# 1NC

## OFF

### 1NC---OFF

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.

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

### 1NC---OFF

T Prohibit

#### ‘Prohibitions’ must cease behavior---the aff only regulates it

Broaddus ’50 [James; February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220]

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

#### Voting issue---allows minor tweaks that explode limits and moot access to high quality ground

### 1NC---OFF

T Expand

#### ‘Expanding the scope’ requires broadening the number of activities the law applies to---the aff merely increases enforcement

Collins ’21 [Collins English Dictionary; copyright updated 2021; Collins Cobuild, “Expand the Scope,” https://www.collinsdictionary.com/us/dictionary/english/expand-the-scope]

expand the scope

These examples have been automatically selected and may contain sensitive content that does not reflect the opinions or policies of Collins, or its parent company HarperCollins.

I wanted to work internationally and expand the scope of my possibilities.

Times, Sunday Times

Labour has called for the government to expand the scope of the test to include consideration of the impact of any merger on research and development and science.

Times, Sunday Times

Most opponents are small-government conservatives who are outraged at any attempt to expand the scope of government, particularly when it involves their personal healthcare decisions.

Times, Sunday Times

The move was cited by the developer to be to expand the scope of indie videogames, and not as a market strategy.

Retrieved from Wikipedia CC BY-SA 3.0 https://creativecommons.org/licenses/by-sa/3.0/. Source URL: https://en.wikipedia.org/wiki/Afterfall: InSanity

Such results expand the scope of asymmetric hydroboration to more sterically demanding alkenes.

Retrieved from Wikipedia CC BY-SA 3.0 https://creativecommons.org/licenses/by-sa/3.0/. Source URL: https://en.wikipedia.org/wiki/Metal-catalysed hydroboration

Definition of 'expand'

expand

(ɪkspænd)

Explore 'expand' in the dictionary

VERB

If something expands or is expanded, it becomes larger. [...]

See full entry

COBUILD Advanced English Dictionary. Copyright © HarperCollins Publishers

Definition of 'scope'

scope

(skoʊp)

Explore 'scope' in the dictionary

UNCOUNTABLE NOUN [NOUN to-infinitive]

If there is scope for a particular kind of behaviour or activity, people have the opportunity to behave in this way or do that activity. [...]

#### Voting issue---allows hundreds of non-controversial affs without a unifying theme for consistent neg ground

### 1NC---OFF

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.

### 1NC---OFF

Antitrust PIC

#### The United States federal government should increase prohibitions on platform utilities without using anti-trust law by promulgating regulations that include standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors.

#### Regulation solves without ‘antitrust’ or FTC involvement

Dr. Howard Shelanski 18, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust and Deregulation”, The Yale Law Journal, Volume 127, Issue 7, 127 Yale L.J., May 2018, https://digitalcommons.law.yale.edu/ylj/vol127/iss7/5/

A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

### 1NC---OFF

States CP

#### The fifty states and relevant subnational entities should substantially increase prohibitions on platform utilities by including standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors.

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

### 1NC---OFF

#### The United States, through a limited constitutional convention, should substantially increase prohibitions on platform utilities by expanding the scope of its core antitrust laws to include standards against owning and competing on the same platform and the acquisition of potential and/or nascent competitors.

#### Solves, causes follow on, and avoid politics

Cooper ’21 [Charlie; 2021; President of Get Money Out Maryland and Retired Human Services Administrator; Get Money Out Maryland, “A Convention of States is Wise and Safe,” <https://www.getmoneyoutmd.org/peoples_convention>]

When Congress fails to represent the people who elected them, the U.S. Constitution provides a path for the people to propose a Constitutional amendment through the states. Article V lays out two equal alternatives:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States..."

Thus there are only two ways to amend the U.S. Constitution:

* A proposal passed by two-thirds of each chamber of Congress, then ratified by three-quarters of the states
* A proposal passed by a convention called by two-thirds of the states, then ratified by three-quarters of the states

As former U.S. Supreme Court Justice Antonin Scalia said about this second option: "[When] the Congress is simply unwilling to give attention to many issues which it knows the people are concerned with—and which issues involve restrictions upon the federal government’s own power—I think the founders foresaw that and they provided this method in order to enable a convention to remedy that.”

In a 2016 report, the Congressional Research Service noted that an Article V Convention “was included [in the Constitution] to provide the people, through applications by their state legislatures, with the means to call a convention having the authority to consider and propose changes to the Constitution, particularly if Congress proved incapable of, or unwilling to, initiate amendments on its own."

All 27 Amendments to the Constitution were passed using the first of the two methods: Congress proposed an amendment, then two-thirds of state legislatures ratified it. So why is a convention of states necessary to obtain a 28th Amendment? As George Mason argued when he proposed the convention language: It is necessary when Congress itself is the problem.

The 17th Amendment is the best example of a convention campaign working effectively to add an amendment to the U.S. Constitution. The 17th Amendment, which allows for the popular election of U.S. Senators, came about in reaction to Senators being appointed by state legislatures until the early 1900s. That process was widely recognized as corrupt due to the disproportionate influence of wealthy individuals and special interests. In fact, the Senate became so corrupt that individual senators took nicknames such as the "Coal Senator," the "Bank Senator," and the "Oil Senator."

Citizens responded to this overt venality by using every tool of democracy available including petitions, local legislation, ballot referendums, educational campaigns, resolutions calling on Congress to propose a Constitutional amendment, and finally, after all else failed, applying for an Article V Convention to propose an amendment.

When that movement was just one state shy of the two-thirds needed to force a convention on this topic, Congress reacted by proposing an amendment requiring the direct election of U.S. Senators for the states to ratify—resulting in the 17th Amendment to the U.S. Constitution. The Congressional Research Service has called this technique the "prodding effect." It worked then, and it could work today.

Arguments Against an Article V Convention

Both left- and right-leaning groups—Common Cause and the John Birch Society among them—have argued vehemently against the use of Article V Conventions. They say correctly that such a convention has never been used to amend the Constitution. Never having held an Article V Convention, however, is hardly a reason to avoid one, since the framers provided this Constitutional alternative in anticipation of a time when Congress fails to represent the people. Opponents also fear the prospect of a "runaway" convention, where any topic could be proposed, possibly threatening the process for ratifying amendments or the Constitution itself. See authoritative answers to these arguments below.

Experts Respond

The Constitution’s framers foresaw a time—when Congress itself is the problem—for citizens to have the Constitutional authority to pursue an amendment through the states. That time is now: Supreme Court rulings in Citizens United and other cases have created no-holds-barred politics in which Big Money steamrolls the democratic process. A Congress that is the result of this increasingly lawless system can hardly be expected to propose an amendment to dismantle that system without an extraordinary level of public pressure. A citizens’ drive toward a convention of states under Article V would apply such pressure.

Government and legal agencies have responded to critics opposing a convention of states:

* Criticism: Individual delegates could bring up matters unrelated to those the convention was originally called to address.

Response #1: For a convention to stray from its original topic, delegates would have to propose topics that were not included in the original resolution approved by their state legislatures. Nine states to date have made it a felony for any delegate to a state-called convention to call for or vote on any topic that was not part of the original convention topic.

Response #2: The Justice Department concluded in 1987 that Article V Conventions can be called "for limited purposes, and that a variety of practical means to enforce such limitations are available." In addition, "Congress may decline to designate the mode of ratification for those proposed amendments that it determines are outside the scope of the subject matter limitation and therefore beyond the authority of the convention to propose."

### 1NC---OFF

CIL CP

The United States federal judiciary ought to hold that competing on the same platform and the acquisition of potential and/or nascent competitors violates customary international law.

#### The CP solves and sets precedent for binding incorporation of customary law

Kundmueller ‘2 [Michelle; May 1; Attorney specializing in constitutional law, candidate for a J.D. and M.A. in Political Theory from the University of Notre Dame, B.A. from Flagler College; Journal of Legislation, “Note: The Application of Customary International Law in US Courts: Custom, Convention, or Pseudolegislation?” vol. 28]

III. Uses, Abuses, and Implications of Customary International Law in Domestic Law

Debates over the role of customary international law in domestic courts continue to produce differing opinions about the role of customary international law within the U.S. legal structure. While there is general agreement that customary international law plays some role, the extent of this role remains unclear. Three of the most important of the unanswered questions are covered in this section of this Note: (1) whether customary international law has the potential to trump federal legislation, (2) whether customary international law is federal law without empowering legislation from Congress, and (3) which political branch holds ultimate control over the interpretation of customary international law. The resolution of these issues will determine the power of customary international law in U.S. legal systems. In doing this, it may also change the balance of power between the respective federal branches by expanding the judiciary's ability to overrule federal law. In the final analysis, the answers to the preceding questions will determine whether customary international law or Congress controls in domestic legislation. The following section examines some currently viable theories about the power of customary international law in the U.S. legal system.

A. Dominance of Customary International Law over Federal Law

Jordan J. Paust, who has authored a book and several law review articles on the subject of customary international law, asserts that the incorporation of this body of law into domestic law is required by the Constitution. He claims that "customary international law has been directly incorporable, at least for civil sanction and jurisdictional purposes, without the need for some other statutory base." 20 According to Paust, "the Founders clearly expected that the customary law of nations was binding, was supreme law, created (among others) private rights and duties, and would be applicable in United States federal courts." 21

Based on his claims of constitutionally mandated incorporation of customary international law, Paust delineates the areas of domestic law that this affects. In some applications, customary international law enhances the power of the "Executive under Article II, section 3 to 'take care that the Laws be faithfully executed.'" 22 In other applications, customary international law restricts the Executive: "Supreme Court and other opinions have also recognized that while exercising Presidential war powers, the Executive is bound by customary international law." 23 In addition to affecting the President and therefore indirectly the Legislative branch, Paust claims that customary international law directly shapes Congressional power because it "can limit the exercise of an otherwise appropriate Congressional power and thus can function partly as an aid for interpreting the extent of constitutional grants of power." 24 The power of customary international law also affects the courts, where it "may be relevant to an adequate interpretation of various sorts of Congressional power in order to functionally enhance such powers." 25 Finally, Paust claims that the "latter process of incorporation might include an enhancement of the power of Congress under Article I, section 3, clause 18 to enact legislation 'necessary and proper for carrying into Execution . . . all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'" 26

Because customary international law thus pervades the federal government, alternately limiting and expanding the powers of the respective branches, it becomes a defining body of law in relationship to the federal government. Hence, Paust writes, "in the case of an unavoidable clash between fundamental human rights supported by customary international law and a federal statute, the human rights (which have a constitutional status) must prevail." 27 In normal conflicts between codified (treaty) international law and federal statute, the last-in-time rule applies; this rule dictates that whichever law was most recently enacted controls. 28 Paust claims that this rule dictates that, in conflicts between customary international law and federal statutes, customary international law always controls. 29 As Paust theorizes, "customary international law would necessarily be 'last in time,' since custom is either constantly re-enacted through a process of recognition and behavior involving patterns of expectation and practice or it loses its validity and force as law." 30 By this reasoning, custom is always a controlling authority in the face of a directly conflicting federal statute.

The extent to which Paust claims that customary international law influences and controls domestic law leads to the question of who, within the U.S. legal system, decides upon the content, interpretation, and manner of application of international law. While all three branches of the federal government will have some indirect control in forming customary international law, it also limits the scope of each. Hence, whichever branch is empowered to control the application and interpretation of this body of law within the domestic legal structure will be that much stronger, relative to the coordinating branches. In Paust's view, the judicial branch is responsible to "identify, clarify, and apply" this body of law. 31 In response to concerns that this role improperly changes the balance of powers, he asserts that "it is precisely because the federal judiciary has both the power and responsibility to identify and apply customary international law in cases otherwise properly before the courts that there is no violation of the separation of powers when federal courts apply international law while interpreting federal statutes." 32

In an article on human rights law and domestic courts, Richard B. Lillich explores the role and the ramifications of customary international law in United States law. Like Paust, Lillich bases his understanding of the role of customary international law on the finding that "customary international law, while not mentioned in the Constitution, is part of the law of the land to be determined and applied by the courts whenever appropriate in making a decision." 33 Based on this, Lillich states that "the starting point in ascertaining what international human rights norms have been received into customary international law--and therefore are rules of decisions for domestic courts--commonly is thought to be the Universal Declaration of Human Rights . . . ." 34 The status of the Universal Declaration of Human Rights as a source of the customary international law rests solely on its position as evidence of existing customary international law. Lillich admits that, while the Universal Declaration of Human Rights resolution was adopted without a dissenting vote by the U.N. in 1948, it is not legally binding as a treaty, as it has never been ratified. 35

Thus, to the extent Lillich is correct that the Universal Declaration of Human Rights reflects--at least in part--customary international law, and to the extent that both Paust and Lillich are correct that customary international law is part of United States law which should be enforced and interpreted by the courts, it should also "be directly enforceable in domestic courts." 36 Most customary international law claims in U.S. courts have been based on a statute which provides for such a claim. The most common example of this is the Alien Tort Statute, which dates back to the Judiciary Act of 1789 and provides for federal jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations of a treaty of the United States." 37 The point of Lillich's suggestion is that, while there is nothing wrong with providing statutorily for the incorporation of customary international law, as has been done in the past, it is unnecessary or redundant.

The implications of Lillich's claim that customary international law may and ought to be directly incorporated into United States law even without statutory support are far reaching. He advocates that judges ought to use human rights law--and implicitly all of customary international law--without statutory support. Not only could claims be brought in federal and state courts without the benefit of enabling statutes, but, under the mirror principle, the United States has an obligation, enforceable domestically, to live up to the provisions of customary international law. 38 Beyond this direct effect, which has the potential to permit the voiding of a federal statute on the grounds that it conflicts with customary international law (as defined and recognized by the judiciary), Lillich predicts that customary international law should have the "greatest impact on domestic law in the future by influencing the courts' approach to constitutional and statutory standards." 39 This means that the Constitution, federal law, and state law should be interpreted in light of customary international law. As Lillich states, "litigants and judges already have invoked the Universal Declaration [of Human Rights] for precisely this purpose." n40 Lillich hails this new world of customary international law's direct and indirect incorporation into United States law as offering "significant as well as virtually limitless possibilities for achieving greater protection of the rights of individuals." 41

#### Applying customary law to economic paradigms caps a laundry list of global crises---extinction

Nagan ’14 [Winston; April 20; Professor of Law at the University of Florida, LL.M. from Duke University, J.D. from Yale University, M.A. from Oxford University; Cadmus, “The Crisis of the Existing Global Paradigm of Governance and Political Economy,” vol. 2]

Abstract

This article seeks to underline the central challenges to world order that are outcomes of our current system of global, social, power and constitutional processes. The article outlines these major problems which it is suggested represent a crisis for the future trajectory of human survival and well-being. The paper then uses the problem of the emergence of transnational criminal activity in order to underline the limits of the current global paradigm of governance. In effect, in the criminal law context the jurisdiction of sovereign states to attack the problem of transnational crime is hedged with severe limitations.

The most important of these limitations is the fact that the jurisdiction over crimes by sovereigns is limited by the territorial character of the definition of sovereignty. Thus a sovereign has a limited capacity to control and police criminal activity whose main locus of operation is generated outside of the territorial reach of the sovereign state. This essentially means that the element of global governance generates a juridical vacuum which permits organized crime to flourish outside of the boundaries of the state but at the same time, having the capacity to penetrate and corrupt the social, political and juridical processes of the sovereign state. The article explores the effort of the UN to provide some form of response to this crisis in the form of an international agreement. The most important global expectation about global governance is reflected in the Preamble of the UN Charter and it is authorized by “we, the people” of the earth/space community. That expectation includes the high priority humanity gives to international peace and security; the reaffirmation of faith and fundamental human rights, in the dignity and worth of the human person, and equal rights for men and women and nations of whatever size. It also underscores the importance of the global rule of law as well as the promotion of social progress, better standards of life, and expanding freedoms. That is the promise. However, at the practical level the institutions of global governance have been to a large extent a captive of their own history. That history emerged with scholars in the late 1500s and early 1600s (Bodin and Hobbes) and later was given a juridical imperator in the Treaty of Westphalia (1648). In the early 19th century Bodin, Hobbes, and Westphalia were given a powerful juridical imprimatur when John Austin published his influential book The Province of Jurisprudence Determined. In effect, from Bodin to Austin we have the developments from scholarship, to political agreement to creation of a jurisprudential foundation for the notion of the territorially organized sovereign state. The sovereign state became the currency of international relations, diplomacy, international law, as well as a powerful limitation on the force and efficacy of both international law and constitutional law.

In the 20th century the sovereignty idea contained no obvious constraints that could limit a drift into a global war (WWI). Moreover, the creation of the League of Nations system and the Covenant of the League was itself limited in a context of facilitating international peace and security by state claims to sovereign absolutism. At the end of WWII the victorious powers adopted the Charter of the United Nations. The Charter reflected ambiguity of its authority resting in “we, the people” and the residual strength and ambition of sovereign state powers, claiming frequently the competence to trump activities challenging their ambitions and interests. The current paradigm is thus responsible for generating problems that now seem to challenge the survivability of humanity, as well as undermine the prospect of global policy and practice that moves in a trajectory that secures humanity's wellbeing for the future. We list several of the most obvious scenarios where the state/sovereign-centered paradigm is limited in its capacity to respond effectively to the crisis of humanity’s future survivability and wellbeing. These are listed as follows:

1. The crisis of the global war system. States no longer have an effective monopoly on war making. States have been involved in privatizing the functions of the military with unforeseeable consequences. There continues to be the emergence of mercenary-like forces for hire in the global environment. The proliferation of the flow of arms and armaments in the global arms market remains significantly unregulated. The existence of weapons of mass destruction (nuclear, chemical and biological) still represents a major crisis regarding the acquisition of the technologies and assets of these weapons systems falling into the hands of terrorists groups or organized crime cartels.1

2. The growth of civil society deviance may threaten world order when it develops into forms of apocalyptic terrorism, state terrorism, organized crime, human trafficking, global drug production and distribution, and trading in small arms and/or components of mass destruction.

3. Global political economy of radical inequality. Conventional economic theory seems to lead a global race to the bottom. More wealth is produced than ever before and greater inequality is produced as well. Greater wealth concentrations often result in plutocracy which favors the wealthy and greater alienation for the impoverished. What is needed is an economic paradigm that is not confined to a single state or sovereign but a paradigm that functions within the context of a global, social and political process and responds to the problems that emerge from this process from a global inclusive perspective.

4. The depreciation of a human right to development, a depreciation that undermines the value potentials of human capital for the improvement of the human prospect. Clearly, the right to development is a human right of global dimensions and requires a global solution to effectively respond to it. The solution here is beyond the parochialism of national sovereignty.

5. The importance of a viable ecosystem for the survival of humanity requires policy making that is beyond the nation states’ competence. In short, global warming and climate change are matters of inclusive global concern. All must participate because all have a stake in preserving a viable ecosystem for all.

6. Human demographics and human survivability. The radical population increases raise the question of whether food security and accessibility to clean healthy water may be put at risk when earth’s population exponentially increases. Demographic growth may well challenge eco-social and economic capacity of the earth to indefinitely sustain such increases without important radical innovations in birth control, food production, and water conservation. These issues transcend any particular nation state.

7. The global capacity to respond to natural catastrophes (tsunamis, earthquakes, hurricanes, asteroid collisions). It’s now well accepted that such catastrophes require global action because the capacity of any particular sovereign is limited in this regard.

8. The global health crisis (AIDS, malaria, TB, Ebola, etc). It is clear today that any emergent global pandemic will be beyond the capacity of any single sovereign state. Such health threats are really beyond the current paradigm.

9. The global crisis of human rights and humanitarian values. Notwithstanding the vigorous advocacy for the promotion and defense of basic human rights, it is still the case that we have a great human rights crisis on the planet. At the heart of this crisis is the muted claim of unlimited sovereign absolutism. The human rights crisis cannot be solved exclusively within the sovereign state. It is a global problem that implicates the global authority of “we the people.”

The issues listed above represent a crisis for global humanity and as well underline a weakness of the existing paradigm which is a state sovereign dominant paradigm. This underscores the need for new and fresh thinking, nothing short of a new paradigm for understanding and responding to the global crisis of our time. To provide a more detailed explanation of the limits of the state sovereign paradigm we provide an overview of the background and possible value for humanity of an important UN initiative to enhance a global paradigm of governance with regard to a particular problem that defies the exclusive authority of the sovereignty approach. In this initiative we underscore the effort to strengthen the global rule of law, as an indispensable element for a new paradigm of global governance.

### 1NC---OFF

Infrastructure DA

#### Infrastructure passes now---PC is key

López ’9-16 [Burgess Everett and Laura Barrón-López; 2021; reporters, citing Senate Majority Whip Dick Durbin, Sen. Richard Blumenthal, Andrew Bates, a spokesperson for Biden, and Celinda Lake, a pollster on Biden’s campaign; Politico, “Dems call in big gun as they face huge Hill tests,” https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952]

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

#### Antitrust shreds PC, knocking out competing domestic initiatives

Carstensen ’21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “The ‘Ought’ and ‘Is Likely’ of Biden Antitrust,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen>]

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

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

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

#### Infrastructure passage and solves existential climate change

Bordoff ’21 [Jason; March 15; J.D. from Harvard Law School, co-founding dean of the Columbia Climate School, Professor of Professional Practice in International and Public Relations at Columbia University; Foreign Policy, “The Time for a Green Industrial Policy Is Now,” https://foreignpolicy.com/2021/03/15/biden-climate-energy-transition-green-new-deal-industrial-policy/]

Now that U.S. President Joe Biden’s $1.9 trillion plan for economic stimulus and pandemic relief has become law, his administration will turn its attention to a multitrillion-dollar plan to rebuild the United States’ ailing infrastructure. Its scope goes far beyond roads and bridges. Viewed in combination with other parts of Biden’s economic agenda, it reflects a new openness on both sides of the aisle to what has traditionally been known as industrial policy. Critics deride industrial policy as protectionist and as the government picking “winners,” but when it comes to clean energy—a top priority for Biden—a push by his administration to build new and innovative clean energy sectors using industrial policy may actually be the greatest contribution it can make to combating climate change.

Industrial policy, long anathema to mainstream economic policymakers in Washington, is back in vogue. The Biden administration’s Build Back Better economic plan includes targeted support for specific industries to make them more competitive with Asia and Europe and government procurement provisions to boost domestic manufacturing with “Buy America” requirements. As White House economist Jared Bernstein wrote in Foreign Policy, “the rationale for industrial policy is as strong as ever.” Biden’s national security advisor, Jake Sullivan, similarly wrote in Foreign Policy that “advocating industrial policy … should be considered something close to obvious.” Even Republicans, such as Sen. Marco Rubio, have been willing to deviate from the free-market’s gospel by endorsing industrial policy.

