professor) in politics and international relations at the University of Kent from September 2018. He graduated with a PhD in public affairs from Princeton University. “Citizens and Condemnation: Strategic Uses of International Human Rights Pressure in Authoritarian States.” Comparative Political Studies. Vol 52, Issue 4, 2019. First Published August 14, 2018 https://journals.sagepub.com/doi/full/10.1177/0010414018784066)

This implies that public diplomacy designed to pressure authoritarian regimes into improving their human rights performance may end up playing into the hands of autocrats. In the China case, intense human rights pressure from the United States, passed on through state media, may have contributed to the Chinese public’s perception that the CCP was respecting human rights. To revisit Table 1, Chinese citizens’ lofty opinions of their human rights conditions may not be in spite of international pressure, but partly caused by this pressure.

This is important because encouraging a target state’s domestic public to oppose its repressive policies is at the heart of how the international community looks to counter human rights abuses and encourage long-lasting liberal policy changes. Hendrix and Wong (2013) argue that foreign shaming can have decisive effects in making domestic audiences in more repressive states more critical of rights violations—and for some kinds of foreign shaming this may well be the case, if it were to reach the wider public. However, in China at least, while much information about foreign shaming does indeed reach the public, it is rarely the information that does what Hendrix and Wong suggest. Instead, through its control of the media, autocrats only allow their public to hear about shaming that has the opposite effect, making citizens less critical of rights violations.

This does not necessarily call into question models that extol the virtues of external human rights pressure. Indeed, even on the issue of women’s rights, many activists have called out to the United States to use its influence to publicly shame the Chinese government (Radio Free Asia, 2015). International calculations may well have pushed CCP leaders to release the activists on bail (Foreign Policy, 2015). This study shows, however, that even in authoritarian states, if this kind of human rights pressure is public, then it will have more than one audience. These audiences are not just elites and international actors, but also everyday citizens and domestic activists, and the impacts on these groups may conflict with each other.

This challenges commonly held views about the relationship between international pressure “from above” and domestic pressure “from below.” According to these views, foreign shaming, threats, and sanctions impose costs on governments not only directly, but also indirectly, by working in tandem with and providing support to domestic movements. Some scholars have advocated for a “comprehensive approach,” which calls for a combination of these direct and indirect efforts—attacking the elites from above as well as encouraging the inculcation of broader public norms (Cardenas, 2004). The results here, however, show that the two tactics may not work together particularly smoothly. If it can be manipulated by target governments, then top-down pressure may actively reduce the likelihood that members of the public will call out their government on its behavior, or support the cause of domestic groups looking to fight human rights violations or illiberal policies. In this way, the study responds to Goodman and Jinks’ (2013) call for an exploration of how different tactics used by the human rights community may come into conflict with each other.

For policy makers, this means that there is a danger that even if they successfully change autocrats’ behavior in the short term, their work may well be reported domestically and give those leaders a propaganda boost. The dilemma of how to minimize this boost is an important question for future research, but for now, this study provides a plausible starting point: International pressure should be led by neutral states or organizations and target specific human rights abuses and individual leaders.

### 2NC---Link

#### Makes US democratic promotion effective, causes new multilateral agreements that forefront democracy with a US leader

Marietje 1AC Schaake 11-10, International Policy Director at Stanford University’s Cyber Policy Center, Senior Advisor for Tech & Geopolitics at Eurasia Group, President of the Cyberpeace Institute, “We Need a New Global Standard to Curb Intrusive Spyware”, Financial Times, 11/10/2021, Lexis

After more than a decade, democratic governments are finally waking up to the hazards of commercial spyware. Recent media coverage has exposed how authoritarian regimes are using NSO Group’s Pegasus software to spy on journalists and politicians. The EU has now tightened its rules on the export of surveillance technology, and the US Department of Commerce last week determined that Israel-based NSO Group and three other hacking companies were “engaging in activities that are contrary to the national security or foreign policy interests of the United States”. However, these modest steps do not go far enough: what’s needed is a global standard to reign in technologies that violate the rights to privacy, free assembly as well as free expression.

From ~~crippling~~ [devastating] ransomware to questionable neural algorithms which use AI to identify suspicious non-verbal activity, to face and emotion-detecting technologies, there is a proliferation of software applications which conflict with liberal democratic values.

Traditionally, export controls are imposed on products that threaten national security, such as those that could boost the manufacture of nuclear weapons. The EU has recently extended its export regime to include spyware technologies, and added human rights violations as a criterion for potential harm. But since the NSO Group is based outside the EU, it lies outside Brussels’ jurisdiction. Without a wider international agreement, options for curbing these companies are limited.

The absence of global restrictions brings further credibility risks: how can liberal democracies lobby against human rights abuses by authoritarian regimes, when they are in effect permitting the development and marketing of digital weapons?

While restricting exports may help prevent the flow of intrusive technologies from democracies to dictatorships, imports and domestic uses remain unaddressed. The Pegasus Project revealed how, in the heart of the EU, Hungarian prime minister Viktor Orban has deployed commercial surveillance systems to target the few remaining independent media outlets within his own country.

Even some democratic states, such as the Netherlands, are guilty of procuring hacking and surveillance systems, but do not disclose which ones. Undoubtedly, they will claim these are only ever used to track down the most serious criminal and terror suspects. Yet this lends credibility and capital to an exceedingly harmful industry. If democracies are serious about curbing surveillance, they should exercise greater transparency and lead by example.

More than ad hoc measures or restrictions applied to individual companies, the US should partner with the EU and other willing countries to set a new international standard for the use of, and trade in, spyware. This would be a tangible outcome for President Biden’s upcoming Summit for Democracy, a US-led virtual meeting in early December aimed at preventing authoritarianism, fighting corruption, and promoting human rights.

Beyond spyware, a variety of other technologies deserve greater scrutiny and regulation. Illegitimate mass surveillance systems, facial recognition software and tools used for illegal cyber operations are traded across borders to facilitate repression, conflict, and instability. Poor cyber security is now a source of systematic risk which threatens national resilience. Greater co-ordination is necessary to ensure that technologies which are currently legal do not provide the means for widespread rights violations.

Moreover, an international agreement between democratic states against malicious uses of technology will help set multilateral norms. UN human rights experts this week raised the alarm once more about how tech companies serve as modern-day “mercenaries”. “Private actors provide a wide range of military and security services in cyber space, including data collection, intelligence and surveillance,” they warned.

In the future, a licensing requirement should be the default for tech companies that contravene the human rights standard of democratic states. This would ensure better controls of end use and exports. Regulation would also allow for mapping of how software is being deployed, and enable greater transparency. Equally, companies should strengthen their own risk-management. The very credibility of democracies is at stake when tech companies can undermine global security unhindered.

#### That’s the crucial IL---they’re building their image in opposition to the US

Yan Zuetong 19, Distinguished Professor and Dean of the Institute of International Relations at Tsinghua University, January/February, “The Age of Uneasy Peace,” lexis.

WHAT CHINA WANTS China’s growing influence on the world stage has as much to do with the United States’ abdication of its global leadership under President Donald Trump as with China’s own economic rise. In material terms, the gap between the two countries has not narrowed by much in recent years: since 2015, China’s GDP growth has slowed to less than seven percent a year, and recent estimates put U.S. growth above the three percent mark. In the same period, the value of the renminbi has decreased by about ten percent against the U.S. dollar, undercutting China’s import capacity and its currency’s global strength. What has changed a great deal, however, is the expectation that the United States will continue to promote—through diplomacy and, if necessary, military power—an international order built for the most part around liberal internationalist principles. Under Trump, the country has broken with this tradition, questioning the value of free trade and embracing a virulent, no-holds-barred nationalism. The Trump administration is modernizing the U.S. nuclear arsenal, attempting to strong-arm friends and foes alike, and withdrawing from several international accords and institutions. In 2018 alone, it ditched the Intermediate-Range Nuclear Forces Treaty, the nuclear deal with Iran, and the UN Human Rights Council. It is still unclear if this retrenchment is just a momentary lapse—a short-lived aberration from the norm—or a new U.S. foreign policy paradigm that could out-live Trump’s tenure. But the global fallout of Trumpism has already pushed some countries toward China in ways that would have seemed inconceivable a few years ago. Take Japanese Prime Minister Shinzo Abe, who effectively reversed Japan’s relations with China, from barely hidden hostility to cooperation, during a state visit to Beijing in October 2018, when China and Japan signed over 50 agreements on economic cooperation. Meanwhile, structural factors keep widening the gap between the two global front-runners, China and the United States, and the rest of the world. Already, the two countries’ military spending dwarfs everybody else’s. By 2023, the U.S. defense budget may reach $800 billion, and the Chinese one may exceed $300 billion, whereas no other global power will spend more than $80 billion on its forces. The question, then, is not whether a bipolar U.S.-Chinese order will come to be but what this order will look like. At the top of Beijing’s priorities is a liberal economic order built on free trade. China’s economic transformation over the past decades from an agricultural society to a major global powerhouse—and the world’s second-largest economy—was built on exports. The country has slowly worked its way up the value chain, its exports beginning to compete with those of highly advanced economies. Now as then, these exports are the lifeblood of the Chinese economy: they ensure a consistent trade surplus, and the jobs they create are a vital engine of domestic social stability. There is no indication that this will change in the coming decade. Even amid escalating trade tensions between Beijing and Washington, China’s overall export volume continued to grow in 2018. U.S. tariffs may sting, but they will neither change Beijing’s fundamental incentives nor portend a general turn away from global free trade on its part. Quite to the contrary: because China’s exports are vital to its economic and political success, one should expect Beijing to double down on its attempts to gain and maintain access to foreign markets. This strategic impetus is at the heart of the much-touted Belt and Road Initiative, through which China hopes to develop a vast network of land and sea routes that will connect its export hubs to far-flung markets. As of August 2018, some 70 countries and organizations had signed contracts with China for projects related to the initiative, and this number is set to increase in the coming years. At its 2017 National Congress, the Chinese Communist Party went so far as to enshrine a commitment to the initiative in its constitution—a signal that the party views the infrastructure project as more than a regular foreign policy. China is also willing to further open its domestic markets to foreign goods in exchange for greater access abroad. Just in time for a major trade fair in Shanghai in November 2018—designed to showcase the country’s potential as a destination for foreign goods—China lowered its general tariff from 10.5 percent to 7.8 percent. Given this enthusiasm for the global economy, the image of a revisionist China that has gained traction in many Western capitals is misleading. Beijing relies on a global network of trade ties, so it is loath to court direct confrontation with the United States. Chinese leaders fear—not without reason—that such a confrontation might cut off its access to U.S. markets and lead U.S. allies to band together against China rather than stay neutral, stripping it of important economic partnerships and valuable diplomatic connections. As a result, caution, not assertiveness or aggressiveness, will be the order of the day in Beijing’s foreign policy in the coming years. Even as it continues to modernize and expand its military, China will carefully avoid pressing issues that might lead to war with the United States, such as those related to the South China Sea, cybersecurity, and the weaponization of space. NEW RULES? Indeed, much as Chinese leaders hope to be on par with their counterparts in Washington, they worry about the strategic implications of a bipolar U.S.-Chinese order. American leaders balk at the idea of relinquishing their position at the top of the global food chain and will likely go to great lengths to avoid having to accommodate China. Officials in Beijing, in no hurry to become the sole object of Washington’s apprehension and scorn, would much rather see a multipolar world in which other challenges—and challengers—force the United States to cooperate with China. In fact, the United States’ own rise in the nineteenth and early twentieth centuries provides something of a model for how the coming power transition may take place. Because the United Kingdom, the world’s undisputed hegemon at the time, was preoccupied with fending off a challenger in its vicinity—Germany—it did not bother much to contain the rise of a much bigger rival across the pond. China is hoping for a similar dynamic now, and recent history suggests it could indeed play out. In the early months of George W. Bush’s presidency, for instance, relations between Beijing and Washington were souring over regional disputes in the South China Sea, reaching a boiling point when a Chinese air force pilot died in a midair collision with a U.S. surveillance plane in April 2001. Following the 9/11 attacks a few months later, however, Washington came to see China as a useful strategic partner in its global fight against terrorism, and relations improved significantly over the rest of Bush’s two terms. Today, unfortunately, the list of common threats that could force the two countries to cooperate is short. After 17 years of counterterrorism campaigns, the sense of urgency that once surrounded the issue has faded. Climate change is just as unlikely to make the list of top threats anytime soon. The most plausible scenario is that a new global economic crisis in the coming years will push U.S. and Chinese leaders to shelve their disagreements for a moment to avoid economic calamity—but this, too, remains a hypothetical. To make matters worse, some points of potential conflict are here to stay—chief among them Taiwan. Relations between Beijing and Taipei, already tense, have taken a turn for the worse in recent years. Taiwan’s current government, elected in 2016, has questioned the notion that mainland China and Taiwan form a single country, also known as the “one China” principle. A future government in Taipei might well push for de jure independence. Yet a Taiwanese independence referendum likely constitutes a redline for Beijing and may prompt it to take military action. If the United States were to respond by coming to Taiwan’s aid, a military intervention by Beijing could easily spiral into a full-fledged U.S.-Chinese war. To avoid such a crisis, Beijing is determined to nip any Taiwanese independence aspirations in the bud by political and economic means. As a result, it is likely to continue lobbying third countries to cut off their diplomatic ties with Taipei, an approach it has already taken with several Latin American countries. Cautious or not, China set somewhat different emphases in its approach to norms that undergird the international order. In particular, a more powerful China will push for a stronger emphasis on national sovereignty in international law. In recent years, some have interpreted public statements by Chinese leaders in support of globalization as a sign that Beijing seeks to fashion itself as the global liberal order’s new custodian, yet such sweeping interpretations are wishful thinking: China is merely signaling its support for a liberal economic order, not for ever-increasing political integration. Beijing remains fearful of outside interference, particularly relating to Hong Kong, Taiwan, Tibet, and Xinjiang, as well as on matters of press freedom and online regulations. As a result, it views national sovereignty, rather than international responsibilities and norms, as the fundamental principle on which the international order should rest. Even as a new superpower in the coming decade, China will therefore pursue a less interventionist foreign policy than the United States did at the apex of its power. Consider the case of Afghanistan: even though it is an open secret that the United States expects the Chinese military to shoulder some of the burden of maintaining stability there after U.S. troops leave the country, the Chinese government has shown no interest in this idea. Increased Chinese clout may also bring attempts to promote a vision of world order that draws on ancient Chinese philosophical traditions and theories of statecraft. One term in particular has been making the rounds in Beijing: wangdao, or “humane authority.” The word represents a view of China as an enlightened, benevolent hegemon whose power and legitimacy derive from its ability to fulfill other countries’ security and economic needs—in exchange for their acquiescence to Chinese leadership.