The push for industrial policy has been particularly strong for clean energy—as a way to combine battling climate change with building strategically important parts of the economy. The Green New Deal in 2019 drew the link between achieving net-zero emissions and creating millions of jobs by investing in the “industry of the United States.” Biden’s top economic advisor, Brian Deese, said, “some of the biggest opportunities” in climate policy right now are “what some people would call straight-out industrial policy.”

Industrial policy is a phrase used to mean different things. Broadly speaking, it refers to government intervention in the economy to promote and protect targeted sectors, often those considered strategically important. The term is therefore instinctively distasteful to those schooled in the laissez-faire, free-market orthodoxy of Adam Smith’s “invisible hand.” They worry about a creeping state capitalism that favors well-connected companies, stifling innovation and competition.

In reality, of course, the energy sector has never been free of government intervention. Nearly every source of energy receives some degree of favorable tax treatment. Nuclear energy receives government liability protection. Government investment and research gave rise to the shale revolution. As Robert McNally points out in his book, Crude Volatility: The History and the Future of Boom-Bust Oil Prices, the Texas Railroad Commission was the most successful oil cartel in history in setting prices, and even a Republican president like Dwight D. Eisenhower protected the domestic oil industry from the threat of imported oil.

To be fair, there are good reasons for government intervention in the energy market. Energy use and production can impose harm on others, such as through air pollution and carbon emissions. Energy innovation delivers benefits to all of us beyond the economic gains the innovator can capture. Energy infrastructure investment, such as pipelines, transmission lines, and electric vehicle chargers, may be hampered if any one firm’s investments benefit all their competitors or if it risks monopolistic market power of energy delivery mechanisms.

The argument for government’s role in the energy sector is even stronger today. First, the world faces an existential threat from climate change. With time running short to begin sharply curbing emissions, market forces will not deliver the pace of transition needed without robust government intervention. Second, the scale of that transition creates enormous economic opportunity to build new energy sectors. With the economy in a deep hole from the pandemic, leading in these new sectors can spur significant job growth. Finally, given the strategic importance of energy—critical to every citizens’ economic and physical well-being and safety, as the recent crisis in Texas reminded us—there is a strong national security rationale to develop these technologies and capabilities in the United States. As the energy system transitions to cleaner alternatives, there will be new risks associated with the critical minerals’ supply chains required for renewable energy and batteries, cybersecurity, and global trade chokepoints, which argues for reinforcing the domestic U.S. industrial base in these technologies.

To tackle the problem of climate change, Sullivan and Biden’s China advisor, Kurt Campbell, persuasively argued that the United States must pursue not only cooperation but also economic competition with China, for example. Noting that both Democrats and Republicans “are making a convincing case for a new U.S. industrial policy,” they called for more government investment in infrastructure and research in clean energy, among other areas, to confront such a “challenging economic competitor” as China.

The argument against industrial policy to combat climate change is that the government cannot anticipate which technologies will deliver the cheapest solutions. Yet, as the International Energy Agency explained, most of the key technologies the energy sector needs to reach net-zero emissions are known today. Market forces are still powerful—when properly directed by a carbon price—to give firms and consumers the right incentives to adopt and develop those technologies and to determine which ones emerge as the best solutions in different energy sectors.

Moreover, critics of industrial policy argue that if the goal is to reduce emissions as fast as possible, it should matter less whether the technology is made in the United States than whether it is as cheap as possible so more people will adopt it. Germany’s Energiewende, a comprehensive plan to shift the country to renewable energy, has been criticized for its high cost per ton of emissions avoided, which economists have estimated to be between $600 and $1500, much costlier than most other policy interventions. (To put the German numbers in context: The Obama administration estimated the total harm caused by one ton of carbon dioxide to be around $50, although there are good arguments to revise that figure higher.) Jason Furman, a Harvard professor and former Obama administration economic advisor, said “if you think climate change is the biggest challenge facing the country … you should want to make sure a lot of solar and wind energy is produced in the United States. You shouldn’t care nearly as much where panels and turbines are produced.”

Furman’s view is correct if the goal is to cut emissions in the United States as fast as possible. But what if the goal is to decarbonize the entire world’s emissions as fast as possible? What if the goal is to show climate leadership by helping all nations achieve net-zero emissions? In that case, the measure of U.S. climate policy should be less about how fast it brings down domestic emissions, only 15 percent of the world’s annual total, than about how fast it brings down the cost of clean technologies needed for the rest of the world to decarbonize.

Some clean energy technologies, such as solar and wind power or electric vehicles, are fairly cost competitive today relative to their carbon-intensive counterparts. Yet as Bill Gates explained in his new book, the cost difference between carbon-emitting and carbon-free production—what he calls the “green premium”—remains exceptionally high for many sectors and technologies, such as cement and steel, air travel and shipping, long-duration energy storage to cope with the intermittency of renewable energy, and steady sources of electricity like nuclear power or natural gas with carbon capture and storage. These technologies may not be needed to make a large dent in emissions by 2030, but they will absolutely be needed to achieve net-zero emissions by mid-21st century. Consider that the largest source of global greenhouse gas emissions comes from what Gates calls “making things,” such as the production of cement, steel, and plastics—sectors that will almost certainly need nascent technologies to decarbonize.

To promote domestic industries developing technologies for such hard-to-decarbonize sectors, policies should boost demand for such products, spur their deployment, and lower production costs. As first U.S. Treasury Secretary Alexander Hamilton famously explained: “In matters of industry, human enterprise ought, doubtless, to be left free in the main, not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the Government.”

What might such a clean energy industrial policy look like? Dramatically increasing clean energy research and development funding can accelerate needed innovation. Subsidies can lower the cost of clean energy technologies, and a carbon price can increase the cost of carbon-intensive alternatives. The government can use its procurement power to create more demand or reduce risk for developers by signing long-term energy purchase agreements or guaranteeing them a certain price by paying the difference to prevailing market prices (the “contract for difference” model used in the United Kingdom). Low-cost loans and loan guarantees can support projects by lowering the cost of capital and the barriers to accessing private capital because of perceived technological risk. Infrastructure investment and streamlined permitting can boost demand and overcome chicken-and-egg problems. For example, there may be little incentive to develop zero-carbon hydrogen or install carbon-capture technology on power plants if there are no pipelines to transport fuel or carbon dioxide—but firms will not build the infrastructure until the new technology is commercialized. Trade and economic policy can align U.S. competitiveness with a global clean energy transition, such as through export finance to help clean energy companies compete with Chinese and other competitors in emerging markets. Some argue industrial policy should also protect U.S. firms through import tariffs or “Buy America” provisions, but such protectionist tools risk backfiring if retaliatory measures by other countries close export markets to these new domestic industries.

There are three reasons a U.S. clean energy industrial policy makes particular sense today. First, the technologies needed for sectors that are hard to decarbonize also offer many of the biggest economic opportunities for growth. According to the International Energy Agency, almost half of the cumulative emission reductions needed to achieve net-zero emissions by 2050 come from technologies that are not yet commercially available. China already dominates the market for solar panels and batteries, a result of government decisions taken more than a decade ago, so it would be very difficult for the United States to displace China in these technologies, which China already produces very cheaply. By contrast, the United States is well-positioned to build a strong industrial base to produce and export zero-carbon energy in the form of hydrogen and ammonia, fuel cells to produce zero-carbon electricity, or carbon-capture and removal technologies.

Second, these technologies will be needed to decarbonize globally, and by bringing the cost of these technologies down through government investments, Washington can help accelerate their deployment outside the United States as well. In this way, a U.S. industrial policy to promote clean energy can serve not as protectionism but as one of the country’s greatest contributions to global efforts to combat climate change. In the future, roughly 95 percent of all greenhouse gas emissions will come from outside the United States. Yet developing market countries, which are poorer and use much less energy per capita than developed countries do, will not adopt low-carbon solutions unless they are affordable.

Third, industrial policy that drives down the cost of clean energy “green premiums” while also putting U.S. citizens to work can be among the most effective ways to account for the United States’ historic responsibility for the climate change problem. Climate change results from the cumulative total of all carbon emissions over time, and as of 2019, the United States has contributed 25 percent. By contrast, the entire continent of Africa represents only 2 percent. One way to address this inequity is for wealthy countries to send cash to poorer countries. For example, the Biden administration has pledged that the United States will fulfill its 2014 commitment to provide climate-related assistance to poorer countries, of which $2 billion is still outstanding. But making it affordable for developing countries to grow their energy use and prosperity in climate-friendly ways can be a far greater contribution.

At present, U.S. climate policy ambition is being framed around what commitment Biden will make to reduce domestic emissions by 2030. Yet the steps the Biden administration takes to invest in nascent clean energy technologies and research can be even more important to long-term temperature stabilization goals, even if most of the dividends come after 2030 because of the time it takes for hydrogen, long-duration power storage, carbon capture, advanced nuclear power, and other emerging technologies to scale.

### 1NC---OFF

#### The plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy---it’s impossible to distinguish specific industries because, unlike regulation, it’s enforced in generalist common law

Dr. William Rogerson 20, Charles E. and Emma H. Morrison Professor of Economics at Northwestern University, Ph.D. in Social Sciences from the California Institute of Technology, and Dr. Howard Shelanski, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020, Lexis

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. 18To 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. 19Academics 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 [\*1918] another. 21The 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. 22The 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. 23Such "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. 24Reducing 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*. 25from 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 [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation 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.

[\*1920] 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 [\*1921] 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.

[\*1922] 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 [\*1924] 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 ruin biz con AND overall growth

Sarah Chaney Cambon 21, Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery.

Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook.

Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak.

Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.

“Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.”

Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic.

Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists.

Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence.

The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’”

Businesses appear to be less risk-averse now, he said.

After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital.

Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first.

“We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities.

Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Decline cascades---nuclear war

Dr. Mathew Maavak 21, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals.

Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset

INTRODUCTION

The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA).

But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998).

The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020).

An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity.

COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach.

METHODOLOGY

An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020):

• Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006);

• Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012);

• Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and

• Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources.

ECONOMY

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity.

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### 1NC---OFF

FTC Tradeoff DA

#### The FTC will enforce ‘right to repair’ now---prevents agricultural decline

Minter ’21 [Adam; July 11; Columnist and author; Bloomberg, “Americans Must Reclaim Their Right to Repair,” <https://www.bloomberg.com/opinion/articles/2021-07-11/americans-must-reclaim-their-right-to-repair>]

When the Apple II personal computer was shipped in 1977, it came with a [detailed manual](https://archive.org/details/Apple_II_Mini_Manual/page/n49/mode/2up) for upgrading and repairing the device. Parts were readily available from Apple Inc. (and, later, other manufacturers), and if Apple owners didn’t want to fix or upgrade at home, they could find plenty of small, competitive repair businesses to do the work for them.

That was then. These days, Apple’s products arrive sealed shut, often with [proprietary screws](https://www.ifixit.com/News/9905/bit-history-the-pentalobe). Service manuals, circuit-board schematics and repair parts are [reserved](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for Apple’s technicians, shops and a handful of “authorized” partners. With no access to parts, manuals or indie repair shops, consumers pay much more to keep their devices running.

President Joe Biden’s new executive order to promote competition encourages the Federal Trade Commission to end such anti-competitive repair monopolies. It’s a contentious move. Apple and the makers of other technological products from farm tractors to [35mm cameras](https://www.ifixit.com/News/1349/how-nikon-is-killing-camera-repair) argue that their repair monopolies are good for consumers. But as these monopolies have grown, their toll on consumers, the environment and American productivity and innovation has risen. Biden’s recognition of a “right to repair” can help lower these costs and, at the same time, spur new kinds of growth across the economy.

Repair has always been a part of American life. The first prairie farmers had no option but to repair their own carts and plows. When mechanization came along, farmers became expert technicians — so skilled that companies often consulted them on tractor designs. During the past 15 years, as computers have been integrated into expensive farm equipment, that relationship has broken down. The handful of remaining implement manufacturers make sure that only dealerships, with specialized software tools, can diagnose problems. Those same tools are often also needed to install parts and authorize repairs.

The costs to farmers can be significant. Paying a Deere & Co dealership to plug in a computer to clear an error code on a tractor or combine can cost [hundreds of dollars](https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware) — not including transporting the tractor to the dealership. Worse, by limiting access to crucial diagnostic and repair tools, manufacturers cause significant delays during harvest, planting and other busy periods. At certain times, a piece of equipment immobilized for even a few hours can cost a farmer thousands of dollars.

As farmers lose money, farm manufacturers with parts and service businesses [profit handsomely](https://uspirg.org/feature/usp/deere-headlights). From 2013 to 2019, Deere & Co annual sales of new equipment declined 19%, to $23.7 billion, while sales of parts increased 22%, to $6.7 billion. Harvester manufacturers aren’t the only ones who’ve spotted a growth market in restricting access to repair. In 2019, Apple’s Tim Cook [conceded](https://www.apple.com/newsroom/2019/01/letter-from-tim-cook-to-apple-investors/) that lower-cost iPhone battery replacements had negatively impacted new iPhone sales. More expensive repairs, on the other hand, lead customers to think they may as well buy a new phone.

That’s bad for the buyers of Apple’s expensive new phones and even worse for lower-income consumers who rely on secondhand devices. Lack of competition in repair markets raises the cost of owning older devices, and ultimately accelerates their untimely, wasteful disposal.

The first calls to roll back manufacturer restrictions on repair, in the early 2010s, were focused on cars. But the problem now encompasses everything from phones to farm equipment. Since 2014, [32 states](https://www.repair.org/legislation) have considered so-called Fair Repair bills. Earlier this year, the New York legislature became the [first](https://states.repair.org/states/newyork/) to pass one.

But manufacturers have pushed hard to defeat such legislation. In 2017, Apple warned Nebraska lawmakers that Fair Repair “would make it very easy for hackers to relocate to Nebraska.” [TechNet](http://technet.org/), a trade group that represents Apple, Amazon Inc. and Google, has [warned](https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws) several states that Fair Repair legislation would somehow jeopardize the safety of devices. (TechNet did not respond to requests for examples of such consumer safety threats.)

The federal government has not bought these arguments. In May, the Federal Trade Commission [reported](https://www.ftc.gov/news-events/blogs/business-blog/2021/05/nixing-fix-report-explores-consumer-repair-issues) that “many of the explanations manufacturers gave for repair restrictions aren’t well-founded.” Biden’s executive order now encourages the FTC to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”

#### The plan trades off

Nylen ’20 [Leah; December 10; Antitrust journalist; Politico, “FTC suffering a cash crunch as it prepares to battle Facebook,” <https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468>]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

#### Extinction

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Is Critical to Our National Security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings.

These conclusions are based on my decades of experience while serving as a Marine around the world and from a lifetime as a steward of the soil on my family farm in Tennessee. I see food security strategy in military terms as either being “defensive” or “offensive”. “Defensive” includes those actions we take to protect our agricultural infrastructure including crops, livestock and the food chain here in the United States. Conversely, the “Offensive” side of food security takes the initiative to deal with food security issues overseas and this is where I will spend most of my time today.

There is a good reason for our success on the “defensive” here at home in ensuring our own food security. As my good friend and former Tennessee Deputy Agriculture Commissioner Louis Buck points out to me, American agriculture has always been about public/private enterprise. The Morrill Act of 1862 – showing our Country’s foresight and confidence in the future even in the dark days of our Civil War – created our Land Grant University model of teaching, research and extension. And equally importantly, we have a private sector that values individual initiative, unleashing an unparalleled vitality. With that vitality driving innovation, our farmers and ranchers leverage the expertise and information from the public sector to manage risks and seek profits from deployed capital. But above all, American farmers and ranchers are our “citizen soldiers” on the front lines here at home fighting to guarantee our food security.

America is also blessed with fertile soil, water availability, moderate climate, and the advanced technology to successfully utilize our abundance. Whether I walk the corn fields of Indiana or the cotton fields of Tennessee, I see agricultural technology in use that is amazing. Soon after I retired from the Marines and came home to the family farm, I climbed into the cab of a self-propelled sprayer. Settling into the seat was like strapping into the cockpit of one of the aircraft I flew, except the sprayer had more computing power and better data links. All these factors, public and private, natural and manmade, hard work and innovation, combine to provide the American people with the widest choices in the world of wholesome foods to eat and clothes to wear.

## Adv---China

### 1NC---AT: Leadership

#### **America's maintaining tech leadership now, but antitrust expansion cedes tech dominance.**

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### Big tech is key to economies of scale---Chinese platforms will replace the aff and undermine competition

Lessin ’21 [Jessica; February 4; Founder and Editor-In-Chief, graduate of Harvard University; The Information, “Former Google CEO Fears ‘Chilling Effect’ of Antitrust Probes,” <https://www.theinformation.com/articles/former-google-ceo-fears-chilling-effect-of-antitrust-probes>]

Eric Schmidt ran Google during its ascendance into one of the world’s most powerful companies, and before regulators on multiple continents ramped up investigations into its potential abuses of power. Today, Schmidt said he fears that antitrust probes into Google and other tech giants will have a “chilling effect” on innovation in the industry.

In a conversation with The Information founder Jessica Lessin at The Information’s Future of Startups conference, Schmidt pointed to the availability of affordable, superpowerful cellphones and other devices as evidence that the biggest tech companies foster competition rather than squelch it.

Schmidt also discussed why social media platforms need to do a better job of ranking information to diminish the impact of harmful content, and why it would be foolish to write off the San Francisco Bay Area’s future as the tech industry’s center of gravity.

The Information: I want to start with politics. We have a new administration in D.C., a lot of different tech policy issues on the agenda. What do you think are some of the most important issues that people should have on their radar in the year ahead?

Eric Schmidt: By far the most important thing is American competitiveness, and in particular our ability to compete against the rise of China.

Let’s start with the fact that 20% of our stock market value is five tech companies who are global in nature, who are innovators beyond belief. We all know who they are. Let’s understand that the Chinese model is a different model. They have ruthless domestic competition, unbelievable competition and work ethic. And the government picks the national champion, and they become a very pro-China, pro–Chinese-policy corporation.

So in addition to the five or six most valued companies in the United States, the three most valued companies in China are tech companies. So the two are in battle. It’s a competition with enormous consequences. And if you get confused, think about Huawei and TikTok a

nd the fears that the American government has had about it. I try to remind our government that the Europeans had the same fears about U.S. companies and that we dismissed them. But now that we fear China—and by the way, fear is the correct word because they are ahead of us there—then what’s our response? We have to learn as a country how to fight the platform wars to win. And this thinking is completely missing in our political system.

President Trump did take some action. He said he was going to block TikTok, and now a deal is in review with the Committee on Foreign Investment in the U.S. Did you agree with the steps he took? How should the Biden administration address TikTok?

Generally, Trump’s actions were reactive and without strategy, which had characterized his entire presidency. The answer is not to block Huawei; it’s to compete with them. In other words, what’s your strategy to win with a global, strong, subsidized Chinese competitor? With TikTok, it’s the same thing. What’s your strategy to win? What happens is that we were behaving the way the Europeans did to the American companies, where they would spend all their time complaining and trying to block and regulate. Whereas what the Europeans should have done is organized to win and compete against the global platforms that were coming out of the West Coast of America. It’s exactly analogous. And because people aren’t framing this question correctly, they’re thinking that somehow we’re going to do a deal where we’re going to change the cloud computing provider of TikTok from Google to Oracle.

And Walmart.

And I’m glad Walmart was part of that package. But none of that actually happened. At the end of the day, it created a huge press narrative and a huge discussion in Washington. But the outcome does not affect the success of these companies. If you want to deal with global platforms, which is what TikTok is, you have to have a thoughtful, multigenerational technology platform strategy, which includes, by the way, winning. And winning is defined as building better products. Last time I checked, all of the major telecom companies were outside the United States. That’s a problem that needs to get addressed.

### 1NC---AT: Heg

#### No liberal order or SOI impact---states won’t risk war, err towards isolation, AND mediate ties economically

Mueller ’21 [John; February 17; Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies; The Stupidity of War: American Foreign Policy and the Case for Complacency, “The Rise of China, the Assertiveness of Russia, and the Antics of Iran,” Ch. 6]

Complacency, Appeasement, Self-destruction, and the New Cold War

It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conflict as can be seen in the case of the Cuban missile crisis of 1962. As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938.

Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try.

If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that

The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129

Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy.

However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion o

f the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130

The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities.

The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods. However, as discussed in Chapters 1 and 2, the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct.134

It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony.

Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so.

There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other.

More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence.

In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

### 1NC---AT: Prolif

#### No prolif and no impact to it

Mueller 17 (John Mueller, Professor of Political Science at The Ohio State University & Senior Fellow at the Cato Institute & Senior Research Scientist with the Mershon Center for International Security Studies at Ohio State University "76. Nuclear Weapons: Proliferation and Terrorism" https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2017/2/cato-handbook-for-policymakers-8th-edition-76\_0.pdf)

Except for their effects on agonies, obsessions, rhetoric, posturing, and spending, the consequences of nuclear proliferation have been largely benign: those who have acquired the weapons have “used” them simply to stoke their egos or to deter real or imagined threats. For the most part, nuclear powers have found the weapons to be a notable waste of time, money, effort, and scientific talent. They have quietly kept the weapons in storage and haven’t even found much benefit in rattling them from time to time. If the recent efforts to keep Iran from obtaining nuclear weapons have been successful, those efforts have done Iran a favor. There has never been a militarily compelling reason to use nuclear weapons, particularly because it has not been possible to identify suitable targets—or targets that couldn’t be attacked as effectively by conventional munitions. Conceivably, conditions exist under which nuclear weapons could serve a deterrent function, but there is little reason to suspect that they have been necessary to deter war thus far, even during the Cold War. The main Cold War contestants have never believed that a repetition of World War II, whether embellished by nuclear weapons or not, is remotely in their interests. Moreover, the weapons have not proved to be crucial status symbols. How much more status would Japan have if it possessed nuclear weapons? Would anybody pay a great deal more attention to Britain or France if their arsenals held 5,000 nuclear weapons, or much less if they had none? Did China need nuclear weapons to impress the world with its economic growth or its Olympics? Those considerations help explain why alarmists have been wrong for decades about the pace of nuclear proliferation. Most famously, in the 1960s, President John Kennedy anticipated that in another decade “fifteen or twenty or twenty-five nations may have these weapons.” Yet, of the dozens of technologically capable countries that have considered obtaining nuclear arsenals, very few have done so. Insofar as most leaders of most countries (even rogue ones) have considered acquiring the weapons, they have come to appreciate several drawbacks of doing so: nuclear weapons are dangerous, costly, and likely to rile the neighbors. Moreover, as the University of Southern California’s Jacques Hymans has demonstrated, the weapons have also been exceedingly difficult for administratively dysfunctional countries to obtain—it took decades for North Korea and Pakistan to do so. In consequence, alarmist predictions about proliferation chains, cascades, dominoes, waves, avalanches, epidemics, and points of no return have proved faulty. Although proliferation has so far had little consequence, that is not because the only countries to get nuclear weapons have had rational leaders. Large, important countries that acquired the bomb were run at the time by unchallenged—perhaps certifiably deranged—monsters. Consider Joseph Stalin, who, in 1949, was planning to change the climate of the Soviet Union by planting a lot of trees, and Mao Zedong, who, in 1964, had just carried out a bizarre social experiment that resulted in an artificial famine in which tens of millions of Chinese perished. Some also fear that a country might use its nuclear weapons to “dominate” its area. That argument was used with dramatic urgency before 2003 when Saddam Hussein supposedly posed great danger, and it has been frequently applied to Iran. Exactly how that domination is to be carried out is never made clear. The notion, apparently, is this: should an atomic rogue state rattle the occasional rocket, other countries in the area, suitably intimidated, would bow to its demands. Far more likely, threatened states would make common cause with each other and with other concerned countries (including nuclear ones) against the threatening neighbor. That is how countries coalesced into an alliance of convenience to oppose Iraq’s region-threatening invasion of Kuwait in 1990. Yet another concern has been that the weapons will go off, by accident or miscalculation, devastating the planet in the process: the weapons exist in the thousands, sooner or later one or more of them will inevitably go off. But those prognostications have now failed to deliver for 70 years. That time period suggests something more than luck is operating. Moreover, the notion that if one nuclear weapon goes off in one place, the world will necessarily be plunged into thermonuclear cataclysm should remain in the domain of Hollywood scriptwriters.

## Adv---EU

### 1NC---AT: European Backlash

#### No European backlash---it’s political hype

Bradford 12 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Antitrust Law in Global Markets." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

It seems plausible that antitrust enforcers deliberately overlook the anticompetitive conduct of domestic corporations in individual instances while disproportionately targeting foreign corporations.150 Suspicions were reinforced when the EC Commission threatened to block the merger between the two US- based companies, Boeing and McDonnell Douglas, after the merger had been cleared in the United States.151 Both the United States and the EU accused one another of engaging in industrial policy: the Europeans perceived the US clearance of the merger as an eff ort to create a US- based global monopolist in the large civil jet aircraft market, whereas the Americans accused the EU of opposing the merger to protect Boeing’s main European rival, Airbus, from competition.152 Distrust over antitrust protectionism escalated further in 2001, when the EU moved on to prohibit the GE/Honeywell merger.153

Despite the perception of protectionism, a deeper inquiry into the EU antitrust authorities’ merger decisions does not reveal any systematic bias against US corporations. In fact, while 25% of the merger notifi cations the EU Commission received in 1995–2005 involved at least one US- based company, only 12% of the prohibited mergers involved a US corporation.154 Similarly, only 17% of the mergers withdrawn after the notifi cation involved a US corporation, 26% of the Commission’s initiated phase II investigations (‘second request’) involved a US corporation, and 27% of the conditional clearances were granted in cases that involved a US company. These numbers suggest that any enforcement bias would be limited to a small number of individual cases, or that enforcement bias may not even exist. There are several reasons for this. For instance, the threat of judicial review may sufficiently deter antitrust agencies from engaging in blatant parochialism. Agencies must also give reasons for their decisions, and will therefore find it difficult to depart manifestly from an established legal framework.155

### 1NC---AT: Protectionism

#### Antitrust doesn’t collapse relations or cause protectionism

Bradford et al 17 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

Previous work on the determinants of Commission antitrust enforcement has produced decidedly mixed results. Bergman et al. (2005), relying on a sample of 96 mergers notified to the Commission between 1990 and 2002, find that political variables—such as the nationality of the merging firms—have no significant effect on the probability of an adverse ruling. Similarly, Lindsay et al. (2003), examining 245 Commission merger decisions between 2000 and 2002, do not find the nationality of the bidder to be a statistically meaningful predictor of Commission action.

By contrast, Aktas et al. (2004, 2007, 2012) have published a series of papers seeking to establish whether Commission merger review reflects a pro-EU bias. In their initial 2004 study, the authors found that investors anticipate higher costs to merging parties when the Commission intervenes in a case involving a non-EU bidder. In a 2007 follow-up piece, the authors examined a sample of 290 Commission merger decisions between 1990 and 2000, finding that the Commission is more likely to oppose a merger when the bidder is a foreign national and when the merger adversely affects European competitors.11 But in 2012, Aktas et al reevaluated that finding, concluding on the basis of an updated sample that the bidder’s status as a foreign national is not a meaningful predictor of outcomes in the Commission merger-review process.

By contrast, Ozden (2005) studies the 209 largest mergers between 1995 and 1999 involving at least one US firm. That study finds that more extensive merger review is more likely if, among other things, the target is European or all U.S. firms in the industry have high market share. Ozden concludes that the higher likelihood of merger review in cases involving a European target reveals a political and economic tendency to protect European firms. 12

None of this prior work, however, made use of a comprehensive sample of all mergers reported to the Commission since the inception of the merger-review process in 1990. Nor, for the reasons described below, did those studies feature covariates addressing significant variation over time, among industries, and among nations. In this Article, we introduce a novel dataset that offers the most comprehensive view of the Commission’s antitrust decisions to date. We describe that dataset in detail in the next section.

### 1NC---AT: Interdep

#### Trade doesn’t solve war

Miller 14 – Charles Miller, Lecturer at ANU’s Strategic and Defence Studies Centre, “Globalisation and war,” April 2014) <http://www.aspistrategist.org.au/globalisation-and-war/>

John O’Neal and Bruce Russett’s work is perhaps the best known in this regard—and Steven Pinker cites them approvingly in his book The Better Angels of Our Nature. Analysing trade and conflict data from the nineteenth to the twenty-first centuries, they found that trade flows do have a significant impact in reducing the chances of conflict, even when taking a variety of other factors into account. But their conclusions have in turn been questioned by other scholars. For one thing, their model failed to take three things into account. First, it’s quite possible that peace causes trade rather than the other way around—no company wants to start an export business to another country if it anticipates that business linkages will be cut off by war further down the line. Second, conflict behaviour exhibits what’s called ‘network effects’— if France and Germany are at peace, chances are Belgium and Germany will be too. And third, both the likelihood of conflict and the level of trade are influenced by the number of years a pair of countries has already been at peace—because prolonged periods of peace increase mutual trust. Take any of these factors into account, and studies have shown (here and here) that the apparent relationship between trade flows and peace disappears. Perhaps, though, conceiving of globalisation solely in terms of trade flows is mistaken. Alternative indicators of globalisation include foreign direct investment, financial openness and the levels of government intervention in economic relations with the rest of the world. Data on those variables is less extensive than on trade flows, usually dating back only to the post World War II period. But some analysts, such as Patrick McDonald and Erik Gartzke, have argued that a significant correlation can be found between them and a reduction in the probability of conflict. Those findings, newer than O’Neal and Russett’s, haven’t yet been subjected to the same intense scrutiny, so may in turn be qualified by future research. What does all that mean for the policy-maker? The statistical evidence certainly doesn’t tell us that globalisation has made war in East Asia impossible. ‘Cromwell’s law’ counsels us that a logically conceivable event should never be assigned a probability of zero. The most we could conclude is that globalisation has made such an occurrence much less likely. There’s some hopeful numerical evidence that globalisation does indeed have that effect, but the evidence isn’t so compelling that we can substitute an economic engagement policy for a security policy. By all means, let’s continue to promote trade in the Asia-Pacific. But we should also continue to be prepared for scenarios which are unlikely but would be hugely damaging if they were to occur.

### 1NC---AT: Internet Balkanization

#### Limited, low impact Splinternet is inevitable.

Bey 19 Matthew Bey, energy and technology analyst for Stratfor. [The Age of Splinternet: The Inevitable Fracturing of the Internet, 4-25-2019, https://worldview.stratfor.com/article/age-splinternet-inevitable-fracturing-internet-data-privacy-tech]

The end result is that the next 25 years of internet regulation and changing guidelines about how information flows across boundaries will be far more complicated than the previous 25. The extreme version of the splinternet, in which every country creates its own internet with limited connections to the global internet, is unlikely to come to pass. The requirements of a modern economy simply won't allow that eventuality. Instead, companies will be required to jump through increasingly more hoops, and domestic demands for local ownership or data regulation will grow steadily. Corporate America will still demand an open internet for all — even making massive investments in satellite technology to try to do so — but it will not be able to prevent the inevitable.

### 1NC---AT: Cyber

#### Cyber doesn’t escalate

Jensen & Banks 18 Benjamin Jensen holds a dual appointment as a scholar-in-residence at American University, School of International Service and as an associate professor at the Marine Corps University, & David Banks, professorial lecturer at the American University's School of International Service. [Cyber warfare may be less dangerous than we think, 4-26-2018, https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/26/what-can-cybergames-teach-us-about-cyberattacks-quite-a-lot-in-fact/]//BPS

We agree. However, our research suggests that, although states like Russia will continue to engage in cyberattacks against the foundations of democracy (a serious threat indeed), states are less likely to engage in destructive “doomsday” attacks a

gainst each other in cyberspace. Using a series of war games and survey experiments, we found that cyber operations may in fact produce a moderating influence on international crises. Here’s why: Cyberspace offers states a way to manage escalation in the shadows. Thus, cyber operations are more akin to the Cold War-era political warfare than a military revolution. Would you like to play a game? To understand how actors use cyber operations to achieve a position of relative advantage, we designed a series of analytical war games. This methodology lets us assess how multiple factors could combine in a competitive environment, and helps identify recurrent strategic preferences associated with cyber operations. We ran military officers and university students through these war games. Next, we turned the war games into survey experiments via Amazon Mechanical Turk (MTurk) — so randomized respondents answered questions about how to respond to an international crisis. War games offer a time-tested means of assessing the changing character of crisis and competition. Following scripted scenarios, players are assigned to different “teams” and armed with resources to meet their objectives. They earn points based on their choices, with referees guiding the play and military/security analysts interpreting the results. [There’s more to Russia’s cyber interference than the Mueller probe suggests] As players seek to win the game, they may choose previously unconsidered options or draw on or combine resources in unexpected ways. By observing these games, recording their results, repeating the plays and redesigning the scenarios, analysts can understand the nature of the complex and highly contingent problems the scenarios represent. And political scientists use war games to create survey experiments to test hypotheses about strategic preferences. Our study of over 100 military officers and students, for instance, gave players a crisis scenario and a range of response options, all of which included the ability to escalate in cyberspace — as well as more traditional diplomatic, economic and military instruments. Players could also choose to de-escalate. What would a great power cyber crisis in East Asia look like? In our first round, “Island Intercept,” we sought to identify whether states escalated using cyber capabilities. Players took on the role of China or the United States in an escalating dispute in the South China Sea. Over the course of multiple war games, we found our mix of military officers and university students often sought to de-escalate the crisis and rarely used offensive cyber operations. Players assigned to the Chinese side often combined cyber espionage and more traditional intelligence activities to identify the U.S. players’ intentions and capabilities. Players replicating strategic decision-making in Beijing seemed to prefer a “wait and see” approach involving increased intelligence and diplomatic lobbying, rather than escalatory offensive cyber operations. [Did the U.S. ‘hack back’ at Russia? Here’s why this matters in cyber warfare.] The broader survey experiment replicated these findings. The 800 MTurk respondents revealed a bias toward not escalating into the cyber domain. Specifically, about 52 percent chose to de-escalate while 30 percent opted for minor escalation in the diplomatic or economic arena. Only 18 percent of respondents preferred escalatory offensive cyber operations. These findings support other studies demonstrating that states do not prefer escalatory responses to cyber intrusions. How will states employ cyber capabilities against their domestic populations? In a second round, we shifted to examine intrastate conflicts. In our “Netwar” game, players took on the role of either the government, a paramilitary organization, a multinational company or a transnational group of hackers and activists, all attempting to achieve their interests in a weak and corrupt state. This scenario sought to replicate the complex, often proxy, multiparty competition in cyberspace. In these games, the results were more mixed. Players replicating the state tended to use offensive cyber operations as a means of targeting domestic opposition groups — while opposition groups used cyber to blackmail the state by leaking sensitive information. In an MTurk survey experiment involving 800 respondents, we found that states still preferred not to jump into the cyber domain, opting about 43 percent of the time to limit escalation. Yet these results appeared to be a function of regime type. When we controlled for regime type in a second round of surveys involving 800 respondents, we found that democracies had a higher than expected count of de-escalatory measures (53 percent). But authoritarian regimes escalated to cyber measures 35 percent of the time, vs. 18 percent for democracies. Where is the escalation? [The Netherlands just revealed its cybercapacity. So what does that mean?] Our findings suggest that cyber weapons may be far less destabilizing than many assume. First, we found that actors in crisis situations were restrained in their use of cyber weapons. Indeed, actors were more likely to use military, economic or diplomatic alternatives before escalating into the cyber domain. How might this work in the real world? We might interpret the Russian shift to cyber operations to be one of desperation, rather than evidence of a calculated strategy. Our findings suggest that actors are uncomfortable in the cyber domain and only operate there when they lack relative influence in other areas — or seek to limit the risk of escalation, likely due to attribution issues associated with cyber operations. Second, fears of large-scale cyber operations are likely overblown due to cyber’s unique “use it and lose it” character. Individual cyberattacks could potentially wreak considerable damage, but any such exploits could — once deployed — be quickly reverse-engineered and the vulnerability in target networks patched. Here’s the catch: Once you convert network access and cyber espionage into an attack payload, you signal your capabilities and lose the ability to conduct similar attacks. There is a unique shadow of the future in cyber statecraft. States have to assess whether they want to jeopardize an exploit in the short term — and lose long-term coercive options against rivals.

# 2NC

## CP---Antitrust PIC

### 2NC---OV

#### Regulations solve the aff and avoid antitrust DAs---CP’s more predictable and enforceable

Shelanski 18 [Howard Shelanski, Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP, “COMMENT: Antitrust and Deregulation,” 127 Yale L.J. 1922, 1926-1960, May, 2018, lexis]

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

#### Its implemented faster and more efficaciously

Singer 21 [Hal Singer, managing director of Econ One and an adjunct professor at Georgetown’s McDonough School of Business, “Congress Is Leaning Towards a Big Tech Breakup,” March 9, 2021, https://promarket.org/2021/03/09/congress-antitrust-big-tech-break-up-interoperability/]

Antitrust Is Not the Only Tool in the Antimonopoly Toolkit

Unlike Europe, there is no protection against abuse of dominance in the United States. This means that antitrust law can’t assist harmed trading partners unless the offender’s dominance is supported by a restraint of trade. And all too often, it must be a restraint that crosses the firm’s boundaries and results in higher consumer prices.

So while Amazon’s most-favored nation clause and requirements to purchase fulfillment service can and should be challenged under antitrust law, Amazon’s residual market power over merchants cannot. Similarly, while Apple’s exclusionary provisions in app developer contracts can be challenged under antitrust law, Apple’s residual market power over app developers cannot. Given this gap in protection, there is an urgent need to supplement antitrust enforcement with regulatory protections.

One of the witnesses called by Republicans during February’s hearing, antitrust lawyer John Thorne, suggested that antitrust was the right venue for most of these complaints, but only if the process could be accelerated. (Thorne’s testimony showed that in the Northern District of California, the median time from filing an antitrust complaint to trial in a civil case is a staggering 44.5 months.) This seems to be in line with Senator Amy Klobuchar’s (D-MN) current antitrust bill, which seeks to add an “exclusionary conduct” provision to the Clayton Act to accommodate some of Big Tech’s novel exclusionary strategies that current flies beneath antitrust’s radar.

Rather than bending antitrust’s standards, or hoping that antitrust moves faster (it won’t), my strong inclination is to combat self-preferencing outside of antitrust, where a specialized tribunal could gain experience and speed in adjudicating such claims. The House bill will likely be strikingly at odds with Senator Klobuchar’s attempt to force everything through the antitrust funnel. To her credit, however, Klobuchar recently endorsed “better safeguards on tech platforms,” including nondiscrimination rules, an acknowledgment that antitrust isn’t the only tool.

### 2NC---AT: PDB

#### Inclusion of antitrust undermines regulation, ensures sector creep, and is likely to cause more panic than the CP alone

Singer 21 [Hal Singer, managing director of Econ One and an adjunct professor at Georgetown’s McDonough School of Business, “Fixing a Broken Antitrust Regime,” May 26, 2021, https://promarket.org/2021/05/26/amy-klobuchar-antitrust-monopoly-ovation-review/]

Antitrust Isn’t The Only Tool in the Competition Toolkit

The book concludes with a Top-25 list of things Congress and the White House can do to solve America’s monopoly problem. The first 18 prescriptions track her latest legislative proposal, and fall under the domain of antitrust. There are many good ideas here, as well as some important omissions, as noted by Eric Posner, including the failure to overturn Supreme Court cases that established limitations on antitrust liability and enforcement. To her credit, Klobuchar also calls for policies outside of antitrust, such as protecting workers by restricting the use of non-competes agreements and forced arbitration clauses.

Klobuchar’s 24th suggestion, my personal favorite, is to “stop using the word antitrust and start calling it competition policy.” Alas, she only spends one paragraph on this proposal. It would have been an ideal place to note that sector-specific regulation can complement antitrust in hard-to-reach areas, where antitrust can’t easily recognize the (non-price) harm, or where antitrust can’t provide relief in time to spare innovation at the edges of the platforms. The book repeatedly calls for the restoration of net neutrality rules, an admission that antitrust isn’t the only tool in the competition toolkit.

### 2NC---AT: PDCP

#### ‘Core antitrust laws’ are the Big Three.

Pfaffenroth ’21 [Sonia K, Justin P Hedge, and Monique N Boyce; July 1; Partner at Arnold and Porter, Former Deputy Assistant Attorney General for Civil and Criminal Operations for the Antitrust Division of the US Department of Justice; Counsel at Arnold and Porter; Senior Associate at Arnold and Porter; Mondaq, “United States: A Comparison Of Proposed Antitrust Legislation In 2021: Federal And New York State,” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1086194/a-comparison-of-proposed-antitrust-legislation-in-2021-federal-and-new-york-state#:~:text=At%20the%20federal%20level,%20there,;1%20(2)%20the%20Federal]

At the federal level, there are three core antitrust laws: (1) the Sherman Act, in which Section 1 outlaws "every contract, combination, or conspiracy in [unreasonable] restraint of trade," and Section 2 outlaws any "monopolization, attempted monopolization, or conspiracy or combination to monopolize";1 (2) the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices";2 and (3) Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."3 Criminal violations of the Sherman Act carry a maximum penalty of a $100 million fine for corporations, and a maximum penalty of 10 years in prison and a $1 million fine for individuals. A prevailing plaintiff in a civil suit can recover treble damages and attorneys' fees. But federal law currently does not provide for civil penalties when the government brings an antitrust case, only injunctive relief.

#### Anti-trust is distinct from regulations

Crane 8—Visiting Professor, New York University School of Law (Daniel, “Technocracy and Antitrust,” Texas Law Review 86, no. 6 (May 2008): 1159-1222, dml)

It is common to describe antitrust and regulation as the two competing choices facing governments wishing to place controls on market economies. 133

FOOTNOTE 133. See, e.g., W. KIP VISCUSI, JOSEPH E. HARRINGTON, JR. & JOHN M. VERNON, ECONOMICS OF REGULATION AND ANTITRUST xviii (4th ed. 2005) ("The traditional emphasis of economics textbooks on business and government is on the character of regulations and antitrust policies.").

For example, as a judge on the First Circuit, Justice Breyer—a longtime fan of technocratic solutions 134—described antitrust and regulation as substitutable legal controls:

"[R]egulation" and "antitrust" typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods—but they seek to achieve these goals in very different ways. Economic regulators seek to achieve them directly by controlling prices through rules and regulations; antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about. 135

Historically, bureaucratic regulation and adjudication under antitrust norms were considered the two primary choices for implementing controls on the behavior and structure of large commercial enterprises. 136 The regulatory model was associated with the Interstate Commerce Commission (ICC), which was created three years before the Sherman Act and had regulatory control over national railroads. 137 The ICC was the first independent regulatory body in the United States 138 and provided an early representation of the technocratic model. 139 The commissioners were to be railroad experts insulated from political influence who would engage in the technical business of rate setting, ex ante rule making, and general administration of the nation's railroads. 140

When the Sherman Act was framed three years later and the FTC Act twenty-seven years later, following the ICC model of regulation was a possibility. 141 But Congress chose not to create an antitrust regulatory body along the lines of the ICC. Instead of regulation as an antitrust mode, Congress chose adjudication. The Sherman and FTC Acts create highly generalized and open-textured antitrust norms—no restraints of trade, monopolization, or unfair trade practices 142—which the courts then flesh out through a process of common-law-like iteration in active disputes.143

#### Lit consensus goes neg

Cappai ‘20 [Marco and Guiseppe Colangelo; 2020; Research Fellow in EU Competition Law at University of Roma Tre and in Markets, Regulation and Law at LUISS, Italy, earned a Ph.D. in Economic and Consumer Law at University of Roma Tre, AND Giuseppe Colangelo is a Jean Monnet Professor of European Innovation Policy and Associate Professor of Law and Economics at University of Basilicata, Italy; TTLF Working Papers, “Navigating the Platform Age: the ‘More Regulatory Approach’ to Antitrust Law in the EU and the U.S.,” Paper no. 55]

2. Antitrust vs. regulation: where do we stand? The boundaries between antitrust and regulation have always been erratic. This is mainly attributable to the fact that the concepts themselves of antitrust and regulation have been long debated. However, over time the literature has managed to converge on a limited set of shared theoretical conclusions.

Aside from debated questions concerning the ultimate goals of antitrust, competition is commonly accepted as the best regulator, meaning that an effective antitrust policy reduces the need for regulation. Indeed, it has been empirically observed that effective competition leads to lower prices, better quality (for existing products and services) and innovation (in new products and services).24 To this end, antitrust addresses the problem of market power through a flexible and horizontal system of proscriptions typically enforced with a backward looking procedure. In this sense, antitrust performs a prophylactic function by safeguarding the competitive process, instead of dictating market outcomes.

Conversely, regulation is prescriptive in nature. It favours forward-looking intervention based on a rigid set of (normally, sector-specific) clear-cut rules where the conduct required is identified from the outset. Hence, regulation ensures higher technical specialization and is more effective in addressing competition problems that result from structural market imperfections.