#### Democracy promotion great power nuclear war – backsliding solves

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(Harald, Democracy, Peace, and Security, Lexington Books pp. 44-49)

My own proposal for solving the problem. developed together with my colleague Jonas Wolff (Müllcr 2004. Muller/Wolff 2006). turns the issue upside down: We do not start with explaining mutual democratic peacefulness, but its opposite. the proven capability of democracies to act aggressively against non-democracies. We note that—apart from self-defense where there is no difference between democracies and non-democracies——democratic states go to war—in contrast to non-democracies—to uphold international law (or their own interpretation thereof), to prevent anarchy through state failure, to “save strangers” when dictatorships massacre their own people, and to promote democracy. None of these acts is likely to find its target in a democracy. Since the use of force by democracies is hardly possible without public justification, even the rhetorical use of the said reasons will not stand public scrutiny when uttered against a democracy—people will not believe it, War other than for self-defense thus can only be fought by democracies against non-democracies because against a fellow democracy justification would fail. Because whether this is the case or not to a degree that justifies war as the ‘ultimate means” must rely on practical judgments. and practical judgments can differ among even reasonable people. democracies might disagree whether or not the judgment applies in specific cases. Democracies also show variance in that regard due (o a systematic. political-culturally rooted different propensity to judge situations as justifing war or not, and to participate in such wars (Gels et al, 2013). It should also be noted that, given the continuum between autocracy, anocracy and democracy, whether a given state is a democracy or not can be subject to interpretation. and this interpretation may even change over time (Oren 1995, Hayes 2013). The fact is that there are a couple of fairly warlike democracies, and that the democracies participating most frequently in military disputes (apart from the special case of Israel) are, by and large. major powers such as the United States, the United Kingdom. France. or India. This pattern is important to keep in mind when the question of the utility of democratic peace for today ‘s world problems is to be answered. Transnational terrorism, failed states, civil wars and the like dominate the international agenda on war and peace. At the classical level of international relations, in the relationships among major powers. developments arc undcr way which potentially pose an even greater threat than this diverse collection of non-interstate problems presently does. We are living in an era of rather rapid and disturbing power change (Tammcn et al. 2000). The United States are still the leading power of the world with unprecedented militany and economic poer. But others are coming closer: China. India. Braiil and Indonesia, China is at the top of this cohort, All major power changes chal lenge existing structures and thus contain the potential for great disturbance. The leading power may start to fear for its dominant position and take measures to ensure its position at the lop. These actions may frustrate emerging powers and even lead to the perception that their security is endangered. which would motivate counter-measures that further propel a political escala tion spiral. An increasingly focused competition in which a true power change appears increasingly possible. that is. a change of position at the top of the international hierarchy, has an even greater risk potential. If the inherent dangers are not contained—which remains always a possibility major power war may ensue defying all propositions that major war has become obsolete or that nuclear deterrence will prevent this calamity once and for all. Of course, states can grow peacefully into roles of higher responsibility. status and influence on the world stage. There arc no natural laws saving that changes in the world’s power structure must end in war, despite all distur bances and ensuing risks (Rauch 2014). The less conflict an emerging power experiences with established ones, and with peer challengers that emerge simultaneously, the better the chances that the rise will travel a peaceful trajectory. Looking through this lens. thc relations of only one emerging power with the present hegemon appear to be partially conflict-pronc. and seriously so: it concerns the pair China/United States. The Iwo great powers are rivals for preponderance in East and South East Asia and eventually for being the number one at the global level. There is also Chinese resentment stemming from the US role in China’s past as a victim of Western imperialism. On the other hand. China’s authoritarian system of rule and ensuing violations of human and political rights trigger the liberal resentment discussed in the first part of this chapter. which is rooted particularly strongly in US political culture. The Chinese—US relationship is thus thc key to a peaceful. tense or even violent future at the world stage. A small group of major powers. Including the United States and China, is interconnected today by a complex conflict system. China has territorial claims against Japan, South Korea, Vietnam. the Philippines. Brunci. and India which it pursues by a variety of means, not shying away from the limited, small scale usc of militan force in some cases, notably against obviously weaker counterparts (Ellcman ci al. 2012). China’s relation (o wards Japan is the one most burdened by China’s past as a victim of Japanese oppression and related cruelties, and the propcnsit of the conservative part of Japan’s elite to display cavalier attitudes towards this past or even sort of celebrate it (as through visits to the notorious Yasukuni shrine hosting the remnants of war criminals) only adds to anti-Japanese feelings in China (Russia. another great power. also openly pursues a revisionist agenda. as vividly shown in the recent Crimean move, but these territorial ambitions are not part of the most virulent conflict complex in Asia). Territorial claims are always emotionalized and dangerous. Territorial claims by a major power bear particular risks, because threatened countries look for protective allies which are, by necessity, major powers with the capability to project power into the region of concern. The great power claimant and the great power protector then position themselves on the opposite sides of the conflict. A classical constellation of great power conflict results that looks far more traditional than all the talk about post-modern global relations in which state power struggles fade into oblivion would suggest. In the Asian conflict complex that structures the shape of the US—Chinese contest (Foot/Walter 201 1). Japan. South Korea and the Philippines arc for mall allied ith the United Slates. India and Vietnam today entertain rda (ions ith the United States that can be depicted as cordial entente, already include military cooperation, and might move further towards an alliance. depending on deelopmens in Asia. The United States is also a protector of Taiwan. officially a Chinese province, factualh an independent political entity. and the main object of Chinese interest because of the unfinished agenda of national re-unification. Given the enormous asymmetries between China and Taiwan. the latter’s independence depends fully and unambiguously on the US guarantee. Russia and China have a fairly ambivalent relation with each other that is officially called a strategic partnership. Ambiguous as this relationship is, it is predictable that the more the West and Russia are at loggerheads, the closer the Russian—Chinese relations might become. On the other hand. Chi na is the stronger partner and harbors not completely friendly feelings to wards Moscow. as Russia took part in China’s humiliation during the imperi alist period no less than the United States did. Russian fears concerning covert immigration into Eastern Siberia and demographic repercussions and political consequences that might result therefrom add to the uneasiness. China and India arc natural rivals for regional preponderance in Asia (Gilbov/Hcginbotham 2012). Both arc developing rapidly. with China still ahead. Territorial disputes. India’s liospitalit Lo TibeLan exiles including the Dalai Lama. China’s close relation to Pakistan and a growing naval rivalry spanning the Indian Ocean from the Strait of Malacca to Iranian shores (Garofano/Dew 2013) run parallel to rapidly growing economic relations and ostensible efforts lo present the relationship if not as amiable then at least as partner-like. The United States, China, Russia and India even today conduct a multi- pronged nuclear arms race (Fingar 2011: Gangul /Thompson 2011: O’Neill 2013. Müllcr 2014). In this race, conventional components like missile de fense. Intercontinental strike options, space-based assets and the specter of cbcr war play their role, as does the issue of extended dcterrcncc The general US militar’ superiority induces Russia and China to improve their nuclear arsenals, while India tries not to be left too far behind the Chinese in terms of nuclear capability. Pakistan and North Korea ork as potential spoilers at the fringe of this arms race. They are not powerful but thc arc capable of stirring up trouble, whenever they move. In tems of the military constellation, the most disquieting development is the drafting of pre-emptive strategies of a first (most likely conventional) strike by the United States and China, on either side motivated by the per ceived need to keep the upper hand early in a potential clash close to Chinese shores (such as in the context of a Taiwan conflict). China is building up middle-range ballistic capabilities to pre-empt US aircraft carrier groups from coming into striking distance and to desiroy US Air Force assets in Okinawa. while the United States is developing means to neutralize exactly these Chinese capabilities. They are steering towards a hair-trigger security dilemma in which the mutual postures cry out for being used first before the enemy might destroy them (Goldstein 2013: Le Miôre 2012). It cannot be excluded that this whole conflict system might collapse into two opposing blocks one da the spark for a major violent cataclysm could even be lighted by uncontrolled non-state actors inside some of the powers. or—in analogy to the role of Serbia in 1914— a ‘spoiler” state with a particularly idios ncralic agenda. Pakistan. North Korea or Tai an arc con ceivable in this role. Even Japan might be considered, if nationalism in Nippon grows further and seeks confrontation with the old rival China. If anything. this constellation does not look much better than the one which drove Europe into World War I a century ago. and it contains a nuclear component. To trust in the infallibility of nuclear deterrence in this mufti- pronged constellation needs quite a lot of optimism Can democratic peace be helpful in this constellation? Our conflict system includes democracies—the United States, India, Japan. Indonesia and non- democracies such as China. Russia, and Vietnam, but not necessarily on the same side. Should the European theater become connected to the Asian one through continuous US—Russian disputes and a Russian—Chinese entente. defective democracies like Ukraine and Georgia may feature rather importantly as potential triggers for a worsening of relationships. While democracy is useful in excluding certain conflict dyads in the whole complex, such as India and the United States. Japan and the United States. Japan and India. from the risk that they might escalate into a violent conflict, and as democratic peace is pacifying parts of the world. such as South America or Europe. it helps little in disputes between democracies and non-democracies. To the contrary: as discussed above, democracies have a more or less moral-emotional inclination to demonize non-democracies once they dis agree, and to feel a missionary drive to turn them democratic. This might exacerbate the existing, more interest-based conflicts between democracies and non-democracies, and it creates fears in the hearts of autocratic leaders that they might be up for democratization sooner or later. The close inter- democratic relations which democratic peace tends to produce, in turn, only exacerbate these fears as democracies tend to be rich, well organized, and powerful and dispose together of much more potent military capabilities than their potential non-dcnwcratic counterparts. Rather than helping with peace. the inter-democratic consequences of the democratic peace tend to exacerbate the security dilemma which exists between democracies and non-democracics an way. This non-peaceful dark side of democratic peace has escaped the attention of most academic writings on this subject and certainly all political utterances about democratic peace in our political systems. But democratic militancy is the Siamese twin of democratic peace as the Bush Administration unambiguously taught us (Gels et al. 2013: Müllcr 2014b).

#### External to perception, making the promotion effective is a sufficient link---gives rise to political elites who causes instability---causes regional chaos, civil wars, and nationalism

Burcu Savun and Daniel Tirone, 4/15/9, Associate Professor of Political Science at the University of Pittsburgh, Associate Professor of Political Science at Louisiana State University received Ph.D. in Political Science from University of Pittsburgh, “Democracy Aid, Democratization and Civil Conflict: How does Aid Affect Civil Conflict?”, file:///C:/Users/cguti/Downloads/SSRN-id1456753.pdf

II. DEMOCRATIZATION, CIVIL CONFLICT, AND DEMOCRACY AID

The fact that democracies do not fight each other is one of the most well established findings of International Relations (e.g., Maoz and Abdoladi 1989; Maoz and Russett 1992, 1993; Morgan and Campbell 1991; Oneal and Russett 1997, 1999; Oneal, Russett, and Berbaum 2003; Ray 1998; Russett 1993; Russett and Oneal 2001; Weede 1992). It is safe to argue that no other empirical regularity identified by International Relations scholars has found as much resonance within the policy community as the “democratic peace” proposition. The rise in the democracy promotion efforts by the international community since the 1990s is a testament to this argument (e.g., Burnell 2000; Carothers 1999; Diamond 1995).

Within this context, when Mansfield and Snyder proposed that democratization is a violent process, it inevitably initiated a controversial debate in the literature. In a series of articles and books, Mansfield and Snyder (1995a, 1995b, 1997, 2002, 2005, 2007, 2009) argued that although mutually democratic states may be peaceful in their relations with one another, the path to democracy can be a violent one: i.e., democratizing states are more likely to get involved in wars than consolidated regimes.

There have been several compelling criticisms of Mansfield and Snyder’s argument mostly on methodological grounds (e.g., Enterline 1996; Gleditsch and Ward 2000; Narang and Nelson 2009; Thompson and Tucker 1997; Ward and Gleditsch 1998). Recent work by Mansfield and Snyder (2002, 2005, 2009) has refined and significantly improved upon the research design and addressed most of the empirical criticisms and the findings still hold, i.e., democratization is positively associated with violent conflict.

As Cederman, Hug and Krebs (2007) note, most theoretical and empirical treatments of the democratization-conflict link have occurred with a focus on interstate wars. In From Voting to Violence, Snyder (2000) provides one of the first exclusive systematic studies of the link between democratization and civil conflict, particularly ethnic conflicts. Snyder (2000) proposes that during the early phases of the democratization process, two conditions favorable to the initiation of civil conflict emerge: (a) political elites exploit rising nationalism for their own ends to create divisions in the society and (b) the central government is too weak to prevent elites’ polarizing tactics. According to Snyder, before democratization, the public is not politically active and hence its sense of belonging to a nation is relatively weak (35).3

Democratization increases the feeling of nationalism, especially with the provocation of the elites who feel threatened by the arrival of democracy. To maintain or increase their grab on political power, the elites may depict the political opponents and the ethnic minorities as traitors by invoking nationalist sentiments in the public (37).4

These polarizing tactics, in turn, create tensions among ethnic groups and hence increase the risk of violent clashes in the society.5

3 Rustow (1970) argues that national unity is a background condition for democratization (354). 4 In Snyder’s argument, it is not entirely clear whether the elites represent the ancient régime or the new opposition. In our discussion, we treat political elites as a more generic group that may be a member of either the old or new regime.

6 For example, during 1987 Milosevic skillfully used the Serbian state TV to convince the Serbian minority that Serbs in the Kosovo were suffering discrimination and repression at the hands of the Albanian majority. These kinds of inciting polarizing tactics by Milosevic and the Serbian nationalist elites were pivotal in contributing to violence in Kosovo. Violent struggles in post-communist regimes such as Croatia, Georgia, Azerbaijan, and Armenia during the 1990s are other examples of nationalist upheavals incited by the domestic political elites during democratization process.

Snyder (2000) argues that the elites’ use of exclusionary nationalism is particularly strong and damaging if the democratizing state has weak political institutions. If state institutions are strong, the institutions may be able to deter the elites’ opportunistic behavior and curb its potentially damaging impacts. However, during early phases of democratization, the institutions are usually new and fragile and the central authority is weak. The weakening of central authority gives the elites the opportunity to monopolize the media, create divisions in the society, and control the political discourse.

Without the constraints of strong institutions and state authority, the political elites have more leeway to pull the society to any direction their interests dictate.

#### States are only dangerous and conflict-prone when their window for international prestige is closing---the plan creates the only scenario for great power war

Hal Brands 18, the Henry Kissinger Distinguished Professor at Johns Hopkins-SAIS, senior fellow at the Center for Strategic and Budgetary Assessments, 10/24/18, “Danger: Falling Powers,” <https://www.the-american-interest.com/2018/10/24/danger-falling-powers/>

There is, then, no disputing that rising powers can have profoundly disruptive effects. Yet such powers might not actually be the most aggressive or risk-prone type of revisionist state. After all, if a country’s position is steadily improving over time, why risk messing it all up through reckless policies that precipitate a premature showdown? Why not lay low until the geopolitical balance has become still more favorable? Why not wait until one has surpassed the reigning hegemon altogether and other countries defer to one’s wishes without a shot being fired? So while a rising revisionist power may be tempted to assert itself, it should also have good reason to avoid going for broke.

Now imagine an alternative scenario. A revisionist power—perhaps an authoritarian power—has been gaining influence and ratcheting its ambitions upward. Its leaders have cultivated intense nationalism as a pillar of their domestic legitimacy; they have promised the populace that past insults will be avenged and sacrifices will be rewarded with geopolitical greatness and global prestige. Yet then the country’s potential peaks, either because it has reached its natural limit or because of some unforeseen development, and the balance of power starts to shift in unfavorable ways. It becomes clear to the country’s leadership that it may not be able to accomplish the goals it has set and fulfill the promises it has made, and that the situation will only further worsen with time. A roll of the iron dice now seems more attractive: It may be the only chance the nation has to claim geopolitical spoils before it is too late.

In this scenario, it is not rising power that makes the revisionist state so dangerous, but the temptation to act before decline sets in. In this sense, the dynamic bears a resemblance to the famous Davies J-Curve theory of revolution, wherein a populace is held to be more inclined to revolt not when it is maximally oppressed but rather when raised expectations are shown to be in vain.