### 2NC---AT: L2NB

#### CP resolves spillover fears by signaling that regulated industries are the exception

Boliek ’14 [Babette; February; Ph.D. in Economics from the University of California, Davis, J.D. from the Columbia University School of Law, Professor of Law at Pepperdine University; Hastings Law Journal, “Antitrust, Regulation, and the "New" Rules of Sports Telecasts,” Hastings Law Journal, 65 Hastings L.J. 501, lexis]

I. The Current Relationship of Antitrust, Regulation, and Sports Broadcast

As noted, antitrust and industry-specific regulation are two distinct means to achieve much the same social goal - to protect consumers and encourage efficiencies in production and distribution. 38 However, the two regimes are by no means interchangeable, and the choice between them is itself imbued with certain social policy preferences. 39

[FOOTNOTE] As then-Chief Judge Stephen Breyer stated, while regulation and the antitrust laws "typically aim at similar goals - i.e., low and economically efficient prices, innovation, and efficient production methods," regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." Town of Concord, Mass. v. Bos. Edison Co., 915 F.2d 17, 22 (1st. Cir. 1990). [END FOOTNOTE]

Antitrust law is an enforcement regime that preserves competition across all private industries by condemning anticompetitive conduct only after it occurs. 40 In contrast, industrial regulation is inherently a social admission that, in a given industry, market forces are too weak to produce the consumer benefits that are realized in competitive markets. 41 Therefore, regulated industries are an exception to the economy at large and are subject to preemptive, regulatory rule that may actively engineer industry conduct far beyond that permitted under antitrust law. 42

## CP---CIL

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

#### It creates binding law

Sekulow ’20 [Jay; Spring 2020; Chief Counsel at the American Center for Law & Justice and at the European Centre for Law & Justice, PhD from Regent University, JD from Mercer University, and Robert Weston Ash, Senior Counsel at the American Center for Law & Justice, Master of International Public Policy from the School of Advanced International Studies (SAIS) of the Johns Hopkins University, JD from Regent University; South Carolina Journal of International Law and Business, “The Issue of ICC Jurisdiction Over Nationals of Non-Consenting, Non-Party States to the Rome Statute: Refuting Professor Dapo Akande's Arguments,” vol. 16]

Conventional international law is found in conventions, treaties, and similar negotiated agreements between and among States as well as agreements between States and other international actors (like the United Nations or NATO), and it is only binding on the parties to such agreements. Accordingly, it is a consent-based legal regime. Customary international law, on the other hand, is law based on custom that develops over an extended period of time and is considered binding on all States. Although it is not necessarily written law, customary international law is nonetheless considered "law" because States generally comply with its requirements because they believe that they have a legal obligation to do so. "To establish a rule of customary international law, State practice has to be virtually uniform, extensive and representative." We would point out that this is not the case with the Rome Statute. Although approximately two-thirds of all States have acceded to the treaty, one-third of all States--including three permanent members of the UNSC--representing two-thirds of the globe's population have not. It is difficult to understand how such statistics support "virtually uniform, extensive and representative" State practice. Further, "[n]ot all state practice results in customary law . . . . Consistent state practice becomes law when states follow the practice out of a sense of legal obligation encapsulated in the phrase opinio juris sive necessitatis."

#### AND will be fully enforced---everyone complies

Baum ’18 [Lawrence; 2018; Professor of Political Science at Ohio State University, Ph.D. in Political Science from the University of Wisconsin-Madison; *The Supreme Court*, p. 206-208]

Summing Up: The Effectiveness of Implementation

We know far too little to make confident judgments about how well judges and administrators carry out Supreme Court decisions, even if that question is simplified to the question of compliance and noncompliance. Still, a few generalizations are possible.

When judges and administrators address issues on which the Supreme Court has ruled, most of the time they readily apply the Court’s ruling. They often do so even when that requires them to depart from positions on legal policy they had adopted before the Court’s decision. These actions typically get little attention because they accord with most people’s assumption that judges and administrators will follow the Court’s lead and carry out its decisions fully.

Contrary to this assumption, however, implementation of the Court’s policies is often quite imperfect. For Supreme Court decisions, like congressional statutes, the record of implementation is mixed. Some Court rulings are carried out more effectively than others, and specific decisions often are implemented better in some places or situations than in others.

Implementation of the Court’s decisions is most successful in lower courts, especially appellate courts. When the Court announces a new rule of law, judges generally do their best to follow its lead. And when a series of decisions indicates that the Court has changed its position in a field of policy, lower courts tend to follow the new trend. For this reason, Court decisions that require only action by lower courts tend to be carried out more effectively than decisions that involve other policymakers.36

But even appellate judges sometimes diverge from the Court’s rulings. Seldom do they explicitly refuse to follow the Court’s decisions. More common is what might be called implicit noncompliance, in which a court purports to follow the Supreme Court’s lead but actually evades the implications of the Court’s ruling.

The higher frequency of implementation problems for Supreme Court decisions in the executive branch reflects several conditions. One condition is that administrators are likely to feel less obligation to follow the Court’s lead than do judges. Another is that carrying out the Court’s decisions is more likely to create practical problems for administrators. Even so, the Court enjoys considerable success in getting compliance from administrative bodies.

Responses by Legislatures and Chief Executives

Congress, the president, and their state counterparts also respond regularly to Supreme Court decisions. Their responses shape the impact of the Court’s decisions, and some responses by Congress and the president affect the Court itself.

### 2NC---AT: PDB

#### Makes the counterplan’s ruling merely advisory

Fountaine 99 (Cynthia L. Fountaine, Professor of Law, Texas Wesleyan University, “Article: Article III and the Adequate and Independent State Grounds Doctrine,” American University Law Review, June 1999, 48 Am. U.L. Rev. 1053, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1336&context=aulr>)

Whether Article III permits the Supreme Court to review judgments of state courts depends on whether there is a substantial likelihood that a favorable decision by the federal court will have an impact on the outcome.284 Whether the case is moot-–because the Court’s determination is not substantially likely to have any impact on the outcome-–breaks down into two separate inquiries: (1) whether the state court’s state law determinations are subject to “merits” review by the Supreme Court;285 and, if not, (2) whether Supreme Court review of the federal issues in the case would amount to an advisory opinion because there is no actual dispute between adverse litigants or there is no substantial likelihood that a judgment favorable to the party seeking review will have an impact.286 To make the second determination, the Court must look to the “independence” and “adequacy” factors as indicators of whether “it is ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be redressed by a favorable decision.”287 If the Supreme Court’s decision on the federal issues likely will have an impact on the state court’s judgment, then the parties have the requisite personal stake in the litigation to assure adversarial presentation of the issues, as required by Article III.288

#### Voids precedent and the net benefit

Varat 86 (Jonathan D. Varat, Professor of Law, University of California – Los Angeles, “Cases and Controversies,” 1986, [https://web.archive.org/web/20070613230315/http://www.novelguide.com/a/discover/eamc\_01/eamc\_01\_00392.html](https://web.archive.org/web/20070613230315/http:/www.novelguide.com/a/discover/eamc_01/eamc_01_00392.html))

As to extant factual circumstances, advisory opinions are banned. This limitation not only bars direct requests for legal rulings on hypothetical facts but also requires dismissal of unripe or moot cases, because, respectively, they are not yet live, or they once were but have ceased to be by virtue of subsequent events. The parties' future or past adversariness cannot substitute for actual, current adversariness. Disputes that have not yet begun or have already ended are treated as having no more present need for decision than purely hypothetical disputes. (See RIPENESS; MOOTNESS). The desire to preserve federal judicial power as an independent, effective, and binding force of legal obligation is reflected both in the finality rule, which bars decision if the judgment rendered would be subject to revision by another branch of government, and in the rule denying standing unless a judgment would likely redress the plaintiff's injury. These two rules are the clearest instances of judicial self-limitation to insure that when the federal courts do act, their judgments will be potent. To exercise judicial power ineffectively or as merely a preliminary gesture would risk undermining compliance with court decrees generally or lessening official and public acceptance of the binding nature of judicial decisions, especially unpopular constitutional judgments. Here the link between the limitations on judicial power and that power's independence and effectiveness is at its strongest. Historically, congressional attempts to expand the use of Article III judicial power have caused the greatest difficulty, largely because the federal courts are charged simultaneously with enforcing valid federal law as an arm of the national government and with restraining unconstitutional behavior of the coequal branches of that government. The enforcement role induces judicial receptivity to extensive congressional use of the federal courts, especially in a time of expansion of both the federal government's functions and the use of litigation to resolve public disputes. The courts' checking function, however, cautions judicial resistance to congressional efforts to enlarge the scope of "cases" or "controversies" for fear of losing the strength, independence, or finality needed to resist unconstitutional action by the political branches. The early emphasis of "case" or "controversy" jurisprudence was on consolidating the judiciary's independence and effective power. The Supreme Court's refusal in 1793 to give President GEORGE WASHINGTON legal advice on the interpretation of treaties with France—the founding precedent for the ban on advisory opinions—rested largely on the desire to preserve the federal judiciary as a check on Congress and the executive when actual disputes arose. Similarly, HAYBURN ' SCASE (1792) established that federal courts would not determine which Revolutionary War veterans were entitled to disability pensions so long as the secretary of war had the final say on their entitlement: Congress could employ the federal judicial power only if the decisions of federal courts had binding effect. In the mid-nineteenth century the concern for maintaining judicial efficacy went beyond finality of substantive judgment to finality of remedy. The Supreme Court refused to accept appeals from the Court of Claims, which Congress had established to hear monetary claims against the United States, because the statutory scheme forbade payment until the Court certified its judgments to the treasury secretary for presentation to Congress, which would then have to appropriate funds. The Court concluded that Congress could not invoke Article III judicial power if the judges lacked independent authority to enforce their judgments as well as render them.

#### Court primacy is key

Bruch 6 – (Carl, Attorney and Co-Director of International Programs at the Environmental Law Institute (ELI), Is International Environmental Law Really Law?: An Analysis of Application in DomesticCourts, 23 PaceEnvtl.L. Rev. 423, http://digitalcommons.pace.edu/pelr/vol23/iss2/)

A. Ambiguity of International Environmental Law in Judicial Decisions As the cases cited above show, domestic courts increasingly look to international environmental law. In some cases, the courts are clear as to the legal effect of the particular provision of inter-national environmental law. International environmental law may be binding or persuasive. In many cases, though, the precise role of international law is ambiguous, vague, or inconclusive. In these instances, the decisions consider, cite, and discuss international environmental law in support of the ultimate holding, but the weight that the court accords international environmental law is unclear. It could serve as a cause of action, a rule of decision, an interpretive aid, or a principle of national law notwithstanding the international status of the principle, or as "commonsense.137 However, in many cases, the court refers to international environmental law without ex-plaining the legal status of the specific norm within the context of the judicial decision. A survey by Professors Bodansky and Brunn6e of experiencesof domestic courts in applying international environmental law also noted this ambiguity. They observed that, "In a perhaps sur-prisingly large number of cases, courts refer to norms of interna-tional environmental law without explaining whether they regard them as rules of decision, as an interpretive aid, or as principles that, despite currency at the international level, are simply drawn from national sources."'38With respect to principles of international environmental law, Professors Bodansky and Brunn~e noted that many decisions seemed to view the principles "as reflecting 'common sense,"' par-ticularly in cases that interpreted and applied the precautionaryprinciple.139A variety of reasons for the ambiguity might be posited.140 Insome instances, the status of the legal provision might be unclear. For example, while many cases relate to the precautionary princi-ple, there is controversy over whether the precautionary principle constitutes a principle of customary international law, or if it is anelement of soft law, or if it is simply a good idea ("common-sense").14' Accordingly, courts might seek to avoid taking a posi-tion regarding the international legal status of a particularprovision. Similarly, there might be uncertainty within a country about the role of international law in domestic judicial deci-sions.142 In other words, the domestic legal culture may be de facto suspicious of international law. In order to avoid being over-ruled or treading unnecessarily into controversial areas, courts might blur the specific nature of the international provision before them. In some instances, judges might not be particularly familiarwith international law or its relationship with domestic law. Judges often are steeped in domestic law, its operation, and its interpretation but have not been trained in international law or practiced international law. Accordingly, they might be reluctant to apply international law, even if they are in a monist state and thus theoretically bound to give legal effect to the relevant provi-sions of international law. A lack of fluency regarding the precise role of international law in domestic litigation may also contributeto judges giving more weight to international law than would bemerited under conventional legal theory (e.g., in a country with adualist system). Even if a judge does accord appropriate weight to interna-tional law, the judge might be intentionally vague about the ratio-nale. This might be, for example, because other judges (e.g., thoseto whom the decision might be appealed) may be less familiar withor even hostile to international law, as discussed above.

### 2NC---AT: PDCP

#### Resolved

LSA 5 [Louisiana State Legislature; 2005; Governing body of the state of Louisiana; Louisiana State Legislature, “Legislative Glossary,” <https://www.legis.la.gov/legis/Glossary.aspx>]

Resolution

A legislative instrument that generally is used for making declarations, stating policies, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution uses the term "resolved". Not subject to a time limit for introduction nor to governor's veto. (Const. Art. III, §17(B) and House Rules 8.11, 13.1, 6.8, and 7.4 and Senate Rules 10.9, 13.5 and 15.1)

#### The

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

#### USfg

Arthur Miller 86. Distinguished Visiting Professor of Law – Emory University. Summer 1986. “Congress, the Constitution, and First Use of Nuclear Weapons.” Review of Politics. Vol. 48, No. 3.

Three other points merit mention in this discussion of collective decision-making. First, both the formal and the secret constitutions allocate power over foreign relations and defense to the central government, to, that is, the United States of America visualized as a single entity. What, however, is "the" United States? The question has never been definitively answered; and indeed has seldom been asked in judicial opinion or scholarly discourse.42 Asked another way, the question is this: Where does sovereignty lie in the American polity? The formal constitution is supposedly based on popular sovereignty, with ultimate power resting in the people. That, however, is far from accurate. Proof positive that sovereignty lies in the "state" came when General Robert E. Lee surrendered at Appomattox: "the people" of the South were not to be permitted to exercise their "sovereignty." The powers of the national government are supposedly only those delegated to it, either expressly or impliedly. But that is scarcely accurate, as 200 years of constitutional development attest. The Framers of the formal constitution established a governmental system that, as Justice Robert Jackson commented, would ensure that the dispersed powers of the federal government would be integrated into a workable government. "Separateness but interdependence, autonomy but reciprocity" was the constitutional command.43 The meaning is unmistakable: "the" United States is a single metaphysical entity, encompassing state, society, and government in one artificial being. These terms are not synonymous. The state is the fundamental entity; government its apparatus; and society is composed of the individuals and groups governed. Much like the business corporation, the state-"the" United States-is an artificial construct, more a method than a thing. It exists in constitutional theory-in, for example, the state secrets privilege in litigation-even though judges and commentators alike often confuse the term with government and with society. A legal fiction that by itself can do no act, speak no work, and think no thought, the state (like the corporation) has "no anatomical parts to be kicked or consigned to the calaboose; no soul for whose salvation the parson may struggle; no body to be roasted in hell or purged for celestial enjoyment." 44 Despite loose language to the contrary from executive branch lawyers and even the Supreme Court, "the" state or "the" government-or "the" United States-is not to be equated with the executive branch. Nor with any one branch, for that matter; each branch is part of an indivisible whole.

#### Prohibitions

Hadley 9 [John Vestal; December 16, 1909; Justice on the Supreme Court of Indiana; Westlaw, “McPherson v. State,” 174 Ind. 60]

Furthermore, the word “prohibition” is close akin to “regulate, restrict, and control.” Its use in the body of the act is of little significance. To forbid the sale of liquor by those who have no license; to deny the licensee the right to sell on certain days, between certain hours, in certain places, in certain quantities—is, to some extent at least, qualified prohibition. It is prevention, interdiction. Such laws, however, are unquestionably regulations and restrictions of the liquor traffic. They operate as a check, as a restraint, upon the sale, not in absolute inhibition, and are in the strictest sense regulations. They regulate by prohibiting the sale at certain times, and to certain persons, and \*613 in certain places. Besides, to say the law prohibits the citizen from selling without a license, or that the law prohibits the licensed seller from selling on Sunday, is etymologically correct. In fact, the word was employed in this sense by the Legislature in framing section 4 of the Nicholson law (section 8327, Burns' Ann. St. 1908), which provides that obstructions to the street view shall not be set up in the selling room “during such days and hours when the sale of such liquors is prohibited by law.” So it is not so much the primary meaning of the word as sense in which it is popularly understood as applied to the manufacture and sale of spirituous liquors that must control.

Following are a few definitions of “prohibition” as specifically applied:

“Interdiction of the liberty of making and of selling, or giving away, intoxicating liquors for other than medicinal, scientific and religious purposes.” Anderson's L. Dict.; Bouvier, L. Dict. (Rawle's Rev.).

“The forbidding by law of the manufacturing and sale of alcoholic liquors.” English's L. Dict.

“The forbidding by law of the sale of alcoholic liquors as a beverage.” Webster's Int. Dict.

“The forbidding by legislative enactment of the sale of alcoholic liquors for use as a beverage.” Standard Dict.

#### Expand

Hatter ’90 [Terry J Jr; March 20; January District Court Judge at the Central District of California; Westlaw, “In re Eastport Assocs.,” 114 B.R. 686]

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

#### Scope

Sagers ’15 [Christopher L; 2015; the James A. Thomas Distinguished Professor of Law and Faculty Director of the Cleveland-Marshall Solo Practice Incubator; Handbook on the Scope of Antitrust, “Introduction,” Ch. 1, p. 9]

B. Sources of the Scope of Antitrust Law

The scope of federal antitrust law is governed by three separate authorities: (1) the U.S. Constitution, (2) the language of the antitrust statutes themselves, and (3) the language of other federal statutes and regulations.

#### Core

Texas ’19 [Texas Real Estate Commission; November; the state agency governing real state in Texas; “Commission Member Guide,” https://www.trec.texas.gov/sites/default/files/pdf-forms/Commission%20Training%20Guide.pdf]

1.6 Antitrust Laws

Antitrust laws were enacted by Congress to protect consumers and promote fair competition in the marketplace. Such laws are based on the premise that resources allocated competition best promotes consumer welfare. Antitrust laws encourage fair competition by prohibiting businesses and individuals from engaging in anticompetitive behavior, such as collusion, price fixing, or mergers that would give substantial market power to a single company or only a few companies.

1.6.1 History

Congress passed the first antitrust laws in the late 1800s and early 1900s to combat the growth and anticompetitive behaviors of big businesses known as “trusts.”1 Many of these so-called trusts controlled entire segments of the economy, such as railroads, oil, steel, and sugar. Two of the most famous trusts were U.S. Steel and Standard Oil. Other, more recent examples of large companies to come under government scrutiny for anticompetitive behavior are American Telephone & Telegraph (AT&T) and Microsoft. President Theodore Roosevelt “busted” or broke up many of these trusts by enforcing the antitrust laws enacted by Congress. The three core antitrust laws enacted by Congress are:

• The Sherman Act

This the nation’s oldest antitrust law. Passed by Congress in 1890, the Sherman Act makes it illegal for competitors to make agreements with each other that would limit competition. In particular, the Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." The Supreme Court has held that the Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, a partnership agreement between two individuals may limit or restrict trade, but may not unreasonably do so and, therefore, would not be illegal under the Sherman Act. However, certain acts are considered so harmful to competition that they are almost always illegal. Examples include plain agreements or arrangements between individuals or businesses to fix prices, divide markets, or rig bids. These acts are “per se” violations of the Act, in other words no defense or justification is allowed.

• The Clayton Act

The Clayton Act was passed in 1914 and addresses specific acts not clearly prohibited under the Sherman Act. This Act prevents mergers or acquisitions that are likely to stifle competition or tend to create a monopoly. The Federal Trade Commission Act Also passed in 1914, the Federal Trade Commission Act created the Federal Trade Commission and prohibits “unfair methods of competition” and “unfair or deceptive acts or practices.” The Supreme Court has said that every act that violates the Sherman Act also violates the FTC Act. Thus, the FTC can bring cases under the FTC Act for the same types of conduct or activities that violates the Sherman Act. The FTC Act also reaches other conduct harmful to competition that may not fit neatly into one of the categories of conduct prohibited under the Sherman Act. The FTC also enforces antitrust laws against states, including state licensing boards and commissions.

• The Federal Trade Commission Act

Also passed in 1914, the Federal Trade Commission Act created the Federal Trade Commission and prohibits “unfair methods of competition” and “unfair or deceptive acts or practices.” The Supreme Court has said that every act that violates the Sherman Act also violates the FTC Act. Thus, the FTC can bring cases under the FTC Act for the same types of conduct or activities that violates the Sherman Act. The FTC Act also reaches other conduct harmful to competition that may not fit neatly into one of the categories of conduct prohibited under the Sherman Act. The FTC also enforces antitrust laws against states, including state licensing boards and commissions.

#### Antitrust laws

Kalbfleisch ’61 [Girard Ewdard; March 27; Federal District Court Judge in Ohio’s Eastern Division; Westlaw, “Paul M. Harrod Co. v. A. B. Dick Co.,” 194 F. Supp. 502]

Defendant asserts that the term ‘antitrust laws,’ as used in the above section and as defined in 15 U.S.C.A. § 12, does not include a judgment or decree entered in connection with an antitrust case filed by the Government. Plaintiff, on the other hand, asserts that ‘the violation of the earlier decree of this court in itself gives rise to an independent cause of action under Section 4 of the Clayton Act.’ 15 U.S.C.A. § 15. Plaintiff's Brief, p. 7. Plaintiff concedes that ‘as far as he has been able to ascertain, this contention raises issues which have never before been decided by any appellate court.’ Plaintiff's Brief, p. 5.

In Nashville Milk Co. v. Carnation Co., 1958, 355 U.S. 373, 78 S.Ct. 352, 2 L.Ed.2d 340, the Supreme Court held that the Robinson-Patman Act, 15 U.S.C.A. §§ 13-13b, 21a, was not included among the ‘antitrust laws' defined in Section 1 of the Clayton Act (15 U.S.C.A. § 12) and that ‘the definition contained in § 1 of the Clayton Act is exclusive.’ Id., 355 U.S. at page 376, 78 S.Ct. at page 354.

The definition of ‘antitrust laws' in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term ‘antitrust laws' could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the prohibitions of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term ‘antitrust laws,’ as used in the statute, as to require no further discussion.

## Adv---China

### 2NC---UQ

#### America's maintaining a research and quality advantage

TR '20 [MIT Technology Review; 10/29/20; "America's technological leadership is at stake in this election," https://www.technologyreview.com/2020/10/29/1011375/americas-technological-leadership-is-at-stake-in-this-election/]

The government’s share of funding for basic research—the precursor to the kinds of technologies companies can exploit—has been dropping too, from above 70% in the mid-20th century to 42% in 2017. Again, the private sector has filled the gap, but its priorities are different; much of the replacement money is in pharma. Governments are more likely to fund long-term, risky bets like clean energy, sustainable materials, or smart manufacturing—the kinds of technologies the world really needs right now.

Contrast this with the situation in China. There, government-funded R&D has gradually grown as a percentage of GDP (chart 2), even as the economy has exploded in size. The true measure of government investment is probably higher, since a lot of the private-sector R&D spending is by state-owned enterprises that to some extent take orders from the government.

And overall, China's R&D spending is shooting up, approaching the level in the US (chart 3).

True, China is still far behind on many measures. Basic research, though it’s growing, still represents a much smaller share of GDP than in the US or other advanced economies (chart 4). Also, as we’ve written, although the number of scientific papers and patents published by Chinese researchers is ballooning, the quality of that work (as measured by things like the number of citations) is low, and homegrown Nobel laureates are few and far between.

Nonetheless, the gap is closing. Kai-fu Lee, a venture capitalist and former head of Google China, expressed an oft-heard view at a recent event held by the New York–based China Institute: the US, he said, is “further ahead in fundamental research in AI as well as almost any other domain,” but China is “catching up quickly” and has an edge in AI applications that require masses of data, such as machine translation and speech recognition. (Our China issue looked at several other areas in which the country is carving out an advantage.)

Much of China’s technological acceleration is linked to state-led plans such as “Made in China 2025,” which aims to make China more self-sufficient (pdf, page 21) in key high-tech industries like zero-emission vehicles, industrial robots, mobile-phone chips, and medical devices. This is in stark contrast to the US approach, where the main driver of decisions about where the money goes has been venture capitalists and the increasingly deep-pocketed tech giants, all of them desperate to find the next product idea that can rapidly scale into a billion-dollar business.

Of course, one should take the claims made about schemes like Made in China 2025 with a pinch of salt. The shortcomings of centrally planned economies are well documented, and governments are usually not very good at innovation. The regulatory reforms in the mid-20th century that paved the way for the venture capital industry are arguably some of the most important technology policies the US ever adopted.

#### US will remain leader in AI---funding and quality advantages secure a tentative lead.

Savage '20 [Neil; 12/9/20; science writer for Nature; "The race to the top among the world’s leaders in artificial intelligence," https://www.nature.com/articles/d41586-020-03409-8/]

For the near future, Ding says, the US is likely to remain the world leader in AI. “Though China has some exceptional universities, such as Tsinghua University, the US dominates in terms of maybe the top 20 universities doing AI research, and that is reflected in the quality of the papers. It’s very unlikely that China will become the singular innovation centre by 2030.”

Many countries see AI as providing a competitive edge, not only economically, but militarily, says Husain. He likens the competition in AI to the Space Race of the mid-twentieth century, in which the US and the Soviet Union vied to be the first to achieve milestones in space travel. “The Space Race yielded contributions that differentiated the American technological ecosystem from all others for decades to come,” says Husain. “If a country invests heavily in this area, it will yield technologies that will form the pillar of defence capability and economic differentiation for the rest of the century.”

Technologies that can be developed based on AI will indeed have both economic and military benefit, says Daniel Araya, a policy analyst at the Center for International Governance Innovation, a think tank in Ontario, Canada. “We’re talking new weapons, data-driven innovation for industry and automation, and redesigning how our society works from the ground up.”

### 2NC---Link

#### Results in unpredictable disruptions to conceptual breakthroughs---Big Tech's necessary for AI innovation

Arnold '20 [Zachary; May 2020; J.D. from Yale Law School, Research Fellow at Georgetown’s Center for Security and Emerging Technology; Dakota Foster; Visiting Researcher at Georgetown’s Center for Security and Emerging Technology; "Antitrust and Artificial Intelligence: How Breaking Up Big Tech Could Affect the Pentagon’s Access to AI," https://cset.georgetown.edu/publication/antitrust-and-artificial-intelligence-how-breaking-up-big-tech-could-affect-pentagons-access-to-ai/]

Today, the private sector dominates this domain of AI innovation. Other actors, including government funders and academic researchers, play an important role—especially in basic research—but at the application stage, the private sector generally consolidates critical inputs of data, computing power, and human capital, then applies them to real-world needs. In some cases, such as with Project Maven—where Google built AI-enabled image recognition programs for the Pentagon—the Pentagon is the customer; more often, AI products and conceptual breakthroughs developed by the private sector, from autonomous vehicles to image and speech recognition platforms, are (or could be) adapted for national security use.

Because most U.S. AI innovation currently occurs in the private sector, and at least some of this innovation pertains to the Pentagon, the Pentagon needs the private sector.22 Large tech companies, from Google, Apple and Amazon to slightly lower-profile giants such as IBM, Intel and Qualcomm, form the foundation of the private-sector AI innovation ecosystem. For example, Google, Facebook, Microsoft, Apple, and Amazon generate the most AI patents with a “significant competitive impact” worldwide, according to analysis by economic consultancy EconSight.23 The McKinsey Global Institute reports that large, digitally oriented tech companies worldwide spent $20-$30 billion on AI in 2016, 90 percent of which went toward R&D and deployment; for comparison, the Pentagon plans to spend $4 billion on AI and machine learning R&D in FY2020.24 Private-sector AI companies are especially dominant in applied research and experimental development.25

AI innovation would presumably continue in some form without Big Tech, but the data indicates that breaking up the largest tech companies would fundamentally change the broader AI innovation ecosystem. Such action would create unpredictable, but likely significant, trickle-down effects on AI applications in specific domains, including national security.

### 2NC---AT: Startups

#### Nascent acquisitions enable innovation and increase output---empirics disprove tradeoff between “build for sale” and moonshot innovators

Agarwal '20 [Asheesh; 12/21/20; J.D. from the University of Chicago Law School, Advisor for the American Edge Project, Deputy General Counsel and Internet Policy Counsel at Tech Freedom; "Today's antitrust ideas would have stifled yesterday's innovations," https://thehill.com/opinion/technology/531131-todays-antitrust-ideas-would-have-stifled-yesterdays-innovations/]

A century ago, Louis Brandeis railed against corporate consolidations and “the curse of bigness.” Today, the concern is “nascent” corporate acquisitions, where an established company purchases a smaller firm in a related market to nip a potential rival in the bud. A recent report from the House Judiciary Committee proposes a variety of fixes to this perceived problem: heightened merger scrutiny, structural separation of large companies into single lines of business, and the possibility of unwinding past acquisitions.

As described in a new paper, however, history urges caution. Had these ideas been in place during the last century, America’s economy could look very different — and smaller. Nascent acquisitions repeatedly benefited competition and consumers. They provided acquired companies with critical financing to survive and innovate. They allowed acquiring companies to bring new products to consumers faster and cheaper. Moreover, as data confirms, such purchases usually lead to lower prices and greater innovation for consumers.

Nobel laureate Ronald Coase identified the most famous such acquisition. In 1908, Fisher Body designed an enclosed auto body to appeal to women. This insight helped the company prosper, and by 1918, Fisher Body sold to most major car manufacturers. Within a few years, however, General Motors purchased all of Fisher Body’s stock. Coase concluded that the purchase made economic sense: GM secured its supply chain and Fisher Body found a permanent customer for its specialized output. The purchase also allowed GM to lower costs by locating its body plants near its assembly plants.

Similarly, John Deere might never have sold tractors but for a nascent acquisition. In the early 20th century, Deere was a farm equipment company that sold planters, buggies, wagons, and grain drills. Deere’s tractors, however, all flopped in the marketplace. To satisfy its customer base, in 1918, Deere purchased the Waterloo Gasoline Engine Company, which had developed the first successful gasoline tractor. Deere devoted more than one-third of its advertising budget to touting the tractor. The bet paid off: In its first year, Deere’s distribution network and marketing expertise roughly tripled the sales of Waterloo tractors to consumers, and over time Deere’s green tractors became global icons.

Nascent acquisitions kept some companies alive. In 1926, a bus operator founded Pacific Air Transport to carry mail and passengers between Seattle and Los Angeles. The airline struggled for two years, with thin profits and the loss of several aircraft. In 1928, Boeing bought the company and upgraded its airplanes. Within two years, the company roughly tripled its number of passengers and volume of mail.

More recently, in the tech sector, nascent purchases have increased innovation and output. In 1987, Microsoft purchased Forethought, which allowed it to improve and distribute PowerPoint far more broadly. In 2005, YouTube was a dating site that offered women $20 to upload videos. In 2006, Google purchased the company, injected capital, and upgraded its platform. Five years later, YouTube hit more than three billion daily views.

These examples offer lessons for today. As the FTC acknowledges, Facebook purchased Instagram and WhatsApp, at least in part, because Facebook saw the potential in mobile photo sharing and mobile messaging but couldn’t develop competitive technology internally — just as John Deere saw the potential in tractors, GM in enclosed auto bodies, and Boeing in mail delivery. Each company acquired smaller firms that arguably could have grown to rival their acquirers.

Hindsight isn’t always 20/20. Looking backwards, it’s easy to conclude that John Deere eventually would have developed tractors, that GM would have built entire cars, and that Instagram and WhatsApp would have become viable businesses. In reality, nothing was inevitable. Their success stories required time, money, skill, and the assumption of risk.

In the face of such uncertainty, policymakers should exercise caution before they discourage investment in small companies by rewriting antitrust law, or by bringing lawsuits to unwind deals years after the fact, out of a speculative belief that small acquired companies would have grown into global giants if only they had been left to their own devices. America’s economic history should teach our regulators and policymakers a little humility.

#### VC funding will abandon the market immediately, killing innovation and startups

Feiner 21 - Lauren, "Start-ups will suffer from antitrust bills meant to target Big Tech, VCs charge," Jul 24, https://www.cnbc.com/2021/07/24/vcs-start-ups-will-suffer-from-antitrust-bills-targeting-big-tech.html

Many lawmakers are eager to rein in the power of the largest tech companies: Amazon, Apple, Facebook and Google. But some of their proposals could actually hurt the smaller companies they’re meant to protect, venture capitalists warned CNBC. VCs are particularly concerned about efforts in Congress to restrict mergers and acquisitions by dominant platforms. Some of those proposals would work by shifting the burden of proof onto those firms in merger cases to show their deals would not harm competition. While proponents argue such bills would prevent so-called killer acquisitions where big companies scoop up potential rivals before they can grow — Facebook’s $1 billion acquisition of Instagram is a common example — tech investors say they’re more concerned with how the bills could squash the buying market for start-ups and discourage further innovation. Of course, venture capitalists and the groups that represent them have an interest in maintaining a relatively easy route to exiting their investments. A trade group representing VCs, the National Venture Capital Association, counts venture arms of several Big Tech firms among its members. (Comcast, the owner of CNBC parent company NBCUniversal, is also a member.) But their concerns highlight how changes to antitrust law will have an impact far beyond the largest companies and how smaller players may have to adjust if they’re passed. Why start-ups get acquired When venture capitalists invest in a start-up, their goal is to make a large return on their spend. While most start-ups fail, VCs bank on the minority having large enough exits to justify their rest of their investments. An exit can occur through one of two means: through an acquisition or by going public. When either of these events occurs, investors are able to recoup at least some of their money, and in the best case scenario, reap major windfalls. About ten times as many start-ups exit through acquisitions as through going public, according to the NVCA. Venture capitalists say that number shows just how important it is to keep the merger path clear. The top five tech firms aren’t the only ones scooping up tech deals. Amazon, Apple, Facebook, Google and Microsoft have accounted for about 4.5% of the value of all tech deals in the U.S. since 2010, according to public data compiled by Dealogic. Reform advocates have pointed to some acquisitions, like that of Instagram by Facebook, as examples of companies selling before they have the chance to become standalone rivals to larger firms. But VCs say that’s often not the case. “They all think they could be public companies one day, but the realities are, it’s not realistic for most of these companies to achieve the size and scale to survive the public markets as of today,” said Michael Brown, general partner at Battery Ventures. While going public is a often the goal, VCs say it can be impractical for start-ups for various reasons. First, some start-ups may simply not have a product or service that works long-term as a standalone business. That doesn’t mean their technology or talent isn’t valuable, but just means it could be most successful within a larger business. Kate Mitchell, co-founder and partner at Scale Venture Partners, gave the example of a company called Pavilion Technologies that made predictive technology for manufacturers and agriculture, which sold to manufacturing company Rockwell Automation in 2007. “That’s a company that just couldn’t get to escape velocity,” she said of Pavilion. “Because they were selling globally to large plants, we couldn’t figure out how to sell the technology cost effectively.” It was still a useful technology, but needed the infrastructure of a larger business to accelerate further, she said. After Rockwell acquired it, it became incorporated into its offerings and several employees stayed for years. Sometimes, she said, an acquisition is a last resort before bankruptcy, and at least helps investors get some of their money back. “It is better that they’re sold for even 80 cents on the dollar than that they go bankrupt,” she said. In addition, going public can be difficult. The IPO process is expensive and VCs said that small cap companies often struggle on the public market in part because of the lack of analyst coverage of such businesses. Clate Mask, co-founder and CEO of venture-funded email marketing and sales platform Keap, said greater merger restrictions on the largest companies would likely “change the calculus” for start-ups. But the shift would not be between getting and acquired and going public. Instead, he said, it could make entrepreneurs think harder about whether to raise venture funding at all. “When you have capital behind you, you can think and operate differently,” he said, adding that entrepreneurs can take more risks with that backing. Loss of investment and innovation Several VCs told CNBC they were worried about the trickle-down effect that merger restrictions on the largest firms would have on the entire entrepreneurial ecosystem. Their fear is that if companies no longer have enough viable exit paths, institutional investors that back VCs — like endowments and pension funds — will shift their money elsewhere. In turn, VCs will have fewer funds to dole out to entrepreneurs, who may see less reason to take the risk of starting a new company. The ultimate concern is for a loss of innovation, they say, which is exactly what lawmakers are hoping to fend off with merger restrictions on the largest buyers. “If you restrict the potential to generate exciting rewards and returns from investment, entrepreneurs could find other things to do with their time,” said Patricia Nakache, general partner at Trinity Ventures. Nakache said placing restrictions on the largest tech firms’ ability to make acquisitions could actually discourage entrepreneurs from building companies that compete with their core businesses. That’s because many entrepreneurs like having a back-up plan incorporating possible acquirers if they can’t go public. With greater uncertainty about whether the Big Tech companies could be potential buyers, they may seek to build businesses outside of the largest players’ core offerings, she said. VCs also warned that without the biggest players in the mix, sale prices for start-ups would drop significantly. But outside the industry, some believe these concerns won’t be as bad as VCs fear. “These sorts of laws, if they work as intended, you’re going to have a more competitive marketplace generally, so there’s going to be more potential buyers,” said Michael Kades, director of markets and competition policy at the non-profit Washington Center for Equitable Growth. “I get it if you’re at the VC today, what you’re concerned about is the next couple of years or what your company can get, but increasing the number of potential buyers for firms ... also means that there’s still a very thriving market for these sorts of acquisitions, just not by dominant firms.” Bhaskar Chakravorti, dean of global business at Tufts University’s Fletcher School, said while venture capitalists are probably right that acquisition prices could slide under new merger restrictions, entrepreneurs will still have a drive to innovate. “Ultimately people are going to adapt and yes, some of the valuations, some of the bidding may be stunted. Some of the acquisitions may go for ten, 20% less,” he said. “But ultimately, I don’t think it’s going to make that much of a difference because entrepreneurs are going to go after ideas, they’re going to build them, they’re going to put together teams, and venture money needs a place to invest.” Kades agreed that good ideas will still likely get funding even if the largest firms can’t bid on them or would have a harder time completing an acquisition. Restricting mergers from those companies is about “trying to limit the anticompetitive premium,” he said. Shifting capital VCs are also concerned the new rules could accelerate the shift of venture investment outside the U.S. Mitchell said while other countries including Canada have been adding incentives for entrepreneurs to come and stay in their borders, regulations under consideration in the U.S. will push them away. “We would be making it difficult just at a time when everyone else is trying to make it attractive” to be an entrepreneur in their country, she said. According to the NVCA, the U.S. has seen its share of global venture capital fall from 84% to 52% in the last 15 years. That’s why lawmakers shouldn’t rest on their laurels that U.S. venture capital can keep up with the rest of the world under new arduous regulations, VCs contend.

### 2NC---AT: DIB Consolidation

#### DIB consolidation is already done, good for innovation, and anti-trust shudders the DIB

Chewning ’20 [Eric and Frank Coleman III; November 16; partner in McKinsey’s Advanced Industries practice, former Chief of Staff to the Secretary of Defense and U.S. army intelligence officer, M.B.A. from the University of Virginia, M.A. in International Relations form the University of Chicago; aerospace engineer and partner; Defense News, “Why defense firms need to get systematic about M&A — big and small,” <https://www.defensenews.com/opinion/commentary/2020/11/16/why-defense-firms-need-to-get-systematic-about-ma-big-and-small/>]

The problem for defense companies looking for more of the same is that this wave of consolidation now appears to have run its course. The combined market value of the top five defense hardware players is now more than four times that of the next five; so even as further mega-deals are theoretically possible, they will be increasingly difficult to execute, underscoring the value of programmatic M&A.

Distinct from selective or organic deal-making approaches, programmatic M&A involves a company conducting two or more small or midsized deals per year, with an aggregate value greater than 15 percent of its market capitalization over five years, that align with their overall corporate strategy (which is hopefully linked to the “fast streams” of growth in the budget (see exhibit below)).

These deals get choreographed around a specific business case, such as scaling or integrating vital digital capabilities, and are rooted in a disciplined appraisal of transactions.

In the defense industry, programmatic M&A should be deployed against a strategy supported by the customer’s need for innovation, lower costs and better mission outcomes for the war fighter.

Our analysis shows that over the last decade, few defense companies took a programmatic approach to M&A. Those who did outperformed their peers in total shareholder returns by 10.4 percent. M&A was also an important key to resilience during the last defense spending downturn in 2007-2011: The top quintile of outperforming companies, as well as optimizing cash and flexing capex, used it as an opportunity to grow less cyclical parts of the business and build digital capabilities.

Defense companies may be deterred by the current market environment, featuring stretched valuations, competition from institutional capital and a squeeze on mid-tier players. They may be cautious about the challenge of integrating smaller nondefense acquisitions into company processes and culture — a process that is easier to get wrong than right to be sure.

The very complexity of these circumstances creates opportunities for bold players to differentiate themselves from their peers, align their strategies with national defense priorities and add significant value for shareholders. When done well, programmatic M&A can form a central pillar of their growth strategy.

With a proactive approach to deal sourcing, holistic diligence, and in-house execution and integration expertise, companies can establish M&A as a critical capability and avoid the risks of reactive, one-off projects. In the challenging environment that confronts the defense industry today, those who act boldly will succeed in creating enduring businesses that can adapt to the evolving needs of the national defense.

### 2NC---AT: Espionage

#### Espionage is baseless paranoia with zero evidence, BUT if they’re right hackers thump

Perlow 18 [Jason, Senior Technology Editor at ZDNet, is a technologist with over two decades of experience integrating large heterogeneous multi-vendor computing environments in Fortune 500 companies. 2018. “Paranoia will destroy us: Why Huawei and other Chinese tech is not spying on Americans” <https://www.zdnet.com/article/paranoia-will-destroy-you-why-chinese-tech-isnt-spying-on-us/> dwrs]

CHINA AND THE US: A COMPLEX RELATIONSHIP

Huawei does not just make smartphones. It is also a gigantic telecommunications equipment manufacturer and is actively involved in determining the global 5G standard, which it is collaborating on with AT&T.

US Republican representative Michael Conway of Texas has sponsored a bill -- H.R. 4747 -- that, if passed, would prohibit any US government agency from doing business with Huawei and similar firms, such as ZTE.

The verbiage of the proposed bill claims that, according to our security agencies, Huawei and ZTE have shared sensitive information with China, and that Chinese security agencies can access private US business communications using Huawei and ZTE's equipment.

Huawei and ZTE, of course, have repeatedly denied these allegations since Congress began accusing both of these firms of using their commercial networking products for espionage back in fall 2012.

It should be noted no substantial proof of espionage by China or Huawei/ZTE has ever been established from these accusations and the House intelligence committee report released at the time did not offer much in terms of substance either.

There's no question that the relationship between China and the US is a highly complex one, and that China possesses one of the most sophisticated security apparatus in the entire world, rivaling that of Russia, the US, and other western nations.

Just as the US routinely spies on many countries, China's security agencies also spy on the US and other nations of interest.

OUR ECONOMIC REALITY

So, what is the solution? To stop buying equipment from China and to cease doing business with them?

Well, the short answer is not only no. But, basically, it would be impossible, financially, and from a practicality standpoint.

In 2016, US exports to China were $116 billion, whereas the value of China's exports to the US was $463 billion -- making that year's trade deficit $347 billion.

Our debt to China, financed by US Treasury notes, is $1.2 trillion. This financing of Treasury notes has kept US interest rates low.

If China stopped buying US Treasury notes, the interest rates would rise and could throw the entire world into a global recession. This wouldn't be in China's best interests because shoppers would buy fewer Chinese exports.

China also cannot call in that $1.2 trillion loan -- it would utterly poison its well.

That's the economic reality. The US -- and the western world as a whole -- is China's best customer next to its own domestic market. The country has zero desire to jeopardize this, regardless of its own national security interests.

If it were discovered that China was, in fact, using consumer electronics exports to spy on American citizens and businesses en masse, the consequences would be utterly disastrous for it.

Not just in terms of jeopardizing its export business in the US but also in every country it does business with now. It would be catastrophic for the country's image and would throw the global consumer electronics industry into utter chaos.

ALL KINDS OF STUFF COME FROM CHINA

Chinese firms aren't just responsible for final assembly, productizing, and shipping product abroad, they also form a large portion of the overall supply chain of manufacturing electronic components used in just about every electronic device manufactured all over the world.

I'm talking about all kinds of stuff that go into not just smartphones and mobile devices, but also the Internet of Things (IoT), major appliances, medical devices, automobiles, aerospace, you name it.

If a product has semiconductors in it, there is a good chance they came from China. Yes, there are other countries that make products that have semiconductors and electronics, such as Japan, Korea, Taiwan, Singapore, Vietnam, Malaysia, and, of course, the European and South American nations.

But they too use Chinese firms as not just suppliers for certain things but also for partial and final assembly, because it is that much cheaper to do there.

KEEPING CHINA OUT OF PRODUCTS

So, what do we do? Well, we can't prohibit American firms from doing business with Chinese companies or foreign firms that use Chinese-made components just because we are nervous they might use their products to spy on us.

We can set internal procurement controls on certain types of products and have rigorous monitoring and testing of stuff before it ends up being used in government agencies, but that's about it.

There is no practical or legislative way of keeping China out of products being brought into the US. Such efforts would be counterproductive.

That being said, the threat of our devices being used to spy on us is very much real -- but China should not be the focus of concern. Rogue nation states such as North Korea and malicious/criminal groups seeking financial gain are really what we need to be concerned about.