Obviously, rational analysis does not always prevail in world politics. Rising states can become intoxicated with their own strength; they may simply get tired of waiting to attain the status they desire; or some domestic pressure may impel leaders to act dangerously. But revisionists whose power has begun to decline, or who have hit a rogue bump in the road, may not feel that they even have the option of waiting.

### 2NC---AT: UQ

#### Biden hasn’t been effectively pursuing multilateral governance or democratic promotion

McTague 20 [Tom; 11/8/20; staff writer at The Atlantic; "Joe Biden Won’t Fix America’s Relationships," https://www.theatlantic.com/international/archive/2020/11/joe-biden-america-world/617016/]

Another conclusion for world leaders is that whatever happens to Trump and Trumpism over the next few weeks and years, the causes of their rise, and the issues they have identified, have certainly not gone away. Yes, these leaders believe, Trump was, and perhaps will be again, a fundamentally malign, ignorant, and dangerous president, but he was not the cause of the structural problem at the heart of the U.S.’s relationship with the world. I spoke with dozens of diplomats, officials, and aides in the U.S. and Europe in the run-up to the election, most of whom expected a Biden victory, and many of whom spoke on condition of anonymity to discuss sensitive diplomatic issues. Almost all accepted that serious questions about America’s role in the world would not go away just because Trump was dethroned. The fact that the election was closer than they had expected only confirms this conclusion.

“The old politics is over,” one senior aide to a European leader told me before the election. It was a message that was repeated back to me again and again, particularly by those more skeptical of the transformative powers of a Biden presidency. Over the past four years, a muscle memory has developed in Berlin, Paris, Brussels, and London of how to work not just with American power, but against it, on issues such as climate change and trade. Less antagonistically, but just as important, I was told that America’s allies had also learned how to work in the space left open by Washington’s indifference, whether dealing with the crisis in Belarus, facing up to Turkish maneuverings in the Mediterranean, or managing the devastation in Lebanon. Where once the U.S. might have played mediator or imperial savior, today it is often absent, disruptive, or simply unclear in its goals and commitment. A new president may soon reside in the White House, but confidence that any American decision is secure is all but nonexistent. What can Biden achieve with an angry, prowling Trump menacing his every move for the next four years?

Most of those I spoke with across Europe already took for granted that the U.S. retrenchment actually began under Barack Obama, even if it intensified under Trump. So even if Biden, Obama’s vice president, were able to bring together enough of the American system behind his leadership, such an analysis—fair or not—risks turning into something much more acutely problematic, metamorphosing into a shared idea that it is not Trump who cannot be relied on, but the U.S. itself.

### 2NC---AT: AI Solvency

#### No AI agreements from the FTC.

Stokes ’21 [Jon; April 20; CPU Editor Emeritus and a co-founder of Ars Technica; Jon Stokes, “No, the FTC is not about to wade into the AI bias wars,” https://www.jonstokes.com/p/no-the-ftc-is-not-about-to-wade-into]

So the jig is up, right? Companies are about to start getting hauled into court and eating big fines over things like face recognition software that doesn’t work well on black faces or healthcare algorithms that reinforce racial disparities in care? No, no such thing is likely to happen. Here’s the short version of why:

* The FTC can indeed probably regulate a lot of the AI issues it mentions in this post, at least theoretically. It can also block mega-mergers, cut monopolies down to size, and do a whole bunch of other stuff that it hasn’t actually done for decades.
* The FTC is understaffed and underfunded, and for 20 years has had no real political will to even carry out its core trust-busting mission. So the idea that this atrophied agency will suddenly wade into the fraught, murky waters of the fast-moving AI algo wars and bust some heads... it just seems really unlikely.
* We don’t have basic standards, benchmarks, and measurement tools for evaluating AI/ML systems for “bias,” nor do we even have agreed-upon notions of “fairness” to work with in most of the applicable areas.

The blog post itself is confused in some important ways, particularly around transparency and auditing.

On the point that some of the issues covered in the post do fall under the FTC’s purview, see, How Artificial Intelligence Can Comply with the Federal Trade Commission Act, which was recommended to me by a source who follows this area of law.

* There is general agreement that the authority of the Federal Trade Commission Act (the “Act”) is broad enough to govern algorithmic decision-making and other forms of artificial intelligence (“AI”).[1] Section 5(a) the Act prohibits “unfair or deceptive acts or practices in or affecting commerce” as unlawful.[2] The Federal Trade Commission (the “FTC”) is authorized to challenge such acts or practices through administrative adjudication and to promulgate regulations to address unfair or deceptive practices that occur widely by multiple parties in the market.[3]
* The FTC has a department that focuses on algorithmic transparency, the Office of Technology Research and Investigation, and has requested public comment on and scheduled hearings about algorithmic decision-making and AI.[4]
* The article goes on to give advice about complying with the FTC Act, but take-home here is that the agency has a pretty broad purview in this area, especially around the issues of advertising claims and credit availability that the blog post focuses on.

As for whether the agency will actually jump in and do a bunch of rule-making in this area, this seems pretty unlikely. I corresponded with one lawyer who didn’t wish to be named and who practices in the area of consumer product regulation, and he pointed me to a number of resources on this topic.

He also said, “Most federal regulatory bodies are so badly underfunded that overzealous enforcement on novel areas of law is not particularly likely,” and suggested that this blog post is extremely unlikely to be a prelude to a string of AI-related enforcement actions.

#### Military will circumvent even if they regulate firms

Horowitz 18 Michael C. Horowitz, Professor of political science and the author of The Diffusion of Military Power: Causes and Consequences for International Politics, "World War AI," Foreign Policy, September 12, 2018. https://foreignpolicy.com/2018/09/12/will-the-united-states-lose-the-artificial-intelligence-arms-race/

The fundamental dilemma facing most attempts at arms control is that the more useful a technology is at providing armies with an edge, the harder it is to effectively regulate. There is, after all, no arms control agreement that meaningfully restricts countries from developing tanks, submarines, or fighter jets. Effective agreements tend to restrict the use of less important weapons that don’t decide wars—such as landmines and blinding lasers—or ones that have rarely been used, such as nuclear weapons. Military history suggests that those applications of AI with the greatest relevance for fighting and winning wars will also be the hardest to regulate, since states will have an interest in investing in them.

#### Arms control on new tech escalates crisis

John Yoo 17, Berkeley law professor, April, “Embracing the Machines: Rationalist War and New Weapons Technologies,” https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4355&context=californialawreview

New weapons technologies can help overcome the obstacles of imperfect information. Coercive measures can signal political will, the value placed on the resources at stake, or military capabilities that could influence the outcome of a broader armed conflict. The more costly the signal, the more credible the information becomes. A nation’s leader can make a threat of war and send military forces near disputed territory or a potential conflict zone. Deployment eats up resources that would go to waste if the nation is bluffing and incurs “audience costs” domestically if the leader backs down.153 Escalating steps of force will provide the opportunity to send more precise signals that gradually consume more resources, reveal more military capability, and edge closer to war. With more avenues to credibly signal capabilities, there are more opportunities to reveal reliable, private information, and the likelihood of bluffing is reduced. While new weapons technology may produce more opportunities for violence, it can signal nations’ capabilities and thereby lead to peace settlements rather than war. Limiting the ability to deploy new weapons technologies might make war more harmful. A ban could narrow the range of targets and the means of coercion to produce more destructive signaling and ultimately more lethal conflicts. One nation may want to send a signal during a crisis that inflicts a precise cost on its opponent. With a broader set of targets and more levels of harm, the nations can send more discrete signals in the bargaining process. If nations limit their signals to conventional attacks on military targets, they will have to employ more destructive levels of force. They might develop even more devastating kinetic weapons to produce the same effects as the precision offered by cyber or robotic weapons. Limits on new weapons technology might even destabilize crises by encouraging nations to use offensive weapons early in a crisis because they might themselves be vulnerable to attack.154 New weapons technologies can more easily send specific signals that advance the bargaining process toward settlement. Cyberweapons, for example, can be used to shut down an opponent’s financial markets or transportation and communication networks for a limited time. During the Kosovo War, the United States Air Force achieved a similar result by dropping graphite on Belgrade’s electrical grid, which temporarily disabled power to Serbia’s capital city. While NATO claimed that the disruption in electricity undermined Serbian military operations, the attack on the electricity grid also sought to pressure Serbian civilians against supporting the Milosevic regime.155 While such an attack would violate the ban on targeting civilian objects set out in the Additional Protocol I of 1977 to the Geneva Conventions, it can send a signal that may cause less loss of life and destruction than an attack on a hardened military target using kinetic weapons. Cyberweapons, in particular, present opportunities to send a more nuanced range of signals during interstate crises.156 Nations can use cyberweapons to attack each other’s armed forces more precisely, and hence reduce direct casualties to both military personnel and civilians. In a contest over Taiwan, for example, China could use cyberattacks to disable communications between the Pentagon and the U.S. Seventh Fleet. These cyberattacks can inflict fewer, more directed costs than kinetic attacks. Cyberweapons’ precision can reduce collateral harm to civilians by targeting only military communications. While cyberattacks can cause widespread harm, such as cutting water and electricity services to civilian populations, they still offer more precise and controlled power than kinetic weapons. One might respond that some type of international regulation could forestall long-term harms from cyber conflict that might outweigh the benefits of credible signaling. Cyberweapons, for example, might also make possible new types of harms that did not previously appear in warfare, such as China’s alleged theft of the U.S. personnel management database or North Korea’s entry into Sony’s network. Or cyberwarfare might open up a means for a faster escalation of hostilities. But even if true, these costs have to compare to existing means of signaling, which would depend on the use of conventional, kinetic weapons and their accompanying destruction and loss of life. They would also have to balance against the costs of cutting off a set of communications, which might impede peaceful bargaining.

#### No China follow on

Gregory C. Allen 19 {Gregory C. Allen is a former Adjunct Senior Fellow at the Center for a New American Security (CNAS) Technology and National Security Program. Mr. Allen focuses on the intersection of Artificial Intelligence, cybersecurity, robotics, space, and national security. 2-6-2019. “Understanding China's AI Strategy.” https://www.cnas.org/publications/reports/understanding-chinas-ai-strategy}//JM

1. China’s leadership – including President Xi Jinping – believes that being at the forefront in AI technology is critical to the future of global military and economic power competition. In July 2017, China’s State Council issued the New Generation Artificial Intelligence Development Plan (AIDP).1 This document – along with Made in China 2025,2 released in May 2015 – form the core of China’s AI strategy. Both documents, as well as the issue of AI more generally, have received significant and sustained attention from the highest levels of China’s leadership, including Xi Jinping. Total Chinese national and local government spending on AI to implement these plans is not publicly disclosed, but it is clearly in the tens of billions of dollars. At least two3 Chinese regional governments have each committed to investing 100 billion yuan (~$14.7 billion USD).4 The opening paragraphs of the AIDP exemplify mainstream Chinese views regarding AI: AI has become a new focus of international competition. AI is a strategic technology that will lead in the future; the world’s major developed countries are taking the development of AI as a major strategy to enhance national competitiveness and protect national security.5 The above quote also reflects how China’s AI policy community6 is paying close attention to the AI industries and policies of other countries, particularly the United States. Chinese government organizations routinely translate, disseminate, and analyze U.S. government and think tank reports about AI. In my conversations with Chinese officials and my reading of Chinese government AI reports, they demonstrated substantive and timely knowledge of AI developments in the United States and elsewhere. Chinese government AI reports frequently cite U.S. national security think tank publications.7 The U.S. policymaking community ought to make it a priority to be equally effective at translating, analyzing, and disseminating Chinese publications on AI for the insights they provide into Chinese thinking.8 2. China’s leadership – including Xi Jinping – believes that China should pursue global leadership in AI technology and reduce its vulnerable dependence on imports of international technology. In October 2018, Xi Jinping led a Politburo study session on AI. Such sessions are reserved for the high-priority policy issues where leaders need the benefit of outside expertise. Xi’s publicly reported comments during and after the study session reiterated the main conclusions of both the AIDP and Made in China 2025, which were that China should “achieve world-leading levels”9 in AI technology and reduce its vulnerable “external [foreign] dependence for key technologies and advanced equipment.”10 In his speech during the study session, Xi said that China must “ensure that our country marches in the front ranks where it comes to theoretical research in this important area of AI, and occupies the high ground in critical and AI core technologies.”11 Xi further said that China must “pay firm attention to the structure of our shortcomings, ensure that critical and core AI technologies are firmly grasped in our own hands.” Xi’s speech demonstrates that China’s leadership continues to subscribe to AIDP’s and Made in China 2025’s two major conclusions that China should pursue both world leadership and self-reliance in AI technology. The Chinese AI sector’s dependence on foreign technology is discussed further in point nine.

#### Even if, they’ll cheat

UCESRC 17 [US-China Economic and Security Review Commission Staff Research Report. China’s Position on a Code of Conduct in Space. September 8, 2017. https://www.uscc.gov/sites/default/files/Research/USCC\_China%27s%20Position%20on%20a%20Code%20of%20Conduct%20in%20Space.pdf]

South China Sea. Since China signed the China-Association of Southeast Asian Nations (ASEAN) Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002, it has consistently violated its commitments under the DOC, most notably promises to not “inhabit” uninhabited features in the South China Sea and to abide by the UN Convention on the Law of the Sea (UNCLOS).\*27 While parties to the DOC affirmed they would work toward the eventual creation of a code of conduct (COC),28 the Congressional Research Service noted in July 2017 that “some observers have argued that China has been dragging out the negotiations on the COC for years as part of a ‘talk and take strategy.’”29 While China finally announced the completion of the first draft of a “framework” for the COC in March 2017,30 and Beijing has touted “cooling” tensions in the region as a result,31 it has pushed for a framework that is not legally binding and lacks enforcement mechanisms.32 Ian Storey, senior fellow at the ISEAS-Yusof Ishak Institute, a think tank in Singapore, suggests the framework “makes China look cooperative ... without having to do anything that might constrain its freedom of action.”33 Beijing also did not abide by the public promise of Chinese President and General Secretary of the Chinese Communist Party Xi Jinping—made in Washington in September 2015—to not “militarize” China’s artificial islands in the southern South China Sea,34 and China also rejected the 2016 international legal ruling that some of its specific territorial claims were invalid under UNCLOS— a legally binding treaty.35

China-India border dispute. In the wake of the 2013 Border Defense Cooperation Agreement, the most recent in a series of agreements between the two countries dating back to 1993,36 India has argued for delimiting the Line of Actual Control, while China prefers to first create a code of conduct based on the measures set forth in the agreement,37 refusing to even reveal its version of the Line of Actual Control.38 Although China has resolved numerous border disputes since 1949,39 little progress has been made in settling this dispute and prospects appear limited, given growing domestic political constraints on both sides.40 China’s July 2017 decision to unilaterally build a road through the Doklam Plateau, the site of a disputed “tri-junction” with India and Bhutan, violated China’s promises under the 2013 agreement as well as a 2012 agreement to maintain the status quo in that location.41

Cyberspace. China has argued for the creation of an international code of conduct for cyberspace within the framework of the UN, and has sought to highlight its “active role” in this area.42 China submitted a draft International Code of Conduct for Information Security to the UN in 2015 (updated from 2011), along with Russia and fellow Shanghai Cooperation Organization members Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan.43 This code promotes the concept of “cyber sovereignty,” favorable to these authoritarian countries’ widespread information controls, and has been rejected by the United States and other countries for this reason.44 While China reached a bilateral cyber agreement with the United States in 2015 in which both sides pledged to “refrain from conducting or knowingly supporting cyber-enabled theft of intellectual property,”45 the U.S. Intelligence Community assessed in May 2017 that Beijing would continue actively targeting the U.S. government, its allies, and U.S. companies for cyber espionage—citing private sector reports that these attacks have continued but at significantly lower volumes.46

Observations. Several observations can be drawn from these cases. First, Beijing appears to see inherent value in participating in diplomatic negotiations and seeking to shape emerging rules, and has frequently drawn attention to these efforts. Second, China at times appears to enter into agreements to forestall or delay other outcomes, as in the case of its acceptance of the China-ASEAN DOC followed by an extended delay in negotiating a COC, as well as its numerous border agreements with India. Finally, China has frequently broken its agreements, as in the case of the DOC, its 2015 promise not to further militarize land features in the southern South China Sea, its agreements with India, and its bilateral cyber security agreement with the United States.

#### Russia will cheat or won’t join

Lambakis 17 [Dr. Steven Lambakis is a national security and international affairs analyst specializing in space power and policy studies. Dr. Lambakis serves as the Editor-in-Chief of Comparative Strategy, a leading international journal of global affairs and strategic studies whose readership includes key policymakers, academics, and other leaders. Dr. Lambakis was educated in the fields of international politics, with special emphasis on arms control and intelligence issues, American government, and U.S. foreign policy at Northern Illinois University in DeKalb, Illinois (B.A., 1982) and the Catholic University of America in Washington D.C. (M.A., 1984, and Ph.D., 1990). Foreign Space Capabilities: Implications for U.S. National Security. September 2017. www.nipp.org/wp-content/uploads/2017/09/Foreign-Space-Capabilities-pub-2017.pdf]

There are, of course, numerous documented pitfalls to arms control—verification difficulties and non-compliance are chief among them. Russia has a history of violating key arms agreements, to include the Intermediate Nuclear Forces treaty.278 There was the supreme failure of the 1972 Anti-Ballistic Missile Treaty, which held the United States back from developing technologies and systems to defend the country against Soviet missile threats, while doing nothing to prevent the expansion of the growing Soviet missile force—with the consequent increase in the vulnerability of U.S. deterrent forces to Russian nuclear forces. There is also overwhelming evidence of the failure of the New START treaty to lead Russia to join the United States in lowering the salience and numbers of nuclear forces. Unverifiable arms control agreements on space would likely be as subject to violation by Russia (and perhaps China) as the numerous other arms control agreements with which it is in noncompliance.

### 2NC---AT: AI Impact

#### No AI impact---too far off, technical complexities overwhelm

Edward Moore **Geist, 15** - MacArthur Nuclear Security Fellow at Stanford University's Center for International Security and Cooperation (CISAC). Previously a Stanton Nuclear Security Fellow at the RAND Corporation, he received his doctorate in history from the University of North Carolina in 2013; "Is artificial intelligence really an existential threat to humanity?," *Bulletin of the Atomic Scientists*, 8-9-2015, https://thebulletin.org/2015/08/is-artificial-intelligence-really-an-existential-threat-to-humanity/

Convinced that sufficient “intelligence” can overcome almost any obstacle, Bostrom acknowledges few limits on what artificial intelligences might accomplish. Engineering realities rarely enter into Bostrom’s analysis, and those that do contradict the thrust of his argument. He admits that the theoretically optimal intelligence, a “perfect Bayesian agent that makes probabilistically optimal use of available information,” will forever remain “unattainable because it is too computationally demanding to be implemented in any physical computer.” Yet Bostrom’s postulated “superintelligences” seem uncomfortably close to this ideal. The author offers few hints of how machine superintelligences would circumvent the computational barriers that render the perfect Bayesian agent impossible, other than promises that the advantages of artificial components relative to human brains will somehow save the day. But over the course of 60 years of attempts to create thinking machines, AI researchers have come to the realization that there is far more to intelligence than simply deploying a faster mechanical alternative to neurons. In fact, the history of artificial intelligence suggests that Bostrom’s “superintelligence” is a practical impossibility.

## Adv---Blockchain

### 2NC---AT: Inherency/Solvency

#### Everyone is anonymous and you can’t turn it off – even if attribution is perfect, it solves nothing

Kapanazde 21 [Lika, Master of Laws, Comparative Private and International Law at New Vision University. "The Challenges of Blockchain Technology to Antitrust Law." https://openscience.ge/handle/1/2670]

Anticompetitive practices that violate antitrust laws are usually detected and then stopped and sanctioned by the public authorities. However, doing so in relation to the blockchain technology is tricky, as identities of the perpetrators are anonymous, it is impossible to determine the relevant jurisdiction and remedy the anticompetitive practices due to the immutability of the blockchain.

Antitrust authorities have no ability to detect anticompetitive practices as well as the identification of users who engage in those practices, due to the privacy and pseudonymity of the users.98 If new technologies develop, that enable tracking such practices and perpetrators by the public authorities, it would significantly affect the cornerstone “values” of the blockchain and change the nature of it. Therefore, it is highly unlikely, to implement such technologies on the blockchain. Besides, inherent nature of the blockchain creates a real barrier to antitrust enforcement authorities to remedy, delete or stop anticompetitive practices, since the network is distributed, and no one is in control, but at the same time everybody is, except for the authorities themselves.99 Even if authorities will have a power to track the practices and determine the identities of the perpetrators, they will not be able to stop such practices. Immutability of blockchain ensures, that platform will continue to function (as long as the people who interact with it pay the transaction fees charged by miners who support the blockchain) and there is no server to shut down the blockchain, even if authorities impose strict regulation or penalties on the original parties who developed or promoted such blockchain.100 In other words, if anticompetitive practices are implemented on a blockchain and public authorities detect them, authorities will not be able to stop it and blockchain will continue to perform the transactions

#### Concentrated permissionless OR permissioned blockchains can be resolved using existing antitrust law

Pike and Capobianco ’20 [Chris; Gabriele; 2020; Partner and Managing Director (Head of Digital Markets) at Fideres, an economics firm that focuses on antitrust litigation exclusively from the complainant-side and an associate at the Centre for Competition Policy at the University of East Anglia; Junior Competition Expert at the Competition Division; OECD Blockchain Policy Series; “Antitrust and the trust machine,” https://www.oecd.org/daf/competition/antitrust-and-the-trust-machine-2020.pdf]

A more likely concern is that validation of a permission-less blockchain may over time lose its decentralised nature and instead become highly concentrated. In that case, the co-ordination problems on setting prices that we identified might become significantly less challenging. A validator with a high share of validation capacity, for instance, one that employs thousands of validators in order to operate what is known as a ‘mining-pool’ might then be able to change protocols to raise prices, either unilaterally, or through co-ordination with a small number of other validators. Competition agencies may therefore wish to keep an eye on the degree of concentration of validation capacity on any permission-less blockchains that would hold market power if they were centrally controlled.

In addition, this loss of its highly decentralised nature would mean that a permission-less blockchain with a concentrated list of validators starts to resemble a permissioned blockchain with a small list of validators. Fortunately, however, in such circumstances the blockchain’s highly concentrated nature would also make identification and enforcement against the small number of validators easier, as is already the case for the permissioned blockchains to which we now turn.

3.2 Market power and enforcement against permissioned blockchains

Like firms with a traditional corporate structure, permissioned blockchains are operated by a single, well defined, centralised entity (or consortia of entities) that has developed the protocols that govern its actions. These therefore embody the traditional paradox that firms that compete in markets are governed by hierarchical command and control (non-market) mechanisms.8

This means these blockchains are perfectly capable of exercising any market power that they have. Indeed we might expect that there would be particularly strong network effects in the increasing number of ‘industry’ blockchains that are being formed by consortia of upstream and downstream firms that serve a certain market (see for instance those in shipping or diamonds) or that serve a broader set of markets (for example in the case of Libra).

In contrast to permission-less blockchains there should not be the same enforcement challenges in these cases. This is because there is both a centralised governing entity and a list of permissioned validators, and so it is therefore clear where a competition agency would need to direct any enforcement action that it needs to take. Such action might be required in a host of familiar situations, which we consider in the following sections.

#### No refusal to deal – it’s antithetical to the tech

Kapanazde 21 [Lika, Master of Laws, Comparative Private and International Law at New Vision University. "The Challenges of Blockchain Technology to Antitrust Law." https://openscience.ge/handle/1/2670]

1. Refusal to deal.

Outside of the blockchain, it is a common practice for the companies to refuse doing business with their rivals.75 It would be difficult to do it on public blockchains, as the refusal to deal can only be made possible by modifying the access rules and deliberately or exclusively preventing certain users from accessing a blockchain (in fact, this is inconsistent with the inherent nature of public blockchains, and by modifying the access rules, it would no longer constitute as a public blockchain).76 Whereas, in private blockchain, only selected members have access to the network and certain operations, and for that reason, there are authorization schemes to identify who is entering the platform or who is creating smart contracts on the platform.77

The authorities governing the private blockchain, can adopt different access control mechanisms (such as the ones, where existing participants decide on the future entrants, or governing authority or consortium could issue licenses for access and participation) and engage in a refusal to deal by means of not only preventing certain users from accessing the blockchain, but also preventing them from reading the information on the blockchain and/or forbidding them from proposing new transactions.78 The refusal to grant access is similar to granting licenses, namely, if obtaining a license to patents is deemed essential in order to compete on the market, holders of such patents are strongly encouraged to license them on fair, reasonable, and non-discriminatory (FRAND) terms to avoid any breach of antitrust law. 79 However application of the similar rules (or different rules with the same rationale) to the private blockchain, will again be inconsistent with its inherent nature, as private blockchain holders will be prohibited from setting certain access terms, other than reasonable and nondiscriminatory terms.

Since 1970, the U.S. Supreme Court has addressed an alleged monopolist’s duty to deal with competitors in five decisions: Otter Tail Power Co. v. United States (1973); Aspen Skiing Co. v. Aspen Highlands Skiing Corp. (1985); Eastman Kodak Co. v. Image Technical Services, Inc.(1992); Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP (2004); and Pacific Bell Telephone Co. v. Linkline Communications, Inc. (2009). In the first three cases the court ruled that defendant had duty to deal with competitors, whereas in the last two cases, the court held that the defendant had no duty to deal.80 However Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP is considered to be a landmark case, which made it clear that the profit sacrifice test should be applied to the cases of refusal to deal in assessing the legality of the conduct, in particular, a profit-sacrifice test asks whether the alleged conduct is more profitable in the short run than any other conduct the company could have engaged in that did not have the same (or greater) exclusionary effects and if the alleged conduct is not more profitable, the firm sacrificed short-run profits and might have been investing in an exclusionary scheme, seeking to secure monopoly power and recoup the foregone profits later.81

However, the sole fact of proving that a company has sacrificed its profits in the short term is not sufficient to show a violation, as a company may want to temporarily waive its profits to build customer loyalty in the long term, which is not anticompetitive.82 This could lead to the wrongful conviction of a pro-competitive practice.

In blockchain context, no-economic-sense test would be the best solution for evaluating refusals to grant blockchain access for anticompetitive motives.83 According to this test, public authorities or judge is comparing the non-exclusionary profits from the allegedly illegal conduct to the profits the company would have earned from legal conduct, and if the non exclusionary profits are greater, the conduct would make economic sense without exclusionary effects and thus be legal, whereas if the non-exclusionary profits are less, the conduct would not make economic sense and thus be illegal.84 This test can also be adapted to study issues that can occur on blockchain, namely, “if a trier of fact suspects that the effects created by the alleged practice, are pro- or anticompetitive, he/she must determine whether it is possible to distinguish between all the modifications made to the product, here the blockchain or the smart contract, and identify the economic justification for each.”85

#### And blockchains will self-regulate

Pike and Capobianco ’20 [Chris; Gabriele; 2020; Partner and Managing Director (Head of Digital Markets) at Fideres, an economics firm that focuses on antitrust litigation exclusively from the complainant-side and an associate at the Centre for Competition Policy at the University of East Anglia; Junior Competition Expert at the Competition Division; OECD Blockchain Policy Series; “Antitrust and the trust machine,” https://www.oecd.org/daf/competition/antitrust-and-the-trust-machine-2020.pdf]

Blockchains should be seen as platform products that compete to attract both users and validators. The success of any blockchain therefore relies on its ability to attract users, who use the blockchain to validate actions, and to attract validators, who collectively do the work of validating those actions. In the case of permission-less blockchains the pool of validators is potentially vast, while in contrast, permissioned blockchains will be looking to attract more trustworthy validators. In this sense, they are not open to all; like say Airbnb, but rather, like a luxury hotel-booking platform, they look to attract ‘premium’ sellers.

As in any other digital platform, a blockchain therefore has to set terms that are attractive to both groups in order to get them on-board. For example, the security, price and speed of verification must be attractive to users, and the rewards for verifying must be attractive to validators. Cross-platform network externalities are likely since more users increase the value of the platform and its tokens, and hence increase the rewards to validators, while more validators increase the security and speed of the verification process, and keep down the verification price for users. As in other digital platforms, this price may be near zero (provided there is sufficient competition between validators).

As with other multi-sided platforms (e.g. ride-hailing services), each blockchain platform may compete with other platforms with the same application, or with non-platform alternative technologies that have the same application. These markets may often be intermediate product markets within a supply chain that final consumers might be unaware they are using (as has become the case with Linux-based operating systems). From a competition perspective, what matters is the users’ and validators’ view of the substitutability between these different technologies. It therefore does not follow that there is a specific market for blockchains, or that a blockchain will comprise its own separate market, since different blockchains can be suitable for different applications, where they may compete with non-blockchain technologies that final users consider meet the same needs.

#### Their author concedes coordination to influence a blockchain is impossible

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

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

### 2NC---AT: Bees Impact

#### Bees don’t matter and are easy to replace

**Nordhaus 15** [Ted Nordhaus, economist and Sterling Professor of Economics at Yale University, “The Environmental Case for Industrial Agriculture,” The following keynote address was delivered by Ted Nordhaus at the first annual Institute for Food and Agricultural Literacy Symposium on June 3, 2015, http://thebreakthrough.org/index.php/issues/food-and-farming/the-environmental-case-for-industrial-agriculture]

Like monarch butterflies, honeybees have also become a cause célèbre in the ongoing food debates. In recent years, beekeepers have been losing significantly higher percentages of their bees and hives to various ailments, with many advocates pointing the finger at a particular class of insecticide know as neonicotinoids. In the name of honeybees, the European Union has banned neonicotinoids, and the US Environmental Protection Agency, under pressure from environmental groups, is considering following suit.

In reality, there is scant evidence that these pesticides are a major contributor to bee deaths. The studies that do purport to show a direct link have been poorly designed and widely rejected by entomologists. And while Europe, which has banned neonicotinoids, continues to experience heavy bee losses, Australia, which hasn’t banned them, has not.

Notwithstanding the cause of rising bee mortality, perhaps what is most interesting is that, despite rising losses, bee populations have not declined at all. The vast majority of bees live neither in the wild nor in backyard hives but are kept by industrial beekeepers, many of whom keep tens of thousands of hives that they ship around the country on semi-trucks to provide pollination services year-round.

Die-offs have always been a fact of life for beekeepers and are likely to remain so. But bee populations have remained stable because we have become expert at breeding queens and splitting hives. With or without neonicotinoids, that basic system of pollinating crops will almost certainly continue, as relying upon wild pollination and small-scale beekeeping could not possibly meet the pollination demands of American agriculture.