AN INTERNATIONAL EFFORT IS NEEDED

I believe there needs to be an international effort to monitor and certify consumer electronics so that we can better understand the nature of these threats and then take appropriate action when they are discovered.

The software development and hacker communities residing within the major technology firms already have informal inter-firm efforts to monitor embedded operating systems and applications for potential malware.

To date, they've done a very good job overall of discovering major security exploits and malware, but we can improve this by formalizing how this is done by having our government form and fund organizations with our allies -- as part of overall international treaty negotiations -- with the express effort of increasing due diligence in analysis and monitoring of software that runs on consumer electronics.

The efforts to date have only covered "In-band" types of exploits and malware. In other words, code/processes that exist in software, such as Android or iOS applications distributed in the respective app stores or that are sideloaded, or processes that run in the different OEM distributions of the mobile operating systems themselves.

This needs to continue, but we have to go deeper. The real concern would be "out-of-band" exploits and malware that would not be discovered within applications or operating systems, but in the components, such as firmware or hard-coded routines within the semiconductors themselves (like a baseband communications chip) that would not be detected as a high-level process.

So far, no such state-sponsored malware or an exploit has ever been detected in a semiconductor component originating from China, or, at least, such a discovery has never been validated. All we have received so far is an accusation from a reporter at Bloomberg that certain SuperMicro server systems had a chip that was intercepting and forwarding network traffic from data centers of 30 American corporations, including Apple. That has so far been proven to be categorically false by SuperMicro, as well as Apple and Amazon.

### 2NC---AT: Heg

#### No China war

Shifrinson 2/8/19 [Joshua Shifrinson is an assistant professor of international relations at Boston University. The ‘new Cold War’ with China is way overblown. Here’s why. February 8, 2019. https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm\_term=.f8ca8195c4e4]

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

#### Doesn’t go nuclear

Dennis C. Blair 18. 12-11-18. Dennis Cutler Blair is the former United States Director of National Intelligence and is a retired United States Navy admiral who was the commander of U.S. forces in the Pacific region. “Would China Go Nuclear?” [https://www.foreignaffairs.com/articles/2018-12-11/would-china-go-nuclear //](https://www.foreignaffairs.com/articles/2018-12-11/would-china-go-nuclear%20//) BBM

I read with interest Caitlin Talmadge’s article “Beijing’s Nuclear Option” (November/December 2018), in which she quotes me estimating in 2015 that the odds of a U.S.-Chinese nuclear exchange were “somewhere between nil and zero.” She then goes on to make a case against remaining complacent in the face of the risk of escalation, with no discussion of what is in fact a very high nuclear threshold in a U.S.-Chinese confrontation or conflict. I continue to believe that the chances of nuclear use are very small. Talmadge’s basic argument is that in any conflict with China, the United States will immediately launch a full-scale air and missile assault against military targets in mainland China and against Chinese attack submarines at sea. In so doing, she argues, the United States will inadvertently hit either China’s ballistic missile submarines or its mobile nuclear missiles. That, in turn, will present Chinese leaders with a “use it or lose it” dilemma concerning their nuclear arsenal, and they may well decide to launch a nuclear attack against the United States. Such a scenario is extremely unlikely; indeed, I would say the odds are somewhere between nil and zero. A U.S.-Chinese conflict would be a maritime campaign in which the two sides tried to conquer or defend islands. Attacks on land targets beyond the contested islands and the waters around them, whether carried out by the United States against Chinese territory or by China against U.S. overseas bases, would be aimed at military installations and systems that supported the maritime campaign—ports, air bases, and command-and-control centers. The intercontinental nuclear deterrent forces of both countries are physically separate from these facilities. In addition, U.S. planners are very mindful of the danger of attacking any state’s nuclear arsenal and take extraordinary precautions to avoid doing so. Although there is always a chance for an isolated mistake, it is in fact possible to distinguish nuclear-armed submarines from conventional ones. Likewise, it is possible to distinguish the shorter-range, dual-use missiles that threaten Taiwan, China’s neighbors, and U.S. bases in the Pacific from the intercontinental missiles that threaten the United States. If by mistake a U.S. strike destroyed a land-based medium-range nuclear missile or sank a ballistic missile submarine, China would be greatly concerned, but it is highly unlikely that Beijing would respond by reflexively launching a nuclear attack against the United States. Rather, before even considering violating their long-held “no first use” doctrine, Chinese leaders would wait to see if a concerted, sustained U.S. campaign against their nuclear arsenal was under way. The United States has no incentive to attempt such a campaign and in fact would take every precaution to avoid it. The real danger of escalation in these conflicts would be when a Chinese attempt to capture a disputed island—Taiwan, one of the Diaoyu/Senkaku Islands, or an island in the South China Sea—was failing. A failed attempt to regain territory that the Chinese government has claimed as its own would undermine the legitimacy of the Chinese Communist Party and could make Beijing desperate enough to threaten the use of nuclear weapons. Again, U.S. planners are aware of that danger and would seek to manage the end of a maritime conflict with China in a way that minimized the incentives for escalation.

## Adv---Europe

### 2NC---AT: Protectionism

#### EU won’t do it, impact is limited if they do, BUT the plan causes the harm it would

Rivero 20 [Nicolas, writer for Quartz, Europe’s new antitrust rules will annoy, not topple, Big Tech, <https://qz.com/1946058/europes-digital-markets-act-wont-topple-big-tech/> ]

As US prosecutors ramp up antitrust cases against Big Tech firms, the European Union is readying its own next wave of antitrust lawsuits. On Dec. 15, the bloc will formally begin considering the Digital Markets Act, which would give regulators new firepower to go after digital platforms for alleged anticompetitive practices. The new regulations take aim at “gatekeeper companies,” barring firms from using unfair tactics like giving their own products special treatment on platforms they control (👀 Google and Apple) or using non-public data harvested from third-party sellers to inform their own competing product lines (👀 Amazon). While the laws would likely keep corporate counsel at FAANG firms busy, they probably won’t result in any fundamental changes to the operation of the world’s most powerful online platforms: For that, all eyes are on US courts. Gatekeeper companies that break the proposed European rules would face an escalating schedule of fines and the threat that regulators will restructure their business in Europe. (According to Bloomberg, the law will formally define gatekeepers in terms of revenue, number of users, and their dominance in the European single market, and would call for regulators to regularly revisit and update the list.) That sounds serious, but the breakup threat isn’t new. European regulators already have the power to restructure companies in response to antitrust concerns, and they’ve been loath to use it. “The notion of breakups is completely alien to Europeans, because of course you have this concern about these being big American companies for which you cannot really achieve a breakup that is global,” said economist Cristina Caffarra, who heads the European competition wing of the consulting firm Charles River Associates. Reorganizing companies, in other words, is up to the Americans. Billion-dollar fines have similarly failed to change Big Tech companies’ business models so far. European courts have already fined Google nearly $10 billion in three separate antitrust cases. The lawsuits challenged Google’s digital ad dominance, its practice of elevating its own shopping tool on search results, and the deals it cut with smartphone makers to get its Android operating system installed on virtually all non-Apple devices. The company has yet to meaningfully change any of these practices. “Huge fines are not going to change, and haven’t changed, the companies structurally,” said Michelle Meagher, a senior policy fellow at University College London who has worked with national regulators and private firms on antitrust law. “And that’s ultimately what needs to change if you’re going to have a change in the balance of power.” Caffarra and Meagher both agree the antitrust cases that can really impact the way Big Tech companies do business will have to happen in the US, where the biggest firms are based. American prosecutors have recently launched two cases against Google and Facebook, and are expected to file more in the coming weeks, according to the Wall Street Journal.

#### Plan doesn’t resolve the concerns

1AC Giarda et al., 21 (Raffaele Giarda et al., head of Baker McKenzie's Technology Media & Telecoms Industry Group New York University (M.C.J.) (1994)Columbia University (Summer Program American Law) (1990)University of Rome (J.D., with honors) (1989), 2021, accessed on 9-6-2021, Bakermckenzie, "TMT Looking Ahead", <https://www.bakermckenzie.com/-/media/files/insight/publications/2021/01/tmt-looking-ahead-2021.pdf?la=en)//Babcii>

The long-mooted increased regulation of digital services and markets in Europe landed in December 2020 in the form of two draft regulations, the Digital Services Act and Digital Markets Act. In 2021, digital service providers will be focused on preparing their businesses for the changes ahead, as both proposals navigate the legislative process. The DSA and DMA will not be the only items **near the top of** corporate **agendas in 2021**. Others are likely to include monitoring the continued efforts to find international consensus on tax reforms for the digital economy and addressing the impact of any further developments in the ongoing technology-focused trade wars. AT A GLANCE The EU Digital Services Act: What does the future hold? The European Commission has published its landmark draft new rules applicable to digital services (the Digital Services Act). The DSA shares common themes with the Digital Markets Act (see below) in particular (re) assigning liability or responsibility for possible online harms and a push for even greater transparency from market players. We examine what is actually new for TMT industry players and what lies ahead in these proposals which cover key areas, including safe harbours, notice and take down, know-your-trader requirements, reporting obligations and annual reviews of systemic risks by very large platforms (as defined in the DSA). The EU Digital Markets Act: New rules for platforms. Published alongside the proposed Digital Services Act, the proposals in the Digital Markets Act focus on the largest platforms (gatekeepers) which supply "core platform services" and seek to address what the European Commission perceives as **power asymmetries between platforms**, their business users and end users. Another area of focus is around general market structure — to ensure markets remain "fair and contestable". We look at the definition and role of gatekeepers and the key obligations that will apply under the DMA as well as the road ahead. Trade wars and protectionism — Digital sovereignty under attack? **The** TMT **sector is at the center of disruptive global trade** wars as **geopolitics collide with new technologies and economies are increasingly driven by technological innovation**. Examples include the use of **export controls** to protect "crown jewel" technology, **import restrictions** and **tariffs**, procurement bans and **foreign investment controls** which target key industry players on the basis of perceived national security concerns and **in pursuit of digital sovereignty**. As the concerns underlying these measures are deeply rooted and change is unlikely at the macro level in the short term, we provide an overview of the most important challenges TMT businesses are facing.

### 2NC---AT: Trade

#### Trade is irrelevant for war

Katherine Barbieri 13, Associate Professor of Political Science at the University of South Carolina, Ph.D. in Political Science from Binghamton University, “Economic Interdependence: A Path to Peace or Source of Interstate Conflict?” Chapter 10 in Conflict, War, and Peace: An Introduction to Scientific Research, google books

How does interdependence affect war, the most intense form of conflict? Table 2 gives the empirical results. The rarity of wars makes any analysis of their causes quite difficult, for variations in interdependence will seldom result in the occurrence of war. As in the case of MIDs, the log-likelihood ratio tests for each model suggest that the inclusion of the various measures of interdependence and the control variables improves our understanding of the factors affecting the occurrence of war over that obtained from the null model. However, the individual interdependence variables, alone, are not statistically significant. This is not the case with contiguity and relative capabilities, which are both statistically significant. Again, we see that contiguous dyads are more conflict-prone and that dyads composed of states with unequal power are more pacific than those with highly equal power. Surprisingly, no evidence is provided to support the commonly held proposition that democratic states are less likely to engage in wars with other democratic states.¶ The evidence from the pre-WWII period provides support for those arguing that economic factors have little, if any, influence on affecting leaders’ decisions to engage in war, but many of the control variables are also statistically insignificant. These results should be interpreted with caution, since the sample does not contain a sufficient number wars to allow us to capture great variations across different types of relationships. Many observations of war are excluded from the sample by virtue of not having the corresponding explanatory measures. A variable would have to have an extremely strong influence on conflict—as does contiguity—to find significant results. ¶ 7. Conclusions This study provides little empirical support for the liberal proposition that trade provides a path to interstate peace. Even after controlling for the influence of contiguity, joint democracy, alliance ties, and relative capabilities, the evidence suggests that in most instances trade fails to deter conflict. Instead, extensive economic interdependence increases the likelihood that dyads engage in militarized dispute; however, it appears to have little influence on the incidence of war.

### 2NC---AT: Internet Balkanization

#### Fragmentation’s overhyped nonsense.

Drake 17 William J. Drake, International Fellow and Lecturer in Media Changeat the University of Zurich, expert on internet communication. [Framing Conversation: What Would Internet Fragmentation Mean for the Digital Economy? Global Digital Futures, Working Paper, Columbia School of International and Public Affairs, https://sipa.columbia.edu/sites/default/files/Drake\_GDF\_2017\_FC1\_final.pdf]

In fact, Internet fragmentation remains a contested concept. A cursory review of its usage in various publications and public pronouncements suggests that people often speak of it when discussing a variety of problems and tensions that arise on the Internet that do not all originate from the same source. For example, some in the business community have used the term as a generalized reference to variations in national policies that add to the cost of doing business globally. While some such policies may indeed be related to fragmentation, many other simply reflect differences in national legal systems, policy traditions, and so on that may antedate and arguably do not fragment the Internet. Similarly, some people have described the increasing linguistic diversity of cyberspace as an example of fragmentation, when of course this is simply a matter of a diverse humanity getting on line. Another tendency among at least some observers is to suggest that the Internet is in imminent danger of falling apart. Because there is so much variation in national policies and practices, it is said, the Internet is likely to “break up” into a series of disconnected islands. This seems to be an overly dramatized misreading of some troubling trends. In fact, no cataclysm is around the corner; the underlying infrastructure remains stable and secure in its foundations, and it is incorporating new capabilities that open up new horizons, from the Internet of Things and services to the spread of block chain technology and beyond. But there are fragmentary pressures accumulating which, if left unattended, could reduce to varying degrees the Internet’s enormous vitality and contributions to the world.

### 2NC---AT: Cyber

Finishing Jensen & Banks 18 Benjamin Jensen holds a dual appointment as a scholar-in-residence at American University, School of International Service and as an associate professor at the Marine Corps University, & David Banks, professorial lecturer at the American University's School of International Service. [Cyber warfare may be less dangerous than we think, 4-26-2018, https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/26/what-can-cybergames-teach-us-about-cyberattacks-quite-a-lot-in-fact/]//BPS

shadows. Thus, cyber operations are more akin to the Cold War-era political warfare than a military revolution. Would you like to play a game? To understand how actors use cyber operations to achieve a position of relative advantage, we designed a series of analytical war games. This methodology lets us assess how multiple factors could combine in a competitive environment, and helps identify recurrent strategic preferences associated with cyber operations. We ran military officers and university students through these war games. Next, we turned the war games into survey experiments via Amazon Mechanical Turk (MTurk) — so randomized respondents answered questions about how to respond to an international crisis. War games offer a time-tested means of assessing the changing character of crisis and competition. Following scripted scenarios, players are assigned to different “teams” and armed with resources to meet their objectives. They earn points based on their choices, with referees guiding the play and military/security analysts interpreting the results. [There’s more to Russia’s cyber interference than the Mueller probe suggests] As players seek to win the game, they may choose previously unconsidered options or draw on or combine resources in unexpected ways. By observing these games, recording their results, repeating the plays and redesigning the scenarios, analysts can understand the nature of the complex and highly contingent problems the scenarios represent. And political scientists use war games to create survey experiments to test hypotheses about strategic preferences. Our study of over 100 military officers and students, for instance, gave players a crisis scenario and a range of response options, all of which included the ability to escalate in cyberspace — as well as more traditional diplomatic, economic and military instruments. Players could also choose to de-escalate. What would a great power cyber crisis in East Asia look like? In our first round, “Island Intercept,” we sought to identify whether states escalated using cyber capabilities. Players took on the role of China or the United States in an escalating dispute in the South China Sea. Over the course of multiple war games, we found our mix of military officers and university students often sought to de-escalate the crisis and rarely used offensive cyber operations. Players assigned to the Chinese side often combined cyber espionage and more traditional intelligence activities to identify the U.S. players’ intentions and capabilities. Players replicating strategic decision-making in Beijing seemed to prefer a “wait and see” approach involving increased intelligence and diplomatic lobbying, rather than escalatory offensive cyber operations. [Did the U.S. ‘hack back’ at Russia? Here’s why this matters in cyber warfare.] The broader survey experiment replicated these findings. The 800 MTurk respondents revealed a bias toward not escalating into the cyber domain. Specifically, about 52 percent chose to de-escalate while 30 percent opted for minor escalation in the diplomatic or economic arena. Only 18 percent of respondents preferred escalatory offensive cyber operations. These findings support other studies demonstrating that states do not prefer escalatory responses to cyber intrusions. How will states employ cyber capabilities against their domestic populations? In a second round, we shifted to examine intrastate conflicts. In our “Netwar” game, players took on the role of either the government, a paramilitary organization, a multinational company or a transnational group of hackers and activists, all attempting to achieve their interests in a weak and corrupt state. This scenario sought to replicate the complex, often proxy, multiparty competition in cyberspace. In these games, the results were more mixed. Players replicating the state tended to use offensive cyber operations as a means of targeting domestic opposition groups — while opposition groups used cyber to blackmail the state by leaking sensitive information. In an MTurk survey experiment involving 800 respondents, we found that states still preferred not to jump into the cyber domain, opting about 43 percent of the time to limit escalation. Yet these results appeared to be a function of regime type. When we controlled for regime type in a second round of surveys involving 800 respondents, we found that democracies had a higher than expected count of de-escalatory measures (53 percent). But authoritarian regimes escalated to cyber measures 35 percent of the time, vs. 18 percent for democracies. Where is the escalation? [The Netherlands just revealed its cybercapacity. So what does that mean?] Our findings suggest that cyber weapons may be far less destabilizing than many assume. First, we found that actors in crisis situations were restrained in their use of cyber weapons. Indeed, actors were more likely to use military, economic or diplomatic alternatives before escalating into the cyber domain. How might this work in the real world? We might interpret the Russian shift to cyber operations to be one of desperation, rather than evidence of a calculated strategy. Our findings suggest that actors are uncomfortable in the cyber domain and only operate there when they lack relative influence in other areas — or seek to limit the risk of escalation, likely due to attribution issues associated with cyber operations. Second, fears of large-scale cyber operations are likely overblown due to cyber’s unique “use it and lose it” character. Individual cyberattacks could potentially wreak considerable damage, but any such exploits could — once deployed — be quickly reverse-engineered and the vulnerability in target networks patched. Here’s the catch: Once you convert network access and cyber espionage into an attack payload, you signal your capabilities and lose the ability to conduct similar attacks. There is a unique shadow of the future in cyber statecraft. States have to assess whether they want to jeopardize an exploit in the short term — and lose long-term coercive options against rivals.

#### Cyber attacks can’t undermine deterrence

Caylor ’16 – Air Command and Staff College (Matt, “THE CYBER THREAT TO NUCLEAR DETERRENCE”, <http://warontherocks.com/2016/02/the-cyber-threat-to-nuclear-deterrence/>, dml)

The perception that cyber threats will ultimately undermine the relevance or effectiveness of nuclear deterrence is flawed in at least three keys areas. First among these is the perception that nuclear weapons or their command and control systems are similar to a heavily defended corporate network. The critical error in this analogy is that there is an expectation of IP-based availability that simply does not exist in the case of American nuclear weapons — they are not online. Even with physical access, the proprietary nature of their control system design and redundancy of the National Command and Control System (NCCS) makes the possibility of successfully implementing an exploit against either a weapon or communications system incredibly remote. Also, whereas the cyber domain is characterized by significant levels of risk due to a combination of bias toward automated safeguards and the liability of single human failures, nuclear weapon safety and surety are predicated on balanced elements of stringent human interaction and control. From two-person integrity in physical inspections and loading, to the rigorous mechanisms and authority required for weapons release, human beings serve as a multi-factor safeguard while retaining the ultimate role to protect the integrity of nuclear deterrence against cyber threats. To a large degree, the potential vulnerabilities caused by wireless communications and physical intrusions into areas holding nuclear material are already mitigated via secure communications that are not linked to the outside and multiple layers of physical security systems. While there has been a great deal of publicity surrounding the Y-12 break-in of 2012, the truth is that the three people involved never got near any nuclear material or technology. Without state-level resourcing in the billions of dollars, the technical sophistication required to pursue a Stuxnet-like attack against nuclear weapons is most likely beyond the capability of even the most gifted group of hackers. For all intents, this excludes terrorist organizations and cyber criminals from the field of threats and restricts it to those nations that already possess nuclear weapons. Nuclear-weapon states, however, have the full-spectrum cyber threat capability referenced in the Defense Science Board report and would most likely be influenced by an understanding of the elements of classic nuclear deterrence strategy. In the case of first strike, no cyber weapon could be expected to perform at a rate higher than any conventional anti-nuclear capability (i.e., not 100 percent effective). Therefore, an adversary’s nuclear threat would be perceived to endure, thereby negating and dissuading the effort to use and employ a cyber weapon against an adversary’s nuclear force. Additionally, just as missile defense systems have been historically controversial due to perceived destabilizing effects, it is reasonable to conclude that these nuclear-weapon states would view the attempt to deploy a cyber capability against their nuclear stockpiles from a similar perspective. Finally, the very existence of nuclear weapons is often enough to alter the risk analysis of an adversary. With virtually no chance of remote or unauthorized detonation (which would be the desired results of a sabotage event), the most probable cyber threat to any nuclear stockpile is that of espionage. Attempted cyber intrusions at the U.S. National Nuclear Security Agency (NNSA) and its efforts to bolster cybersecurity initiatives provide clear evidence that this is already underway. However, theft of design information or even more robust intelligence on the location of stored nuclear weapons cannot eliminate the potential destruction that even a handful of nuclear weapons can bring to an adversary. Knowledge alone, particularly the imperfect knowledge that cyber espionage is likely to offer, is incapable of drastically altering an adversary’s risk calculus. In fact, quite the opposite is true. An adversary with greater understanding of the nuclear capabilities of a rival is forced to consider courses of action to prevent escalation, potentially increasing the credibility of a state’s nuclear deterrence. Despite the growing sophistication in cyber capabilities and the willingness to use them for espionage or in concert with kinetic attack, the strategic value of nuclear weapons has not been diminished. The insulated architecture combined with a robust and redundant command-and-control system makes the existence of any viable cyber threat of exploitation extremely low. With the list of capable adversaries limited by both funding and motivation, it is highly unlikely that any nation will possess, or even attempt to develop, a cyber weapon sufficient to undermine the credibility of nuclear weapons. In both psychological and physical terms, the threat of the megabyte will never possess the ability to overshadow the destructive force of the megaton. Although the employment of cyberspace for military effect has brought new challenges to the international community, the role of nuclear weapons and their associated deterrence against open and unconstrained global aggression are as relevant now as they were in the Cold War.