As I noted at the beginning, at bottom of both these controversies are fundamental misunderstandings of what agriculture is. Commercial honeybees are hardly more natural these days than the pesticides that activists claim are killing them, and every bit as much an agricultural technology. Monarch butterflies are increasingly unable to thrive in cornfields because we dedicate that land to the production of corn, not butterflies. Both cases are not novel expressions of an industrial food system gone haywire but rather reflect what the food system is, and has always been. Both domesticated honeybees and herbicides are used to increase the productivity of the land and to monopolize the outputs for human purposes.

#### No ag impact

Steven Pinker 11, Prof @ Harvard, Steven Pinker: Resource Scarcity Doesn’t Cause Wars, <http://www.globalwarming.org/2011/11/28/steven-pinker-resource-scarcity-doesnt-cause-wars/>

Once again it seems to me that the appropriate response is “maybe, but maybe not.” Though climate change can cause plenty of misery… it will not necessarily lead to armed conflict. The political scientists who track war and peace, such as Halvard Buhaug, Idean Salehyan, Ole Theisen, and Nils Gleditsch, are skeptical of the popular idea that people fight wars over scarce resources. Hunger and resource shortages are tragically common in sub-Saharan countries such as Malawi, Zambia, and Tanzania, but wars involving them are not. Hurricanes, floods, droughts, and tsunamis (such as the disastrous one in the Indian Ocean in 2004) do not generally lead to conflict. The American dust bowl in the 1930s, to take another example, caused plenty of deprivation but no civil war. And while temperatures have been rising steadily in Africa during the past fifteen years, civil wars and war deaths have been falling. Pressures on access to land and water can certainly cause local skirmishes, but a genuine war requires that hostile forces be organized and armed, and that depends more on the influence of bad governments, closed economies, and militant ideologies than on the sheer availability of land and water. Certainly any connection to terrorism is in the imagination of the terror warriors: terrorists tend to be underemployed lower-middle-class men, not subsistence farmers. As for genocide, the Sudanese government finds it convenient to blame violence in Darfur on desertification, distracting the world from its own role in tolerating or encouraging the ethnic cleansing. In a regression analysis on armed conflicts from 1980 to 1992, Theisen found that conflict was more likely if a country was poor, populous, politically unstable, and abundant in oil, but not if it had suffered from droughts, water shortages, or mild land degradation. (Severe land degradation did have a small effect.) Reviewing analyses that examined a large number (N) of countries rather than cherry-picking one or toe, he concluded, “Those who foresee doom, because of the relationship between resource scarcity and violent internal conflict, have very little support from the large-N literature.”

### 2NC---AT: Blockchain Impact

#### Only way blockchain could possibly be relevent was if the chains are private and controlled by states---opposite of the chains the plan promotes

Michal Onderco 21, Associate Professor of International Relations in the Department of Public Administration and Sociology at Erasmus University Rotterdam; and Madeline Zutt, research associate at Erasmus University Rotterdam, 2021, “Emerging technology and nuclear security: What does the wisdom of the crowd tell us?,” Contemporary Security Policy, 42(3), pp. 286-311

Our third finding focuses on whether emerging technologies could enhance or impede nuclear disarmament efforts. Some work has already exposed how new technologies have the potential to strengthen nuclear disarmament and verification measures. A prototype “SLAFKA” was recently jointly developed by a nuclear regulator in Finland (STUK), the University of New South Wales in Australia, and the Stimson Center in the United States which tests whether a distributed ledger technology (DLT) can effectively safeguard nuclear material (Stimson Center, 2020). A DLT platform is “a system of electronic records that enables independent entities to establish consensus around a “ledger”—without relying on a central coordinator to provide the authoritative version of the records” (Rauchs et al., 2018, p. 23). Blockchain is the most well-known type of distributed ledger. Importantly, blockchain is structured in such a way that all who participate in the shared ledger must agree upon a set of records or data, and this data cannot be changed or tampered with by one actor alone (Rockwood et al., 2018). When it comes to accounting for nuclear materials, blockchain could be used by member states to confidentially and securely provide data to the IAEA (Vestergaard, 2018). By using a shared ledger system, the transmission of data by a member state would be visible to other member states, while maintaining the anonymity of participants (Rockwood et al., 2018).

In a recent report, Burford (2020) notes that the characteristic features of blockchain, namely its immutability and security as a data management tool, are uniquely suited to “help to build technical capacity among [non-nuclear weapons states] and habits of cooperation among NPT parties, while protecting proliferation-sensitive data” (p. 21). Finally, others have noted that advances in image-recognition software combined with the increased sophistication in and availability of satellite imagery could open up space for more actors to get involved in verification activities (Kaspersen & King, 2019). This would make verification more robust by allowing a greater number of states to participate in what has traditionally been the domain of states that are more technologically superior.

### 2NC---AT: Arms Contol

#### Distrust inevitable---slew of alt causes

Brendan Green 17. \*\*Assistant Professor of Political Science at the University of Cincinnati. \*\*Austin Long, Analyst of nuclear issues. “The Limits of Damage Limitation.” *International Security* 42(1): 193-207.

Of all the arguments that Glaser and Fetter offer against damage limitation, this is by far the most powerful. There are empirical and theoretical reasons, however, to doubt that the United States will be able to avoid sending malign signals to the Chinese, regardless of its force posture decisions. Glaser and Fetter's analysis of U.S. theater missile defense provides a perfect example (p. 75): technically, it is clear that terminal high altitude area defense poses no threat to Chinese strategic nuclear capabilities, but that has not stopped Beijing from drawing negative inferences about U.S. intentions.17 Compounding this problem, many surveillance assets vital to damage limitation are “indistinguishable” from those needed for other purposes. So even if the United States rejects damage limitation and embraces mutually assured destruction, it would procure these capabilities for these other purposes and China would likely infer that the United States was seeking a damage-limiting capability regardless of U.S. declarations to the contrary.

#### Publicizing violations undermines the regime and encourages arms racing

Carnegie and Carson 18 [Allison Carnegie is an Associate Professor (without tenure) of Political Science at Columbia University. She received a joint PhD in Political Science and Economics from Yale University. Austin Carson is an assistant professor in the Department of Political Science at the University of Chicago. His main research focus is the politics of secrecy in International Relations. The Spotlight’s Harsh Glare: Rethinking Publicity and International Order. International Organization 72, Summer 2018]

In this article we develop and test a theory that answers these questions, arguing that while the conventional wisdom often holds, it breaks down under key circumstances that are prevalent in international settings. We develop two mechanisms by which exposing rule violations endangers norms and formalized legal regimes: (1) when a state learns of high levels of noncompliance in the international community, the perceived social opprobrium from that state violating the norm is reduced (the pessimism mechanism), and (2) when a state learns of specific instances of noncompliance that may pose a direct threat to the state’s security, it may seek to defend itself (the threat mechanism). Next we analyze how these mechanisms inform the strategic behavior of a well-informed state with enforcement capabilities, modeling the conditions under which such a state intentionally hides another state’s rule violations to protect the regime. When the well-informed state finds it difficult to reverse a case of noncompliance, publicity can encourage additional instances of rule abandonment, leading regime advocates to strategically withhold information to perpetuate the practical and legal ambiguity about a given infraction. Otherwise, such a state will publicize noncompliance in line with the conventional view.

We evaluate the theory’s observable implications in the nuclear nonproliferation setting, focusing on whether decision makers in the regime’s strongest advocate, the United States, intuitively grasped the appeals and dangers of revealing violations. Drawing on recently declassified internal documents, we find that US leaders strategically obfuscated violations of the nuclear regime when they believed that a state’s nuclear progress was irreversible and would lead to other states’ noncompliance. Otherwise, US leaders shared their information with other states to reassure such states and to organize punishment of the violator, mirroring the conventional wisdom. The nuclear domain illustrates potential downsides of this pattern of behavior for the regime as a whole: high rates of concealment can undermine confidence in the enforcement of the regime.

#### Russia will cheat or won’t join

Lambakis 17 [Dr. Steven Lambakis is a national security and international affairs analyst specializing in space power and policy studies. Dr. Lambakis serves as the Editor-in-Chief of Comparative Strategy, a leading international journal of global affairs and strategic studies whose readership includes key policymakers, academics, and other leaders. Dr. Lambakis was educated in the fields of international politics, with special emphasis on arms control and intelligence issues, American government, and U.S. foreign policy at Northern Illinois University in DeKalb, Illinois (B.A., 1982) and the Catholic University of America in Washington D.C. (M.A., 1984, and Ph.D., 1990). Foreign Space Capabilities: Implications for U.S. National Security. September 2017. www.nipp.org/wp-content/uploads/2017/09/Foreign-Space-Capabilities-pub-2017.pdf]

There are, of course, numerous documented pitfalls to arms control—verification difficulties and non-compliance are chief among them. Russia has a history of violating key arms agreements, to include the Intermediate Nuclear Forces treaty.278 There was the supreme failure of the 1972 Anti-Ballistic Missile Treaty, which held the United States back from developing technologies and systems to defend the country against Soviet missile threats, while doing nothing to prevent the expansion of the growing Soviet missile force—with the consequent increase in the vulnerability of U.S. deterrent forces to Russian nuclear forces. There is also overwhelming evidence of the failure of the New START treaty to lead Russia to join the United States in lowering the salience and numbers of nuclear forces. Unverifiable arms control agreements on space would likely be as subject to violation by Russia (and perhaps China) as the numerous other arms control agreements with which it is in noncompliance.

# 1NR

## cp - common law

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

#### the perm turns the CP into ‘statutory gap filling’---it does NOT result in a durable expansion of federal common law.

Abbe R. Gluck 11, Associate Professor of Law, Columbia Law School, “Intersystemic Statutory Interpretation: Methodology as "Law" and the Erie Doctrine,” 120 Yale L.J. 1898, Lexis

Consider how well the Court's typical arguments justifying federal common-lawmaking apply to statutory interpretation methodology. There is a uniquely federal interest involved (the meaning of federal statutes); it is grounded in a federal source (federal statutes); 45 [FOOTNOTE 45 BEGINS] See Bradley et al., supra note 18, at 879 ("There is widespread agreement that federal common law must be grounded in a federal law source."); see also Field, supra note 18, at 887 (arguing for a broad understanding of federal common-lawmaking authority but still acknowledging that the "limitation … is that the court must point to a federal enactment, constitutional or statutory, that it interprets as authorizing the federal common law rule"). [FOOTNOTE 45 ENDS] and there is a clear need for federal-law uniformity. As with other types of approved federal common-lawmaking, this type also would be restrained: it would be limited to filling interstitial gaps in a statutory scheme. 46 [FOOTNOTE 46 BEGINS] See Tex. Indus. v. Radcliff Materials, Inc., 451 U.S. 630, 640 (1981) ("The Court has recognized the need and authority in some limited areas to formulate what has come to be known as "federal common law.' These instances … fall into essentially two categories: those in which a federal rule of decision is "necessary to protect uniquely federal interests,' and those in which Congress has given the courts the power to develop substantive law." (citations omitted)); Bradley et al., supra note 18, at 921 ("This sort of statutory gap-filling, guided by congressional intent, is probably the most common (and uncontroversial) type of federal common law."). [FOOTNOTE 46 ENDS] And, similar to arguments made for [\*1915] common-law authority in other areas, the source of federal judicial authority to create these interpretive principles derives from the power - given to the federal courts by the jurisdictional statutes and Article III - to adjudicate statutory cases. 47 In fact, this same kind of inherent authority is used to justify the Court's methodological work in the constitutional law context.

#### DOESN’T SOLVE---even if the perm retains a claim of statute-independent common law---that claim won’t set precedent

Michael B. Abramowicz & Maxwell L. Stearns 5, Abramowicz is Associate Professor, George Washington University Law School; Stearns is Professor, George Mason University School of Law, “Defining Dicta,” 2005, 57 Stan. L. Rev. 953, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1201&context=faculty\_publications

A judge’s failure to delineate the scope of the holding within an opinion might not be a disservice to the judicial process. Even punctilious judges arguably should not be allowed the final word on the extent of their authority to resolve legal issues, and even a judge’s claim to have produced a holding on a particular issue should perhaps be open to challenge when the issue seems distant from the central concerns of the case. The failure of a judicial opinion to supply reliable guidance distinguishing its holdings from its dicta, moreover, poses little difficulty to the extent that legal actors agree upon the definitions of holding and dicta. With shared understandings, future courts could be expected to follow a case’s holdings and consider its dicta only to the extent that such discussions prove helpful. Although judges and scholars share intuitions that frequently lead them to the same conclusions in particular case settings, our analysis will reveal the absence of a shared conceptual foundation for analyzing even modestly complex cases.4 This deficiency might reflect the tendency in recent decades of scholars interested in precedent to focus significant attention on the nature of stare decisis. A considerable literature studies the emergence, scope, and limits of stare decisis,5 the doctrine through which courts use opinions not merely to resolve cases, but also to make law in the form of at least presumptively binding precedents.6 [FOOTNOTE 6 BEGINS] 6 See, e.g., Thomas Merrill, Judicial Opinions as Binding Law and as Explanations for Judgments, 15 CARDOZO L. REV. 43, 65 (1993) (“Although horizontal stare decisis creates a strong presumption that prior judicial articulations of the law are correct and should generally be followed by the rendering court, the rule is far from absolute.”); Abner Mikva, The Shifting Sands of Legal Topography, 96 HARV. L. REV. 534 (1982) (reviewing GUIDO CALABRESI, A COMMON LAW FOR THE AGE OF STATUTES (1982)) (positing that “such common law doctrines as stare decisis would presumably constrain courts applying statutes to the same extent that they constrain courts making common law decisions”); Rafael Gely, Of Sinking and Escalating: A (Somewhat) New Look at Stare Decisis, 60 U. PITT. L. REV. 89, 109 (2003) (observing that “common law precedents enjoy a presumption of correctness stronger than applied to constitutional cases, but not as constraining as that enjoyed by statutory precedents”). In his famous Commentaries on American Law, James Kent provided a similar early account of stare decisis. See 1 JAMES KENT, COMMENTARIES ON AMERICAN LAW 475 (O.,W. Holmes, Jr. ed., 14th ed. Boston, Little Brown, & Co. 1896) (explaining that “[i]f a decision has been made upon solemn argument and mature deliberation, the presumption is in favor it its correctness; and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it”). [FOOTNOTE 6 ENDS] Stare decisis plays a central role in our common law system, whether in horizontal form, for example within the Supreme Court and across federal circuit court panels, or in vertical form, for example from the Supreme Court to lower federal courts and from circuit courts to district courts.7 This scholarly attention is thus warranted. As a practical matter, however, judicial analyses of precedent rarely require that courts test the contours of stare decisis doctrine directly. When stare decisis applies, a court rarely needs to consider the relatively narrow exceptions to stare decisis. Vertical stare decisis is generally considered absolute,8 and in the federal appellate system, en banc rehearing is required before a circuit court can overturn the precedent of a panel or an earlier en banc court. Even the Supreme Court overturns its precedents only rarely, and it debates the scope of stare decisis even more rarely.9 In contrast, evaluating a claimed precedent to determine whether an identified proposition is holding or dicta occupies a great deal of judicial attention. Indeed, before a court can decide whether to apply the doctrine of stare decisis to a given case, it must first determine just what that case purports to establish. Because holdings in prior cases are at least presumptively binding, while dicta is not, this task requires an understanding of these terms.10 While the literature on stare decisis is broad, despite the growing need for a clear distinction to accommodate increasingly complex opinions, in recent decades the literature on the distinction between holding and dicta has been comparatively tiny.11 An earlier generation of scholars, in contrast, devoted considerable attention to the holding-dicta distinction.12 While no satisfactory definition has yet to emerge, legal scholars have largely turned their attention elsewhere. The questions whether to apply precedent, and how to construe a particular precedent in a given case, are intertwined. But they are not the same inquiry. Even an opinion without precedential value contains a holding. If anything, the more relevant inquiry in most cases is the one that has been given scant attention among the current generation of legal scholars. Courts themselves have not filled the theoretical void, and so the American judicial system lacks clearly defined rules on an important aspect of the process through which judges resolve cases and make law. Through a loose set of practices that vary considerably from jurisdiction to jurisdiction, and, perhaps more problematically, from court to court and case to case, judges define such terms as needed to assist in the task of resolving particular cases entirely on their own. Despite the absence of any single governing source or universal agreement on how to define dicta, the legal system does not threaten to devolve into chaos or general incoherence. Rather, disagreements as to whether a claimed proposition is part of a court’s holding, or is instead merely dicta, surface in discrete disagreements over particular cases without unraveling the fabric of the law. There is no denying, however, the importance of understanding—both as a matter of theory and at the level of practice—how to approach such a central task as sorting holding and dicta. This query goes to the heart of the business of judging, which itself goes to the essence of the Anglo-American system of interpreting and making positive law. Even if there is broad agreement on a range of issues related to decoding dicta and holdings, it should not be surprising that in the cases in which these issues matter most, the conceptual uncertainties that result from a lack of rigor in categorizing holding and dicta give rise to the greatest practical difficulties. One difficulty in developing theoretically satisfying, and operational, understandings of the terms holding and dicta is that the most commonplace—and frequently cited—definitions of these terms are problematic in profound ways. Appreciating both why these definitions emerged and what is problematic about them is essential to our project. Consider, as perhaps the most prominent illustration, the definition of “Obiter dictum” in Black’s Law Dictionary: “[a] judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential.”13 We will argue that the definition is indefensible,14 and at least inconsistent with the general understanding that alternative holdings in a case all count as holdings.15 In fact, we will demonstrate that as a core element in the definition of holding, necessity, is itself not necessary,16 and might not even be sufficient to ensure holding status to a given proposition.17 The intuition that underlies the definition, however, is easy to appreciate, because the definition works well for simple cases. In a case in which there is just one issue, and just one logical argument that can take a court from the facts to the judgment, discussions that do not lie along that path are unnecessary to the decision and are therefore dicta.