# 1NR

## DA---Bizcon

#### Optimism and growth are surging.

DiBlasi ’21 [Joseph; May 19; Associate Director of Corporate Communications at the Conference Board; the Conference Board, “CEO Confidence Hits All-Time High in Q2,” <https://www.conference-board.org/research/CEO-Confidence/>]

The Conference Board Measure of CEO Confidence™ in collaboration with The Business Council improved further in the second quarter of 2021, following a sharp increase in Q1. The measure now stands at 82, up from 73. This marks the highest level of CEO confidence recorded since the measure began in 1976. (A reading above 50 points reflects more positive than negative responses.)

CEOs’ assessment of current economic conditions rose substantially, after slightly moderating last quarter. In Q2, 94 percent said conditions are better compared to six months ago, up from 67 percent in Q1. CEOs also expressed greater optimism about conditions in their own industries, with 89 percent reporting better conditions compared to six months ago, up from 68 percent in Q1. Historically high expectations in Q1 climbed even further in Q2: 88 percent of CEOs expect economic conditions to improve over the next six months, up from 82 percent.

“This quarter’s survey marks a remarkable turnaround from a year ago—when CEO confidence reached a nadir of 34 at the height of COVID-19’s first wave,” said Dana Peterson, Chief Economist of The Conference Board. “For CEOs, the challenge of navigating a once-in-a-century pandemic is receding, as the focus turns to hiring and investing to compete in an economy poised to see the fastest growth in decades over the months ahead.”

In the job market, the pace of hiring is expected to accelerate over the next 12 months, with 54 percent of CEOs expecting to expand their workforce, up from 47 percent in Q1. While the outlook for wages was virtually unchanged in Q2, more CEOs are reporting difficulty finding qualified workers—57 percent in Q2, up from 50 percent in Q1.

“Optimism is surging in C-suites and boardrooms across industries,” said Roger W. Ferguson, Jr., Vice Chairman of The Business Council and Trustee of The Conference Board. “For CEOs, the challenge is no longer staying afloat, but keeping pace—in particular, with a likely resurgence of the labor shortages experienced before the pandemic.”

Current Conditions

CEOs’ assessment of general economic conditions rose sharply in Q2:

* 94% of CEOs reported economic conditions were better compared to six months ago, up from 67% in Q1.
* Only 2% said conditions were worse, down from 10%.

CEOs were similarly optimistic about conditions in their own industries in Q2:

* 89% of CEOs reported that conditions in their industries were better compared to six months ago, up from 68%.
* Only 4% said conditions in their own industries were worse, down from 8%.

Future Conditions

Expectations about the short-term economic outlook improved further in Q2:

* 88% percent of CEOs said they expect economic conditions to improve over the next six months, up from 82% in Q1.
* Only 1% expect conditions to worsen, down from 7%.

CEOs’ expectations regarding short-term prospects in their own industries also improved in Q2:

* 81% of CEOs expect conditions in their own industry to improve over the next six months, up from 78%.
* Only 4% expected conditions to worsen, down from 7%.

Capital Spending, Employment, Recruiting, and Wages

The survey also gauged CEOs’ expectations about four key actions their companies plan on taking over the next 12 months.

* Capital Spending: 47% of CEOs expect to increase their capital budgets in the year ahead, up from 45% in Q1.
* Employment: 54% of CEOs expect to expand their workforce, up from 47% in Q1.
* Hiring Qualified People: 57% of CEOs report some problems attracting qualified workers, up from 50% in Q1. Notably, 28% report difficulties that cut across the organization, rather than concentrated in a few key areas—up from 18% in Q1.
* Wages: 37% of CEOs expect to increase wages by 3% or more over the next year, virtually unchanged from 36% in Q1.

#### ‘Antitrust now’ is rhetoric. It’ll be light-touch and easily thwarted by litigation, unenforced due to regulatory capture and previous admins, AND foiled by partisanship.

Silverman ’21 [Jacob; July 9; Staff writer and Author; The New Republic, “Biden Wants to Tame Big Tech with a Thousand Paper Cuts,” <https://newrepublic.com/article/162940/biden-executive-order-big-tech-monopoly>]

On Friday, the White House [announced](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/) a potentially important, if modest, effort to further tamp down the power of the technology industry. This time the instrument is an executive order—the kind of wide-ranging declaration that often gets called “sweeping” or “major,” though its efficacy may take years to gauge—that covers everything from competition in the economy to drug prices to reforming a tech sector that is defined by a handful of seemingly unstoppable titans. Offering a mix of general recommendations, requests for action from other government agencies, and new administration policies, the Executive Order on Promoting Competition in the American Economy may be just what our overconsolidated economic system needs. But in tackling the power of a tech sector that has not only wrested control of the economy but remade it in its own data-hungry image, the Biden administration is still throwing pebbles at its enemy’s parapets. The tech industry has had 20 years to establish a stranglehold over our personal data, attention, and consumer choice. To tackle these problems, we need more, much more.

Despite promising to take on the power of Big Tech, President Joe Biden and his administration have so far taken a cautiously incrementalist approach. He’s [appointed tough industry critics](https://www.nytimes.com/2021/06/15/technology/lina-khan-ftc.html) like Lina Khan to be commissioner of the Federal Trade Commission, but he has yet to name a head of the Justice Department’s antitrust division, a key role for any future enforcement action. In Congress, Democrats have introduced six smallish antitrust bills, but their path out of the House is [murky](https://www.cnbc.com/2021/06/24/-big-tech-antitrust-debate-odd-alliances-form-and-party-fractures-show.html), as ongoing disputes between [Republicans](https://www.cnbc.com/2021/07/07/house-republicans-lay-out-tech-antitrust-agenda.html) and Democrats over how to fight this legislative battle mean that the final bills could look much different than they did in committee—if they make it to a floor vote at all. (It doesn’t help that some Silicon Valley–adjacent Democratic politicians, like Representative Ted Lieu and Representative Ro Khanna, have been less than supportive of the bills.)

As federal and congressional leadership lag, states have forged ahead, with dozens of attorneys general coming together in lawsuits like one, filed this week, accusing Google of [anti-competitive practices](https://www.vox.com/recode/2021/7/7/22567656/google-play-store-states-antitrust-suit-letitia-james-utah-new-york-north-carolina). Other ongoing antitrust suits include one [against Amazon](https://www.washingtonpost.com/technology/2021/05/25/dc-ag-antitrust/) over pricing issues; another lawsuit (this one with DOJ participation) [against Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws); and two others against Facebook that a judge recently threw out. In this proliferating legal war against Big Tech—premised on a lack of competition and companies’ abusing their monopoly status—any of these cases could yield billion-dollar fines for one of the tech giants. But fines are easily paid. Whether these suits can lead to meaningful reform, to breaking up companies and redirecting business practices away from the current dominant model of user surveillance and bulk data collection—that is far less clear. As with proposed legislation in the House, bipartisan legal efforts may be sundered on the altar of competing partisan priorities, with Republicans focusing on [alleged censorship](https://newrepublic.com/article/162299/josh-hawley-gops-fake-war-big-tech) and Democrats more focused on [economic competition and user rights](https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting).

With the stage set for legislative gridlock, drawn-out lawsuits, and [bickering](https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386) over the FTC’s legitimacy, a small opening has emerged for the Biden administration to take meaningful action on its own. And there are some measures in the executive order worth celebrating. One section aims to improve internet service by eliminating early termination fees and providing transparent pricing to help drive competition. Another proviso calls for gadget users—from farmers working on tractors to people tinkering with their own cell phones—to have what’s often [referred to](https://www.theverge.com/2021/7/9/22569869/biden-executive-order-right-to-repair-isps-net-neutrality) as “the right to repair,” a right that tech companies have suppressed by discouraging DIY or third-party work on broken items. (Forcing customers to take their doddering laptop to Apple’s Genius Bar helps the company maintain control over its products and ensures that repairs, and the money they generate, stay in-house.) Other relevant orders call for the restoration of net neutrality and applying more scrutiny to corporate mergers, which may prevent a tech giant from swallowing up the next WhatsApp or Slack, formerly insurgent chat/social media platforms that were absorbed by Facebook and Salesforce.

In the last year, tech companies have shifted their rhetoric, [claiming](https://newrepublic.com/article/162509/facebook-big-tech-nick-clegg-regulation-policy) that they are in favor of regulation—just on their terms. To that end, they’ve deployed armies of lobbyists to woo elected officials, making companies like Google and Facebook some of the most profligate spenders on K Street. With the potential for major legislative action still up in the air—a divided Senate doesn’t augur well, unless tech-critical Republicans like Senator Josh Hawley line up behind the Democratic legislative agenda, which seems unlikely—executive action may be the most promising way forward. Call it death by a thousand regulations. It’s also—as the executive order’s many prompts for action by the Federal Communications Commission, the FTC, and DOJ show—a plea for the government to do its damn job.

Even sympathetic observers may survey this latest initiative with some well-earned cynicism. [Regulatory capture](https://newrepublic.com/article/149438/big-pharma-captured-one-percent), in which regulatory agencies become beholden to the companies and industries they oversee, is a well-known feature of the land, and the families of leading politicians like Representative Nancy Pelosi periodically trade stocks based on what appears to be insider information. And as demonstrated by the measure to treat all internet traffic equally by restoring net neutrality (something that the Trump administration [did away with](https://newrepublic.com/article/146305/loses-war-net-neutrality)), the Biden administration is still playing catchup, fighting many of yesterday’s battles. For instance, the order “calls on the leading antitrust agencies, [the DOJ and FTC], to enforce the antitrust laws vigorously and recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.”

While divesting WhatsApp and Instagram from Facebook are worthwhile efforts, there’s also a sense that would-be tech reformers are struggling to deal with the mistakes and oversights of a previous generation of politicians (i.e., pushing for the enforcement of existing laws is yet another call for the government to do its job). Even the order’s directive that the FTC “establish rules on surveillance and the accumulation of data” seems incredibly belated. We are 20-odd years into a surveillance economy, in which consumers have become the main source to be mined for value. The resulting inequities are vast, as the tech giants have had decades to strengthen their positions. It will take far more than an executive order to undo all this, much less to ensure a more equitable future. The question is: Does the Biden administration understand this grim state of play, or is this the best we’re going to get?

#### Biden is all talk---actual policy signals deference to corporate consolidation in every sector.

Stoller ’21 [Matt; April 29; Research Director of the American Economic Liberties Project, author; Substack, “Is Biden Accidentally Giving the Green Light to Mega-Mergers?” <https://mattstoller.substack.com/p/is-biden-accidentally-giving-the>]

Today I’m going to write about the Biden administration’s first major antitrust move, a clearance of a giant pharmaceutical merger which signaled to Wall Street that Biden hasn’t made antitrust a priority. It’s not the worst news, but it’s not good news.

Before that, a little house-keeping. First, Brian Barrett at Wired wrote [a good piece](https://www.wired.com/story/logitech-harmony-smart-remote-lost-its-way/) on how Logitech’s Harmony monopoly killed the universal remote control industry, going into more detail than I did a [few weeks ago](https://mattstoller.substack.com/p/why-logitech-just-killed-the-universal) on the same subject. Second, last year I [wrote up a board game monopoly roll-up](https://mattstoller.substack.com/p/weird-monopolies-and-roll-ups-horse) by a firm called Asmodee, which owns Settlers of Catan. Paul Tullis at Bloomberg [did a more thorough job](https://www.bloomberg.com/news/articles/2021-04-13/board-game-maker-asmodee-behind-catan-pandemic-ticket-to-ride-corners-market?sref=q0qR8k34) last week on how they’ve done through the pandemic.

And now…

Mega-Merger Mania

A number of sources have told me that the merger space is the busiest they’ve ever seen, which is probably a result of being able to borrow a lot of money cheaply (courtesy of the Federal Reserve). Wall Street knows it. “It’s the busiest I’ve ever known it,” Farah O’Brien, a private equity and M&A partner at Latham & Watkins [told](https://www.ft.com/content/bacdf86f-e786-4439-966e-f5958adb1c59) the Financial Times. “There’s a ton of capital that is desperately trying to find a home. I wouldn’t say there’s caution in the market at all.”

It’s happening in every sector, from lithium mining to electric utilities to [semiconductors](https://www.wsj.com/articles/u-k-starts-national-security-probe-of-nvidia-s-40-billion-deal-to-buy-arm-11618837683) to pharmaceuticals. Mergers tend to lead to layoffs, higher prices, less innovation and research, and a more brittle supply chain, and they amplify the control monopolies have over our society. There are even weird new ways of self-dealing via mergers, like the trend of private equity funds [selling their](https://www.institutionalinvestor.com/article/b1r14ljp32b2ly/Private-Equity-Firms-Used-to-Sell-Half-Their-Companies-to-Their-Competitors-Now-They-re-Selling-Them-Back-to-Themselves) own portfolio companies to themselves, and the new cheating special of 2021, the special-purpose acquisition companies, or SPAC. The details of how are not particularly important, suffice to say that what is happening is a massive transfer of wealth and power to a small group, far beyond the inequality we’ve known.

#### All of their examples meaningless because of lack of judicial support---cases won’t even get brought.

Posner ’21 [Eric; July 21; Professor at the University of Chicago Law School, fourth-most cited legal scholar in the United States; Project Syndicate, “The Antitrust War’s Opening Salvo,” <https://www.project-syndicate.org/commentary/biden-antitrust-executive-order-what-it-does-by-eric-posner-2021-07>]

Still, the Biden administration’s antitrust agenda will face significant judicial obstacles. Over the past 40 years, an increasingly business-friendly Supreme Court has gutted antitrust law. In ruling after ruling, it has weakened the standards used to evaluate anti-competitive behavior; raised the burden of bringing an antitrust case; limited the types of antitrust victims who are allowed to bring cases; allowed businesses to use arbitration clauses to protect themselves from class action lawsuits; and much else.

On top of that, the Supreme Court has disseminated throughout the judiciary a generalized suspicion of antitrust claims. Judges at all levels have absorbed an academic skepticism about antitrust law that is now 30 years out of date. Accordingly, business plaintiffs are usually seen as sore losers who have resorted to the law because they were beaten in the marketplace. Consumer cases are attributed to the machinations of trial lawyers. The pretexts businesses offer for their anti-competitive practices are swallowed whole.

So, while Biden is right that “federal government inaction” is partly to blame for the decline in antitrust enforcement, there is little that his (or any) administration can do unless it has the courts on its side. This probably accounts for the order’s careful language. Agencies like the DOJ and the FTC would surely like to enforce antitrust laws more vigorously than in the past, but they are not going to commit resources to bringing cases that will fail in court.

#### Corporations will read into the plan---it spills over because antitrust enforcement is hard to distinguish AND the threat alone depresses corporate growth.

Newcomer ’19 [Eric; June 14; Writer, B.A. from Harvard University; Bloomberg, “As the Antitrust Debate Heats Up, It Could Have a Chilling Effect,” <https://www.bloomberg.com/news/articles/2019-06-14/as-the-antitrust-debate-heats-up-it-could-have-a-chilling-effect>]

Here’s one piece of antitrust news you might have missed last week, amid revelations that the U.S. government is scrutinizing four of the largest tech companies: Mexico said it objected to Walmart Inc.’s $225 million [acquisition](https://www.bloomberg.com/news/articles/2018-09-13/walmart-eyes-mexico-grocery-delivery-with-225-million-purchase) of a grocery delivery startup called Cornershop.

Walmart’s Mexico business, nicknamed Walmex, is the country's biggest supermarket chain, and the bid to expand its online shopping business there fits with the parent company’s larger strategy. Cornershop was founded in San Francisco and raised money from Accel and other venture capitalists before turning its full attention to Latin America. The move by Mexico’s competition agency to scuttle the deal is a warning shot to the technology industry that antitrust anxiety isn’t exclusively an American phenomenon.

It can be hard to sort through which tie-ups are safe. Corporate lawyers might offer a complicated analysis of local laws, but the decisions can often end up being as much political as they are legal. In the U.S., the process to review acquisitions by foreign companies suddenly amped up as the Trump administration expressed concerns about China’s growing economic influence. Is it a coincidence that the Justice Department is diving into antitrust cases just as politicians like Josh Hawley on the right and Elizabeth Warren on the left are raising awareness of the issue?

The threat of a corporate breakup can be just as powerful as actual government intervention. There’s already talk within the industry about a possible chilling of deals from big tech. With Senator Warren and others calling for the unwinding of Facebook Inc.’s acquisitions of WhatsApp and Instagram, companies in the cross hairs might think twice about making a huge purchase. It’s hard to say whether, or to what extent, that is happening because we rarely hear about deals that aren’t signed.

As Walmart was “[analyzing the scope](https://uk.reuters.com/article/us-walmart-mexico-cornershop/walmex-says-mexican-competition-authority-opposes-walmarts-cornershop-purchase-idUKKCN1T5314)” of Mexico’s reproach over the last week, Silicon Valley was still opening its wallet. Google said it would [purchase](https://www.bloomberg.com/news/articles/2019-06-06/google-to-buy-looker-for-2-6-billion-to-expand-cloud-offerings) Looker Data Sciences Inc. for $2.6 billion to help its third-place cloud business, and Salesforce.com Inc. said it would [spend](https://www.bloomberg.com/news/articles/2019-06-10/salesfoce-to-buy-tableau-for-15-3-billion-in-analytics-push) $15 billion to buy Tableau Software Inc. Neither is expected to draw anti-competitive charges.

In her policy proposal, Warren positioned trustbusting as friendly to startups. That wasn’t the vibe I got in a meeting with a group of venture capitalists this week. They argued that big tech companies create opportunities for startups, whether it’s through app stores or new computing platforms. That allows startups to focus on targeted business opportunities that large companies overlook.

That dynamic allowed a little company called Slack Technologies Inc. to develop a chat app that became popular among business professionals. Now Facebook, Google and Microsoft Corp. are trying to build their own versions. Slack has [drawn interest](https://www.bloomberg.com/news/articles/2017-06-15/messaging-startup-slack-said-to-draw-interest-from-amazon-com) from potential buyers including Amazon.com Inc. over the years.

Next week Slack is set to list on a public stock exchange, which, if history is any guide, would be an opportune time for a big company to swoop in with an offer. In this current environment, is the potential hassle of a government review worth it if you’re Facebook or Amazon? Given the enormous price tag a deal would likely carry, it might just be easier to sit on the sidelines.

#### Businesses are uniquely responsive to a perceived increase in likelihood of a successful suit

Patrick J. Medeo 18, Judicial Law Clerk at the New Jersey Superior Court, Appellate Division, JD from Rutgers Law School, BS in Business Administration and Legal Studies from Drexel University, “Potential Negative Impacts of Antitrust Litigation on Businesses”, Rutgers Law School Center for Corporate Law and Governance, 4/6/2018, https://cclg.rutgers.edu/blog/potential-negative-impacts-of-antitrust-litigation-on-businesses-by-patrick-j-medeo/

In the United States, antitrust litigation is not solely a matter of government concern. In fact, antitrust enforcement is a tool strategically used by private parties as part of business operations in the United States. By increasing litigation costs, potential damages, risk of suit, and regulatory oversight costs, antitrust litigation can be an impediment on businesses. Further, fear of litigation and associated costs stifles new product development and production in the United States by creating a high barrier to entry in the form of regulatory costs and significant risk of liability. With the number of antitrust cases rising annually, the negative impact on businesses should be of concern for enforcers especially as the number of private claims grows. Properly applied antitrust laws allow both government and private parties the ability to stop or hinder abuses of market power by participants seeking anticompetitive advantages.

A meritorious use of antitrust law by private parties may entail a situation where a cartel of competitors in an industry work together to fix prices, control supplies, and divide market share. In doing so the cartel blocks access to necessary resources for new entrants to the market; through strategic distribution, wholesale, and manufacturing contracts the cartel is able to raise barriers to entry so high that a new entrant would be unable to enter the market or would be unable to effectively compete upon entry. Proper application of antitrust laws by a private party would allow for recourse against the cartel participants and would promote competition in the industry by lowering barriers to entry for new market participants. However, due to the staggering effects that antitrust litigation can have, private parties may also abuse the laws in order to subvert competition.

According to an article published by the International Bar Association in 2009, it was noted how “broad procedural and substantive rules providing incentives to litigation produce economic harm” to companies and employees, specifically emphasizing the role played by antitrust cases. The liability is of such a drastic nature that liability policy premiums “increase (s) of 300 or more percent are not uncommon for [European] companies with a US [stock] listing.” In 2016 alone, there were 853 antitrust cases heard in federal courts, a majority of which were brought by private actors. This is an increase of 10.9 percent from 2015 and a 21 percent increase from 2012, where 702 antitrust cases were filed in federal court alone. [1] As of 2007, the average duration of an antitrust case, from filing to completion, was 24.6 months.[2] Such prolonged cases prove expensive for defendants and can create a disincentive to enter the United States Market as the frequency of them increases.

A poignant example of prolonged litigation is the LIBOR-Based Financial Instruments Antitrust Litigation. With lawsuits dating back to 2007, the private litigation against numerous banks is still in the process of closing, over a decade later. Collectively, the defendant organizations have paid hundreds of millions and potentially billions of dollars to end litigation, with firms like Citigroup paying individual settlements with private litigants upwards of $100 million.[3] The use of private antitrust litigation may be abused by private litigant as a strategic and anti-competitive tool.

Although Antitrust laws are meant to be used to uphold the competitive integrity of US Markets, the laws may also be used by private litigants for anti-competitive ends. This specifically comes into play where non-dominant firms in competitive markets utilize antitrust laws to sue dominant firms. According to a United State Department of Justice paper on the procompetitive and anticompetitive nature of private antitrust litigation, antitrust suits brought by non-dominant firms in competitive markets are more likely to constitute abuses of the law rather than true claims of anticompetitive activity.[4] Further, the use of private antitrust litigation can be highly profitable for nefarious plaintiffs; for instance, not only is the risk of long, complex, and the costly litigation a major deterrent for defendants but it may often lead to profitable settlements for the plaintiffs. In addition to profitable settlements, plaintiffs in private antitrust actions may also be rewarded with easier competition due to fear by defendants of copy-cat lawsuits, this is especially true after a successful government claims. Overall, even where claims may have merit private parties may be less likely to use antitrust laws to impede anticompetitive behavior than use it for their own profit.

Antitrust lawsuits are not only costly because of settlements, litigation costs, and other directly monetary outputs; instead, antitrust may also take a toll on opportunity and operational costs ultimately stifling innovation and go-to-market strategies. A prime example is the strategic use of antitrust laws by Digital Equipment Corp. against Intel in 1997. As illustrated in the Department of Justice’s article “The Strategic Abuse of the Antitrust Laws”, a well-timed antitrust allegation can be effective and profitable for the aggressing party. Although suit was never brought, the prospect of a large scale antitrust battle led to a $700 million settlement deal between Digital and Intel, ending months of patent litigation.[5] The settlement came just after a press release by Digital claiming that Intel was bolstering a monopoly in high power micro processing chips, at the same time the FTC began questioning Intel’s dominance in the chip and semi-conductor market.