### 2NC---Solvency---OV

#### It’s identically solvent to the plan---all antitrust policy’s interpreted and enforced through a common-law-like legislative delegation to the judiciary.

--yes, this article says that is a bad interpretation of the Sherman Act, but it is nevertheless the dominant one and what would be used for the plan

Daniel A. Crane 21, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust Antitextualism,” 96 Notre Dame L. Rev. 1205, https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlrScholars and judges widely agree that the U.S. antitrust statutes are open-textured, vague, indeterminate, and textually unilluminating.1 [FOOTNOTE 1 BEGINS] 1 ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 372–75, 409 (1978) (describing antitrust statutes as “open-textured”); WILLIAM LETWIN, LAW AND ECONOMIC POLICY IN AMERICA: THE EVOLUTION OF THE SHERMAN ANTITRUST ACT 4 (Random House 1965) (1954) (“From the beginning many men have criticized the [Sherman] Act as vague, its meaning as elusive, its commands as ambiguous.”); Roger D. Blair & John E. Lopatka, Albrecht Overruled—At Last, 66 ANTITRUST L.J. 537, 552 (1998) (critiquing the Sherman Act’s “indefinite language” and “elusive meaning”); Douglas H. Ginsburg, An Introduction to Bork (1966), COMPETITION POL’Y INT’L, Spring 2006, at 225, 225 (“The open textured nature of the [Sherman] Act—not unlike a general principle of common law— vests the judiciary with considerable responsibility . . . to choose among competing values.”); William H. Page, Interest Groups, Antitrust, and State Regulation: Parker v. Brown in the Economic Theory of Legislation, 1987 DUKE L.J. 618, 659 (“[T]he Sherman Act is so open textured and the legislative history so vague, that any standard the Court adopts is ultimately a judicial creation.”). [FOOTNOTE 1 ENDS] They further agree that little use can be made of the statutes’ legislative histories.2 [FOOTNOTE 2 BEGINS] 2 Nat’l Soc’y of Pro. Eng’rs v. United States, 435 U.S. 679, 688 (1978) (“Congress . . . did not intend the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations.”); THE POLITICAL ECONOMY OF THE SHERMAN ACT: THE FIRST ONE HUNDRED YEARS 20–160 (E. Thomas Sullivan ed., 1991); George E. Garvey, The Sherman Act and the Vicious Will: Developing Standards for Criminal Intent in Sherman Act Prosecutions, 29 CATH. U. L. REV. 389, 390, 417 (1980) (noting that the Sherman Act’s legislative history demonstrates that the Sherman Act “was deliberately intended to be indefinite with specificity to be provided by the judiciary”); Michael S. Jacobs, An Essay on the Normative Foundations of Antitrust Economics, 74 N.C. L. REV. 219, 232 (1995) (describing prevailing views that the Sherman Act’s legislative history is “confused” (quoting From Von’s to Schwinn to the Chicago School: Interview with Judge Richard Posner, Seventh Circuit Court of Appeals, ANTITRUST, Spring 1992, at 4, 4)). [FOOTNOTE 2 ENDS] It follows that the antitrust statutes are best understood as a legislative delegation to the courts to create an evolutionary and dynamic common law of competition.3 [FOOTNOTE 3 BEGINS] 3 1 PHILLIP E. AREEDA & HERBERT HOVENKAMP, 1 ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION 62 (3d ed. 2006) (stating that the Sherman Act “invest[ed] the federal courts with a jurisdiction to create and develop an ‘antitrust law’ in the manner of the common law courts”); William F. Baxter, Separation of Powers, Prosecutorial Discretion, and the “Common Law” Nature of Antitrust Law, 60 TEX. L. REV. 661, 663 (1982) (“Congress adopted what is in essence enabling legislation that has permitted a common-law refinement of antitrust law through an evolution guided by only the most general statutory directions.”); Frank H. Easterbrook, Statutes’ Domains, 50 U. CHI. L. REV. 533, 544 (1983) (“The statute books are full of laws, of which the Sherman Act is a good example, that effectively authorize courts to create new lines of common law.”); Frank H. Easterbrook, Workable Antitrust Policy, 84 MICH. L. REV. 1696, 1705 (1986) (“The Sherman Act set up a common law system in antitrust.”); Thomas W. Merrill, The Common Law Powers of Federal Courts, 52 U. CHI. L. REV. 1, 44–45 (1985) (describing antitrust statutes as delegating to courts power to develop common law of antitrust). [FOOTNOTE 3 ENDS] As the Supreme Court explained in its landmark Leegin decision on resale price maintenance, “From the beginning the Court has treated the Sherman Act as a common-law statute. . . . Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act’s prohibition on ‘restraint[s] of trade’ evolve to meet the dynamics of present economic conditions.” 4 In other words, the statutory texts disclose little of importance; the action is all in dynamic judicial interpretation.

#### It’s optically identical

Jonathan B. Baker 19, Research Professor of Law, American University Washington College of Law, “Accommodating Competition: Harmonizing National Economic Commitments,” 60 Wm. & Mary L. Rev. 1149, March 2019, WestLaw

Were the courts to seek to interpret the Constitution to assure competition, moreover, that would be unlikely to make much practical difference to the way the competition commitment is enforced. The resulting constitutional jurisprudence would probably look like the judicial elaboration of the antitrust laws. If so, judicial \*1173 enforcement of a constitutional mandate for competitive markets would turn out to be no more protective of the competition commitment than is the interpretation and enforcement of the antitrust statutes. The national economic commitment to assuring competitive markets must be protected, and antitrust enforcement needs to be strengthened, but we should look to the political branches and judicial interpretation of the antitrust statutes as the vehicle for doing so, not to the Constitution.

#### Uncertainty is inevitable, BUT common law is predictable and sufficiently certain

David McGowan 1, Associate Professor of Law, University of Minnesota Law School, “Innovation, Uncertainty, and Stability in Antitrust Law,” 16 Berkeley Tech. L.J. 729, Lexis

3. Antitrust and Common-Law Adjudication

Debates over the origins and original meaning of the Sherman Act are a notorious quagmire; debates over the congressional purposes behind the Cellar-Kefauver Amendments are a little clearer, 65 but the grammatical change in the original section 7 language left the statute as open-ended as it had been before. 66 That left it to the courts to discern which mergers threatened to limit competition substantially. The highlights of legislative history we have seen in the last two sections illustrate a problem for courts interpreting the antitrust laws. The statutes emerged from political struggles involving conflicting economic interests, but the statutory language does not resolve the conflicts. This lack of direction in the statutory language has both by congressional design and by default given considerable power and responsibility to courts to choose among a range of interests. The upshot is that neither the statutory language nor the legislative history provides courts with a clear rule of decision for evaluating innovation claims or weighing innovation as against other considerations.

[\*753] Judges have long concluded that the Sherman Act gives them common-law authority to interpret the statute in a dynamic manner, taking changes in economic practices and understanding into account. Chief Justice Hughes's famous dictum that "as a charter of freedom, the [Sherman] act has a generality and adaptability comparable to that found to be desirable in constitutional provisions" is a strong, but representative statement. 67 In the modern era, the Court has said that "the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress "expected the courts to give shape to the statute's broad mandate by drawing on common-law tradition,'" and that "the term "restraint of trade,' as used in 1, also "invokes the common law itself, and not merely the static content that the common law had assigned to the term in 1890.'" 68

Antitrust scholars have tended to agree with this assessment. Judge Posner has written that "the body of antitrust doctrine is largely the product of judicial interpretation of the vague provisions of the antitrust laws and thus can be changed by the courts within the very broad limits set by the language and what we know of the intent behind it." 69 Judge Easterbrook gave the Sherman Act as an example of a law that "effectively authorizes courts to create new lines of common law" 70 and has elsewhere said that the statute "does not contain a program; it is a blank check." 71 Professor Baxter analogized antitrust courts to Congress; 72 and Professor Hovenkamp has suggested that we regard the Sherman Act as ""enabling' legislation - an invitation to the federal courts to learn how businesses and markets work and formulate a set of rules that will make them work in socially efficient ways." 73 This position is reasonable, 74 particularly because the statute adopted common-law terminology and its [\*754] leading proponent insisted that the bill merely enacted into federal law the existing common law of each state.

Most commentators who note the common-law nature of Sherman Act interpretation emphasize the flexibility of the common-law approach, as does the Court. 75 From the judicial perspective, this emphasis is useful to explain to readers why opinions in a field resting nominally on statutes spend so little time on the statutory language. Where the statutory command is to engage in common-law analysis, that analysis is itself a proper form of statutory interpretation.

But the common-law method is not about flexibility alone. A reasonable degree of stability and a high degree of reasoned evolution are at least as important as flexibility, though any serious participant in common-law adjudication will acknowledge that perfect certainty is neither achievable nor required. 76 Lawyers cannot advise clients, and clients cannot obey the law, if the "dynamic potential" of common-law antitrust decisionmaking is not balanced by constraints that render the decisions reasonably predictable.

Reasonable predictability requires that each decision rest on reasons that identify the purposes the law seeks to advance, orders them to resolve conflicts, and classifies the behavior at issue relative to those purposes in an analytically rigorous manner that can be understood and replicated by attorneys advising clients. The clarity with which purposes are identified and ranked and the rigor of the analysis of behavior relative to those purposes are what allow lawyers operating in the real world to advise clients with a degree of confidence that, while not reaching certainty, allows business to get done.

#### Statute-independent common law changes are actually clearer than the plan

Milton Handler 82, Professor Emeritus of Law, Columbia University, A.B. 1924, L.L.B. 1926, Columbia University; L.L.D. (honoris causa) 1965 Hebrew University Senior Partner, Kaye, Scholer, Fierman, Hays & Handler, New York, New York, “Reforming the Antitrust Laws,” November 1982, 82 Colum. L. Rev. 1287, Lexis

A. Background

The in pari delicto defense -- from the Latin maxim "in pari delicto potior est conditio defendentis" 445 -- arose at English common law as an expression of a moral judgment that a party should not be permitted to profit from his own misconduct. One cannot understand in pari delicto without relating it to the defenses of illegality and unclean hands. In wholly executory contract situations, where a party sues to enforce an illegal contract, illegality is a complete defense -- the courts will not enforce the illegal bargain. 446 Where the illegal contract has been executed and where one party sues for rescission or for damages, that party may recover if he is not in pari delicto; if he is in pari delicto, his suit is barred. 447 In other words, in pari delicto is the name given to the illegality defense to actions for rescission or damages in executed contract situations.

In pari delicto is distinct from the equitable doctrine of "unclean hands." The doctrine of unclean hands -- a defense in equity only -- looks not only to plaintiff's involvement in the transaction comprising plaintiff's claim, but also to misconduct by plaintiff generally relating to plaintiff's allegations in suit. If the misconduct by plaintiff is sufficiently relating to plaintiff's allegations in suit. If the misconduct by plaintiff is sufficiently related to the relief that plaintiff seeks, plaintiff will be denied equitable relief. 448 Unclean hands merely requires [\*1360] a nexus between plaintiff's misconduct and the relief that plaintiff seeks; it does not go so far as in pari delicto and require that plaintiff have equally participated with defendant in the very illegality which is the subject of plaintiff's suit.

The in pari delicto defense was recognized in the United States from the earliest days of the Republic. 449 It was applied in the antitrust context beginning in 1900 in Bishop v. American Preservers Co. 450 Over the years, however, the courts began to stray from the common law ambit of the defense. Many courts were confused by the distinction at common law between in pari delicto and unclean hands. 451 Another troubling application (or misapplication) of the in pari delicto defense arose in cases where the courts did not fully analyze the respective fault of the parties regarding the illegality or the coercive circumstances involved in plaintiff's participation in the specific challenged conduct. 452

B. The Perma Life Case

The Supreme Court was faced with a confusing disarray of decisions misconstruing and misapplying the in pari delicto defense when it granted certiorari to review the Seventh Circuit's decision in Perma Life. Given the common law limitations on that doctrine and the facts of that case, 453 it is small wonder that the Supreme Court unanimously reversed. What is baffling is that the Court spoke with so many voices, thus dissipating a golden opportunity to give proper guidance to the lower courts.