In a highly competitive market Digital was able to nearly stop Intel in its tracks by threatening antitrust litigation and utilizing a Public Relations campaign to draw attention to the company’s market power, founded upon verifiable anticompetitive activity or not. The benefits of this strategy for Digital were not limited to a cash settlement, although the settlement was highly profitable more significant gains were made. In the settlement agreement it was stipulated that Digital would be guaranteed discounts on Intel Pentium chips (used in Digital’s computer products instead of its own competing chips), and continued access to the same Intel Pentium chips. Digital’s personal computers, which incorporated Intel chips, represented nearly 25% of its total revenues. By strategically threatening antitrust litigation Digital was able to slow Intel’s growing and usurping dominance in the high-power chip market, where both parties were competing. In doing so Digital added to its cash reserves while forcing Intel to acquire its chip technology. [6] Ultimately the FTC investigation lead to the finding that Intel had withheld information in the patent litigation process, but Digital’s threat antitrust suit forced a settlement exclusive to them and not benefitting other patent litigants against Intel.

Although private parties may, and often do, have a vested interest in utilizing antitrust law to stop anticompetitive behavior strategic uses such as Digital’s are viewed more as abuses. This is because they ultimately do not better competition in the market as a whole, and instead are highly profitable for only the aggressing party. Strategic uses of antitrust such as this appear problematic for businesses. Although they strong arm parties into dealing together, they also hinder development of new products and allow intelligent abusers to systematically restrain their competitors that may otherwise be outperforming other market participants. This may be done regardless of the veracity of their claim. Ultimately, it is the consumer that pays in the form of higher prices, slowed product development and potentially inferior products.

#### Abrupt expansion of antitrust generates major uncertainty that disrupts business planning

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

#### It’s perception-based---the possibility that precedent could be applied crumbles confidence and spirals into global decline

Mohamed A. El-Erian 17, Chief Economic Adviser at Allianz, Chairman of US President Barack Obama’s Global Development Council, Former CEO of the Harvard Management Company and Deputy Director at the International Monetary Fund, “America’s Confidence Economy”, Project Syndicate, 3/20/2017, https://www.project-syndicate.org/commentary/trump-market-optimism-economic-growth-by-mohamed-a--el-erian-2017-03

The surge in business and consumer sentiment reflects an assumption that is deeply rooted in the American psyche: that deregulation and tax cuts always unleash transformative pro-growth entrepreneurship. (To some outside the US, it is an assumption that sometimes looks a lot like blind faith.) Of course, sentiment can go in both directions. Just as a “pro-business” stance like Trump’s can boost confidence, perhaps even excessively, the perception that a leader is “anti-business” can cause confidence to fall. Because sentiment can influence actual behavior, these shifts can have far-reaching impacts. In his groundbreaking General Theory of Employment, Interest, and Money, John Maynard Keynes referred to “animal spirits” as “the characteristic of human nature that a large proportion of our positive activities depend on spontaneous optimism, rather than mathematical expectations, whether moral or hedonistic or economic.” Jack Welch, who led General Electric for 20 years, is a case in point: he once stated that many of his own major business decisions had come “straight from the gut,” rather than from analytical models or detailed business forecasts. But sentiment is not always an accurate gauge of actual economic developments and prospects. As the Nobel laureate Robert J. Shiller has shown, optimism can evolve into “irrational exuberance,” whereby investors take asset valuations to levels that are divorced from economic fundamentals. They may be able to keep those valuations inflated for quite a while, but there is only so far that sentiment can take companies and economies. So far, the exuberant reaction of markets to Trump’s victory – all US stock indices have reached multiple record highs – has not been reflected in “hard data.” Moreover, economic forecasters have made only modest upward revisions to their growth projections. It is not surprising that equity investors have responded to the surge in animal spirits by attempting to run ahead of a possible uptick in economic performance. After all, they are in the business of anticipating developments in the real economy and the corporate sector. In any case, they believe that they can quickly reverse their portfolio positions should their expectations change. That is not the case for companies investing in new plants and equipment, which are less likely to change their behavior until announcements begin to be translated into real policies. But the longer they wait, the weaker the stimulus to economic activity and income, and the more consumers must rely on dissaving to translate their positive sentiment into actual purchases of goods and services. It is in this context that the economy awaits a solid timeline for policy announcements to evolve into detailed design and durable implementation. While there is often some delay when political negotiations and trade-offs are involved, in this case, the sense of uncertainty may be heightened by policy-sequencing decisions. By deciding to begin with health-care reform – an inherently complicated and highly divisive issue in US politics – the Trump administration risks losing some of the political goodwill that could be needed to carry out the kinds of fiscal reform that markets are expecting. Even if a bump in the economic data does arrive, it may not last, unless the Trump administration advances policies that enhance longer-term productivity, through, for example, education reform, apprenticeship programs, skills training, and labor retooling. The Trump administration would also have to refrain from pursuing protectionist trade measures that would disrupt the “spaghetti bowl” of cross-border value chains for both producers and consumers. If improved confidence in the US economy does not translate into stronger hard data, unmet expectations for economic growth and corporate earnings could cause financial-market sentiment to slump, fueling market volatility and driving down asset prices. In such a scenario, the US engine could sputter, causing the entire global economy to suffer, especially if these economic challenges prompt the Trump administration to implement protectionist measures.

#### Studies confirm---business confidence tells economic fortunes better than conventional indicators.

Khan ’20 [Hashmat and Santosh Upadhayaya; August 16; Economics Professor at Carleton University, Economics PhD from University of British Columbia; Economic Analyst for Innovation, Science and Economic Development Canada; Empirical Economics, “Does business confidence matter for investment?” Vol. 59, No. 5]

Abstract

Business confidence is a well-known leading indicator of future output. Whether it has information about future investment is, however, unclear. We determine how informative business confidence is for investment growth independently of other variables using US business confidence survey data for 1955Q1–2016Q4. Our main findings are: (i) business confidence has predictive ability for investment growth; (ii) remarkably, business confidence has superior forecasting power, relative to conventional predictors, for investment downturns over 1–3-quarter forecast horizons and for the sign of investment growth over a 2-quarter forecast horizon; and (iii) exogenous shifts in business confidence reflect short-lived non-fundamental factors, consistent with the ‘animal spirits’ view of investment. Our findings have implications for improving investment forecasts, developing new business cycle models, and studying the role of social and psychological factors determining investment growth.

Introduction

Business confidence is a well-known leading indicator of future output, especially during economic downturns, and receives attention from the media, policymakers and forecasters. Somewhat surprisingly, the direct link between business confidence and investment has not yet been investigated. Our paper fills this gap. We provide a quantitative assessment of the information in business confidence for future investment growth, after controlling for the conventional determinants such as user cost, output, cash flow and stock price.

Understanding the predictive power of business confidence is valuable along three dimensions. First, it can help forecasters and policymakers improve their investment forecasts. Second, it can provide a rationale for explicitly including business confidence—either as causal or as anticipatory—in theoretical models of business cycles. Third, it can help motivate studies on the how investment managers’ social and psychological circumstances influence investment decisions over and beyond rational cost-benefit analyses.Footnote1

We consider the Organization for Economic Co-Operation and Development (OECD)’s business confidence index for the USA as a measure of business confidence and ask the following three questions.Footnote2 Does business confidence have independent information about future business investment growth? Does it have forecasting power for investment downturns? Does it help in making directional forecasts—the positive or negative movements in the trajectory of investment growth?

Previous literature that used business confidence has primarily studied its predictive properties for variables other than investment. Heye (1993) examines the relationship between business confidence and labour market conditions in the USA and other industrialized countries. Dasgupta and Lahiri (1993) show that business sentiments have explanatory power of forecasting business cycle turning points. Taylor and McNabb (2007) find that business confidence is procyclical and plays an important role in forecasting output downturns.

Although we focus on business confidence, our paper is related to a large body of previous research that has studied consumer confidence or sentiment and its ability to forecast macroeconomic variables. Leeper (1992) finds that consumer sentiment does not help predict industrial production and unemployment, especially when financial variables are taken into account. On the other hand, Matsusaka and Sbordone (1995) reject the hypothesis that consumer sentiment does not predict output. Carroll et al. (1994), Fuhrer (1993), Bram and Ludvigson (1998), Ludvigson (2004) and Cotsomitis and Kwan (2006) find that the consumer attitudes have some additional information about predicting household spending behaviour. Lahiri et al. (2016) employ a large real-time dataset and find that the consumer confidence survey has important role in improving the accuracy of consumption forecasts. Christiansen et al. (2014) find that consumer and business sentiments contain independent information for forecasting business cycles. Barsky and Sims (2012) find that consumer confidence reflects news about future fundamentals and a confidence shock has a persistent effect on the economy.

More recently, Angeletos et al. (2018) quantify the role of confidence for business cycle from both theoretical and empirical perspectives. They construct a measure of confidence within a Vector Autoregressive (VAR) framework by taking the linear combination of the VAR residuals that maximizes the sum of the volatilities of hours and investment at frequencies of 6–32 quarters. Their measure likely captures a mixture of consumer and business confidence and is, therefore, distinct from the survey-based measure that we use in our analysis.

We find that business confidence leads US business investment growth by one quarter. It leads structures investment, which is one of the major components of business investment, by two quarters. Our empirical analysis shows that investors’ confidence has statistically significant predictive power for US business investment growth and its components (equipment and non-residential structures) after controlling for other determinants of investment. To better gauge the role of business confidence for investment growth, we also perform Out-Of-Sample (OOS) test for 1990Q1–2016Q4. Our findings suggest that the OOS test results are similar to the in-sample test results.Footnote3

While, as we found, business confidence has predictive power for total investment, it may also contain additional information on the trajectory of investment as captured by downturns and directional changes. This information would be of interest to policymakers in assessing the economy’s near-term outlook, over and above the general ability of business confidence to forecast investment. Indeed, we find that contemporaneous correlation between business confidence and investment growth rises during NBER recession dates. This property of the data suggests that it is worthwhile to explore the forecasting ability of business confidence for investment downturns and directional changes. Towards this end, we define investment downturns as business investment growth below the sample average for more than two consecutive quarters.Footnote4 Using a static probit forecasting model, we assess the OOS forecasting ability of business confidence for investment downturns for 1990Q1–2016Q4. A key finding of this approach in the literature is that term spread and stock price contain information for forecasting US recessions (Estrella and Mishkin 1998; Nyberg 2010; Kauppi and Saikkonen 2008). We follow a similar approach and find that business confidence has statistically significant forecasting power for investment downturns over 1–4-quarter forecast horizons in the US economy. It has stronger forecasting ability than the traditional predictors such as term spread, credit spread and stock price at 1–3-quarter forecast horizons. We also find strong evidence that the business confidence has good incremental predictive power for investment downturns over 1–4-quarter forecast horizons, controlling for other predictors of downturns.

#### Confidence is key to growth---it’s a barometer that foretells the overall health of the economy.

Shankar ’19 [Reddy; June 12; professional trader and cryptocurrency analyst, currently managing an Asset Management Platform; Ditto Trade, “What Is Business Confidence Index & Why Is It Important,” <https://www.dittotrade.academy/education/intermediate/fundamental-analysis/fundamental-indicators/what-is-business-confidence-index-why-is-it-important/>]

What is the Business Confidence Index (BCI)?

Business Confidence Index (BCI) is a leading indicator of future developments in the country. This index is built with the opinions taken during regular surveys asking about progress in production, sales, orders, and stocks of finished goods in the manufacturing sector. It can be employed to monitor the growth in production and try to forecast future turns in the economic situation.

Speaking about numbers, above 100 suggests increased confidence in business performance and numbers below 100 indicate nervousness towards future performance. Basically, Business or economic sentiment shows the optimism that business managers have on the prospects of economic conditions in a country or region. It also presents an overview of how people foresee the economy.

It is a component of the bank’s business survey, which covers hundreds of companies to assess the business conditions in the country. The index is a leading indicator in gauging the overall health of the economy. It is being published since 1997.

The Business Confidence Index (BCI) is calculated on a net balance basis. The companies that are surveyed in the index are asked about whether there is a positive or negative outlook. Specifically, how business conditions are likely to change in the next three months, and the result is calculated as positive minus negative responses, which is the net balance. Thus, a balance above zero reflects improving business confidence, and lower than zero indicates falling confidence. A positive outlook can, therefore, be regarded as healthy for the near term economic outlook, in turn, will benefit growth-related economic instruments.

What does the Business Confidence Index (BCI) of a country measure?

BCI aims to measure the expectation of business conditions for the upcoming months and takes the average of trading, profitability, and employment indices of the companies under the survey. The Central Bank analyses the data according to industry, region, and components. The monthly report of BCI covers a lot of businesses, including tax regulation, housing prices, interest rates, supply and demand, labour market, wages, input, output prices, and others. The companies that are surveyed operate in various industries, including manufacturing, construction, mining, retail and wholesale trade, transportation, recreation and entertainment, finance, and IT. A detailed text report published by analysts also includes the responses of some companies to the questionnaire set by them. The text report looks at the factors influencing the company’s opinion.

A reliable source of information on ‘Business Confidence Index’ for Major currencies

The Business Confidence Index (BCI) is published by the National Bank of their respective nations. However, there are business analysts who also publish a monthly report on the same. Here the report will have a lot more information and analysis as compared to one released by National Bank. The business analyst report will also predict the economy and growth of various industries and their contribution to the country’s revenues. One can also get the data from financial economists as they rank the order of confidence in carrying out a business based on the risks. Here are a few BCI’s of major economies of the world.

[Hyperlinks omitted].

What do traders care about the Business Confidence Index (BCI) and its impact on a currency?

The Survey of Business Confidence Index (BCI) belongs to the group of economic indicators, which measure financial confidence among businesses as well as consumers. The business confidence influences most of the fundamental analysis of the Forex market, primarily because the effect it has on the currency. If the business confidence index number is higher, it will have a positive impact on the currency. This is because higher confidence indicates the growth of a country’s economy. Conversely, if these numbers are low, it will have a negative impact on the currency. Hence, traders and investors prefer holding the currencies of those countries with higher BCI values.

In addition to this, the BCI provides a clue as to how the public would estimate their ability to obtain employment and how their income would be spent. In case the indicator gives terrible numbers, the consumers will restrain from making large and expensive purchases like luxury items and automobiles. Banks and governments are also affected by reduced confidence. Lending will decrease, and the number of mortgage applications may drop. Central banks may look to cut benchmark interest rates, and governments will be forced to reduce taxes to propel economic growth.

#### Confidence is self-fulfilling---a shock jolts the demand curve and turns growth into recession.

Greenlaw ’18 [Steven and Timothy Taylor; January 2; Professor of Economics at the University of Mary Washington, Ph.D. in Economics from Binghamton University; Managing Editor of the Journal of Economic Perspectives, former lecturer at the University of Minnesota; Principles of Economics, “The Aggregate Demand/Aggregate Supply Model,” Ch. 24]

How Changes by Consumers and Firms can Affect AD

When consumers feel more confident about the future of the economy, they tend to consume more. If business confidence is high, then firms tend to spend more on investment, believing that the future payoff from that investment will be substantial. Conversely, if consumer or business confidence drops, then consumption and investment spending decline.

The University of Michigan publishes a survey of consumer confidence and constructs an index of consumer confidence each month. The survey results are then reported at [http://www.sca.isr.umich.edu](http://www.sca.isr.umich.edu/), which break down the change in consumer confidence among different income levels. According to that index, consumer confidence averaged around 90 prior to the Great Recession, and then it fell to below 60 in late 2008, which was the lowest it had been since 1980. Since then, confidence has climbed from a 2011 low of 55.8 back to a level in the low 80s, which is considered close to being considered a healthy state.

One measure of business confidence is published by the OECD: the “business tendency surveys”. Business opinion survey data are collected for 21 countries on future selling prices and employment, among other elements of the business climate. After sharply declining during the Great Recession, the measure has risen above zero again and is back to long-term averages (the indicator dips below zero when business outlook is weaker than usual). Of course, either of these survey measures is not very precise. They can however, suggest when confidence is rising or falling, as well as when it is relatively high or low compared to the past.

Because a rise in confidence is associated with higher consumption and investment demand, it will lead to an outward shift in the AD curve, and a move of the equilibrium, from E0 to E1, to a higher quantity of output and a higher price level, as shown in [Figure 1](https://opentextbc.ca/principlesofeconomics/chapter/24-4-shifts-in-aggregate-demand/#CNX_Econ_C24_014) (a).

Consumer and business confidence often reflect macroeconomic realities; for example, confidence is usually high when the economy is growing briskly and low during a recession. However, economic confidence can sometimes rise or fall for reasons that do not have a close connection to the immediate economy, like a risk of war, election results, foreign policy events, or a pessimistic prediction about the future by a prominent public figure. U.S. presidents, for example, must be careful in their public pronouncements about the economy. If they offer economic pessimism, they risk provoking a decline in confidence that reduces consumption and investment and shifts AD to the left, and in a self-fulfilling prophecy, contributes to causing the recession that the president warned against in the first place. A shift of AD to the left, and the corresponding movement of the equilibrium, from E0 to E1, to a lower quantity of output and a lower price level, is shown in [Figure 1](https://opentextbc.ca/principlesofeconomics/chapter/24-4-shifts-in-aggregate-demand/#CNX_Econ_C24_014) (b).

#### Failed recovery snowballs---causes cyber, China, and Russia war.

Engelke ’20 [Peter and Matthew Burrows; July 2020; Deputy Director and Senior Fellow within the Atlantic Council’s Scowcroft Center for Strategy and Security, Ph.D. in History from Georgetown University, M.A. from the Walsh School of Foreign Service; Director of the Atlantic Council’s Strategic Foresight Initiative, Ph.D. in European History from the University of Cambridge; Atlantic Council, “What World Post-COVID-19?” <https://www.atlanticcouncil.org/wp-content/uploads/2020/07/What-World-Post-COVID-19.pdf>]

The developing world is even more hard hit economically despite the fact that the worst forecasts of large-scale deaths in Africa and Latin America never come true. Death tolls resemble those in the West. The virus weakened as its moved south and the youthful populations—many of whom suffered minor symptoms— diminished the contagion. With the major economic powers hard hit, recovery is extremely difficult. Commodity prices remain low, hurting those developing countries that are dependent on the export of minerals, oil, etc. Chinese investments help, but CPC leaders are wary of providing much assistance largesse for fear the Chinese public is angered while conditions remain hard at home. Popular discontent against the CPC rises with China’s faltering domestic economy.

As during the Great Depression, there are many false starts, giving the illusion that the corner is about to be turned, justifying governments’ stubbornness in persevering with failing policies. Unlike in the 1930s, there is enough of a social safety net that discontent is contained despite slowly sinking standards of living in much of the world. The other is always to blame. Sino-American tensions escalate to an all-time high. The United States takes strong protectionist measures against China and Russia for their “disinformation,” deciding finally to erect a firewall against the two. Observers think the United States is preparing for a cyber war against China and Russia.

By the mid-2020s, deglobalization is speeding up, yielding slow economic growth everywhere. Poverty levels are rising in the developing world and there is the potential for open conflict between the United States and a China-Russia alliance.

# 2NR

## CP---CIL

### 2NR---Solvency---Antitrust

#### The Supreme Court has total control over the substance and applicability of antitrust.

Sitaraman ’18 [Ganesh; September 2018; Co-founder and Director of Policy for the Great Democracy Initiative, Professor of Law at Vanderbilt University; The Great Democracy Initiative, “Taking Antitrust Away from the Courts,” <https://greatdemocracyinitiative.org/wp-content/uploads/2018/09/Taking-Antitrust-Away-from-the-Courts-Report-092018-3.pdf>]

The second failure was the structure of government agencies. Compared to how most of the rest of government works, antitrust is exceptional. Normally, Congress passes laws commanding agencies to act to regulate – the EPA regulates clean air and water, the National Highway Transportation Safety Administration regulates safety in cars and trucks, the Consumer Products Safety Commission regulates children’s toys. These agencies are staffed with experts in the field, they hire scientists and commission studies, and they are designed to receive input from industry and the general public. Agencies are empowered to use their considerable expertise to make regulations setting standards or regulating specific practices. Courts are able to review the agency’s regulations, and they generally give deference to the substance of the regulation as long as it is within the agency’s discretion and so long as the agency has used its expertise to come to a reasoned decision. If a court strikes down an agency’s regulation for failing to consider an aspect of the problem or acting outside their statutory authority, the agency has a chance to correct its failure.

Antitrust doesn’t work this way. At first, Congress passed the Sherman Antitrust Act in order to make monopolization and monopolists’ practices illegal. The law was written with extremely broad language, and the Supreme Court narrowed the law, declaring that only unreasonable market practices were covered by the statute. In response, Congress passed new antitrust laws, created an antitrust agency (the FTC), and empowered the FTC to interpret its charter and make rules. But in practice, a timid FTC has failed to take up its congressionally authorized role and has largely abandoned the project of making regulations to interpret and enforce the antitrust laws it administers.13 This has left the Supreme Court to define the substance of antitrust law. This is a serious problem. Agencies have considerable expertise and are politically accountable to Congress and the President. In contrast, the Court is made up of unelected, unaccountable judges who have no expertise in business realities or any specific sector of the economy. Worse still, the FTC now defers so completely to the Supreme Court’s policymaking choices that it has narrowed its own statutory authorities to align with judicially-invented policies. Judicial lawmaking in this arena also ties back to the ideology problem. Normally, the courts provide a check on regulatory agencies, which utilize their expertise and have a transparent process for making regulations. In antitrust, because the courts have no expertise, they rely on the parties in the case and academics to teach them about markets and competition through an ad-hoc process of allowing amicus briefs during litigation.14 A skewed set of intellectual inputs, and limited public participation, leads to judicial lawmaking that is disconnected from the reality of the economy.

### 2NR---M---AT: Posner

#### Posner’s a joke

Joel P. Trachtman 9, Professor of International Law, Tufts University Fletcher School of Law and Diplomacy, 2009, Review of The Perils of Global Legalism, <http://www.globallawbooks.org/reviews/detail.asp?id=627>

A fundamental point in Posner’s argument is that we “cannot solve global collective action problems by creating institutions that themselves depend on global collective action” (p. 34). This glib assertion is patently false: consider as an example the formation of any constitution—constitutions themselves depend on collective action, and they are used to address collective action problems. In domestic society, and in all other social contexts, the creation of institutions always depends on collective action, and always is intended to solve collective action problems. Similarly, Posner later emphasizes that “it is the conceit of global legalism that people—ordinary people, government officials, bureaucrats—will obey law even though they would not obey or consent to the international versions of government institutions that we all agree are necessary to make law workable at the domestic level” (p. 128). Here, Posner makes the additional error of extrapolating from the domestic context to the international context without recognizing contextual and teleological differences. The result is the breathtaking assertion that international law, to be effective, requires the same supporting institutions that domestic law has.