It is difficult to ferret out a true majority holding from the five opinions in Perma Life. 454 Despite Justice Black's clear language rejecting in pari [\*1361] delicto as an antitrust defense, the fact that a plaintiff equally and voluntarily participated in the challenged misconduct remained an antitrust defense under Perma Life. Five of the Justices were explicit on this score, 455 and the remaining four Justices did not close the door to such a defense. 456 In other related areas, the full Court was in agreement. All of the Justices agreed that the lower courts had incorrectly applied the common law standards for an in pari delicto defense; 457 and that a defense did not properly lie where the plaintiff was as responsible as the defendant for the challenged illegality or where the plaintiff had been coerced (literally or under concepts of economic coercion, unequal bargaining power, or business necessity) into participating in the illegality. 458

C. The Legacy of Perma Life

What is the legacy of Perma Life? In part, the problems generated by the Perma Life opinions have been semantic. Courts have struggled with a label for the "equal fault" defense in view of Justice Black's absolute repudiation of in pari delicto. 459 In addition, at least one court has correctly rejected the defense as a matter of law in a situation where economic coercion was practiced; 460 it failed, however, to explain that the result was not a matter of [\*1362] the total inapplicability of in pari delicto, but simply of the nonexistence of equal fault in cases where plaintiff has been subject to economic coercion. 461

The problems go deeper than semantics, however. Courts in the Ninth Circuit (followed by the Eighth Circuit) permit suit against co-conspirators where the plaintiff, a free and equal participant, was not a party to the initial creation of the conspiracy. 462 Courts have continued to confuse in pari delicto and unclean hands and to suggest that in pari delicto (under that or any other label) is no longer a defense in antitrust cases. 463 Finally, courts in several circuits have expended considerable effort speculating on the deterrent effect of applying or rejecting in pari delicto in various categories of securities cases. 464

D. Reconciling Antitrust and In Pari Delicto

An effort to reconcile the competing policies of the antitrust laws and the in pari delicto doctrine is long overdue. The rejection of in pari delicto as a defense subverts the very goals of the antitrust laws. Justice Black's formulation, if applied literally, would require a court to grant a plaintiff treble damages where both parties are equal participants in an unlawful scheme without even compelling plaintiff to cease the very illegality of which he is complaining. If one assumes, for example, that the provisions in a franchise agreement beneficial to the franchisee were unlawful, the franchisee could obtain treble damages and an injunction against the restraints upon his freedom of action while continuing those restraints affecting the franchisor. Moreover, Justice Black also encouraged illegal conduct by plaintiff, by offering a "heads-I-win, tails-you-lose" protection if plaintiff violated the antitrust laws -- if the conspiracy is successful, plaintiff profits from the illegality; if it is unsuccessful, it sues for treble damages. The policies of the antitrust laws and the in pari delicto doctrine are thus not entirely inconsistent.

[\*1363] Moreover, to the extent that the policies of the antitrust laws do conflict somewhat with those of the in pari delicto doctrine, the two sets of policies can be accommodated. Courts have not found it difficult to accommodate competing policies in other antitrust contexts. For example, in Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 465 the Supreme Court reconciled the patent and antitrust laws by declaring that misrepresentations in patent applications could give rise to a section 2 violation of the Sherman Act only if the patent was "procured by intentional fraud" and if all of the other elements of a section 2 violation were shown. 466 Limiting antitrust recovery to instances of intentional fraud was required, according to the Court, because exposing a broader classification of misstatements to potential antitrust liability "might well chill the disclosure of inventions through the obtaining of a patent because of fear of the vexations or punitive consequences of treble-damage suits." 467 But if intentional fraud resulted in obtaining monopoly power (or a dangerous probability of monopoly power) in a property defined relevant market, the full panoply of antitrust sanctions might be invoked against the recreant patentee. Similarly, in the patent misuse area, if a patent holder is guilty of misuse, he cannot recover damages from an infringer. If, however, the patent holder purges his misuse, he may enforce his patent against infringers in the future. 468 In that manner, antitrust policy is fostered by penalizing the patent misuse; and the policy of the patent laws is furthered by allowing an inventor to continue to reap the rewards resulting from the disclosure of his invention after he purges the misuse.

The key to situations where two competing policies collide is not to engage in absolutes and entirely sacrifice one policy in favor of another. It is, rather, to reconcile the demands of both policies to the maximum extent possible -- in the case of antitrust and in pari delicto, to promote free and open competition while preventing a wrongdoer from benefiting from his own misconduct. That can be accomplished by paying strict attention to the common law scope of the in pari delicto doctrine and by holding that the in pari delicto defense can bar treble-damage actions in instances of equal fault but should not preclude suits for injunctive relief against the defendant's continued wrongdoing where the plaintiff has voluntarily ceased to participate in the challenged arrangement. 469 It is one thing to bar a plaintiff's damage recovery [\*1364] because the law does not reward wrongdoers for their own voluntary wrong-doings. It is entirely another to deny the plaintiff a right to bring the illegal scheme to an end. A rule limiting the in pari delicto defense to suits for damages would effectuate the purposes of the antitrust laws while preserving the fundamental notions of fairness that underlie the in pari delicto defense. The court, by conditioning rejection of the defense to injunctive claims on a voluntary cessation by plaintiff of his own part in the challenged conduct, 470 and by enjoining continued wrongdoing by defendant, would in one fell swoop bring the violations of both parties to a halt, thus advancing the cause of antitrust that the negative philosophy of Perma Life does not accomplish.

CONCLUSION

Most of the changes that I have advocated can be accomplished by the courts without the enactment of new legislative revision were kept to a minimum, lest the simplicity of the Sherman law be replaced by superseding amendments in the modern pattern of a complex tax code. We now have an excellent body of antitrust doctrines that, over all, have worked extremely well for almost a century. There has been no diminution in the nation's solid support of the salutary objectives of antitrust or in sound and effective methods of enforcement. It would be tragic if we were to weaken the rules pertaining to the hard core antitrust offenses by amendments that are not faithful to our antitrust traditions. What I propose is of modest dimension. It amounts to little more than a correction of some serious aberrations and would not alter the fundamental purposes and scope of our existing jurisprudence. There are in the wind many other reform proposals, many of which merit the most careful consideration. There unhappily are some that are inspired by special interest purposes and that are antithetical to sound antitrust policy. In my view, all serious proposals should be publicly debated. Out of such a debate should emerge a constructive program of antitrust reform.

### 2NC---Process CPs Good

#### 3. Mixes Burdens---any CP might result in the aff---states has federal follow-on, international has US model. Any action could make the plan more likely.

Jamie Wood 13, Avatel EVP, “The Butterfly Effect – What a Fascinating Theory!”, 6-10, https://avatel.wordpress.com/2013/06/10/the-butterfly-effect-what-a-fascinating-theory/

Every action or decision has some kind of effect on something or someone, if only in an indirect way. How we approach these decisions or actions we take can have a huge impact, not just on those directly involved, but on others we could hardly fathom would be affected. You never know what little action may be the tipping point for another action and or reaction. butterfly effect When you hear the words “The Butterfly Effect”, most of you will probably think of the movie. That was about the chaos theory, meaning one series of events leads to another and the effect of changing the course of those events. Actually the term “The Butterfly Effect”, was a phenomenon proposed in a doctoral thesis written in 1963 by Edward Lorenz. It states that a butterfly, by flapping its wings in one place and time is able to create a major weather event in another place and time, eventually having a far-reaching ripple effect on subsequent events. The butterfly effect suggests that cause and effect are applicable in the universe even if the pattern is indecipherable and the precise cause of our predicaments, rooted far away in time and space, are ultimately unfathomable. More than just an esoteric science, the chaos theory works off the concept that the relation between any two things is rarely linear in nature, that any reaction is usually the result of an accumulation of causative factors small and large, intentional and accidental.

#### 4. Process Education---It’s good

Abbe Gluck et al. 15. Anne O’Connell, and Rosa Po. \*Professor of Law at Yale University. \*\*Professor of Law at UC Berkeley. \*\*\*J.D. Candidate at Yale University. “Unorthodox Lawmaking, Unorthodox Rulemaking” Columbia Law Review. 115 Colum. L. Rev. 1789. l/n.

And so it seems that the Schoolhouse Rock! n13 cartoon version of the conventional legislative process is dead. It may never have accurately described the lawmaking process in the first place. This is not news to anyone in the halls of Congress or the executive branch. But it may be news for law. The Court's first opinion directly confronting these modern developments--King v. Burwell, n14 the recent challenge to the ACA--was issued just before this Essay went to press. Until then, most of the doctrines, theories, and casebooks had overlooked--or perhaps intentionally ignored--the fact that the textbook understandings that form the basic assumptions underlying the doctrines and theories of both fields are woefully outdated. Just as the now-textbook 1970s model was once itself revolutionary, ours is again a world of both "unorthodox lawmaking" n15 and "unorthodox rulemaking." These unorthodoxies are everywhere and they are not exceptions. n16 They are the new textbook process. The "law crowd"--a group in whom the value of process is deeply instilled--tends to view these changes as disconcerting, as the Court did in King. But evaluating them is quite complex. Arguably, some of these modern unorthodoxies are beneficial to democracy, particularly insofar as they enable the enactment of policy that otherwise could not occur in an age of gridlock or under considerable fiscal constraints. n17 What is more, what is [\*1795] orthodox today may have been unorthodox yesterday. The Administrative Procedure Act n18 (APA) and Chevron deference n19--two core modern institutions of administrative lawmaking--were considered unorthodox when first proposed. n20 Office of Information and Regulatory Affairs (OIRA) review, one of the unorthodoxies we discuss, may now be close to orthodox status, despite its lack of statutory and judicial recognition. n21 Another question is who are we--the lawyers--to judge? The Constitution gives to Congress the power over its own procedures. n22 Congress organized itself into committees and passed rules such as the filibuster, the fast-track budget process, and the rules that govern the omnibus bills that give rise to many of the unorthodoxies we see today. n23 Congress also passed the APA, which explicitly permits agencies to regulate without notice and comment--a practice today viewed as unorthodox because of its increased use and de facto binding effect on regulated entities. n24 This Essay develops a modern account of unorthodox lawmaking and unorthodox rulemaking and, in the Strauss tradition, substantiates [\*1796] the link between them. For example, both lawmaking and rulemaking often now bypass the hurdles of transparency that have become familiar. Both use outside delegates for many controversial issues. Both also have generated significant jurisdictional overlap: The "deal making" required to surmount political division leads to bundling unrelated bills, drafted by multiple congressional committees, which in turn creates overlap across administrators and gives a more prominent role to the White House because it takes on the role as coordinator-in-chief. n25 Who wins and who loses from these deviations? Power inures to party leaders and the President--who wears two different, but equally powerful, hats as legislator and chief administrator. On the other hand, policy experts in committees and agencies, as well as those who favor decentralized power, may get the short end of the stick. From a democracy perspective, the process loses transparency and public input and sometimes obfuscates accountability. But it may also gain in efficiency and productivity. "Unorthodox lawmaking" was first brought to the attention of the academy by political scientist Barbara Sinclair, in her eponymous book. n26 Subsequent editions empirically documented the increase in legislative-process deviations, n27 a phenomenon elaborated on in a coauthored empirical study of congressional drafters by one of us. n28 On the administrative law side, separate work by two of us has begun to develop the modern unorthodox rulemaking account. n29 Until now, these two accounts mostly have been discussed in isolation and have themselves relied on fairly simplified description. n30 In contrast, [\*1797] we argue here that the legislative and rulemaking processes are inextricably linked, and that each set of unorthodoxies feeds into and illuminates the other. We also argue that it would be a return to the Schoolhouse Rock! fiction to fail to appreciate the sheer variety of deviations from the textbook process that fall under the general umbrella of unorthodox policymaking. Omnibus bills and rules are different from emergency bills and rules; both are different from unorthodox delegations; and so on. Part I expands the preexisting descriptive account by developing a new typology of these deviations and roughly surveying their scope empirically. Part II explores these connections as well as other ways in which common motivations, such as gridlock, institutional complexity, and fiscal constraints, give rise to the deviations in both branches. The final two Parts investigate the normative and legal implications of our descriptive account. As Part III explains, these unconventional practices allow certain institutional actors to gain and lose power and offer benefits and drawbacks for social welfare and democratic legitimacy. Part IV looks to doctrine and details how, in the contexts of both statutory interpretation and administrative law, these unorthodoxies have been largely invisible, even as the courts seem obsessed with ensuring that judicial decisions in statutory cases reflect how Congress legislates or that agencies otherwise faithfully execute Congress's commands. Two brief examples will illustrate our direction. On the legislation side, take the simple example of one of the Court's favorite interpretive rules--that a term used in one part of a statute means the same thing when used in another part. n31 While this "presumption of consistent usage" may make sense for very short statutes, or statutes involving a single subject matter drafted by a single congressional committee, it makes little sense for omnibus deals that put together diverse statutes, drafted at different times, by different institutional actors. On the administrative law side, to take another basic example, the Supreme Court has yet to decide how its central deference doctrine--Chevron--applies when multiple agencies share authority. n32 [\*1798] One goal of the Essay is simply to set the record straight. Given that so much scholarship and legal doctrine at least purports to rely on an understanding of how Congress and the executive branch actually function, an accurate account of the modern policymaking process seems vital. At a broader level, the Essay's goal is to question the capacity of and role for courts in taking this amount of process variation into account. Part of this inquiry is motivated by an interest in the jurisprudential foundations of statutory law. When it comes to legislation, the Court has never been consistent in its articulation of what the role of interpretive doctrine is supposed to be in the first place. Sometimes the Court tells us that its doctrines aim to reflect how Congress drafts--for instance, the rule that Congress does not write with redundancies. Other times, the Court tells us that legislation doctrine helps Congress draft "better" or encourages legislative deliberation. Still other applications of interpretive doctrine aim to impose on legislation external values, like federalism, that Congress might not have considered. n33 These potential normative frameworks are often in tension in any given case. On the administrative law side, the Court has been less interested in engaging in a shared interpretive con-versation with agencies and more interested in questions of accountability. n34 But even there, the theoretical basis has been fuzzy, since the Court seems to measure accountability against the APA, and not against actual agency and White House practices. n35 Obviously, all of these different norms have different implications for a theory that would take unorthodox processes into account. One caveat at the outset is that we do not engage judicial unorthodoxies, or unorthodoxies related to agency enforcement and agency adjudications. A comprehensive study of unorthodox mechanisms in law might well include these, for instance, examining court innovations such as the increasing use of unpublished and thus nonprecedential opinions n36 and the rise of specialty courts. n37 These developments, while fascinating, are outside the scope of this Essay, which trains its focus on the public law-making processes. Even with respect to Congress and the executive branch, [\*1799] one Essay cannot possibly tackle all unorthodox practices and we recognize omissions: For instance, we do not discuss foreign affairs. In addition, we focus mostly on action by policymakers. One could also develop an account of unorthodox inaction in lawmaking and rulemaking. n38 Our efforts, as noted, build on Strauss's contributions. Strauss has always written with both modern legislation and administration--and their connections--front and center. n39 He was an early identifier of the varied unorthodox roles played by the President and the potential doctrinal implications of those different roles. n40 He was one of the first scholars to consider the question of Chevron deference for presidential interpretations, and also the link between agency statutory interpretation and the legislative history debate raging on the statutory side. n41 And his pathbreaking work on Chevron as a judicial management tool is a rare realist analysis of doctrinal development in response to the sprawl of regulation. n42 He has been a consistent voice in pushing back against those who turn a blind eye toward the political and legislative context of statutes, and we aim to follow his example here. n43 I. THEMANY FORMS OF UNORTHODOX LAWMAKING AND RULEMAKING Unorthodox policymaking is now often the norm rather than the exception. But not all unorthodox policymaking is the same. This Part focuses on these two themes, documenting the modern prevalence of unorthodox policymaking and resisting the way in which the limited accounts that do exist tend to lump together all deviations from conventional process as a single phenomenon. n44 Omnibus actions are different from emergency actions, not only in motivation and in how the final product looks, but also in the distinct challenges each poses for courts. Outsourcing difficult legislative and regulatory questions to special processes, commissions, and unconventional delegates raises its own set of [\*1800] questions for law, as do the simultaneously regulatory and legislative roles of the modern President, and the increasing use of nonformal means, such as guidance, for regulation. Direct democracy is yet another type of lawmaking whose differences from the norm courts seem to prefer to ignore.

### 2NC---AT: No I/L

#### That political action’s sufficient AND empirically proven in other environmental contexts

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CONCLUSION

Congress first enacted comprehensive federal regulatory programs to protect the environment in the early 1970s. Prior to the enactment of such programs, the common law of nuisance was the primary legal vehicle for redressing pollution problems. Early in the twentieth century, states invoked the federal common law of nuisance to seek intervention by the U.S. Supreme Court in disputes over transboundary air and water pollution. The Court, exercising its original jurisdiction over disputes between states, heard several interstate nuisance cases and used its equitable powers to stop environmentally destructive actions.

After more than a century of evolution, the federal common law of interstate nuisance has been largely eclipsed by the rise of the regulatory state. The Court has held that the CAA and CWA displace federal common law for pollution problems they comprehensively regulate. But for emerging problems not covered by existing regulatory programs, like invasive species, the federal common law may remain a viable option.

In AEP the Court held that federal common law nuisance actions to redress climate change had been displaced by the CAA in light of its decision in Massachusetts v. EPA that the Act delegated to EPA the responsibility to regulate greenhouse gas emissions. 381 But the Court reaffirmed the standing of states to sue, rejected the notion such lawsuits raise non-justiciable political questions, and left open the door to state common law nuisance actions to redress climate change.382 Principles of federalism and the extensive savings clauses in the federal environmental laws will make it difficult to preempt the state common law of nuisance. Thus, if a state can show that its residents are suffering significant injury that federal regulatory authorities have failed to prevent and for which an express decision to preempt state law has not been made, state common law actions founded on the law of the source state will remain available.

In AEP, the Court reaffirmed that environmental protection was a proper subject for the development of federal common law. 383 It also emphasized that expert administrative agencies generally are more capable than the judiciary at fashioning solutions for complex environmental problems. 384 Yet the judiciary has played an important role as a catalyst for action when activities causing significant harm otherwise have escaped regulation. Direct judicial intervention to stop interstate pollution is rare today, but when regulation fails, common law remedies can serve as an important backstop. The Trump Administration’s aggressive efforts to dismantle regulation of GHG emissions and to deny the reality of climate change could revive federal common law,385 [FOOTNOTE 385 BEGINS] 385. Fear of reviving federal common law nuisance suits reportedly was a factor in industry lawyers praising the Trump Administration for proposing new, albeit much weaker, regulations of GHG emissions to replace the Obama Administration’s Clean Power Plan. Ellen M. Gilmer, Proposed Climate Rule May Help Hamstring Nuisance Claims, E&E NEWS, (Aug. 24, 2018), https://www.eene ws.net/stories/1060095165/print [https://perma.cc/XZE6-HBP6]. [FOOTNOTE 385 ENDS] particularly if EPA reverses its endangerment finding or Congress overrules Massachusetts v. EPA.

Judicial intervention to stop interstate pollution remains rare, but the common law of interstate nuisance still retains vitality as a backstop when regulation fails to respond to a serious problem.386 And this is particularly true when states sue. Moreover, in light of the judiciary’s historic role in responding when the other branches of government fail to address significant environmental harm, the common law may return as a viable catalyst for change if official climate denial persists.387 [FOOTNOTE 387 BEGINS] 387. Indeed, despite the environmental litigants’ defeat in the Fourth Circuit in North Carolina. ex rel. Cooper v. Tennessee Valley Authority, the threat of future litigation brought the parties to the negotiating table, resulting in significant decreases in air pollution. See supra Part III. [FOOTNOTE 387 ENDS]

The Court in AEP was surely correct that administrative agencies like EPA possess greater expertise than the judiciary in fashioning responses to climate change. This is why Congress has assigned EPA the primary responsibility for protecting the public against pollutants that endanger public health or welfare. But displacement of federal common law is not a license to deny or ignore a global environmental crisis. If EPA becomes the captive of official climate change denial, common law litigation may return to its historic role as an important catalyst for action.

#### Even if rulings themselves fail---the mere doctrinal possibility of climate litigation acts as a ‘prod’ that compels government regulation---that’s Nevitt---AND…

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At the outset, it must be acknowledged that the fit between climate change and tort law seems poor. Climate change is the ultimate tragedy of the commons. Not only fossil fuel companies and industrial manufacturers, but all human beings and enterprises contribute - however marginally - to the phenomenon of anthropogenic climate change. Isolating where responsibility for greenhouse gas emissions attaches in our energy and land use cycles is therefore an intellectual, moral, and empirical challenge of the first order. In essence, climate change takes Ronald Coase's famous reformulation of tort law - which disrupted classical tort thinking by substituting neutral concepts of reciprocal harm and resource conflict for the moralized terms of victim and polluter 63 - and extrapolates it to the entire globe. Moreover, many of the most devastating impacts of climate change will not happen for decades or centuries hence, even though actions taken today critically affect whether they will occur. If the paradigmatic tort is one in which A hits B - a clear, direct, and unlawful action by one actor against another that gives rise to an isolated, retrospective harm - then climate change lies conspicuously far outside the paradigm.

Climate change harms also seem ill fit for the tort system in light of its supposed goals of ex ante efficient deterrence and ex post corrective justice. From the prospective regulatory standpoint, it seems obvious that carbon taxes, emissions allowances, or traditional pollution control measures are more capable of providing clear rules to facilitate coordinated planning and of casting a wide enough net to actually limit and reverse the growth of greenhouse gas emissions. From the retrospective corrective justice standpoint, a second-order duty to repair one's victim might arise if one has contributed to her harm through the mechanism of climate change, and, in so doing, breached an underlying duty of care owed to her. However, the domain of behavior to which such an underlying duty might apply could be severely cabined by demands for clear and proximate causation, foreseeability of harm, and feasible [\*370] allocation of damages - all far from worked out as matters of morality, let alone law. 64

On the other hand, many of the reasons for skepticism that climate change tort defendants could be held liable - especially the difficulty of pinning causation on a single defendant or group of defendants - have been similarly applicable to other environmental and toxic tort suits. Albeit with hesitation and confusion, courts have devised a number of doctrinal devices to accommodate the difficulties of proof associated with those cases. For instance, courts developed market share liability in the diethylstilbestrol (DES) context as a way of apportioning responsibility for harm in the absence of other means to disaggregate causal influence. 65 Courts made loss of chance recovery available in the medical malpractice context for those whose dim chances of survival might otherwise have rendered them ineligible for protection from negligent behavior under a "more-likely-than-not" causation test. 66 Subtle toxic causation presumptions incorporated into the asbestos context have helped litigants where orthodox doctrines would have prevented recovery due to scientific uncertainty regarding the biological mechanism underlying asbestos-related diseases. 67 Though its track record in these cases has been less than ideal (with many, including courts themselves, preferring legislative or regulatory solutions), the tort system is no stranger to complex, sprawling litigation. Indeed, finding in such cases a broad set of precedents upon which to legitimate climate change torts, some commentators have appeared relatively bullish about the prospects of establishing a viable claim. 68

Whether optimistic or pessimistic about the likelihood that greenhouse gas emissions can successfully be challenged, writers in the climate change tort literature have almost invariably focused on what, if anything, tort law can do [\*371] to help save the global environment from potential catastrophe. 69 Less considered has been how climate change will or should impact the struggle over tort law itself - its appropriate institutional role and the values and meanings it ought to affirm. If most commentators have as yet shied away from such expansive analysis, it may be partly because of an unwritten assumption that although climate change litigation may serve near-term instrumental goals, courts and tort law have no long-term, principled role to play in the struggle to de-carbonize the economy. Thus, writers have tended to focus only on the auxiliary role climate change tort suits might play in regulation more broadly - including framing the climate change issue in terms of compelling victim narratives, stimulating and dignifying climate science against skeptics and propagandists, pushing past special interests and congressional inertia, potentially spurring new laws or regulations, and helping advocacy movements to organize and define themselves. 70

[\*372] Theory and experience do suggest that the margin of legal ambiguity entailed by tort adjudication can serve as a strong impetus for concrete, reformist agitation in the other branches of government. To give one prominent example, uncertainty over liability and the potential for varying environmental, health, and safety standards through tort law give potential defendants a strong incentive to join their plaintiff complainants in attempting to mobilize Congress to respond to the social harms at issue in litigation. 71 Likewise, even when the political branches are pursuing a national policy, they may leave in place the threat of common law tort suits precisely in order to bolster the chance of that policy succeeding. 72 Nevertheless, more analytical work is needed to defend the role of courts in this practice - this apparent means to an expedient political end for plaintiffs, their supporters, and the climate change policy world. As Timothy Lytton brings out in his study of gun industry and clergy sexual abuse suits, the brute consequential effect of litigation on the regulatory system is a contingent empirical question. 73 Even if litigation seems poised to stimulate more substantial and effective regulation, it [\*373] may instead create a backlash from reinvigorated special interests. The Protection of Lawful Commerce in Arms Act, which confers a wide grant of immunity from civil liability on manufacturers and retailers of firearms and ammunition, is one prominent example. 74

Commentators are correct that common law claims have long existed in a complementary relationship with statutory and administrative efforts to protect human health and the environment. 75 Yet, a principled justification of the courts' role in this dynamic must rest on a sturdier foundation than the mere possibility that it will promote what some observers take to be desirable substantive outcomes. The institutional role we are calling "prods and pleas" provides such a justification. Although prods and pleas are generalizable across the different branches of government, they are no more created equal than are checks and balances. Instead, they vary greatly in magnitude, message, and - perhaps most importantly - pedigree within the system and history of American governance. In our view, the common law of tort provides a distinctive and especially powerful instantiation of prods and pleas.

### 2NC---AT: Other Countries

#### The U.S. is key---tech scale up diffuses globally, action is modeled, and leverage can create future agreements

Dr. Noah Smith 20, Assistant Professor of Finance at Stony Brook University, PhD in Economics from the University of Michigan, Contributor at Quartz, “American Leadership Needed To Fight Climate Change”, Times Leader, 1/15/2020, https://www.timesleader.com/opinion/op-ed/769461/noah-smith-american-leadership-needed-to-fight-climate-change-4

As it becomes more apparent that climate change is a true worldwide emergency, there’s a mounting need for a big policy push to curb greenhouse emissions. But that leaves the question of which policy steps would be most effective.

Despite having high per-capita emissions, the U.S. is actually responsible for only about a seventh of the global total carbon output. U.S. emissions from power-generation are falling as the country transitions away from coal, even as China adds more coal-fired plants. Meanwhile, poor countries are eager to begin or accelerate their own industrialization. For the U.S. to help fix this global problem, it will need to employ solutions that have a worldwide impact — researching and disseminating new technologies, subsidizing companies to scale up these technologies and make them cost-effective, paying other countries to use renewable energy and taxing the products of those nations that increase their use of dirty fuels.

But the U.S. needs to clean its own house. If the U.S. doesn’t curb its own emissions substantially, it will look like a hypocrite for trying to get the rest of the world to do so. That would make it much harder to conclude future global climate agreements and will make competitors reluctant to switch from fossil fuels for fear of forfeiting competitive advantage.

#### U.S. leadership creates follow-on from India and China---failure causes backsliding---2020’s key

Carolyn Beeler 19, Former Fellow at the Bosch Foundation, Environment Correspondent + Editor at The World, from the BBC, WGBH, PRI and PRX at The World, BS in Journalism from Northwestern University, “Top US Leadership Is 'Missing Ingredient' In Climate Change Action”, PRI – Public Radio International, 9/18/2019, https://www.pri.org/stories/2019-09-18/top-us-leadership-missing-ingredient-climate-change-action

Will countries, seeing the US doing less on climate change, do the same themselves?

Under Obama, the US put its full diplomatic muscle into getting countries signed on to the Paris Agreement.

“If you were a head of state from India, from China, or from anywhere and you were going to meet with the United States, you knew that you'd have to be prepared to speak about climate change and the Paris Agreement,” said Elan Strait, a former climate negotiator on the Paris Agreement who now works at the World Wildlife Foundation.

By 2020, countries are requested to announce new carbon cuts as part of the Paris process. Those cuts have to be more ambitious if countries hope to meet the Paris Agreement goal of keeping warming “well below” 2 degrees Celsius and pursue efforts to limit warming to the scientist-recommended 1.5 degree Celsius.

“I completely believe that the missing ingredient this time around is the United States leadership driving climate as a head-of-state agenda,” Strait said.

Only when those 2020 climate pledges start rolling in will the international community start to see the full impact of the US climate policy reversal.

### 2NC---AT: No Warming

#### Yes warming impact - makes the Earth uninhabitable and escalates every hotspot

Specktor 19 [Brandon; June 4; Senior Writer at Live Science, citing Breakthrough National Centre for Climate Restoration; "Human Civilization Will Crumble by 2050 If We Don't Stop Climate Change Now, New Paper Claims," https://www.livescience.com/65633-climate-change-dooms-humans-by-2050.html]

It seems every week there's a scary new report about how man-made climate change is going to cause the collapse of the world's ice sheets, result in the extinction of up to 1 million animal species and — if that wasn't bad enough — make our beer very, very expensive. This week, a new policy paper from an Australian think tank claims that those other reports are slightly off; the risks of climate change are actually much, much worse than anyone can imagine. According to the paper, climate change poses a "near- to mid-term existential threat to human civilization," and there's a good chance society could collapse as soon as 2050 if serious mitigation actions aren't taken in the next decade. Published by the Breakthrough National Centre for Climate Restoration in Melbourne (an independent think tank focused on climate policy) and authored by a climate researcher and a former fossil fuel executive, the paper's central thesis is that climate scientists are too restrained in their predictions of how climate change will affect the planet in the near future. [Top 9 Ways the World Could End] The current climate crisis, they say, is larger and more complex than any humans have ever dealt with before. General climate models — like the one that the United Nations' Panel on Climate Change (IPCC) used in 2018 to predict that a global temperature increase of 3.6 degrees Fahrenheit (2 degrees Celsius) could put hundreds of millions of people at risk — fail to account for the sheer complexity of Earth's many interlinked geological processes; as such, they fail to adequately predict the scale of the potential consequences. The truth, the authors wrote, is probably far worse than any models can fathom. How the world ends What might an accurate worst-case picture of the planet's climate-addled future actually look like, then? The authors provide one particularly grim scenario that begins with world governments "politely ignoring" the advice of scientists and the will of the public to decarbonize the economy (finding alternative energy sources), resulting in a global temperature increase 5.4 F (3 C) by the year 2050. At this point, the world's ice sheets vanish; brutal droughts kill many of the trees in the Amazon rainforest (removing one of the world's largest carbon offsets); and the planet plunges into a feedback loop of ever-hotter, ever-deadlier conditions. "Thirty-five percent of the global land area, and 55 percent of the global population, are subject to more than 20 days a year of lethal heat conditions, beyond the threshold of human survivability," the authors hypothesized. Meanwhile, droughts, floods and wildfires regularly ravage the land. Nearly one-third of the world's land surface turns to desert. Entire ecosystems collapse, beginning with the planet's coral reefs, the rainforest and the Arctic ice sheets. The world's tropics are hit hardest by these new climate extremes, destroying the region's agriculture and turning more than 1 billion people into refugees. This mass movement of refugees — coupled with shrinking coastlines and severe drops in food and water availability — begin to stress the fabric of the world's largest nations, including the United States. Armed conflicts over resources, perhaps culminating in nuclear war, are likely. The result, according to the new paper, is "outright chaos" and perhaps "the end of human global civilization as we know it."